



**TOWN OF WEST BOYLSTON
ZONING BOARD OF APPEALS
127 Hartwell Street
West Boylston, Massachusetts 01583**

NOTICE

**Zoning Board Appeals Meeting
Tuesday, December 15, 2009, at 7:00PM
West Boylston Town Hall
127 Hartwell Street**

To: Town Officials, Boards, and Committees
From: Zoning Board of Appeals

The Zoning Board of Appeals has received a request of a project change for Mr. Lever's project on North Main Street. This project is currently approved as a rental project. Mr. Lever has requested a change in his Comprehensive Permit that would allow him the option to develop the project as a home ownership project, and sell the units as condominiums. This request does not alter design or layout of the project.

Mr. Lever will make a formal presentation to the ZBA on Tuesday, December 15, 2009, at 7:00PM. Mr. Lever's request does have advantages, and disadvantages, both to the town and the neighborhood. The ZBA will take these into account in deciding upon Mr. Levers request. I have enclosed a copy of his request. We want to take this opportunity to invite you to hear Mr. Lever's presentation, and provide the ZBA with your input.

Sincerely,

Philippe W. Chevalier, Chairman

November 25, 2009

BY U.S. AND ELECTRONIC MAIL

Philippe Chevalier, Chairman
Zoning Board of Appeals
Town of West Boylston
127 Hartwell Street
West Boylston, MA 01583

Re: Notice of Project Change, The Village at North Main Street,
94 North Main Street, Assessor's Map 108, Parcel 56

Dear Chairman Chevalier:

As you know, this firm represents Lever Development, LLC and Village at Oakdale Associates, LLC (the "Permittee") in connection with the Village at North Main Street affordable housing development at 94 North Main Street in West Boylston, Massachusetts (the "Project") approved by the Board of Appeals (the "Board") in its Amended Decision on Comprehensive Permit Application dated October 3, 2008 (the "Decision"). This Decision has been subsequently amended by a decision of the Board dated April 9, 2009 granting the Permittee's Notice of Project Change to reverse the locations of Buildings B and C (collectively with the "Decision," the "Comprehensive Permit").

Requested Project Changes

Pursuant to 760 CMR 56.05(11), please allow this letter to serve as a Notice of Project Change ("NPC"). Specifically, the Permittee seeks two changes to the Comprehensive Permit. The Permittee wishes to amend the Comprehensive Permit to allow the Permittee (i) to develop the Project either as a rental project or as a for-sale condominium project and (ii) to develop the Project under any qualifying rental funding source, including, but not limited to, the Low Income Housing Tax Credit ("LIHTC") program. The proposed changes will not materially alter the design or layout of the Project. As grounds in support of this NPC, the Permittee states as follows:

The Comprehensive Permit provides that the Project shall be a 96-unit rental apartment development in three buildings to be primarily funded under the LIHTC program. However, since the resolution of the litigation that resulted in the finalization of the Comprehensive Permit

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in October 2008, the economy has undergone dramatic changes along with the market for housing in Massachusetts. Most immediately, these changes have significantly reduced the value of the tax credits under the LIHTC program. One result is that when the Permittee goes in the market to sell the tax credits to corporations, banks, or other institutions, the Permittee will not be able to generate as much revenue for the Project. Consequently, the Permittee must investigate other sources of subsidized funding for the Project. These funding sources each have their own requirements that may alter or influence the Project in ways that could not have been predicted by the Permittee, including adjusting the income thresholds for the affordable units and imposing design changes on the individual units. The Permittee is concerned that some of these changes could make the marketing and rental of the market-rate units potentially far more difficult and change the complexion of the Project.

Given these changed circumstances for the development of a rental project, the Permittee's preference is to have the flexibility to pursue a condominium project in lieu of a rental project where the Permittee can retain significantly more control over the design and marketing. If the Project is constructed as for-sale condominiums, 25 percent of the condominiums in the Project will be affordable as defined by the regulating agency, most likely 80 percent of median income for the applicable geographic area. Although the market for condominiums has not yet rebounded, the Permittee expects that the market will return about one year from now, and the extensive planning for the construction of such a project needs to begin in the short term in order to be ready to proceed 12 to 18 months from now.

In the event that the Permittee does construct the Project as rental units, the Permittee seeks additional flexibility with respect to its funding sources to address these same issues. As drafted, the Comprehensive Permit requires the Permittee to use the LIHTC program and the Permittee desires the flexibility to use different qualifying programs, including those sources that may not even exist at this time. Specifically, the Permittee requests that the Board allow the Permittee to use any qualifying source of funding for the rental project, including, but not limited to, the LIHTC program.

The proposed changes will have no material impact on the design or layout of the Project. However, conversion to a condominium project will impact the number of units in the Project that will be counted on the Department of Housing and Community Development's ("DHCD") Subsidized Housing Inventory ("SHI"). In a rental project, all units in the Project count toward the SHI. In a for-sale project, only the affordable units in the Project are included in the SHI.

The most recently updated SHI dated September 29, 2009 lists West Boylston at 7.7 percent, and this figure includes all 96 units of the Project. These units are included in the most recent update of the SHI because the Comprehensive Permit for the Project became final in October 2008, and DHCD provides that units may be counted for a period of one year after the Comprehensive Permit is final even if building permits have not been obtained for the Project. However, after one year, those units are removed from the SHI until such time as the Project

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obtains building permits. According to DHCD, the 96 units included in the most recent update should now be removed from the SHI because one year has expired since the Comprehensive Permit was finalized and no building permits have issued. As a result, West Boylston is actually at 3.79 percent. If the Project is constructed as a condominium development, West Boylston will be credited with 24 affordable units (rather than the 96 units under a rental scheme), resulting in a SHI of 4.77 percent.

The Permittee requests that the Board find the proposed change to be an insubstantial change pursuant to 760 CMR 56.05(11). Such a determination will provide the Permittee with the flexibility to proceed with the planning necessary to pursue a for-sale condominium development while maintaining the ability to develop the Project as rental housing in the event the market does not return for condominiums in the near term.

NPC Procedures

Kindly note that under 760 CMR 56.05(11), the Board has 20 days from the date of this letter to determine and notify the Permittee whether it deems these changes to be substantial or insubstantial.

If the Board either takes no action within 20 days or expressly determines that the changes are insubstantial, the Permit "shall be deemed modified to incorporate the Change." If the Board expressly determines that these changes are substantial, the Board "shall hold a public hearing within 30 days of its determination and issue a decision within 40 days of termination of the hearing...." Notice by mail, posting and newspaper publication similar to the original Permit application should precede the public hearing. Only the changes in the proposal or aspects of the proposal affected thereby are at issue during the hearing.

Thank you for your attention to this matter.

Very truly yours,



Marc J. Goldstein

MJG

cc: Mr. Brian Lever (by electronic mail)
Jeanne McKnight, Esq. (by electronic mail)