

Town of Barnstable
Growth Management Department
JoAnne Buntich, Interim Director

Follow-up Staff Report



Comprehensive Permit Application No. 2009-069
Barnstable Housing Authority - "Stage Coach Residences"

Comprehensive Permit Application pursuant to MGL Chapter 40B "affordable housing" seeking the development of 12 affordable rental apartment units (6 one-bedroom "Flat Units" and 6 two-bedroom "Townhouse Units") in 3 buildings on 6.9 acres.

Date: December 23, 2009
To: **Zoning Board of Appeals**

Art Traczyk, Regulatory Review/Design Planner

Applicant: Barnstable Housing Authority
Property Address: 70 Stage Coach Road and 151 Oak Street, Centerville, MA
Assessor's Map/Parcel: Map173, parcels 026 & 014-001
Zoning: Residence C Zoning District

Recording Information: Deed Reference - 70 Stage Coach Road - Book 9481, page 201 –
Deed Reference – 151 Oak Street, Centerville - Book 23130, page 273

Application Filed:	November 3, 2009, No Extension
Hearing Opened (30 days from Filing):	December 2, 2009
Continued to:	December 30, 2009
Max. Closing Date (not beyond 180 days):	May 30, 2010
Decision Due (40 days from close of hearing):	July 9, 2010

Findings of Fact on Consistency with Local Needs:

Motion: Based upon the materials and testimony submitted, a motion was duly made and seconded to make the following findings of fact as it relates to the proposal which is to be consistent with local needs:

1. The Applicant is the Barnstable Housing Authority, a public agency, seeking a comprehensive permit under the General Laws of the Commonwealth, Chapter 40B "Affordable Housing" and the Code of Massachusetts Regulations 760, Section 56. The permit is for the development of 12 multi-family units on 6.94-acres located in Centerville, MA.

2. The locus for the proposed development is owned by the Applicant. It consists of two parcels shown on Assessors Map 173 as Parcels 026 and 014-001, commonly addressed as 151 Oak Street and 70 Stage Coach Road, Centerville, MA. Parcel 026 consists of approximately 2.12 acres. Parcel 014-001 consists of approximately 4.82 acres.
3. The northerly portion of the locus, 151 Oak Street, is improved with a single-family dwelling, shed, and septic system. The dwelling, which is currently unoccupied, and the shed will be removed. The septic system capped and filled. The southern portion, the 70 Stage Coach Road lot is treed. That area is to be development with the 12 units of multi-family housing to be known as "Stage Coach Residences".
4. Stage Coach Residences is to total 12 units of affordable housing consisting of six (6) one-bedroom units, and six (6) two-bedroom units to be constructed within three (3) buildings. Each building to have four units comprised of two (2) two-bedroom, two-story, townhouse-style units and two (2) one-bedroom, single-level, flat-style units. The development is clustered on the southern portion of the locus and accessed from Stage Coach Road.
5. The northern 4.8-acres, which represents 70% of the locus, is to be retained in an undeveloped natural state for conservation purposes and environmental protection.
6. Massachusetts Housing Partnership (MHP) has reviewed the proposal for funding under the Neighborhood Rental Initiative Program and on October 21, 2009 issued a Project Eligibility Letter to the Barnstable Housing Authority for Stage Coach Residences. The letter was issued under the affordable housing regulations of the Commonwealth, MGL Chapter 40B and CMR 760 Section 56. The issuance of that letter confers "standing" for the Applicant to seek a local Comprehensive Permit for the development.
7. As of September 29, 2009, the Department of Housing and Community Development has certified that 6.6% of the Town of Barnstable's year-round housing stock qualifies as affordable housing. At this point, the Town has not met the Commonwealth's goal of 10% of a community's housing stock being dedicated to affordable housing.
8. The Centerville Village Plan of the Town's Local Comprehensive Plan specifically identifies the locus as a desirable site for affordable housing. The Plan promotes a 'fair share' of affordable housing throughout all of the villages of the Town. Presently, Centerville has 1.05% affordable housing and this development advances Centerville's fair share of the town's affordable housing goal.
9. All 12 units will be permanently restricted as affordable housing units rented to individuals and households with an income level not to exceed 60% of the area median income for the Barnstable Metropolitan Statistical Area (MSA). The monthly unit rents, including utilities, are limited as to not exceed 30% of the 60% maximum income allowed thereby providing housing to that underserved group that is acutely in need of decent affordable housing.

