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AMENDMENT #1 OF DECISION #10-08 AND TRANSFER OF COMPREHENSIVE PERMIT

May 14, 2012

Comprehensive Permit
Issued to the Acton Housing Authority
15-26 Sachem Way
McCarthy Village II

This is an amendment by the Acton Zoning Board of Appeals (hereinafter the Board) of its decision issued to the Acton Housing Authority on October 12, 2010 for property at 15-26 Sachem Way shown on the current Acton Town Atlas map C5 parcel 16 (hereinafter the Site). The 2010 decision is referred to hereinafter as the Original Decision.

This Amendment Decision is in response to the request of the Acton Housing Authority (hereinafter the Applicant) for an amendment of the Original Decisions and of certain aspects of the project plan approved thereunder, and to transfer the Comprehensive Permit to a new

entity. The Board decided on the request as a public meeting on May 14, 2012. Board members Kenneth Kozik (Chairman), Jonathan Wagner, and Marilyn Peterson were present at the meeting. The minutes of the meeting and submissions, on which this decision is based upon, may be referred to in the Town Clerk's office or the office of the Board at Acton Town Hall.

1 EXHIBITS

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

1.1 Amendment request cover letter from Kelley Cronin, Executive Director of the Acton Housing Authority, dated April 2, 2012.

1.2 Letter from Stephen D. Baker, RA, Principal of Baker/Wohl Architects, dated April 5, 2012, which itemizes the proposed architectural changes.

1.3 Plans approved under the Original Decision:

- a) Buildings elevation and floor plans, dated September 15, 2010.
- b) Grading and Drainage Plan, last revised September 9, 2010.
- c) Planting Plan, dated September 15, 2010.
- d) Site Plan, dated September 15, 2010.

1.4 Proposed revised plans:

- a) Buildings elevation and floor plans, dated February 29, 2012.
- b) Grading and Drainage Plan, dated February 29, 2012.
- c) Planting Plan, dated February 29, 2012.
- d) Site Plan, dated February 29, 2012.

1.5 Letter from Ruth H. Silman of Nixon Peabody LLP, dated May 3, 2012.

1.6 Certificate of Organization of AHA LLC, dated May 1, 2012 (MA Secretary of the Commonwealth Filing Number: 20128533580).

1.7 AHA LLC Operating Agreement, dated April 30, 2012.

Exhibits 1.1 through 1.7 are referred to herein as the Plan Changes.

2 FINDINGS AND CONCLUSIONS

2.1 The proposed Plan Changes include:

2.1.1 Changing the affordability restrictions from 50% to 80% of area median income (AMI). The Applicant explains that:

- a) The change is necessary to meet the Massachusetts Housing Partnerships (MHP) requirements to issue a mortgage for the project.
- b) The Acton Housing Authorities intent and mission for the project as originally stated remains unchanged.

2.1.2 *De minimis* building design and site plan modifications in part needed to meet DHCD requirements and otherwise to improve the project. In total, the request lists approximately fifteen changes, such as:

- a) Reduction of deck sizes.

b) Changes in window arrangements.

c) Raising the finish floor elevation by 3 inches.

d) Addition of +/- 6' x 8' lean-to storage sheds at each unit.

e) Slight rearrangements of landscaping elements.

2.2 The proposed Plan Changes individually and in the aggregate do not significantly alter the overall project on the Site as approved by the Original Decisions.

2.3 In addition, the Applicant requests approval for a transfer of the Comprehensive Permit, including this Amendment, to AHA LLC. The Applicant explained that project lenders sought to insulate McCarthy Village II from any other assets and risks that the Acton Housing Authority owns or may own, and states that AHA LLC nevertheless is wholly owned and controlled by the Acton Housing Authority.

2.4 The AHA LLC is created as an instrumentality of the Acton Housing Authority to conduct only activities related to the Acton Housing Authority's purpose and authority. The Acton Housing Authority has the authority to create such an entity pursuant to M.G.L. c. 121B, s. 26(m) ("A local housing authority may create, designate or approve agencies or instrumentalities to provide such housing and do all other things necessary or desirable to secure financial or other forms of assistance from the federal government including the exemption from federal income taxation of interest on bonds or notes of such housing authority issued with respect to such housing.").

2.5 According to DHCD Regulations, 760 CMR 56.05(12)(b), prior to the substantial completion of a project, the Comprehensive Permit may be transferred "upon written confirmation from the Subsidizing Agency that the transferee meets the requirements of 760 CMR56.04(1)(a) [*it is a public agency*] and (b) [*it is fundable by the Subsidizing Agency]*, and upon written notice to the Board. Accordingly, the Board does not independently verify that the transferee satisfies those jurisdictional requirements. Instead, notice of satisfaction from the Subsidizing Agency to the Board is sufficient documentation.

2.6 There appears to be no continuing jurisdictional requirement of "site control" for transference contained in the DHCD regulations.

3 BOARD ACTION

Therefore, the Board voted on May 14, 2012 to **APPROVE** the amendment request as follows:

3.1 Section 4.3.2 of the Original Decision is hereby deleted and replaced with the following:

4.3.2 The units shall be affordable to low-income households. All 12 (twelve) new dwelling units shall be made available to potential eligible renters with household incomes up to 80% of the area median income for the Boston Metropolitan Primary Statistical Area (BMPSA).

3.2 The building design and site plan modifications are hereby approved as requested.

3.3 The Applicant's request to transfer the Comprehensive Permit issued with the Original Decision and as amended herein to AHA LLC is hereby approved subject to Conditions stated below.

4 CONDITIONS

4.1 This Decision shall be recorded at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit or occupancy permit for the Use, whichever is first.

4.2 Prior to the issuance of any building permit for McCarthy Village II, the applicant shall provide the Zoning Enforcement Officer with confirmation from the Subsidizing Agency that AHA LLC meets the jurisdictional requirements of 760 CMR 56.04(1)(a) and (b).

5 EFFECT OF THIS DECISION

This Amendment only responds and decides on the limited matters that the Applicant brought before the Board requesting the cited amendments of the Comprehensive Permit, as issued in the Original Decision and of the plans approved thereunder, and requesting a transfer of the Comprehensive Permit. Except as herein specified, the Original Decision shall remain in full force and effect.

For the Town of Acton Zoning Board of Appeals

Kenneth F. Kozik

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Kenneth F. Kozik, Chairman

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Town Clerk
Fire Chief
Water Supply District of Acton
Conservation Commission
Town Counsel
Building Department
Engineering Department
Planning Department
Police Chief
Municipal Properties
ACHC
Board of Health
Assistant Assessor
Town Manager
Board of Selectmen