



TOWN OF NORTHBRIDGE

ZONING BOARD OF APPEALS

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Approved on September 13, 2012

ZONING BOARD OF APPEALS

MINUTES OF MEETING

AUGUST 9, 2012

This meeting was called to order at 7:00 P.M. by Chairman Thomas Hansson. Other members present were:

Sharron Ampagoomian, Member
William Corkum, Member
Carol Snow, Member
Brett Simas, Associate Member
Harold Hartmann, Associate Member

Also present was Brenda Ouillette, Administrative Assistant.

Absent from this meeting was Diane Woupio.

A motion was made by Carol Snow to approve of the minutes of July 12, 2012. The motion was seconded by Sharron Ampagoomian and the vote was 5-0 in favor. Brett Simas abstained from voting as he was not present at the July 12th meeting.

PUBLIC HEARING :(10-APP-12 & 11-APP-2012) NORTHBRIDGE HOUSING AUTHORITY, APPLICANT

This public hearing was held pursuant to Chapter 173, Article X, Section 173-46E of the Zoning By-laws on the administrative appeals of the Northbridge Housing Authority, 12 Colonial Drive, Whitinsville, MA. appealing the determinations of the Building Inspector as it relates to Linwood Mill Lofts, 670 Linwood Ave., Linwood, MA. The Building Inspector has determined the Senior Living By-law (Article XVII, Section 173-111) does not apply to the Linwood Mill Lofts development. Also, the Building Inspector has offered an opinion as it relates to compliance with Condition #8 of the Special Permit (01-SPP-2009) granted by the Planning Board under Article XIX, Historic Mill Adaptive Re-Use Overlay District.

In a letter dated June 21, 2012 the Building Inspector, Mr. James Sheehan Jr., stated that the Linwood Mill Project as approved does not require additional permits or applications. The Senior Living By-law has its own specific requirements for development which do not apply to the

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Linwood Mill project. The Senior Living By-law is an option for developers who choose to pursue a Special Permit under its general requirements.

In addition, the applicant is appealing a determination of the Building Inspector as it relates to Condition #8 of the Special Permit (01-SPP-2009) which states that the applicant shall coordinate tenant selection and long term affordability monitoring plans with the Housing Authority and the Department of Housing and Community Development such that all parties agree with the assignment of roles and responsibilities. In that same letter dated June 21, 2012 it was his recommendation that the Housing Authority return to the Planning Board to determine if the applicant is compliant with this condition of approval.

The public hearing was opened at 7:05 with the reading of the public hearing notice by Board Member Sharron Ampagoomian.

Board Member Brett Simas stated for the record that he is an elected Planning Board Member as well as an appointed Associate Zoning Board Member. Chairman Thomas Hansson asked if there would be any opposition from any of the parties concerned if Mr. Simas served on this hearing. No one spoke in opposition.

Chairman Thomas Hansson then assigned the following Members to the hearing: Sharron Ampagoomian, Carol Snow, William Corkum, Brett Simas and himself.

Jay Taleran, Special Counsel for the Northbridge Housing Authority, was present and stated that there are two appeals before the Board this evening, one based on the Building Inspector's denial of enforcement for non-compliance with a condition of a Special Permit and the other for non-compliance as it relates to the Senior Living By-law which is a parallel Special Permit process to the Historic Mill Adaptive Re-Use Overlay District By-law.

