

Barbara J. Walling

TOWN CLERK
SANDWICH

DECISION ON REVISED COMPREHENSIVE PERMIT APPLICATION OCT 17 2005

G.L. C. 40B, §§20-23

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APPLICANT: Housing Assistance Corporation (the "Applicant" or "HAC")

PROPERTY: Assessor's Map 28, Parcels 41, 42, 43, and 48; off Victory Drive and Kiah's Way, Sandwich, MA (the "Property")

DATE: October 11, 2005

08-30-2007 @ 02:53p

I. PROCEDURAL HISTORY AND JURISDICTIONAL FINDINGS

1. HAC submitted an application for a Comprehensive Permit on or about May 21, 2002. The project described in the application is entitled "Dana's Fields." The application stated that the vision for Dana's Fields is that it be a residential work community for eligible low income individuals. The original application proposed 60 single person occupancy ("SPO") affordable rental units and 3 detached staff residences, as well as a community building, a horse stable, two greenhouses, a farm stand, an equipment barn, and a chicken coop.
2. The Applicant proposed funding the development with the use of HUD grants, HOME funds, contributions, and other eligible funding sources. The Applicant received a portion of the necessary funding before the application was filed for the acquisition of a portion of the site. Other materials submitted by the Applicant included project plans and a project narrative.
3. The Applicant possesses qualified status as a Non-Profit Organization. 760 CMR 31.01(1)(a).
4. The Applicant controls the primary site by virtue of deeds to the primary locus dated December 14 and 15, 2000. 760 CMR 31.01(1)(c). Subsequent deeds for ancillary parcels were received by the Board. The Applicant has established sufficient rights to the accessways shown on its plans. The Applicant asserts a colorable claim of right with respect to proposed activities in the NStar utility easement shown on the plans. Neither NStar nor any other entity has submitted evidence to the contrary.
5. The Applicant submitted a site-eligibility letter from the Barnstable County Home Consortium. The project is therefore deemed fundable, as required under 760 CMR 31.01(1)(b). The Applicant has received funding from the U.S. Department of Housing and Urban Development for acquisition of the primary site. The Applicant also expects to receive funding from other public sources and private donations.
6. After receipt of a full application, a public hearing was opened in a timely manner on August 27, 2002 and was continued with good cause and without

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objection to the following dates: October 10, 2002, December 10, 2002, January 28, 2003, February 25, 2003, April 15, 2003, and June 24, 2003. The hearing was closed on June 24, 2003. The Applicant granted an extension for the Board's deliberation period up to and including September 23, 2003.

7. The Applicant has been represented by Michael Princi, Esq. as well as various representatives of HAC. As of February 2004, the Applicant also has been represented by Hale and Dorr LLP (which on May 31, 2004 became Wilmer Cutler Pickering Hale and Dorr LLP). Horsley & Witten has appeared on behalf of the Applicant with respect to engineering and environmental issues.
8. Town Counsel Jason Taleran, Esq. has served as an attorney for the Board. The Board also retained the services of Richard Heaton of H&H Associates, LLP to review the economic feasibility of the project.
9. Members of the public submitted substantial oral and written testimony during the course of the public hearing. Such testimony was divided between project supporters and project opponents.
10. On October 21, 2002 and June 24, 2003, the Applicant submitted revised applications at the Board's request, including engineering data and revised project plans. These revisions addressed comments by the Board, the Board's consultants, local officials, and members of the public.
11. On September 18, 2003, the Board issued a decision approving the Comprehensive Permit under G.L. c. 40B for Dana's Fields, subject to certain conditions. The decision was filed with the Town Clerk of the Town of Sandwich on September 23, 2003.
12. On October 10, 2003, the Applicant filed an Appeal from the Board's September 18, 2003 decision, pursuant to G.L. c. 40B and CMR 30.06, with the Housing Appeals Committee (the "Appeal"). This decision is issued pursuant to an agreement for remand of the Appeal and a Remand Order issued by the Housing Appeals Committee.
13. On August 17, 2005, the Applicant submitted a revised proposal for the project (the "Present Proposal"). The Present Proposal represents a substantial revision of the Applicant's original proposal so as to take into account concerns of the Board and abutters and to facilitate the development of affordable housing.
14. The Present Proposal is for 10 SPO affordable rental housing units, 20 1-bedroom units, 35 2-bedroom units, up to 5 free-standing single family residences (3-4 bedrooms), including a Director's residence (3-4 bedrooms). The Present Proposal also includes a community building, a horse stable, two greenhouses, a farm stand, an equipment barn, paddocks, an agricultural area and a chicken coop.

