

DECISION

PROCEDURAL HISTORY, FINDINGS AND DECISION

Application of Charles Ridge Realty, LLC for Comprehensive Permit (the "Application")

June 14, 2004

PROCEDURAL HISTORY

1. On or about October 16, 2003, Charles Ridge Realty, LLC (the "Applicant"), applied for a Comprehensive Permit, pursuant to G.L. c. 40B, to construct forty-three (43) condominium units located in 10 buildings (the "Development") on approximately 17.52 acres of land (15.8 acres in Littleton, 1.72 acres in Westford) off Beaver Brook Road in Littleton, Massachusetts (the "Property"). The Development will be a "for sale" project.
2. A duly advertised public hearing of the Littleton Zoning Board of Appeals (the "Board") was opened on November 6, 2003, and continued to the following dates:

December 4, 2003, February 19, 2004, March 18, 2004, April 1, 2004 and April 22, 2004
3. The public hearing was closed on April 22, 2004.

FINDINGS

1. The Applicant is qualified to make the Application pursuant to 760 CMR 31.01 in that:
 - a. It is a "limited dividend corporation" as that term is used in G.L. c. 40B, s. 21 and 760 CMR 31.01(1);
 - b. It has a funding commitment from a subsidizing agency as evidenced by the Site Approval letter from the Department of Housing and

Community Development ("DHCD) under its Local Initiative Program ("LIP"); and

- c. It has "control of the site" as that term is used therein, in that it owns the Property.

2. The Town of Littleton does not currently meet the statutory minimum set forth in G.L. c. 40B, s. 20 or 760 CMR 31.04, nor is affordable housing located on sites comprising one and one-half percent or more of the total land area zoned for residential, commercial or industrial use. The development of affordable units consistent with this Application will not result in the commencement of construction of such housing on sites comprising more than three tenths of one percent of such land area.

3. The Property is referenced as Assessor's Tax Map 14, Parcel 1. It is situated within the Residential Zoning District and the Aquifer Resource Overlay District, as set forth in the Littleton Zoning Bylaw. It has approximately 670 feet of frontage on Beaver Brook Road.

4. The prevailing zoning surrounding the site is exclusively residential. Currently there exists a number of moderately sized and larger single family homes adjacent to the site. With the exception of electrical transmission lines and the Littleton Water and Electric electrical transmission building, there are no businesses, commercial or industrial uses in close proximity to the site.

5. The Property comprises approximately 16.41 acres of dry land area with 1.1 acres of wetlands.

6. The property is currently wooded except for a portion containing electric transmission lines.

7. Existing public utilities available to the Property include water, telephone, electric, gas and cable television/internet.

8. The Town of Littleton does not have a municipal sewer system.

9. The Applicant has proposed an on-site wastewater disposal system.

10. The Applicant initially proposed eighty-six (86) parking spaces on the Property. This has been augmented by an additional ten (10) spaces in a central area.

11. As finally proposed, twenty-five percent (25%) of the forty-three (43) dwelling units, or eleven (11) units (the "Affordable Units"), would be reserved for

sale to families earning no more than eighty percent (80%) of the median household income for the Boston Metropolitan Statistical Area.

12. The Board retained the following consultants to assist in the review of the Application:

- a. Civil Engineering: H2O Engineering Consulting Associates Inc., Bedford, MA;
- b. Traffic Engineer: Abend Associates, Burlington, MA;
- c. Fire Safety: RDK Engineers, Andover, MA.

13. Various aspects of the Development were reviewed by the Departments, Boards, and Commissions of the Town of Littleton.

14. After reviewing the Applicant's stormwater management and wastewater disposal plans, the Board's engineering consultants prepared detailed reports indicating that the Development would not endanger public health or safety or the environment, subject to the conditions set forth below.

15. The Development, as conditioned below, is consistent with local needs.

DECISION

Pursuant to G.L. c. 40B, the Zoning Board of Appeals of Littleton, after a public hearing and findings of fact, hereby grants a Comprehensive Permit to the Applicant for the construction of forty-three (43) dwelling units on the Property, with associated infrastructure improvements, subject to the following conditions. The term "Applicant" as set forth herein shall mean the Applicant, its heirs, successors and assigns, including the required Unit Owners Association. The term "Board" as set forth herein shall mean the Littleton Zoning Board of Appeals. Unless otherwise indicated herein, the Board may designate an agent to review and approve the matters as set forth herein.

