

Town of Westwood
Commonwealth of Massachusetts

David W. Krumsiek, Chairman
John F. Lally
Douglas C. Stebbins

2017 MAY 30 A 11:45



TOWN CLERK
TOWN OF WESTWOOD

ZONING BOARD OF APPEALS

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NOTICE OF DECISION

In compliance with Chapter 40A of the General Laws of the Commonwealth of Massachusetts, you are hereby notified that the Board of Appeals has unanimously voted to grant the Petitioner, BC Highland Glen, LLC & CRHCII Residential, LLC, c/o Peter Zahka, II, Esq., their request for a Special Permit to modify a Comprehensive Permit pursuant to Comprehensive Permit Powers and Rules delineated in Westwood Zoning Bylaw, Section 10.2.2.4 and M.G.L. c. 40B. The application requested to modify the existing Comprehensive Permit, granted by the Board on November 8, 1976 and amended on June 15, 1990 and June 20, 2002, by subdividing the property into multiple parcels via a Definitive Subdivision plan to reflect different ownership of the two existing phases of development.

PROPERTY OWNER(S): BC Highland Glen, LLC & CRHGII Residential, LLC

LAND AFFECTED: 1105-5419 Highland Glen Road (fka 1055 High Street) Westwood, MA
Map 20 Lot 126

The signed decision for the petition was filed at the office of the Town Clerk on **May 30, 2017.**

Any appeal of this decision shall be made pursuant to the Massachusetts General Laws, Chapter 40A, Section 17 and a copy delivered to Office of the Town Clerk within twenty (20) days of the date that the decision was filed in the office of the Town Clerk.

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

PROPERTY OWNER(S): BC Highland Glen LLC and CRHGII Residential LLC

PETITIONER(S): BC Highland Glen LLC and CRHGII Residential LLC
2 Center Plaza
Suite 700
Boston, MA 02108

LAND AFFECTED: 1105-5419 Highland Glen Road (fka 1055 High Street)
Westwood, Massachusetts 02090
Map 20, Lot 126

HEARING:

The Zoning Board of Appeals for the Town of Westwood (the “Board”) held a Public Hearing according to the General Laws of the Commonwealth of Massachusetts on Wednesday, April 26, 2017 at 7:00 PM in the Selectmen’s Meeting Room of the Town Hall, 580 High Street, Westwood, MA 02090 to consider a request by BC Highland Glen LLC and CRHGII Residential LLC (the “Petitioners”) to modify a Comprehensive Permit pursuant to Comprehensive Permit Powers and Rules delineated in Westwood Zoning Bylaw, Section 10.2.2.4 and M.G.L. c. 40B. The application requests to modify the existing Comprehensive Permit, granted by the Board on November 8, 1976 and amended on June 15, 1990 and June 20, 2002, by subdividing the property into multiple parcels via a Definitive Subdivision plan to reflect different ownership of the two existing phases of development. The property is located in the Single Residential C Zoning District.

BOARD MEMBERS: David W. Krumsiek, Chairman
John F. Lally
Douglas C. Stebbins

APPLICABLE SECTION OF THE WESTWOOD ZONING BYLAW

10.2 BOARD OF APPEALS

10.2.1 **Establishment.** There is hereby established a Board of Appeals of three (3) members and six (6) associate members. All members shall be residents of the Town, who shall be appointed by the Board of Selectmen.

10.2.2 **Powers.** The Board of Appeals shall have and exercise all the powers granted to it by M.G.L. Chapters 40A, 40B and 41 and by this Bylaw. The powers of the Board of Appeals are as follows:

10.2.2.1 To hear and decide applications for special permits. Unless otherwise specified herein, the Board of Appeals shall serve as the Special Permit Granting Authority, to act in all matters in accordance with the provisions of Section 10.3, or as otherwise specified.

- 10.2.2.2 To hear and decide appeals or petitions for variances from the terms of this Bylaw, with respect to particular land or structures, as set forth in M.G.L. Chapter 40A, Section 10. The Board of Appeals shall not grant use variances.
- 10.2.2.3 To hear and decide appeals taken by any person aggrieved by reason of their inability to obtain a permit or enforcement action from any administrative officer under the provisions of M.G.L. Chapter 40A, Sections 8 and 15.
- 10.2.2.4 To hear and decide comprehensive permits for construction of low or moderate income housing by a public agency or limited dividend or nonprofit corporation, as set forth in M.G.L. Chapter 40B, Sections 20 through 23.