15. On September 13, 2005, the Board held a duly noticed public hearing with respect to the Present Proposal. All prior evidence, plans and testimony were incorporated into the public record. Following the hearing, the Board voted to close the public hearing and take the matter advisement. The Board deliberated on October 11, 2005.

II. PROJECT DESCRIPTION

1. The physical aspects of the proposed project are described in the site plans of Horsley and Witten, as revised through August 17, 2005 as well as the architectural plans of Brown, Lundquist Fenuccio & Raber, dated August 16, 2005. Unless otherwise noted herein, these versions of the site and architectural plans are the subject of this decision (hereinafter, the "Revised Plans").
2. The Property contains approximately 46.73 acres and is presently undeveloped. The Property is located partly within an Industrial Zoning District and partly within the Residential Zoning District. The Property is located within and accessed through an industrial park, although it also abuts a residential neighborhood. The Revised Plans exhibit access by both Jan Sebastian Drive and Victory Drive. The primary access to the site is off of a public way, Jan Sebastian Drive. The Property contains minor wetlands and changes in topography.
3. The Present Proposal, as described in the Revised Plans, proposes 70 housing units, a community building, a horse stable, two greenhouses, a farm stand, an equipment barn, paddocks, an agricultural area and a chicken coop. The Present Proposal is for 20 1-bedroom housing units, 35 2-bedroom housing units, and 10 SPO units in a separate building. Each of the 1-bedroom and 2-bedroom housing units will contain, at a minimum, a full bathroom, a full kitchen, and a living room. Prior to renting of a 1 or 2-bedroom housing unit to prospective tenants, the Applicant will verify that each tenant has an income that will enable him or her to pay the rental fees for the unit. Each SPO unit shall be a single person occupancy unit containing a single bedroom and one bathroom with five SPO tenants sharing a common living room and kitchen. In addition, the Applicant proposes up to 5 single-family houses, 2 of which are designed to house Dana's Fields staff and one of which is to serve as a Director's residence.
4. The target population for residents of the 10 SPO units includes formerly homeless men and women. The Applicant proposes a detailed selection process for potential residents. The Applicant revised its resident selection process several times in response to concerns raised during the public hearing. The Applicant offered to employ the tenant selection process, in the form as submitted to the Board. It is intended that the term of residency for an SPO unit will be a minimum of one year.

5. The Applicant intends that the residents of the SPO units will participate in one or more of seven proposed business/training enterprises, including an equestrian program, culinary arts training (through Cape Cod Community College), agricultural training, building maintenance, horticultural production and marketing, and/or print and video production.
6. The community building will be used for central dining for residents, training programs for Dana's Field residents, and meetings. The community building shall not be used for day programs and services administered by and through the Noah Shelter, which is a facility operated by the Applicant in Hyannis, Massachusetts.
7. The Applicant proposes a public water source and private wastewater treatment facility.
8. A preliminary storm water management system has been designed for the site.