Conditions:

1. The Development shall be constructed in substantial conformance with the following plans of record:

- a. Site Plans: "Site Plan "Charles Ridge" Littleton/Westford, Massachusetts," as drawn by Landtech Consultants, Inc. of Westford, MA 01886, dated September 12, 2003, last revised May 11, 2004, fifteen (15) sheets.
- b. Architectural Plans: "Charles Ridge Estates, Beaver Brook Road, Littleton, MA," as prepared by Joseph D. LaGrasse & Associates, Inc. of One Elm Square, Andover, MA, sheets C1.0 & C1.1 dated January 1, 2003, last revised February 15, 2004, sheets A1.0 & A1.1 dated January 15, 2004, last revised March 18, 2004, sheet C1.2 dated January 1, 2003, last revised March 18, 2004(6) total sheets (5 plus cover).

Any deviation from these plans and/or documents shall require a modification of this Comprehensive Permit by the Board as set forth in 760 CMR 31.03.

2. The Development shall be limited to forty-three (43) home-ownership dwelling units located in ten (10) buildings. Thirty-nine (39) of the dwelling units shall have two (2) bedrooms each. Four (4) of the dwelling units shall have three (3) bedrooms each. The Board hereby limits the total number of bedrooms in the Development to ninety (90). The number of bedrooms per unit as shown on the site and architectural plans will not be allowed to be increased. Said restriction shall be included in the Condominium Master Deed for the Charles Ridge Condominiums. Eleven (11) of the forty-three (43) Units shall be "affordable" units.

3. The Development shall contain a minimum of Ninety-six (96) parking spaces.

4. Twenty-five percent (25%) of the forty-three (43) dwelling units, or eleven (11) units (the "Affordable Units"), shall be reserved for sale to households earning no more than eighty percent (80%) of the median household income for the Boston Metropolitan Statistical Area.

~~5. Nine (9) of the dwelling units (said units being those contained in Buildings 9 and 10 as shown on the Project Plans) shall be restricted to ownership and occupancy by a person 55 years of age or older (the "Age Restricted Units"). Three (3) of the Nine (9) Age Restricted Units will be Affordable Units. The master deed and unit deeds for the Age Restricted Units shall contain the following language:~~

~~" The unit shall be owned and occupied by at least one person who is age fifty-five (55) or older (the "Qualified Occupant"); provided, however, that in the event of the death of the Qualified Occupant(s) of a unit or other~~

~~involuntary transfer of a unit, a one year exemption shall be allowed to allow for the rental of the unit to another Qualified Occupant(s) (that is an occupant meeting the "Age Restriction") so long as the provisions of the Housing Laws (defined below) are not violated by such occupancy. The Age Restriction is intended to be consistent with, and is set forth in order to comply with the Fair Housing Act, 42 USC section 3607(b), as amended, the regulations promulgated thereunder, 24 CFR Subtitle B, Ch. 1, section 100.300 et seq. and G.L. c. 151B, section 4 (the "Housing Laws").~~

6. Preference for the sale of the Affordable Units shall be given to persons or families who are either (a) Littleton residents, and/or (b) the parents or children of current Littleton residents, and/or (c) employees of the Town of Littleton. The local preference shall be implemented by a Lottery Agent approved by the Board. Prior to conducting the Lottery, the Lottery Agent shall submit a final Lottery Plan to the Board for its approval. All costs associated with the Lottery shall be exclusively the Applicant's.