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 multifamily residential development known as Highland Glen (the "Property") was first granted by this Board a Comprehensive Permit for development in November 8, 1976. Three buildings containing 180 units of affordable housing and 214 parking spaces were subsequently constructed. This first phase of development under the Comprehensive Permit is known as Highland Glen Phase I ("HG1").
2. The Comprehensive Permit was amended on June 20, 2002 to include permitting and construction of two new buildings containing an additional 102 affordable and market-rate housing units and 102 created parking spaces. This second phase of development under the Comprehensive Permit is known as Highland Glen Phase II ("HG2").
3. The Highland Glen development was sold on December 15, 2016 by GR-Highland Limited Partnership to BC Highland Glen LLC, which retained ownership of HG1 and through a condominium form of ownership, immediately sold HG2 on December 15, 2016 to CRHGII Residential, LLC.
4. Jointly, the petitioners have requested amendments to the Comprehensive Permit that allow for a Definitive Subdivision Plan reflecting the new dual ownership structure for the Property.
5. The Definitive Subdivision Plan dated January 18, 2017 by Tetra Tech, 100 Nickerson Road, Marlborough, MA 01752 consisting of one (1) page and titled "Definitive Subdivision Plan, Highland Glen Condominium High Street (Route 109)" has been submitted to the Board.
6. The requested amendments to the Comprehensive Permit do not involve any increase in the height of any of the buildings, change to the number of housing units, reduction in the size of the overall Property, change in building type, or change from one form of housing tenure to the other.
7. The Board finds that the requested waivers from the Westwood Subdivision Rules and Regulations are in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law because no physical changes are proposed to the project as constructed.
8. The Board finds that previous approvals, conditions and agreements related to this project's Comprehensive Permit have been fulfilled or addressed in a manner that represents reasonable satisfactory progress.

9. The Board has taken a view, utilizing its unique knowledge of local conditions, that the Petitioners' proposed amendments to the Comprehensive Permit will not have a material adverse effect on the value of the land and buildings in the neighborhood, or on the amenities thereof, or be detrimental to the normal use of the adjacent properties, and proposed amendments will not be injurious or dangerous to the public health or hazardous, and any adverse effects of the proposed amendments do not outweigh beneficial aspects, all in view of the particular characteristics of the site and of the proposal in relation to that site.

DECISION and CONDITIONS

The Board of Appeals voted unanimously to grant the Petitioners' request to modify the Comprehensive Permit pursuant to Section 10.2.2.4 of the Westwood Zoning Bylaw. The amendments to the existing Comprehensive Permit shall be made as follows:

1. Add the following to the end of Condition 1 in the 2002 Amended Comprehensive Permit:
"The Comprehensive Permit is hereby further amended to subdivide the Property into three separate lots and to create a fourth lot consisting of the private way known as "Highland Glen Road", all as shown on the Definitive Subdivision Plan dated January 18, 2017, prepared by TetraTech (the "Subdivision Plan"). HG1 and HG2 submitted the Subdivision Plan to the ZBA, seeking endorsement of the same so as to allow for the division of the Property into Lot 1, Lot 2, Lot 3 and Highland Glen Road for the ongoing operation of the Highland Glen Apartments development into Phase I and Phase II, respectively. Pursuant to G.L. c. 41, Sections 81K through 81GG and the ZBA's role as per M.G.L. c. 40B, Section 21, the ZBA hereby agrees to endorse the Subdivision Plan simultaneously herewith, which Subdivision Plan shall thereafter be recorded by HG1 and HG2 with the Norfolk County Registry of Deeds."
2. In Condition 3 of the 2002 Amended Comprehensive Permit, replace the term "the Applicant" with "HG1 or HG2".
3. In Condition 9 of the 2002 Amended Comprehensive Permit, replace the term "the Applicant, or its management company" with "each of HG1 and HG2 or their respective management company, respectively,"
4. In Condition 13 of the 2002 Amended Comprehensive Permit, replace the term "the Applicant" with "HG 1".
5. In Condition 19(a) of the 2002 Amended Comprehensive Permit, replace the term "the Applicant" with "HG1 or HG2".
6. Add the following new Conditions at the end of the 2002 Amended Comprehensive Permit:
 - a. The Private Way shown on the Subdivision Plan named "Highland Glen Road" shall remain a private way. Highland Glen Road, the Private Way, shall be owned by HG1.
 - b. HG1 and HG2 will enter into an Easement and Cost-Sharing Agreement pursuant to which HG2 will have certain access, utility, signage, amenity, walkway, landscaping and other easement rights to Lot 3 (as shown on the Subdivision Plan). As set forth in the Easement and Cost-Sharing Agreement, HG1 will perform certain maintenance obligations and HG2 will contribute its share of costs to HG1.
 - c. As set forth in the Easement and Cost-Sharing Agreement, HG2 has agreed to grant certain access, irrigation, and drainage easement rights in favor of HG1.
 - d. Acknowledging the potential classifications of the driveway named Highland Glen Road as a Roadway, Street or Way (all as defined in the Subdivision Regulations),

HG1 and HG2 have sought and the ZBA has granted waivers from the provisions of the Westwood Zoning By-Law and the Subdivision Regulations applicable to such potential classifications. Notwithstanding the same and without waiving provision(s) of the Subdivision Regulations from which waiver(s) have not been granted, it is the determination of the ZBA that the referenced "Highland Glen Road" shall be considered a driveway for all other purposes herein.