10. The townhouse units are to be 1,024 sq.ft., two-bedroom, 1.5 bathroom units and the one level flat type units are to be 711 sq.ft. when on the first floor, or 788 sq.ft. when on the second floor. The sizes of the units exceed the minimum requirements of the Local Initiative Program Guidelines and the bedroom areas exceed the minimum state sanitary code requirements. All of the 9 first floor units will be visitable. One unit will be handicapped accessible and another unit will be designed for the sensory impaired.
11. The Applicant has met with the Centerville Osterville Martsons Mills Fire Department, Barnstable Housing Committee, Site Plan Review Committee and the Town's Growth Management Department. The Housing Committee has unanimously voted to support the proposal as communicated to the Board in its letter of November 17, 2009. The Town's Growth Management Department, in its letter of November 24, 2009, expressed its support based upon the proposed development's compliance with the goals of the local comprehensive plan and housing plans. The Town Manager expressed support for the development as stated in his project eligibility application review letter of September 16, 2009 to Massachusetts Housing Partnership.
12. The Barnstable Housing Authority has been providing affordable housing in Barnstable for over 60 years. It currently administers some 1000 units of housing under a number of local, state and federal programs. The Applicant has a proven track record of developing and operating affordable housing projects.
13. Access to the development will be over Stage Coach Road, a 40-foot developed private way. Although the Town recently improved drainage in the way, testimony has been presented that the way is still subject to periodic flooding. The Town's Department of Public Works indicates that "the road is passable and no major flooding damage is evident or has been recently reported to the Highway Division." To assure road drainage is not exacerbated by the development, the Applicant has committed to containing all runoff on-site and none will be directed into abutting properties or into the way.
14. Based on the Institute of Transportation Engineers (ITE) manual, the estimated vehicle trips from the 12 multi-family units is 80 trips on an average weekday. That is less trips than what would be generated from the development of 12 single-family detached units. The development of Stage Coach Residences does not represent an overburdening of Stage Coach Road, and will not present a safety issue at the intersection with Old Stage Road as sufficient site distances now exists.
15. Regarding the rights over Stage Coach Road, the Applicant has demonstrated to the Board that regardless of the existing rights or lack of rights, it can secure the right to access the property over Stage Coach Road and has committed to assure those rights exist prior to the implementation of this comprehensive permit.

16. With respect to an encroachment on the subject locus from adjacent neighbors at 79 Three Ponds Drive, this Board finds that issue to be a civil matter; therefore this Board will not address that issue here.
17. The shared septic system has been designed in full compliance with both the local Barnstable Board of Health regulations¹ and Massachusetts Department of Environmental Protection Title 5 regulations without variance. The location of the development and any land disturbance is fully outside of any conservation jurisdictions and there is no need for any Order of Conditions under the State Wetlands Protection Act.
18. The development has been designed to conserve and protect the natural features of the site. It has been clustered to the far southern 2-acres of the 6.9-acre site limiting the extent of site clearing. It is situated well over 100 feet from vegetated wetlands, outside of the jurisdictional concerns of the Conservation Commission. It proposes to preserve 80% of the site in a natural state with 70% permanently protected with a Conservation Restriction.
19. The Applicant has agreed, to the extent permissible by law, to implement a local preference for up to 70% of the affordable units for residents of the Town of Barnstable and for persons employed within the Town.
20. In view of the Town's current deficit for affordable housing units and the Applicant's proposal to provide 100% of the units as affordable housing to individuals and households at or below the 60% median income of the area to the extent allowed by law, this development is consistent with the local needs for the Town of Barnstable as it will serve a population that has been very much neglected and underserved in the creation of affordable housing. Therefore, this Board finds that this proposal is consistent with local needs.