7. The Applicant shall submit the final drafts of a Regulatory Agreement, a Monitoring Agreement, an Affordable Deed Restriction and an Affirmative Marketing Plan to the Board for approval as to form by the Board's legal counsel. Prior to the issuance of any building permit, the Regulatory Agreement shall be executed by and with the Board and/or the Town. Prior to the issuance of any Certificate of Occupancy the Monitoring Agreement shall be executed by and with the Town. Such document(s) shall contain at a minimum, the following terms:

- a. The Affordable Units shall be reserved for sale in perpetuity to households earning no more than eighty percent (80%) of the median household income for the Boston Metropolitan Statistical Area.
- b. The right of first refusal to purchase an affordable unit on resale shall be granted to the Town of Littleton, or its designee, which shall be the Littleton Housing Authority.
- c. The actual Affordable Units shall be identified in the Regulatory Agreement.
- d. The Affordable Units shall be owner-occupied, except for bona fide temporary absences, during which rental may be permitted upon approval of the Littleton Housing Authority.
- e. The development shall be limited to ninety (90) bedrooms. Thirty-nine (39) units shall have only two (2) bedrooms, four (4) units shall have only three (3) bedrooms. There shall be no conversion of any

other space into bedrooms. This condition shall also be placed in the Master Deed of the Unit Owner's Association.

- f. The Monitoring Agent for this development shall be Citizen's Housing and Planning Association.
8. The Affordable Units shall not be segregated from the market rate units.
9. During construction, the Applicant shall comply with all applicable local, state and federal regulations, guidelines, procedures, and laws not otherwise waived in this Decision.
10. The Applicant shall at all times use all reasonable means to minimize inconvenience and disturbance which may affect residents, businesses, and traffic in the general area. Construction shall not commence on any weekday before 7:00 a.m. and shall not continue beyond 6:00 p.m. Construction shall not commence on any Saturday before 8:00 a.m. and shall not continue beyond 4:00 p.m. There shall be no construction on any Sunday or on any state or federal legal holiday except with prior written permission of the Littleton Building Inspector. For this condition, construction activities shall be defined as: start-up of equipment or machinery, delivery of building materials and supplies; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities both on and off the site; demolition of existing structures; removal of stumps and debris; and the erection of new structures.
11. The Applicant has proposed, and the Board hereby requires, that the following common facilities and services of the Development shall be and shall remain forever private, and that the Town of Littleton shall not have, now or ever, any legal responsibility for operation or maintenance of same:
 - a. All roadways and parking areas;
 - b. Stormwater management system;
 - c. Snow plowing;
 - d. Landscaping;
 - e. Trash removal;
 - f. Street lighting;
 - g. Wastewater disposal system.

In this regard, the roadway within the Development shall not be dedicated to or accepted by the Town.

12. The Applicant shall be responsible for the complete installation of all aspects of the common facilities and services set forth in Condition #11 above. The Applicant shall be responsible for the operation and maintenance of all aspects of the common facilities and services set forth in Condition #11 above, until the transfer of the last dwelling unit. Thereafter, such operation and maintenance shall be the responsibility of a Unit Owners Association. In the event that a management company is engaged, the Applicant or the Unit Owners Association shall provide the Board with a copy of the contract.

13. The Applicant shall establish a Unit Owners Association and each owner shall be a member thereof. Littleton's Town Counsel shall approve such document as to form after determining that the document is consistent with this Decision.

14. The Applicant's registered professional engineer shall prepare guidelines for the operation and maintenance of the stormwater management system and the wastewater disposal system, subject to the approval of the Board or its designated agent. In the event a management company is engaged, the guidelines shall be incorporated by reference in the management contract.

15. In the event that the Applicant, its successors, or agent fails to maintain the stormwater management system or wastewater disposal system in accordance with engineering or manufacturing guidelines for operation and maintenance or in any manner which fails to safeguard public health and safety or in the event the Applicant, its successors, or agent fails to properly maintain the roadway for safe and adequate emergency vehicle access/egress as determined by the Littleton Fire Department, Police Department or Highway Department, the Town may, but need not, conduct such emergency maintenance or repairs, and the Applicant shall convey any easement necessary to implement such intervention, including, if applicable, a "Title V Covenant and Easement" pursuant to 310 CMR 15.00 et seq. In the event the Town undertakes any maintenance or repairs, the Applicant shall promptly reimburse the Town for all reasonable expenses associated therewith. If the Applicant fails to so reimburse the Town, the Town may place a lien on the Development or on any or all of the units therein to secure such payment.