He explained that there are two ways to get affordable housing, one is through Chapter 40B and the other way is through the By-law where the town gets to set the policies and design the process. One of the things that the town has chosen to do with respect to affordable units within special permit projects under the Adaptive Re-Use By-Law is to provide some control over how the affordable units will be occupied and how the tenants will be selected. Section 173-131E states that affordable units shall be dispersed throughout a development and shall be undistinguishable from market rate units. The Town of Northbridge, through its Housing Authority and/or Office of Community Development shall be responsible for selecting purchasers or tenants, and monitoring and insuring the long-term affordability of the units. This is the town's own By-law and through that By-law the Planning Board issued a Special Permit. Condition #8 of that Special Permit (01-SPP-2009) states that "for the residential dwelling units, the applicant shall coordinate tenant selection and long-term affordability monitoring plans with the Northbridge Housing Authority and the Department of Housing and Community Development such that all parties agree with the assignment of roles and responsibilities". It is an affirmative requirement of this By-law and the Special Permit. The Housing Authority was ready to step up and assume that role for this project but for some reason that never happened and they were never given the chance. There is nothing they can do about the units that are already occupied; however, this is a project that is going to be affordable in perpetuity. The Housing Authority is willing to work along with DHCD in defining the roles but they want a role in the selection process because it's their job to safeguard affordable housing in this town. The

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applicant should be directed to work immediately with the Housing Authority because they are in violation of zoning.

Chairman Thomas Hansson asked if the Housing Authority was involved during the Special Permitting process for this development. Matt Mittelstadt, Managing Director of E.A. Fish Development, responded by stating that Vincent Tynan, Chairman of the Northbridge Housing Authority at that time, was an active participant in every meeting they had. He is now deceased.

Mr. Hansson asked Mr. Talerman when the Housing Authority became aware that they were not being allowed to be part of the process. He could not answer that and so Mr. Mittelstadt responded by stating that they had been engaged in communication with them through meetings and conference calls with himself, Peabody Properties, and the Housing Authority since January, well in advance of tenant occupancy.

Mr. Talerman stated that he was in possession of an email sent from Deborah Goddard (OCD) on June 19, 2012 stating that tenant applicants be reviewed and qualified by an entity that has the expertise in the program requirements and for these reasons, DHCD would not agree with the Housing Authority's demand that it assume the role of applicant review/tenant selection. Also it would be disruptive to stop the current process and restart with the Northbridge Housing Authority even if they had the required expertise. Mr. Talerman stated that was in violation of Condition #8 of the Special Permit.

Ms. Ampagoomian asked when this was suppose be started and who was the contact person for the agreement and why that didn't happen. Mr. Mittelstadt replied that the Housing Authority contacted E.A. Fish in January and that's when the dialogue began. Their point at the outset of the discussion was that they have never been in a situation where the Housing Authority has had out right control on tenant selection in any project they have ever done. There are two discrete roles; those being a monitoring agent who makes sure the units are going to count towards the affordable housing and tenant selection. Tenant selection is much more involved requiring those doing it to understand the various criteria needed for tax credit compliance. There is specialized training for that and Peabody Properties is specialized in that. Because investors are putting so much money into the project, they are very cautious that no mistakes are made to avoid tax credit recapture. If there is a mistake in the income verification process the economic fallout falls to the owner.

Ms. Ampagoomian asked Mr. Mittelstadt if he was implying that the Housing Authority does not have the expertise to do this. Mr. Mittelstadt replied that they have no expertise pertaining to the tax credit program. Ms. Ampagoomian asked him if he was sure about that and he replied that they had asked them and they replied that they did not. She then asked him if the Housing Authority understood that there was a problem with not having that expertise and he replied that they did have that dialogue and the recommendation of the chief compliance officer of Peabody Properties was to sponsor a member or members of the Northbridge Housing Authority to attend spectrum training for this program. However, the next training session is not until the fall. She replied that she couldn't understand why arrangements could not have been made for an earlier training session if they were aware they didn't have the training in January when the dialogue began.

Mr. Talerman responded by stating that at the very least, well before they selected tenants on May 1st, there should have been some effort to get that training done or to define the Housing Authority's

role in some other way that DHCD could live with. Tenant selection began without any of this being done and the Northbridge Housing Authority was shut out of the process forcing them to bring zoning enforcement action. Until the terms of the By-law are met, there should be no more tenant selection.