Decision and Conditions

Motion: Based upon the findings on consistency with local needs a motion was duly made and seconded to grant Comprehensive Permit No. 2009-069 to the Barnstable Housing Authority for the development "Stage Coach Residences" subject to all of the following conditions and restrictions:

¹ This includes conformity of the locus within the Zone of Contribution to Saltwater Estuaries as defined in the "Massachusetts Estuary Project, Zones of Contribution to Saltwater Estuaries, Town of Barnstable, March 10, 2008." The Barnstable Board of Health has adopted more stringent standards for septic systems in this watershed under its "Interim Regulation for Protection of Saltwater Estuaries" (Section 360-45 of the Code). The Interim Regulation prohibits a bedroom density resulting in a septic flow of more than 440 gallons per day per 40,000 sq. ft. of land area.

1. The total number of housing units shall not exceed 12 units of which six (6) shall be one-bedroom, flat-type units and six (6) two-bedroom townhouse units. All of the units shall be dedicated in perpetuity as affordable rental housing units. The units shall be committed in perpetuity to affordability at 60% of the median income level to the extent allowed by law to individuals and households in the Barnstable Metropolitan Statistical Area (MSA). Rents for the units (including utilities) shall not exceed 30% of the maximum income figure as applicable and adjusted for individual or household size in perpetuity.
2. All units shall be made available to qualified households on a fair and open basis. An Affordable Housing Restriction reflecting the above restrictions shall be prepared by the Applicant, approved by the Town Attorney's Office, and recorded at the Barnstable County Registry of Deeds by the Applicant prior to any building permits being issued. Such restrictions shall take priority over all financing documents relating to this project.
3. Development of the site shall be in conformance with plans presented to the Board and as modified per Condition No 4 below. The plan set Title Sheet is entitled "Proposed Stage Coach Residences for Barnstable Housing Authority 70 Stage Coach Rd. & 151 Oak Street Centerville, MA" dated 11-09 as drawn by Architects Brown Linguist Fenuccio & Raber Architects, inc, and Consulting Surveyor's & Civil Engineers J.M. O'Reilly & Associates, Inc. and consisting of eight (8) plan sheets labeled; C1 – Existing Conditions, C2 - Site Grading & Pavement Layout Plan, C3 – Sewage Disposal System Design, C4 – Drainage Plan, A1.0 - First Floor Plan, A1.1 – Second Floor Plan, A2.0 - Conceptual Front Elevation, and A2.1 - Conceptual Rear Elevation/Conceptual Left End Elevation.
4. The plans cited above are to be modified to comply with requests made to the Board from:
 - Martin MacNeely, Fire Prevention Officer, Centerville-Osterville-Marstons Mills Fire Department as per request letter dated November 23, 2009,
 - Robert Burgmann, Barnstable Town Engineer, Department of Public Works as per request e-mail dated November 23, 2009,
 - Thomas McKean, Barnstable Director of Health, requests a complete plan review checklist at that time that a sewage disposal permit is sought, 3-year septic site inspection requirement, and a proposed dumpster pick-up schedule.
 - The Board of Health request made to staff at the December 8, 2009 meeting of the Board that the leach field vent be screened, the attic under the roof be structured so that there is no habitable space in that attic area, and that the engineer review and verify that there are no private drinking wells within 150 feet of the proposed septic system.
 - And staff requests that a landscape plan be developed for the site that includes a proposed play area and lighting. This plan(s) shall be in conformance with all applicable zoning requirements.

The plans, as modified, shall be submitted for final review by those requesting the changes and cited above. Upon compliance, the entire plan set shall be revised and submitted to

Board's staff for their approval prior to any building permit application. No basement area or attic area shall be designed for human habitation.