16. Prior to the issuance of a building permit for any dwelling unit, the Applicant shall submit the following final engineered plans and/or documents for approval by the Board or its agent. The Board shall not unreasonably withhold such approval. If the Board fails to act within thirty (30) days of the receipt of such plan(s), such plans shall be deemed approved.

- a. Lighting plan;
- b. Landscaping, screening and planting plan;
- c. Grading plan;
- d. Erosion control plan;
- e. Architectural plans and Specifications;
- f. Utilities plan including water, gas, electric, telephone, and cable;
- g. Signs, in accordance with the requirements of the Littleton Zoning Bylaw, if signs are located on the Development;
- h. Stormwater management;
- i. Open space plan, to include a list of furnishings, equipment, etc., to be installed or provided in the recreational area;
- j. Site Layout Plan including sidewalks;
- k. Wastewater disposal system;
- l. Draft Builder's Warranty
- m. Final letter of review from Dr. Chang verifying the resolution of any final engineering issues raised in his letter dated April 19, 2004.

17. In the preparation of the final engineered plans set forth in Condition #16 above, the Applicant shall incorporate the following matters:

- a. Design and install the stormwater management system consistent with the DEP Stormwater Management Policy;
- b. Wherever practicable, existing trees and vegetation shall be preserved. New trees and shrubs shall be installed to provide shade and screening. Additionally, all disturbed areas on the Property shall, at a minimum, be loamed and seeded. Landscaping shall be completed in substantial compliance with the landscape plan included in the Site Plans.

18. The Board of Health's permit for wastewater disposal or the DEP's permit, if any, shall be made a part of this Comprehensive Permit. If there is any inconsistency between the plan of record for this permit and the plans as may be approved by said agencies, the Applicant shall submit an amended plan to the Littleton Zoning Board of Appeals for approval. Said amended plan shall be accompanied by a letter setting forth any and all changes from the submitted plan of record and shall include revised drainage calculations, if applicable. A final "As Built" Plan of the wastewater disposal system locating all underground components shall be submitted to the Board on completion.
19. There shall be no garbage disposals. This condition shall be placed in the Master Deed of the Unit Owners Association.
20. The Applicant shall maintain the landscaping within the common areas in perpetuity. Any dead vegetation shall be removed immediately and replaced in accordance with the specifications on said plan.
21. Approval by the Fire Chief of the number and arrangement of the fire hydrants, as well as any directional or building signage to assist in identifying units, shall be a prerequisite to the issuance of a building permit.
22. Residential sprinkler systems shall be installed in all units in accordance with NFPA-13R.
23. All fire lanes and parking areas shall be kept clear at all times, and all snow shall be removed from these areas to ensure access by fire trucks and other public safety vehicles. Fire lanes shall be posted as such; vehicles parked in such fire lanes shall be towed at the owner's expense.
24. The Applicant shall conform to all pertinent requirements of the Americans with Disabilities Act and the Architectural Access Board Regulations (521 CMR 1.0 et. seq).
25. The Applicant shall promptly pay the reasonable fee of the consulting engineer for the review of any substantial change, as defined in 760 CMR 31.03, and the fee of the Board's legal counsel for review of the documents or plans described herein. The Board may require the establishment of an escrow account to assure such payment. Insubstantial changes shall be reviewed by staff of the Town.
26. Inspections during the construction phase shall be conducted by the Town of Littleton Building Department staff and appropriate Town Agencies.

27. The Applicant shall obtain all necessary permits from the Board of Health, Building Department, Water Department, Highway Department and/or the Conservation Commission, consistent with this Decision.

28. Prior to any earth removal, the Applicant shall comply with all requirements of all relevant Town bylaws and zoning bylaws in conformity with this Decision.

29. Prior to the issuance of any certificate of occupancy, the Applicant shall demonstrate to the satisfaction of the Board or its designee (which shall be the Littleton Board of Health), that there is a maintenance contract for the Development's wastewater disposal system for the initial five (5) year operating period. The Unit Owners Association shall provide proof of the maintenance contract for operating periods beyond year five, as required by DEP, or if DEP does not establish a time period, then every five (5) years.

30. Construction authorized by this Decision shall commence within three (3) years of the date of filing of this Decision with the Littleton Town Clerk. ~~The project shall be completed within five years of the date of filing of this permit with the Town Clerk, except that the Board may grant an extension of time for completion upon showing of good cause by the Applicant.~~ These periods shall be tolled in the event an appeal is taken from this Decision. Failure to exercise these rights within the stated time period or without extension shall cause this permit to lapse. In the event of a lapse, this Decision may be re-established only after notice and a new hearing.

→ The Project shall be completed by March 20, 2013 except that the Board may grant an extension of time for completion upon showing of good cause by the Applicant.

31. If there is any dispute about whether the Project plans are being implemented in accordance with this Decision, the disputants shall present their concerns to the Board or its designee, which shall be the Littleton Zoning Enforcement Officer, for resolution. If there is any dispute relative to any decision of the Monitoring Agent, relative to the cost or profits of the Applicant, the disputants shall present their concerns to the Board, or its designee, for resolution. Applicant shall use reasonable efforts to keep the purchase price of the market rate units as low as is reasonably and economically feasible.

32. The Applicant has requested, and the Board has granted, the waivers from local rules set forth in Exhibit A hereto.

- A. Said Exhibit A is hereby incorporated by reference in this Decision.
- B. To the extent the plans are silent on a particular issue, the appropriate Town by-law shall apply.
- C. In the event the Applicant, the Board's consulting engineer or Agent determines, in the final design of the Project, that additional waivers,

not shown on the plans are required, the Applicant shall be required to request such additional waivers in writing from the Board.

- D. The Board may grant such additional waivers in accordance with applicable rules and regulations.

~~33. The Applicant shall provide annual financial reports regarding the Project to the Board for its review. Such reports shall be issued at the end of Phase I and then annually until the completion of the Project and shall be generated in accordance with Generally Accepted Accounting Principles (GAAP) and reviewed by a Certified Public Accountant (CPA), at Applicant's expense.~~

34. The development and sale of the "affordable" units shall be proportional to the development and sale of the "market rate" units such that one affordable unit must be constructed for every three market rate units constructed. Therefore, building permits shall be issued in a ratio of 3:1 such that only three market rate unit building permits are issued for each affordable rate unit building permit issued. Also, therefore, certificates of occupancy shall be issued in a ratio of 3:1 such that only three market rate unit certificates of occupancy are issued for each affordable rate unit certificate of occupancy issued.

35. A working capital reserve for the septic system shall be established by the Applicant for the benefit of the Homeowners Association and language shall be provided within the Condominium Master Deed to provide for collecting additional funds as part of the condominium fee to fund future septic system improvements and maintenance.

36. The Phasing Plan and Proforma submitted by the Applicant are hereby incorporated into this decision.

37. If any provision of this Decision or portion of such provision or the application thereof to any person or circumstances is for any reason held invalid or unenforceable, the remainder of this Decision (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

38. The terms, provisions and conditions of this Decision shall burden and benefit the successors and assigns of the Town and the Applicant with the same effect as if mentioned in each instance where the Town or the Applicant is named or referred to.

39. In constructing the Project the Applicant shall employ "Controlled Construction" in accordance with 780 CMR 116.1

RECORD OF VOTE

The following members of the Littleton Zoning Board of Appeals vote to grant a Comprehensive Permit subject to the above-stated terms:

Ed Galloni Raymond M. Brush, chairperson
Russ Anderson
William Spanswick

Filed with the Town Clerk on June 24, 2004.

