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Telephone: (617) 796-1120 Fax: (617) 796-1086

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Setti D. Warren

Mayor

## ZONING BOARD OF APPEALS

### DETAILED RECORD OF THE PROCEEDINGS

#### AND DECISION

# 11-15 Petition of the Citizens For Affordable Housing in Newton Development, Inc., 1075 Washington Street, West Newton, Massachusetts for a comprehensive permit pursuant to G.L. c. 40B sections 20 through 23 to rehabilitate an existing single family home to create two affordable rental housing units on a 5,835 square foot lot located at 54 Taft Avenue in Newton. The property is located in Single Residence 3 (SR3) zoning district.

The Newton Zoning Board of Appeals (the "Board") held a duly noticed public hearing on September 29, 2015 in the Aldermanic Chambers at City Hall, Newton, Massachusetts

The following members of the Board were present:

Brooke K. Lipsitt, Chairman  
Vincent Farina  
Harvey Creem  
Barbara Huggins  
Treff LaFleche

The petition was filed on September 2, 2015.

Due notice of the hearing was given by mail, postage prepaid, to all persons deemed to be affected thereby as shown on the most recent tax list and by publication in the Newton Tab, a newspaper of general circulation in Newton, Massachusetts, on September 9 and September 16, 2015.

Accompanying the petition were plans entitled "54 Taft Avenue, Newton, Mass., CAN-DO, certified site plan", dated April 18, 2015, revised July 27, 2015, prepared stamped and signed by Ron Natoli, P.L.S, P.O. Box 32, Kittery, Maine 03904; "Proposed Two Family Dwelling Addition at 54 Taft Avenue, Newton MA for CAN-DO", prepared and stamped by Terence G. Heinlein, AIA, Architect, not dated, proposed schematic site plan, first floor plan, second floor plan, south elevation, east elevation, north elevation, and west elevation; Department of Housing and Community Development (DHCD) Project Eligibility Letter dated September 1, 2013; Quitclaim Deed; and a List of Exceptions and Waivers.

## FACTS

Attorney Terrence Morris, 57 Elm Road, Newton, Mass. presented the application. He explained that the Applicant seeks to rehabilitate an existing single family home to create two affordable rental units, one unit will be a two-bedroom unit affordable to households earning up to 50% of area median income and the second will be a three bedroom unit that will be affordable to households earning up to 80 % of the area median income. Both units will be eligible to be included on the Subsidized Housing Inventory as affordable units.

The Applicant's architect, Terrence Heinlein, described the project. He explained that the existing 340 square foot rear porch will be removed and a 2 bedroom unit will be constructed in its place. The open space to the northwest and south will remain the same. The street view of the building will not be changed. There will be two parking spaces on the lot with an area to the rear of the parking area for snow removal and storage. A retaining wall along the parking area limits the use of any additional space for onsite parking. The wall will be replaced at its current location.

The property will be permanently restricted as affordable housing. The Applicant will maintain ownership of the property and control the leases. The city shall have the right to enforce the affordability requirements through the Affordable Housing Restriction executed as a part of the financing agreement entered into between the city and Applicant which shall be incorporated herein and recorded at the Middlesex South Registry of Deeds.

Six people spoke in favor of the application:

Emily Cagwin, 50 Taft Avenue, Newton,

Alderman Marcia Johnson, 39 Bemis Street, Newton,

Reverend Susan Brecht, 47 Whittemore Road, Newton,

Kathleen Hobson, 128 Dorset Road, Newton,

Philip Herr, 20 Marlboro Street, Newton, and

John Koot, 430 Winchester Street, Newton

One person spoke in opposition to the application:

Virginia Ewell, 27 Taft Avenue, Newton

## FINDINGS

The Board finds that the Applicant has complied with all the rules and regulations of the City of Newton as they pertain to the application for a comprehensive permit.

The Board finds that the Applicant is qualified pursuant to 760 CMR 56.04 in that:

- a. The Applicant is a non-profit organization as defined in 76 CMR 56.04(1) (a);
- b. The proposed project is a Local Initiative Project;
- c. The Applicant has a funding commitment from the City of Newton Community Development Block Grant and its HOME program funds;
- d. The Applicant has site control as evidenced by the quitclaim deed from Lawrence D. Sarner to Citizens for Affordable Housing in Newton Development Organization, Inc. dated April 6, 2015;
- e. The Applicant has provided evidence that a regional need for low and moderate income housing exists; and,
- f. The proposed development is consistent with local needs.