5. Development of the property shall be limited to the construction of three buildings, each with 4 units. The buildings and all site development is to be clustered to 2-acres located and accessed from Stage Coach Road as shown on the plan. The other area of the site, approximately 4.9-acres, is to be dedicated to open space/natural resource protection. A conservation restriction to that effect shall be executed, and a copy of it submitted to the file prior to the issuance of any building permit.
6. All of the first floor units shall be designed for visitability. One of the units shall be designed for handicapped accessibility and another unit designed for the sensory impaired.
7. All required state permits and approvals including but not limited to, Title 5 wastewater disposal permit, and Massachusetts Natural Heritage & Endangered Species Program (NHESP) approval shall be submitted to the Board's file prior to the issuance of a building permit.
8. Proof of access rights over Stage Coach Road shall be submitted to the Board's file and to the Building Commissioner at the time a building permit is requested for the development of the property.
9. This comprehensive permit is granted with the condition that the proposed development is to be funded under an approved program of the Massachusetts Housing Partnership Fund. If the funding source changes, the Applicant shall be required to notify the Board of a minor modification of this comprehensive permit as set forth in the regulations governing comprehensive permits. No building permit applications shall be made for the development until the applicant receives its final funding approval from MHP and a copy of that approval submitted to the Board's file.
10. The conditions contained herein are in addition to, and independent of, any requirements of any funding source for the project. All of the conditions of this decision as set forth herein shall have independent legal significance and effect.
11. The Property shall be addressed and each unit shall be posted in accordance with the Code of the Town of Barnstable General Ordinances, Chapter 51. All signage shall conform to the Town of Barnstable Zoning Ordinances without waiver.
12. Prior to the issuance of any building permit, an Affordable Housing Restriction reflecting the restrictions and consistency with this comprehensive permit, shall be executed by the Applicant, MHP, and the Town of Barnstable. The Applicant shall prepare the restriction and submit it for approval by the Town Attorney. Notwithstanding Condition 1 above, in the event that the subsidizing agency (MHP) or any lender forecloses on the project, no less than 25% of the units shall remain affordable to individuals and households earning no more than

80% of the applicable areas median income (AMI) for as long the project remains noncompliant with zoning. Upon being signed, it shall be recorded at the Barnstable County Registry of Deeds by the Applicant against the property and the individual unit. Such restriction shall take priority over all financing documents related to this project and shall survive foreclosure. All costs associated with monitoring for consistency with the Affordable Housing Restriction shall be the responsibility of the Applicant.

13. Prior to the issuance of a Certificate of Occupancy for any unit, the Applicant shall have the development and the unit connected to the public water supply system and to the on-site wastewater treatment system. The Applicant shall be responsible for obtaining all necessary permits including those of the Department of Environmental Protection (DEP), if necessary, and the Town of Barnstable Health Division.
14. To the extent permissible by law, preference for the rental of at least seventy percent (70%) of the units shall be given to households who are Barnstable residents or that have one of the persons within the household employed by businesses located within the town of Barnstable. This local preference shall be implemented at the initial start-up. After the initial start-up, the Applicant shall maintain this 70% local preference to Barnstable residents to the full extent permitted by law. The Applicant, who will have responsibility for managing the development, shall also be responsible for assuring that the local preference is met.
15. A copy of this comprehensive permit shall be recorded at the Barnstable County Registry of Deeds. Proof of that recording shall be submitted to the office of the Zoning Board of Appeals and the Building Department for inclusion into the file prior to the any building permit application for the development.
16. All construction shall comply with all applicable state building codes, state fire protection requirements, and Board of Health regulations and shall contain a fire suppression system (sprinklers). In addition, the development shall conform to all pertinent requirements of the Americans with Disabilities Act.
17. During construction, the Applicant shall at all times use all reasonable means to minimize inconveniences to the abutting residents in the area. Construction activities that cause noise off-site shall not commence on any day before 7:00 a.m. and shall not continue beyond 6:00 p.m. There shall be no construction on any Sunday or state or federal legal holidays.
18. This comprehensive permit shall not be transferable to another entity other than the applicant without prior written approval of this Board. This condition, however, shall not apply to the use of the permit in securing financing for the development. In the event that the Barnstable Housing Authority becomes a minority owner of the development, that event shall only be permitted provided the Barnstable Housing Authority retains full management of the development and property.
19. The Applicant or a management company shall be responsible for the installation, operation,

and maintenance of all aspects of the common facilities and utilities including, but not limited to septic and drainage systems, common electrical power, snow plowing, landscape maintenance, care of the play area, and garbage removal as well as any periodic reporting requirement as may be imposed by the Board of Health.