Linda A. Knapp
Town Clerk

Loc BEAVER BROOK RD Parcel ID #: R19 1 A
LUC 903

LITTLETON TOWN OF / ELECTRIC LIGHT DEPT
P.O. BOX 1305

LITTLETON MA 01460

Loc 64 BEAVER BROOK RD Parcel ID #: R19 18 0
LUC 101

FREEMAN MICHAEL L / GROSSMAN NANCY E
64 BEAVER BROOK RD

LITTLETON MA 01460

Loc 46 BEAVER BROOK RD Parcel ID #: R19 2 0
LUC 101

FINDLAY FREDERICK E / FINDLAY MADELEINE V
46 BEAVER BROOK RD

LITTLETON MA 01460

Loc 571 GREAT RD Parcel ID #: R19 7 0
LUC 017

THEODOROS JOHN JAMES / GERMAIN HELEN T
571 GREAT RD

LITTLETON MA 01460

Loc 591 GREAT RD Parcel ID #: R19 8 0
LUC 017

MATHESON FRANK W / MATHESON EUNICE
591 GREAT RD

LITTLETON MA 01460

Loc OFF GREAT RD Parcel ID #: R19 9 0
LUC 717

MATHESON FRANK W / MATHESON EUNICE
591 GREAT RD

LITTLETON MA 01460

EXHIBIT A

CHARLES RIDGE

Waivers

I. TOWN ZONING BYLAW

1. Section 173-16 Site Plan Review

Purpose: To allow for development of proposed project without Site Plan Review.

2. Section 173-25 Use Regulations

Purpose: To allow for development of proposed project including multifamily residential housing consisting of 43 townhouse units in 10 buildings within the Residential Zoning District.

3. Section 173-26 Use Regulations Schedule

Purpose: To allow for development of proposed project including multifamily residential housing consisting of 43 townhouse units in 10 buildings within the Residential Zoning District.

II. TOWN BOARD OF HEALTH REGULATIONS

1. Regulation 2. (224-10, 224-20) Professional Review.

Purpose: To allow for review by Nashoba Board of Health on behalf of the Town.

2. Regulation 3. (224-7, 224-21) Reserve Area.

Purpose: To allow for use of the area between the primary trenches for reserve area in conformance with 310 CMR 15.00 ("Title 5").

3. Regulation 4. (224-3A, 224-22) Groundwater Elevation

Purpose: To allow for four foot offset from groundwater in conformance with 310 CMR 15.00 ("Title 5").

4. Regulation 6. (224-B&C, 224-24, 224-4) Distances

Purpose: To allow for setback of system from wetlands to be no less than 80 feet as set forth in the plans and in conformance with 310CMR 15.00 ("Title 5"), which requires a minimum of 50 feet. To allow for setback of any system component from water supply line to be no less than 10 feet in conformance with 310 CMR 15.00 ("Title 5"). To allow for setback of any system component from road sideline to be no less than 5 feet in conformance with 310 CMR 15.00 ("Title 5")

Condition of Waiver: Any crossings of water and septic lines shall provide for water lines to cross over septic lines in conformance with 310 CMR 15.00 ("Title 5"), for the lines to be sleeved in accordance with applicable regulations, and for the lines to be separated to the maximum amount reasonably possible.

5. Regulation 13. (224-17, 224-31) Definition of Bedroom

Purpose: To allow for determination of number of bedrooms in conformance with 310 CMR 15.00 ("Title 5").

6. Regulation 17. (224-35) Pump Systems

Purpose: To allow for system wiring to go to a main control panel located near the system, not within a building, in conformance with 310 CMR 15.00 ("Title 5"). To allow for removable pump vault without steel rails.

7. Regulation 24a, b, & c. Retaining Walls

Purpose: To allow for the use of retaining walls and/or impervious barriers in conformance with 310 CMR 15.00 ("Title 5").

Condition of Waiver: Fencing, a minimum of four (4) feet in height and acceptable to the Littleton Zoning Enforcement Officer, shall be erected along the top of any retaining wall four (4) feet or higher in height.

8. Code 224-1 Percolation Rates

Purpose: To allow for 30 minute percolation rates in conformance with 310 CMR 15.00, ("Title 5").

9. Code 224-11 Length of Sewer Line

Purpose: To allow for distance of sewer line from a foundation to a leaching facility in excess of 100 feet.

III. TOWN OF LITTLETON APPLICATION, BUILDING CONNECTION FEES

Applicant requested a waiver from all Application, Building Permit, Inspection, and Connection fees and any other Town of Littleton fees as they may be applicable to the proposed Charles Ridge Project.

Condition of Waiver: Water Connection ("hook-up") fees and Building Permit Fees shall be waived in their entirety for the Affordable units only. No other fees shall be waived.