7. Delete Condition 21 of the 2002 Amended Permit in its entirety, and substitute the following therefor: "The original Comprehensive Permit and 2002 Amended Comprehensive Permit shall remain in effect as to the project(s) approved therein notwithstanding the issuance of this Amended Comprehensive Permit. However, to the extent that any of the conditions or provisions of this Amended Comprehensive Permit conflict with, or modify, the conditions or provisions of the Comprehensive Permit originally issued in 1976, as amended, or the 2002 Amended Comprehensive Permit, then such conditions or provisions are deemed modified in accordance with this Amended Comprehensive Permit."

Additionally, this approval shall be contingent upon successful completion and adherence to the following conditions:

1. The plan entitled "Definitive Subdivision Plan, Highland Glen Condominium High Street (Route 109)" prepared by Tetra Tech, dated January 18, 2017, be revised to add a plan note that clarifies "Highland Glen Road" to be owned by HG1, located on Lot 4, and not to be considered a buildable lot.
2. After notice from the Town Clerk of "No Appeal", the Petitioners shall submit the Definitive Subdivision Plan for endorsement by the Board of Appeals in accordance with this Certificate of Vote "Decision", and following said endorsement, shall record the Definitive Subdivision Plan and a copy of the Decision at the Norfolk Country Registry of Deeds.
3. Within thirty (30) days after the final endorsement of the Definitive Plan, the Petitioners shall provide three (3) copies and one electronic copy of said Plan showing the final endorsement to the Building Inspector and Board of Appeals.
4. The Petitioners are responsible for filing or closing out any open Orders of Conditions or other filings with the Conservation Commission for disturbance within a resource area.
5. The Petitioners shall submit any and all documents establishing easements such as for parking and access, any covenants, restrictions, and the Condominium Association governing this Project to the Board of Appeals. There shall be nothing in said Documents deemed to be contrary to this Decision.
6. The development shall be limited to a total of four (4) lots including HG1 on Lots 1 and 2, HG2 on Lot 3, and Highland Glen Road as Lot 4, a non-buildable lot, regardless of the number of lots which could otherwise be developed, and the endorsed Definitive Plan shall contain the wording "No further subdivision allowed. Further division of any lot created hereon, whether by ANR or any other method, is expressly prohibited, except that lots may be reconfigured, such that the total number of building lots does not exceed three (3) lots."
7. There shall be no non-emergency municipal services provided along the road, including snow removal and recycling/trash service, until approved street acceptance by Town Meeting. As an unaccepted street, the owner(s) are responsible for any and all road and drainage improvements.
8. If the Project, or any condition imposed by this decision, requires a permit, license, or other approval from any other board, committee or agency of the Town of Westwood or other regulatory agency of the Commonwealth or the Federal government, the Petitioners are responsible for filing the appropriate application. If any condition of such permit is inconsistent with or modifies the approved Project Plans the Petitioners shall make application

- to the Zoning Board for amendment of this Decision and the Board shall consider such application in accordance with the requirements of M.G.L. Chapter 40B and 760 CMR 56.
9. Any future change, modification or amendment to the final Definitive Plan/Comprehensive Permit Modification as may be approved by the Zoning Board shall be in accordance with the requirements of M.G.L. Chapter 40B and 760 CMR 56.
 10. A copy of this Decision and the Plan shall be kept on the Project Site at all times.
 11. Petitioners must assign reasonable effort to create and enforce a plan to reduce non-emergent vehicular entry and/or regular use of the emergency access road located within Lot 2, utilizing such supportive efforts of the public safety departments within the Town of Westwood to enforce compliance.
 12. In the case of a 20 foot buffer zone on the eastern perimeter of the Property, Petitioners must remove any existing trash or debris and maintain the natural habitat therein to a reasonable and satisfactory standard. Further, regarding the fence installed on the aforementioned eastern perimeter of the Property, Petitioners must repair, replace and/or maintain said fence to be of a reasonable and satisfactory condition and of a continuous style as to provide screening to abutting properties.

RECORD OF VOTE

The following members of the Board of Appeals voted to grant the Special Permit for the above mentioned project: David W. Krumsiek, Douglas C. Stebbins and John F. Lally.

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



WESTWOOD ZONING BOARD OF APPEALS

David W. Krumsiek - Chairman

John F. Lally

Douglas C. Stebbins

4/26/17
Date

1105-5419 Highland Glen Road-BC Highland Glen LLC and CRHGII Residential LLC

TOWN CLERK
TOWN OF WESTWOOD

2017 MAY 30 A 11:46