20. No certificate of occupancy for any building or unit shall be issued until the improvements specified in this decision and set forth on the plans of record are constructed and installed so as to adequately serve said building, or adequate security has been provided, reasonably acceptable to the Town Engineer and approved by the Town Attorney's Office to ensure such completion. Any such performance guarantee shall be governed by the subdivision rules and regulations of the Planning Board and shall be approved by the Town Attorney's Office.
21. All leases shall have a minimum term of one (1) year. There shall be no subleasing or subletting of any of the units. The use of the units shall be limited solely for single family residential use. No business activities shall be conducted in any of the units.
22. The Applicant shall contact the other owners of properties on Stage Coach Road in writing by certified and regular mail within 30 days of this Decision becoming final, with a required response from such owners no later than 60 days of this Decision becoming final, as to whether at least 51% of such owners agree to jointly file a petition with the Town of Barnstable to either take Stage Coach Road as a Town road or seek its repair under Barnstable's Private Road Program in accordance with Town rules and regulations. Within 75 days of this Decision becoming final, the Applicant shall submit a letter to the Barnstable Growth Management Department certifying whether a joint petition will be filed with the Town or not. In either event, such notice to the Barnstable Growth Management Department shall be deemed full compliance with this condition."

The Vote on the grant and conditions of the permit was:

AYE:

NAY:

Request for Waivers and Variances:

Motion: With respect to the Applicant's request for relief from local rules and regulations, the Board finds that certain requested waivers may be granted without adversely affecting the public health and safety of occupants in the development, the surrounding neighborhood, and the residents of the Town of Barnstable, provided the conditions imposed in this permit are strictly followed and adhered to. Therefore, the following waivers are granted to the Barnstable Housing Authority for the development of Stage Coach Residences:

1. Waiver from the following zoning ordinance provisions:

- Section 240-7(F)(1) Number of buildings allowed on a lot in residential districts to allow 3 principal buildings on a single lot when zoning only permits one (1) principal building per lot in residential districts.
 - Section 240-13(A) Principal permitted uses to allow for multi-family use in three buildings where only one, detached, single-family dwelling per lot is permitted.
 - Section 240-98 to 105 Site Plan Review, with the exception that the Applicant shall conform to all applicable design standards and as built plans shall be submitted.
 - And, with respect to the Applicant's proposed development on Parcel 026 of the locus and its association with infringements from Parcel 073, all relevant provisions of the Zoning Ordinance concerning, landscape and perimeter buffers and yard setbacks for the proposed construction are waived only if needed and only to the extent necessary.
 - Article XI, Growth Management Provisions are waived to allow all of the building permits for the development of the 12 affordable units to be requested at any one time and all to issue at any one time regardless of the time frames imposed by the Growth Management provisions. All building permits shall be included in the counting and number limitations imposed in the Growth Management Ordinance. However, should the requested permit(s) exceed those available at the time the request is made, the Building Commissioner shall issue the permit(s) separate and outside of the limitations imposed in the Ordinance. The building permits are subject to all other requirements of the Building Division for the issuance of building permits and all requirements of this comprehensive permit decision.
2. With respect to Section 112 of the Code - Protection of Historic Properties, this Board acting on behalf of the Barnstable Historic Commission, finds that the dwelling located at 151 Oak Street, Centerville, MA does not represent a significant historic, cultural or architectural resource; therefore it is not subject to a demolition delay order.
 3. Regarding the request for waiver from the filing and permitting fees of all Town agencies and departments, the Zoning Board specifically grants no relief, however, the Applicant may request any reduction in fees directly to the division or agency that imposed the fees.

The vote on the grant of the waivers was:

AYE:

NAY: