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**DECISION OF THE ZONING BOARD OF APPEALS
of the
TOWN OF WESTWOOD**

PROPERTY OWNER(S): Fox Hill Village Homeowners Corporation

PETITIONER(S): Fox Hill Village
c/o Tony Amico
10 Longwood Drive
Westwood, MA 02090

LAND AFFECTED: 10 Longwood Drive
Westwood, MA 02090
Map 06 Lot 018

HEARING:

The Board of Appeals for the Town of Westwood held a Public Hearing according to the General Laws of the Commonwealth of Massachusetts on Wednesday, October 16, 2019 at 7:00 PM in the Champagne Meeting Room of the Carby Municipal Building, 50 Carby Street, Westwood, MA 02090 which was continued to Wednesday, November 20, 2019 at 7:00 PM in the Champagne Meeting Room to consider the Petitioners' request for a Special Permit amendment. The special permit was originally granted by the Board on April 6, 1988 and further amended by the Board on February 1, 2011 to operate as a Residential Retirement Community. The Applicant sought to amend the Special Permit pursuant to current Westwood Zoning Bylaw Section §8.4 [Residential Retirement Community] to include proposed demolition of an existing two story wing formerly occupied by the Clark House Nursing Facility and new construction of a three story addition with 24 assisted living residences. Property is located in the Administrative Research Office District (ARO).

BOARD MEMBERS: John Lally, Chairman
Douglas Stebbins, Clerk
Michael McCusker

APPLICABLE SECTION OF THE WESTWOOD ZONING BYLAW

8.4 RESIDENTIAL RETIREMENT COMMUNITY (RRC)

8.4.1 Special Permit Required. A Residential Retirement Community shall require the issuance of a special permit by the Board of Appeals in compliance with the provisions of this Section.

8.4.2 General. A RRC is a development of land comprising townhouse or apartment type dwellings, under-over type dwellings, multiple type dwellings, or any combination of such housing types, with resident services, operated or sponsored by a corporation or organization having among its principal purposes the provision of housing for retired and aging persons. Such facility may also include assisted living residence/skilled nursing facility. The program of resident services may include assisted living residence/skilled nursing, transportation, laundry, financial, barber/beautician, medical evaluation, home health, adult day care and respite care services, meals on wheels, both scheduled and unscheduled exercise, recreational and educational activities, and other similar services or activities. These programs and services will be primarily for the benefit of residents of the RRC and/or the Town.

8.4.3 **Restrictions.** A RRC shall be subject to the following restrictions:

8.4.3.1 **Age Limitation.** Occupancy of dwelling units shall be limited to persons who have reached the age of sixty-two (62) years and any close relative of a person who has reached the age of sixty-two (62) years, residing with such person. For purposes hereof, “close relative” shall mean a lineal ancestor, lineal descendant, brother, sister, aunt or uncle, and shall include a person so related by legal adoption and by the half blood.

8.4.3.2 **Lot Area.** The minimum lot area shall be five (5) acres.

8.4.3.3 **Lot Frontage.** The minimum lot frontage shall be one hundred sixty (160) feet.

8.4.3.4 **Building Height.** The maximum building height shall be no more than 65 feet as set forth in the definition of “Building Height” contained in Section 2.0 of this Bylaw measured by the vertical distance from grade plane to the average height of the highest roof surface.

8.4.3.5 **Density Limitation.** The total number of dwelling units within a RRC shall not exceed five dwelling units per acre or one and one-half (1½) nursing facility beds per acre.

8.4.3.6 **Affordability Requirements.** Where any project authorized under a RRC Special Permit will result in the development of at least eight (8) new dwelling units, the minimum number of dwelling units specified in the table below shall be restricted to meet the definition of Affordable Housing in Section 2.0 of this Bylaw and in the Rules and Regulations. All such affordable dwelling units shall be contained within the RRC unless the Planning Board determines a proposed alternative to be at least equivalent in serving the Town’s housing needs after consultation with the Westwood Housing Partnership and the Westwood Housing Authority. The affordable dwelling units authorized under the provisions of this Bylaw shall be Local Initiative Program (LIP) dwelling units in compliance with the requirements for the same as specified by the Department of Community Affairs, Massachusetts Department of Housing and Community Development (DHCD), or successor, or affordable dwelling units developed under additional programs adopted by the Commonwealth of Massachusetts or its agencies. All said dwelling units shall count toward Westwood’s requirements under Massachusetts General Law Chapter 40B, Sections 20-23, as amended and all affordable dwelling units shall remain affordable in perpetuity.

<u>Total Number of Dwelling Units</u>	<u>Minimum Number of Affordable Dwelling Units</u>
1 to 7 units	0
8 to 9 units	1
10 to 15 units	2
16 to 22 units	3
23 to 26 units	4
27 or more units	15% of the total number of dwelling units, rounded up to the next whole number

- 8.4.4 **Procedures.** An application for a special permit for a RRC shall be filed in accordance with the rules and regulations of the Board of Appeals.
- 8.4.5 **Plans.** An application for a special permit for a RRC shall submit a plan in conformance with the rules and regulations of the Board of Appeals.
- 8.4.6 **Decision.** A special permit for a RRC shall be granted by the Board of Appeals, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the Town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site.
- 8.4.7 **Compliance with Subdivision Rules and Regulations.** Nothing contained herein shall in any way exempt a proposed RRC involving a subdivision from compliance with the rules and regulations of the Planning Board governing the subdivision of land or the rules and regulations of any other Town board having jurisdiction. Nor shall this Section in any way affect the right of the Board of Health and of the Planning Board to approve, with or without modifications, or disapprove a subdivision plan in accordance with the provisions of such rules and regulations and of the Subdivision Control Law.

FINDINGS

In consideration of all of the testimony and exhibits and documents submitted before the Board, the Board makes the following findings of fact:

1. The Applicant proposes to demolish an existing two story wing formerly functioning as a skilled nursing facility and constructing in its place a new three story wing to operate as an assisted living facility, requiring relief in the form of an amendment to the existing Special Permit issued in 1988 for use as a Residential Retirement Community. The Board of Appeals is the Special Permit Granting Authority.
2. The lot area of the Subject Parcel is 83.88 acres.
3. The proposed new construction is a three story addition containing 24 assisted living housing units in addition to amenities and services for the residential retirement community.
4. The proposed new construction includes associated walkways, parking, landscaping, utilities and associated site work, including Earth Material Movement (EMM), subject to review by the Town of Westwood Planning Board. The Planning Board conducted an Environmental Impact and Design Review (EIDR) pursuant to Section 7.3 and 7.1 [Earth Material Movement] of the Bylaw via a public hearing that opened on August 13, 2019 and closed on September 3, 2019. A decision was issued by the Planning Board to grant EIDR Approval and EMM Approval on September 6, 2019.
5. To satisfy the affordability requirements of Bylaw Section 8.4.3.6, the Applicant must construct 4 units of qualified affordable housing. The Applicant has proposed off-site affordable housing in the form of a group residence for people with disabilities located at 230 High Street. The Applicant has contracted with TILL, Inc. to develop the parcel at 230 High Street, which is currently owned by the Applicant, into a 5 bedroom group home.
6. The Board finds that the proposed alternative affordable housing in the form of a 5 bedroom group home, funded by DDS and thus eligible for listing on the Subsidized Housing Inventory as 5 units of affordable housing, is at least equivalent in serving the Town's housing needs as an onsite proposal.
7. The Board has given full consideration to the local conditions that affect and may be affected by the Applicant's proposed use, and having particular expertise in said local conditions, have taken a view that any adverse effects of the Applicant's use will not outweigh its beneficial impact to the Town, or the neighborhood, in view of the particular characteristics of the site and the proposal in relation to that site.
8. The Applicant has met all the requirements for a Special Permit pursuant to the Westwood Zoning Bylaw.

DECISION and CONDITIONS

The Board of Appeals voted unanimously to grant the Petitioner's request for a Special Permit amendment pursuant to current Section 8.4 of the Westwood Zoning Bylaw and upon the following conditions:

