



FINDINGS AND DECISION ON REQUEST FOR AMENDMENTS TO COMPREHENSIVE PERMIT PURSUANT TO G.L. c. 40B

PERMITTEE: Stockbridge II Realty Trust

PROPERTY: 96-100 Stockbridge Road; Assessor's Map and Parcels 054-2-28; 54-2-28A (the Property).

I. PROCEDURAL HISTORY AND JURISDICTIONAL FINDINGS.

1. A decision granting a comprehensive permit for Stockbridge II Realty Trust (SRT) was issued by the Scituate Zoning Board of Appeals (the Board) on February 10, 2003.

2. In January of 2006, the applicant requested an extension of the comprehensive permit. This was essentially a modification of condition number 19, which provided that the permit would expire in three years if construction was not completed.

3. On May 16, 2007, the applicant requested a number of changes to the permit, resulting from the approval of a superseding order of conditions for the project under the Wetlands Protection Act, including a reduction of units from 69 to 68 and various plan changes.

4. On April 30, 2008, the applicant requested additional modifications, including changing the approved multi-unit building into two separate buildings; amend condition number 19 to extend the permit to three years from the date of the approval of the modifications; amend condition number 32 to specify two condominium buildings and to revise the last sentence to provide: "The foundation and underground utilities for at least one Condominium Building shall be complete prior to the single family homes being completed"; add a new condition number 61: "Designate Dakota Partners, Inc. or its designee as the new Permittee upon its purchase of the project property. SRT and Dakota Partners, Inc. shall jointly notify the ZBA of the purchase and shall submit proof of the conveyance and that Dakota Partners, Inc. or its designee is a qualified entity within 48 hours of such event."

5. All of the above modifications were approved by the Board by virtue of the Board's determinations that the modifications were not substantial.

6. On October 29, 2008, the applicant submitted a request for a further modification of the comprehensive permit. The applicant requested the following modifications:

A. Allow the two multi-family buildings to be rental property, without any change to the site design, number or styles of units.

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B. Allow the re-allocation of four of the affordable units from the single-family homes to the multi-family buildings, giving the latter 16 affordable units.

C. Amend Condition 12 of the permit as follows: “A minimum of 25% of the units within the Project shall be low or moderate income as defined in M.G.L. c. 40B and the regulations promulgated thereunder (herein the “affordable units”). Two single family homes and 16 multifamily rental units shall be designated as affordable. The affordable units shall be randomly placed throughout the site and/or multifamily buildings and shall be indistinguishable from the market rate units.”

D. Amend Condition 13 of the Permit to require that the two affordable unit, to be constructed within the single family component of the project, are constructed on a schedule that provides for the construction of at least one affordable unit for every eight market rate dwellings constructed.

E. Delete Condition 15 of the Permit.

F. Amend Conditions 12, 32, 36, 41 and 44 by deleting “condominium building” and inserting “multifamily building”.

6. On November 6, 2008, the Board voted at a duly posted meeting to find that the proposed modifications were substantial under 760 CMR 56.05(11), thereby requiring a public hearing.

7. The Board then duly published notice of a public hearing to be held on the proposed modification. The public hearing was opened on December 1, 2008, and continued with the consent of the applicant to January 15, 2009, March 19, 2009, and April 16, 2009, at which time the Board voted to close the public hearing. On April 16, 2009, the Board voted two in favor and one opposed to grant the requested modification, with certain conditions and limitations as outlined herein.

II. FINDINGS

The comprehensive permit as in effect prior to this modification called for 68 units of housing on this site, all of which would be condominiums. Twenty of the condominium units would be single-family, detached units located along the front of the site. The remaining 48 units would be located in two buildings to be constructed to the rear of the site. As required by the comprehensive permit regulations, 25% of the units (18) would be low or moderate income units (“affordable units”). The proposed modifications would create two distinct types of housing on the same site: the 20 single-family detached condominium units would be retained, but the 48 units located in the two larger buildings would become rental units. Only two of the detached condominium units would be affordable, while 16 of the rental units would be affordable.

Where the applicant is seeking a modification of a comprehensive permit, the applicant has the initial burden to prove that the denial makes the proposal uneconomic.

Accordingly, pursuant to the Board's Rules and Regulations, a consultant was retained by the Board under G.L. c. 44 §53G to review the applicant's assertion that the conditions it was seeking to have modified made the project uneconomic. If the applicant sustains its burden in proving that the existing conditions on the comprehensive permit render the project uneconomic, then the Board is to determine if there are valid local concerns that outweigh the need for affordable housing. After careful review, the majority of the Board determined that local concerns do not outweigh the need for affordable housing.

Although the permit holder is Stockbridge Realty Trust, the proposed purchaser of the property, Dakota Partners, Inc., and its attorney, Donald Nagle, made the presentation to the Board. The Board noted at the initial hearing that the applicant had not notified the subsidizing agency of the proposed modification, as required by the regulations. Since this project was approved under the "old" New England Fund (NEF) program, there was some question as to whether MassHousing or the bank that originally approved the project under the NEF is the subsidizing agency. The Board was concerned that the proposal to shift some of the affordable units to the proposed rental buildings might not comply with state regulations and guidelines. The applicant eventually notified both entities of the proposed modifications, and received no response.