III. FINDINGS

1. The Town of Sandwich has not met the statutory minimum set forth in G.L. c. 40B, §20 or 760 CMR 31.04, nor is there evidence that affordable housing is located on sites comprising one and one-half percent or more of the total land area zoned for residential, commercial or industrial use. There is also no evidence that development of affordable units consistent with the Application, as amended, would result in the commencement of construction of such housing on sites comprising more than three tenths of one percent of such land area.
2. The Board finds that the mixture of 1-bedroom, 2-bedroom and SPO units, as described in the Present Proposal, likely will permit greater integration of Dana's Fields residents into the larger community than the prior proposal. The Board further finds that revisions to the housing mixture made in the Present Proposal help address the Board's concerns relating to the potential effect on public safety, as described in the Board's September 18, 2003 decision.
3. The Board finds that the project as described in the revised proposal is economic within the meaning of Chapter 40B and the regulations thereunder. The Board further finds that the conditions imposed in Section IV below will not render the project uneconomic within the meaning of Chapter 40B and the regulations thereunder.
4. The site has frontage and lawful access on a public way, Jan Sebastian Drive. The Revised Plans also exhibit access from Victory Drive. The access, as shown on the Revised Plans, is suitable and appropriate for this proposed development.
5. The Board finds that waivers of local by-laws and regulations, as necessitated by this project, will have an adverse affect on local concerns. Notwithstanding, the Board finds that the Town's need for affordable housing outweighs any potential

adverse impact on local concerns, including the concern for the maintenance of existing by-laws and regulations.

6. The Board's findings are based upon the Applicant's description of the project's buildings as described on the Revised Plans and in the Present Proposal on August 17, 2005. The description of the buildings, is as follows:

"The 10 SPO units will house qualified applicants, who will also receive training and jobs through the Dana's Fields programs. Residents will live in one 10-unit building, with five units on each floor. Two units will be handicapped accessible. Each SPO unit will have a private bathroom and share a kitchen, living room and mudroom. Each side of the building will also have sliding doors.

The 20 one-bedroom and 35 two-bedroom units will be in 5 eleven-unit apartment buildings, each containing 4 one-bedroom and 7 two-bedroom units each.

Five single-family housing units with 3-4 bedrooms will also be developed, with 3 of those housing units designated for Dana's Fields staff.

In addition, Dana's Fields will consist of a 1) community building, 2) a horse stable, 3) two green houses, 4) a farm stand, 5) an equipment barn, 6) five single family houses [**ZBA note – these are the same single family houses described in the preceding paragraph**], and 7) a chicken coop.

The community building will include a large dining room, a kitchen, an interdenominational chapel, laundry facility, two large classrooms, a print shop, nine staff offices, ten bathrooms and three guest rooms.

The horse stable will have twenty stalls, an equipment room, running cold water and an office.

The two greenhouses will be located as follows: in proximity to the farm stand and vegetable fields.

The farm stand will include a product preparation areas as well as a retail area.

The equipment barn will be placed in proximity to the vegetable fields.

The chicken coop will be placed next to the equipment barn."

IV. DECISION AND CONDITIONS

Upon Motion of William Dawes, seconded by Erik Van Buskirk, the Board members hereby unanimously vote to approve the Applicant a Comprehensive Permit under G.L. c. 40B for Dana's Fields as set out in the Present Proposal and the Revised Plans, subject to the following conditions:

1. The Applicant shall be permitted to build 10 SPO affordable rental housing units, 20 1-bedroom units, 35 2-bedroom units, and up to 5 market rate (3-4 bedroom) rental units, consistent with the Revised Plans. The Applicant may decide the number of 1-bedroom and/or 2-bedroom units that will be affordable housing units. The Applicant may, within its sole discretion, and at any time, convert any of the SPO units into as many as 10 1 and/or 2-bedroom units, provided that each converted unit has a full bath, full kitchen and a common living space/room for the residents thereof, and, provided further that any necessary building permits for conversion of said units have been obtained. If such conversion enlarges or alters the exterior dimensions of the subject buildings, the Applicant shall obtain the review and approval of the Board, pursuant to the provisions of 760 CMR 31.03. The units, once converted may not be re-converted back to SPO units without the approval of the Board. The Applicant also shall be permitted to build the community building, horse stable, two greenhouses, farm stand, equipment barn, paddocks, an agricultural area and chicken coop as described in its Present Proposal. The use of the community building shall be limited for central dining for Dana's Field residents, training programs for Dana's Field residents, meetings, and any other lawful purposes. The community building and proposed farming activities shall not be for day programs and services administered by and through the Noah Shelter, which is a facility operated by the Applicant in Hyannis, Massachusetts.
2. Upon the Applicant's written request, the Board may be amenable to allowing a relocation of the horse stable, paddocks, two greenhouses, farm stand, equipment barn, agricultural areas and/or chicken coop, provided that such relocation does not require additional waivers and provided that such facilities are not moved closer to abutting residential properties.
3. The Applicant shall employ the revised tenant selection criteria for the SPO units, as submitted to the Board. For the remaining affordable units, and to the extent permitted by-law, the Applicant shall also employ local preference criteria such that 70% of the units are reserved for residents of Sandwich, parents or offspring of Sandwich residents, employees of the Town of Sandwich or teachers for any school district serving the Town of Sandwich.
4. The Applicant shall construct the roadways throughout the site as shown on the Revised Plans.
5. The building designs shall be limited to the general designs submitted by the Applicant.

6. The Applicant will provide a revised landscaping plan to the Board for its approval prior to the issuance of building permits. The Applicant has agreed to maintain the existing vegetated buffer as shown on the Revised Plans. The existing vegetated buffer shall be supplemented as necessary to include a variety of species, including evergreens and shall be designed in a manner that discourages pedestrian travel between the abutting properties.
7. The proposed farm stand shall comply with Section 2320 of the Zoning By-laws with respect to the sale of produce.
8. The proposed riding and boarding of horses shall comply with Notes 1, 2, and 9 of Section 2320 of the Zoning By-laws.
9. The Board hereby grants all waivers that are necessary to construct the project shown on the Revised Plans, as may be amended by virtue of the conditions imposed in this Permit. No other waivers are granted and all local by-laws and regulations not waived shall be enforced in their entirety. There shall be no waivers of any inspectional requirements or fees that are imposed by any by-law, regulation, or rule of the Town. Any subsequent revision to the Revised Plans that requires additional or more expansive waivers must be approved by the Board in accordance with 760 CMR 31.03.
10. As to dimensional requirements, no original or future construction of primary and/or accessory above-ground structures may occur outside of the building footprints, as shown on the Revised Plans, as may be amended in accordance with this Permit, and no additions to, or increases in square footage of, the proposed buildings may be constructed without approval by the Board in accordance with 760 CMR 31.03. There shall be no waiver from local by-laws or regulations regarding site lighting. There shall be no waiver from Section 3420 of the Zoning By-laws.
11. Comprehensive permits granted under Chapter 40B generally require that a minimum of 25% of the units be rented to low or moderate income households that earn no more than 80% of median income for the area or that a minimum of 20% of the units be rented to low income households that earn no more than 50% of median income for the area. The Applicant hopes to lease as many units as feasible to low-income residents, but in no event shall the number be less than 25%. All of the permitted SPO units and at least 25% of the total units in the proposed development shall be restricted, in perpetuity, for rental to individuals earning no more than 80% percent of the median income for the area, as may be determined by reference to statistics compiled by the Department of Housing and Community Development or the Federal Department of Housing and Urban Development or the successor agencies thereto. The proposed residents of the affordable 1 and 2 bedroom apartments shall be required to demonstrate eligibility for those units in conformance with the normally accepted requirements for affordable apartments. Pursuant to the Monitoring Agreement, the Monitoring

Agent shall have the authority to review and approve the requirements. The Monitoring Services Agreement is subject to the review and approval of Town Counsel. The Applicant shall execute any and all documents that are required by the Department of Housing and Community Development to ensure that, at a minimum, all of the apartments and SPO units are included within the Town's subsidized housing inventory.