1. The Project shall be constructed in conformity with the submitted plot plan consisting of one (1) page, prepared by Alpha Survey Group LLC, 695 Wareham Street, Middleborough, MA, 02346 dated September 17, 2019 and stamped by James E. Peterson, P.L.S., and with the submitted design plans consisting of the following:
 - a. Exterior elevations of existing building sections to demolish and remain: three (3) pages, prepared by JSA Inc. Architects & Planners, 361 Hanover Street, Portsmouth, NH 03801, stamped by James M. Warner, R.A., dated April 15, 1988 and submitted to the Board as part of this application on September 18, 2019;
 - b. Proposed Exterior Elevations (A-201 & A-202), Basement Floor Plan (A-100), First Floor Plan (A-101.1 & A-101.2), Second Floor Plan (A-102.1): six (6) pages, prepared by Perkins Eastman, 1100 Liberty Avenue, Pittsburgh, PA, 15222 dated August 6, 2019 and submitted to the Board as part of this application on September 18, 2019;
 - c. Proposed Demolition and Erosion Control Plan (C-101), Layout and Materials Plan (C-102): two (2) pages, prepared by Perkins Eastman, 1100 Liberty Avenue, Pittsburgh, PA, 15222 dated July 11, 2019 and submitted to the Board as part of this application on September 18, 2019;
 - d. Landscape Plan (LA-030): one (1) page, prepared by Perkins Eastman, 1100 Liberty Avenue, Pittsburgh, PA, 15222 dated August 22, 2019 and submitted to the Board as part of this application on September 18, 2019.
2. The Applicant shall pursue completion of the Project with reasonable diligence and continuity.
3. The comments provided to the Zoning Board of Appeals by the Planning Board on November 6, 2019 shall be made part of this decision and approval shall be conditioned upon successful completion of the following:
 - a. The proposed use at 230 High Street is subject to and requires a Limited Environmental Impact Design Review (EIDR) Approval, following an application and public hearing with the Planning Board, pursuant to Section 7.3 of the Zoning Bylaw. The application shall include a proposed site plan and architectural design plans to confirm compliance with provisions of Westwood's Zoning Bylaw, including setback, height and parking requirements.
 - b. The Applicant and Property Owner, Fox Hill Village Homeowners Corporation shall submit a deed restriction sufficient to maintain five (5) affordable units in perpetuity at 230 High Street for review and approval by Westwood's Town Counsel, Zoning & Housing Agent, and Town Planner. Such deed restriction shall be submitted within 30 days of the close of the RRC special permit hearing or by January 1, 2020, whichever is sooner.
 - c. The Applicant and Property Owner, Fox Hill Village Homeowners Corporation, shall submit to Town Counsel, the Town Planner, and the Housing & Zoning Agent proof of recording for the above-referenced deed restriction at the Registry of Deeds forthwith.
 - d. The Applicant and Property Owner, Fox Hill Village Homeowners Corporation, shall submit to the Housing & Zoning Agent and Town Planner proof of eligibility for listing the Group Home on Westwood's SHI. Said submission, in form satisfactory to the Housing & Zoning Agent, shall be submitted prior to the issuance of a Certificate of

Occupancy of any of the 24 assisted living units or any new independent living unit at Fox Hill Village on Longwood Drive.

- e. In the event the proposed Group Home does not result in the listing of at least five DDS units on the SHI listing, Fox Hill Village shall return to the Zoning Board of Appeals and Planning Board with an alternative plan for fulfilling the affordability requirement for a minimum of four affordable units as required by Section 8.4.3.6 of the Zoning Bylaw, and no Certificate of Occupancy of any of the 24 assisted living units nor any new independent living unit at Fox Hill Village on Longwood Drive shall be issued unless and until the Planning Board approves and Fox Hill Village Homeowners Corporation fully implements said alternative plan for fulfilling the affordability requirements.
 - f. The Applicant is responsible for filing all other necessary permits and approvals for listing on the SHI.
4. The conditions established by the Planning Board in the Environmental Impact and Design Review (EIDR) and Earth Material Movement (EMM) Approvals issued by the Planning Board on September 6, 2019 shall be made part of this decision and approval shall be conditioned upon successful completion of said conditions.
 5. This Special Permit shall not take effect until a copy of the Decision, bearing the certification of the Town Clerk that twenty (20) days have elapsed after the filing of the decision and either that no appeal has been filed or that an appeal has been filed within such time period, is recorded in the Registry of Deeds and indexed under the name of the property owner of record and the parcel address. A copy of these recordings shall be provided to the Building Commissioner, Town Clerk and the Board of Appeals.
 6. **The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and any construction performed under the permit may be ordered to be undone.**
 7. This Special Permit shall lapse within a specified period of time, of not more than two (2) years, which shall not include such time required to pursue or await the determination of the appeal referred to in Chapter 40A, Section 17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause. Prior to the expiration of the Special Permit, the Applicant may apply for an extension of the Special Permit for a period not to exceed one (1) year if the substantial construction or use thereof has not commenced for good cause.

RECORD OF VOTE

The following members of the Board of Appeals voted to grant the Special Permit amendment for the above mentioned project: John Lally, Douglas Stebbins, and Michael McCusker.

The following members of the Board of Appeals voted in opposition to the grant of the Special Permit amendment: None.



WESTWOOD ZONING BOARD OF APPEALS


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John Lally, Chairman



Douglas Stebbins, Clerk



Michael McCusker

11/25/19
Date

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