### **DECISION**

Pursuant to G.L. c. 40B, the Board, after a public hearing and findings of fact including, but not limited to the facts stated herein, on motion of Treff LaFleche, and seconded by Barbara Huggins the Board voted 5 in favor (Lipsitt, Farina, Creem, Huggins and LaFleche) and O opposed to grant a comprehensive permit to the Applicant to rehabilitate an existing single family home to construct two affordable rental units, including a three bedroom unit for households earning up to 80% of the average median income and a two bedroom unit for households earning up to 50% of the average median income. The project shall be constructed in accordance with the Plans submitted as a part of the application and which are incorporated herein by reference. The comprehensive permit is granted subject to the following conditions of approval (the "Conditions") and waivers and exceptions:

### **Conditions of Approval**

#### **General**

The Applicant its successors and assigns, shall at all times be a non-profit organization in good standing and otherwise in accordance with applicable requirements of Chapter 40B and the Massachusetts DHCD regulations.

- 1) All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this Comprehensive Permit/Site Plan approval shall be located and constructed consistent with the plan set titled "54 Taft Avenue, Newton, Mass., CAN-DO", consisting of the following sheets:
  - A. Certified Site Plan, Prepared Stamped and Signed by Ronald J. Natoli, PLS, dated 4/18/15 and Revised 7/27/15
  - B. Architectural Drawings, Prepared Stamped and Signed by Terrence Heinlein AIA Architect, not dated, consisting of the following sheets:

- i. Proposed Schematic Site Plan, 54 Taft Avenue Newton MA
  - ii. First Floor Plan
  - iii. Second Floor Plan
  - iv. South Elevation
  - v. East Elevation
  - vi. North Elevation
  - vii. West Elevation
- 2) Except as expressly waived in this comprehensive permit decision, the Project shall comply with all Newton ordinances and other local rules and regulations, including the payment of all applicable permit fees.
  - 3) Copies of all state and federal permits and approvals related to the Site or the Project shall be submitted to the City's Department of Planning and Development for review to ensure consistency and compliance with this comprehensive permit decision.
  - 4) Both of the two units shall be designated as affordable. The three bedroom unit shall be affordable to households earning up to 80% of area median income, adjusted for household size, and the two bedroom unit shall be affordable to households earning up to 50% of area median income, adjusted for household size. Both units shall be deed restricted in perpetuity, or for as long as the Project does not comply with zoning. The affordability restriction shall be enforceable by the City of Newton as shown in the Affordability Restriction granted to the City of Newton as a consideration for the construction funding granted by the City of Newton, which shall be incorporated herein and made a part of this Decision.
  - 5) The marketing and resident selection process for the affordable units shall be consistent with the "Guidelines for Uniform Local Resident Preferences in Affordable Housing", prepared by the City's Fair Housing Task Committee (Revised March, 2012). That process is consistent with the provisions of Newton Zoning Section 30-24(f), and is intended as a standard provision for all Newton housing programs.
  - 6) Before any site clearing, grading, demolition or construction may begin on site, the Applicant shall submit a municipal lien certificate that shows all taxes, assessments and betterments have been paid in full and there are no outstanding liens on the property.

**Conditions precedent to the issuance  
of a demolition permit**

- 7) All construction and demolition activity shall be limited to 7AM-6PM Monday through Friday excluding holidays, unless extended with the approval of the Commissioner of the Inspectional Services Department.

**Conditions precedent to the issuance  
of a building permit**

- 8) No Building Permit shall be issued pursuant to this Comprehensive Permit until the Applicant has:

- a. recorded a certified copy of this Decision at the Middlesex County (South) Registry of Deeds and submitted copies of the recorded Decision with the City Clerk, the Clerk of the Zoning Board of Appeals, and the Department of Planning and Development.
- b. submitted evidence of Final Approval by the subsidizing agency and executed a Regulatory Agreement in a form approved by the City's Law Department.
- c. submitted final site and building plans, which shall include all required information for building code review and approval.
- d. submitted evidence of compliance with all conditions listed in the DHCD letter of Determination of Site Eligibility dated September 1, 2015.
- e. submitted a memo from the Engineering Division of Public Works approving final engineering plans and details;
- f. obtained a written statement from the Planning and Development Department that confirms the building permit plans are consistent with plans approved in Condition #1.

**Conditions related to construction**

- 9) The Applicant shall make every effort to utilize building materials and systems that comply with the NStar "Energy Star" standards, and at a minimum, all new appliances installed shall meet the NStar "Energy Star" standard.
- 10) The applicant shall make every effort to reduce water use on the site, and at minimum, all new water fixtures shall have Water Sense labels.
- 11) The Applicant agrees to provide, in a form approved by the City's Law Department, an indemnity agreement whereby the Applicant agrees to indemnify and hold harmless the City of Newton for any harm, damage or injury that may occur in connection with the Project.

**Conditions precedent to the issuance**

**of any occupancy permits**

- 12) No building or structure, or portion thereof subject to this Comprehensive Permit shall be occupied nor shall any Certificate of Occupancy be issued until:
  - a. the Applicant shall have filed with the ZBA Clerk, the Department of Inspectional Services and the Department of Planning and Development a statement by a registered architect and registered land surveyor certifying that the site and buildings have been constructed consistent with plans submitted to the Board and on file with the Clerk of the Zoning Board of Appeals.
  - b. there shall have been filed with the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that all engineering details have been constructed to standards of the City of Newton Public Works Department.
  - c. there shall have been filed with the ZBA Clerk and the Department of Inspectional Services a statement by the Director of Planning and Development approving final

location, number and type of plant materials, final landscape features, fencing and parking areas.

