



**ZONING BOARD OF APPEALS
DECISION ON APPLICATION FOR MODIFICATION OF
COMPREHENSIVE PERMIT PURSUANT TO G.L. c. 40B**

I. BACKGROUND

Applicant: Walden Woods, LLC

Project Location: Off Stenbeck Place – Assessors Map 45, Block 16, Parcel 30

Title reference: Book 19298, Page 34

Premises: All those certain parcels of land located at Stenbeck Place,
Assessors Map 45, Block 16, Parcel 30

On May 1, 2002, the Applicant submitted an application for a comprehensive permit for a project consisting of 28 two bedroom condominium units. After an extensive public hearing process the Board, on November 21, 2002 voted to grant the comprehensive permit with conditions. The Board's written decision was filed with the Scituate Town Clerk on January 16, 2003. Among the conditions included in the Board's decision was a condition, Condition # 49, providing that the comprehensive permit would expire one year from the date the decision became final if building permits were not issued on or before said date. The Board's decision (copy enclosed), filed with the Town Clerk on January 16, 2003 was timely appealed by the Applicant to the Housing Appeals Committee. Also, an abutter's appeal was timely filed in the Land Court, Misc. No. 287331. The Applicant's appeal was concluded, in the Applicant's favor, by the enclosed Housing Appeals Committee Decision On Stipulation, dated December 15, 2003. The Land Court dismissed the abutter's appeal by the enclosed Order Allowing Defendant's Second Renewed Motion To Dismiss, dated June 29, 2009. The abutter filed a timely Notice of Appeal which was withdrawn by the enclosed Withdrawal of Plaintiff's Notice of Appeals, dated September 9, 2009 which resulted in the enclosed Judgment entered by the Land. The abutter also appealed the Superseding Order issued by the Department of Environmental Protection for the project. The Adjudicatory hearing resulted in a decision, during the pendency of the Land Court appeal, favorable to the applicant, which was not further appealed by the abutter. As a result, the Comprehensive Permit issued by the Board of Appeals, as modified by the Housing Appeals Committee Decision On Stipulation, dated December 15, 2003, became final on September 9, 2009.

By letter, dated February 4, 2010, received by the Board February 5, 2010, the Applicant requested a modification of the Comprehensive Permit for an additional one year. The modification request was considered by the Board at a regularly scheduled meeting held

February 18, 2010 at the Scituate Town Hall. On that date the Board determined that the requested modification was not a substantial modification request and thereby, by regulation, approved.

By letter, dated July 18, 2011, received by the Board July 19, 2011, the Applicant requested a modification of the Comprehensive Permit for an additional eighteen months. The modification request was considered by the Board at a regularly scheduled meeting held August 18, 2011 at the Scituate Town Hall. On that date the Board determined that the requested modification was not a substantial modification request and thereby, by regulation, approved extending the Comprehensive Permit until March 9, 2013.

By letter, dated November 7, 2012, the Applicant requested three modifications of the comprehensive permit. The Applicant requested that conditions 3 & 9 of the comprehensive permit be modified to replace the Affordability Monitoring Agent, the Scituate Housing Authority, with Abraham Glaser, Omega Ventures, 55 Loring Street, Westwood, MA 02090. The Applicant also requested that conditions 36 & 39 be modified to replace Coler & Colantonio with "the Boards engineering review consultant. Lastly, the Applicant requested that Condition 14 be modified to include a sewer connection permit in lieu of the previously approved on-site wastewater disposal system. The modification request was considered by the Board at a regularly scheduled meeting held November 15, 2012 at the Scituate Town Hall. On that date the Board determined that the first two of the requested modifications were not a substantial modification requests and thereby, by regulation, approved. The Board also determined that the requested modification to include a sewer connection permit was substantial and therefore, with the consent of the Applicant, scheduled a public hearing on the sewer connection request for January 17, 2013 at 7 p.m. At the January 17, 2013 hearing, the Board voted unanimously to approve the sewer connection including the Stenbeck Place street opening permit.

At the January 17, 2013 hearing, the Applicant's counsel submitted a proposed Regulatory Agreement with all Exhibits. Due to unavoidable delays, the Regulatory Agreement was not approved and signed by the Board, acting on behalf of the Town of Scituate, until May 29, 2013. Because the execution of the Regulatory Agreement was enumerated in the original Comprehensive Permit decision as precondition to the issuance of any building permits for the Walden Woods project, the Applicant was not able to file any application for nor receive a building permit prior to the extended March 9, 2013 expiration date of the Comprehensive Permit. The issuance of a building permit is defined in the Comprehensive Permit as the act to be taken by the Applicant to exercise its rights under the Comprehensive permit. By letter, dated July 11, 2013 and hand delivered to the Board on said date, the Applicant requested a determination by the Board that, by virtue of the delays involved in the execution of the Regulatory Agreement, the comprehensive permit has been automatically modified to extend said permit for a period of two months from the date of the determination requested thereby.

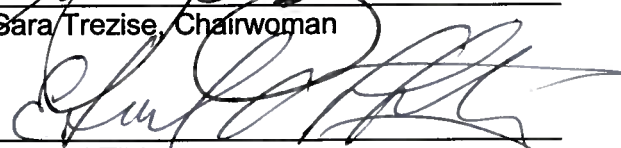
II. Decision

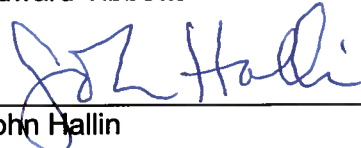
At a regularly scheduled meeting held July 18, 2013, after due consideration of the modification request, the record of the proceedings and the materials submitted to the Board and the testimony received at the hearing from the Applicant's attorney, Robert L. Devin, and others in attendance, the Board finds that the request for a determination is

in fact an insubstantial modification request. Pursuant to the applicable regulations, 760 C.M.R. 56.05(11)(b), by virtue of the foregoing finding, the comprehensive permit is deemed modified to incorporate the requested change. As a result, unless building permits are obtained on or before September 18, 2013, the comprehensive permit shall expire on said date.

SCITUATE ZONING BOARD OF APPEALS



Sara Trezise, Chairwoman

Edward Tibbetts

John Hallin

Filed with the Town Clerk on July 19, 2013.