12. The maintenance schedule for the storm water system is subject to the prior approval of the Board's engineer. Documents governing maintenance shall contain a permanent guarantee by the Applicant, which shall provide for mandatory assessments for any necessary maintenance expenses. Construction of the storm water management system shall not commence until the Board's engineer has forwarded written approval of the system design to the Board of Appeals.
13. Nothing in this decision shall constitute an approval for a connection to the public water system. The Applicant agrees that it shall be responsible for obtaining such approvals from the Sandwich Water District. The Applicant shall pay any and all fees for such water connection, as may be determined by the Sandwich Water District.
14. As security for completion of the Infrastructure shown on the Revised Plans, as conditioned hereby, including but not limited to the roadway, drainage facilities, and utilities (collectively the "infrastructure"), the release of occupancy permits for all housing units in the development shall be subject to the following restrictions:
 - a. No occupancy permit for a unit in any building shall be issued, and no rental of any unit shall be permitted until: (1) the Applicant constructs suitable access and egress for emergency vehicles from Jan Sebastian Drive to and from the housing units; and (2) all infrastructure as shown on the final plans, as approved by the Board's engineer, has been constructed or installed so as to adequately serve each residential building.
 - b. No occupancy permits shall be issued until the Applicant complies with any other requirements or specifications that are reasonably required by the Board's engineer after review of the final construction plans.
 - c. Upon completion of all such Infrastructure, the Board's engineer shall inform the Building Inspector accordingly who may authorize the release of occupancy permits, which authorization will not be unreasonably withheld. No occupancy permit shall be issued without such authorization and such authorization shall be ineffective unless it is in writing.
15. During construction, the Applicant shall maintain all feasible and reasonable means of dust control and shall collect all debris on a daily basis. No construction

may occur on Sundays or on New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving, Christmas Eve, or Christmas. All construction will occur in accordance with existing Town ordinances.

16. In addition to review and approval by the Board's engineer, final construction plans shall be submitted for review and approval by any local official whose approval is necessary prior to the commencement of construction.
17. Nothing in this Permit shall be construed as an approval of the project's wastewater treatment system. The final design of the proposed wastewater system shall control, to the maximum extent feasible, odors emanating from the system.
18. Snow and ice removal shall be the responsibility of the Applicant. Snow and ice removal shall be undertaken as soon as is practicable after snowfall and shall not impede or obstruct the roadway and driveways or the sight lines thereon or obstruct the hydrants. Accumulated ice on the roadway, driveways, and parking lots shall be promptly removed or sanded such that vehicles may pass safely. No sodium-based de-icers shall be permitted.
19. This Permit shall not be valid until recorded with the Barnstable County Registry of Deeds and evidence of such recording is provided to the Inspector of Buildings and the Board of Appeals.
20. This Permit shall not be assigned or transferred in any manner without a hearing and prior approval by the Board.
21. Any modifications in this Permit shall be subject to the provisions of 760 CMR 31.03 or any successor regulation thereto.
22. This Permit shall expire if construction is not commenced within three years from the date it is filed by the Board with the Town Clerk. Appeals of this Permit may be taken pursuant to G.L. c. 40B. Upon an appeal, the period of the Permit shall be extended pursuant to G.L. c. 40B.

Sandwich Zoning Board of Appeals

By: *[Signature]* 10/14/05

I hereby certify that a copy of the decision of the Board of Appeals of the Town of Sandwich related to the application of Housing Assistance Corporation for a Revised Comprehensive Permit was received and filed in this office on October 17, 2005, that a notice of appeal to the Barnstable Superior Court together with a copy of the complaint was received and filed on November 4, 2005 and that such appeal was dismissed, with prejudice on February 16, 2007.

Date: *August 27, 2007*

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[Signature]
Town Clerk

BARNSTABLE REGISTRY OF DEEDS