The Board's consultant filed two reports with the Board which determined that the conditions imposed by the Board rendered the project uneconomic. In addition, the Board received comments from various town boards and also testimony from members of the public at the public hearing. During the course of the hearing, the Board raised concerns with the applicant as to the shifting of some of the affordable units from the single family condominiums to the rental housing. In particular, if the proposed modification were allowed, the Board questioned whether the applicant would be able to construct the most lucrative portion of the project, the detached single family condominium units with only two affordable units, then abandon the rest of the project. The Board and the applicant's representatives discussed potential conditions that would address this concern, including conditions requiring bonds and/or phasing. The applicant agreed to allow the Board to impose a condition that would require the entire project to be built at one time, without any phasing. Neil Duggan, the Building Commissioner, informed the applicant that the permit fees will have to be paid up front for the entire proposed development.

There were also concerns raised with regard to the number and distribution of the affordable units. The Board asked if the 16 affordable units proposed for the rental buildings would be distributed evenly between the two buildings, with 8 in each building. The applicant confirmed that each of the two buildings would have 8 affordable units. The Board requested assurances that the number of affordable units in the rental buildings would not exceed 16. The applicant agreed to a condition limiting the affordable rental units to 16.

The Board also questioned the applicant on the request to delete condition 15, which requires that all affordable units be owner occupied. Although the rental units, if approved, would clearly not be owner occupied, the Board requested assurances that the

single-family condominium units would be owner occupied. The applicant agreed that the Board could impose this as a condition, and further, that the two of the condominium units would be affordable units.

Another issue raised at the hearing concerned condition number 35, which requires the construction of a sidewalk along the easterly side of Stockbridge Road to Vinal Avenue, provided that legal permissions and permits are obtained by the Town and the cost shall not exceed \$25,000. The town's DPW Director submitted a letter to the Board indicating that the DPW has hired an engineering firm to prepare the construction plans and would provide a copy to the Board. The applicant agreed to commence construction of the sidewalk immediately upon receipt by the Town of all necessary permits and approvals and pay for the cost of the physical construction of the sidewalk from the corner of Greenfield Lane to Vinal Avenue. The applicant agreed to expeditiously complete such construction work.

After receiving the above assurances from the applicant's representatives, and in reliance on those representations, the Board found that the proposed modification, as limited and conditioned by the Board, would be consistent with local needs. Accordingly, the Board voted to grant the application with the following conditions and limitations:

1. The Board grants the request to allow the two multi-family buildings to be rental property, subject to the conditions herein.
2. The Board grants the request to allow re-allocation of four of the affordable units from the detached, single family condominium units to the multi-family buildings, giving the latter 16 affordable units, subject to the conditions herein.
3. The Board grants an amendment to Condition 12 of the permit as follows: "A minimum of 25% of the units within the Project shall be low or moderate income as defined in M.G.L. c. 40B and the regulations promulgated thereunder (herein the "affordable units"). Two single family condominium units and 16 multifamily rental units shall be designated as affordable. The number of affordable rental units shall be limited to no more than 16. The affordable units shall be randomly placed throughout the site and/or multifamily buildings and shall be indistinguishable from the market rate units."
4. The Board grants an amendment to Condition 13 of the permit as follows: "The affordable units shall be constructed on a schedule that provides for the construction of one affordable single-family condominium unit for every eight market rate dwellings constructed. The market-rate and affordable units in the multi-family building will be marketed concurrently."
5. The Board grants an amendment to Condition 15 of the permit as follows: "All of the condominium units must be owner-occupied."

6. The Board grants amendments to Conditions 12, 32, 36, 41 and 44 by deleting “condominium building” and inserting “multifamily building”.

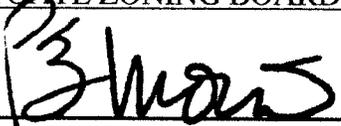
7. The Board further votes to amend Condition 32 (as previously amended) to read as follows: “The entire Project shall be constructed in one phase. All infrastructure (utilities, roads, drainage, etc.) to service the Property shall be constructed as shown on the final development plans prior to issuance of a certificate of occupancy of any buildings, with the exception that the roadways need only be completed to binder course prior to issuance of a certificate of occupancy. The foundations and underground utilities for the multifamily buildings shall be constructed concurrently with the single family homes.”

8. The Board further votes to amend Condition 35 to read as follows: “A sidewalk built in accordance with subdivision standards shall be installed by Applicant along the easterly side of Stockbridge Road to Vinal Avenue, provided that legal permission and permits for the same are obtained by the town. Said sidewalk shall be constructed of asphalt and shall have an asphalt layer of three inches in depth and four feet in width. The Town shall be responsible for obtaining any and all necessary permits and buyouts and the Town shall provide any necessary surveys. The applicant shall commence construction of the sidewalk immediately upon receipt by the Town of all necessary permits and approvals and pay for the cost of the physical construction of the sidewalk from the corner of Greenfield Lane to Vinal Avenue. The applicant shall expeditiously complete such construction work. The construction shall be in compliance with a plan entitled “Stockbridge Road Sidewalk Improvements, Scituate, MA” prepared by the Horsley Witten Group.”

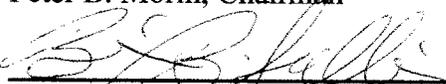
Except as explicitly modified by this decision or previous modifications approved by this Board, the Decision of the Board and all conditions therein remains in full force and effect.

Any person aggrieved by this decision may appeal to a court of competent jurisdiction within 20 days as provided by G.L. c. 40A §17.

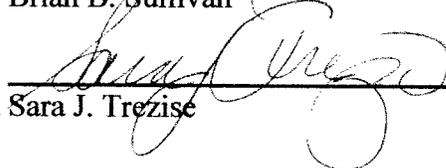
SCITUATE ZONING BOARD OF APPEALS



Peter B. Morin, Chairman



Brian B. Sullivan



Sara J. Trezise

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