- d. the Applicant shall have submitted the language for the proposed deed restrictions to the City's Law Department for review and approval.
- 13) The Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy of all or portions of the buildings prior to installation of final landscaping provided that the Applicant shall first have filed with the Director of Planning and Development a letter of credit or other security in a form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the remaining landscaping to secure installation of such landscaping.

**Ongoing Conditions**

- 14) The landscaping shown on the approved plan shall be maintained in good condition. The plantings shall be inspected annually, and any plant material that has become diseased or dies shall be replaced in a timely manner with similar material.
- 15) Each unit shall be provided with one parking stall.
- 16) No exterior lighting shall trespass onto abutting properties, and all exterior lighting fixtures shall be residential in scale and shall be shielded or diffused as necessary.
- 17) In accordance with 760 CMR 56.04(8), copies of cost certifications shall be submitted to the City of Newton for review to determine whether any funds in excess of the profit limitations of the subsidizing agency are payable to the City.
- 18) In accordance with 760 CMR 56.02 & 56.05(13), the subsidizing agency or its designated monitoring agent shall provide information on the status and enforcement of the use restriction deed riders for the two affordable units in the Project.
- 19) Unless extended by the Newton Zoning Board of Appeals upon a finding of good cause, this comprehensive permit shall lapse and become void if construction pursuant to a building permit has not begun within three years of the date on which it is filed with the City Clerk. The Applicant shall use its best efforts to secure a building permit within one year and an occupancy permit within eighteen months of issuance of this comprehensive permit, so that all affordable units remain continuously eligible for inclusion on the Subsidized Housing Inventory.
- 20) This comprehensive permit, and all conditions herein, shall run with the land and be binding on any successors or assigns, in the event that this Project, the comprehensive permit or any of the obligations therein are sold, transferred, sub-contracted or otherwise made the obligation(s) of an entity other than the original Applicant, Citizens For Affordable Housing Development Organization Inc., the successor or subcontractor shall be bound by all of the terms and conditions of this comprehensive permit.

**Waivers from the Requirements of the City of Newton Revised Code of Ordinances.**

- A. The Board grants a waiver from the following sections of the Zoning Ordinance:

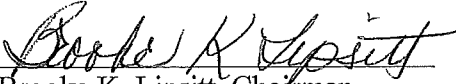
1. Section 30-8(a)(1), allowing the Applicant to construct a two-family dwelling on one lot.
2. Section 30-15, insofar as the Applicant is allowed to construct the structure with the following density and dimensions in a Single Residence 3 District:

Lot Area:	Required 10,000 sf	Allowed: 5,835 sf
Lot Area/Unit:	Required 10,000 sf	Allowed: 2,917 sf
Front Yard Setback:	Required: 25 ft.	Allowed: 16.4 ft.
Frontage:	Required: 80 ft.	Allowed: 60 ft.
3. Sections 30-19 (m) and 30-19(d) (1), allowing the Applicant to provide only one parking space for each unit.
4. Sections 30-23 and 30-24, allowing the Applicant to avoid site plan review and approval.

B. The Board grants a waiver from the following section of the City of Newton Revised Ordinances:

1. Section 22-44 allowing the Applicant to forego submitting the project to the Newton Historic Commission for review. A comprehensive permit is granted in lieu of a determination of the Newton Historic Commission that such structures or features are not preferably preserved. The waiver is granted on the condition that the Applicant constructs and designs the project as shown on the plans and as represented by the Applicant's architect at the public hearing.

In reaching this Decision, the Board has endeavored to insure that the conditions herein do not render the project uneconomic and that the conditions are consistent with Local Needs. If the Applicant should appeal this Decision to the Housing Appeals Committee and the Committee finds that any particular condition or conditions render the project uneconomic or not consistent with local needs, the Board requests that any order to the Board to remove or modify any condition in this Decision be limited to such particular condition or conditions and that all other conditions and aspects of this Decision be confirmed.

  
 Brooke K. Lipsitt, Chairman

Copies of this decision and all plans referenced in this decision have been filed with the Planning and Development Department, the ZBA and the City Clerk.

The decision was filed with the City Clerk on \_\_\_\_\_.

The City Clerk certified that all statutory requirements for the issuance of a COMPREHENSIVE PERMIT have been complied with and that 20 days have lapsed since the date of filing of this

decision and no appeal, pursuant to Section 17, Chapter 40A or Section 21 of Chapter 40B has been filed.

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David A. Olson, City Clerk

I, Norine Silton, am the Acting Clerk of the Zoning Board of Appeals and the Keeper of its records. This is a true copy of its decision.

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Norine Silton, Acting Clerk