Mr. Mittelstadt responded that there was dialogue and that all they had to do was go in as a team with DHCD on these matters. It was very plain that all parties had to work together but the last response they got from Rita Osborne, Managing Director of the Northbridge Housing Authority was that they didn't want to be a part of that. The Housing Authority was given ample opportunity to work toward a cooperative solution.

Board Member Brett Simas asked Mr. Mittelstadt what his response was to the May 3rd letter from the Northbridge Housing Authority. Mr. Mittelstadt replied that there were two issues in that letter that they were not comfortable with. The first one was the outright veto and the second one was the finder's fee, both of which caused concern. Mr. Mittelstadt made the point that Peabody Properties does not charge a finder's fee, nor are they aware of any precedent of a Housing Authority charging a fee in this typed of arrangement. The concern with the veto was that it would allow the NHA to disallow an applicant that was otherwise fully qualified.

Barbara Gaudette, Planning Board Chair, stated that she was very surprised to hear the discussion about the Housing Authority not being involved because she remembers very clearly that when this started they didn't really want to have anything to do with it. They wanted a very loose role, but not a big job. They didn't want to select tenants; they just wanted to know what was going on. It is now 3 years later and they would like to have a role after the process has already started. She added that the town is very lucky to have saved the mill and she's quite sure that the applicant is willing to work with the Housing Authority but they don't have the expertise as individuals to interview people and decide who should get in and who shouldn't.

James Sheehan, Building Inspector, was present and reiterated written comments addressed to the Board in a memo dated August 8, 2012. The Planning Board issued a Special Permit under the Historic Mills Adaptive Re-use Overlay District on June 23, 2009. On June 14, 2012 Mr. Sheehan received a letter from the Northbridge Housing Authority stating that they had two issues with the Special Permit, the first one being the Senior Living By-law, and the second one being tenant selection. The Historic Mill Special Permit allows for mixed use (residential and commercial) and it is his opinion that the Senior Living By-law does not apply nor was it required for this development. Massachusetts General Laws, Chapter 40A, Section XVII states that the time limit for an appeal is 20 days after the decision has been filed with the Town Clerk.

Section 173-31 of the Zoning By-law states that a minimum of 10% of the units shall be affordable and that the Housing Authority and/or Office of Community Development shall be responsible for selecting tenants. Section 173-47 B allows the permit granting authority to impose additional conditions to those specified in this chapter. Condition#8 of the Special Permit modified the language to include a mutually agreeable working relationship between E.A. Fish, the Northbridge Housing Authority, and DHCD. The Housing Authority attended and participated in the public hearing process and if the language was not agreeable, the Housing Authority could have appealed it at that time. There is a 20 day appeal period for Special Permits.

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Ms. Shelly Buma, a member of the Northbridge Housing Authority, stated that the Housing Authority takes their role and responsibility on the Housing Authority seriously and it is clear in the By-law that the Housing Authority “shall” select tenants and participate in the monitoring. No where is there any documentation that states that they were unwilling or unable to fulfill their role and responsibility and she’s not quite sure where that is coming from. In fact, the minutes of the 2009 public hearing that were just approved a few weeks ago, do not indicate that at all. They do take it seriously and they do want a place at the table and they have been asking for that. They never received a reply to their letter dated May 3, 2012 and so they reached out again with a conference call with no resolution. However, the process is still moving forward with tenant selection without them being a part of it. She also stated that she is also very confident and comfortable with the expertise of the Northbridge Housing Authority. The comment was made tonight by a member of the Planning Board that they don’t have the expertise and she’s not sure how they could know that, or why they believe that, or why they would say that. They do have the expertise because they are involved with tenant selection all of the time. They have an executive director and other staff that does this on a daily basis.

Mr. Mittelstadt stated that both John Shannahan and Rita Osborne from the Housing Authority had agreed verbally to allow E.A. Fish’s staff lease up the project and then their parallel review would kick in at that point. They understood that tenants had to be placed in order to qualify for the tax credit in a timely manner. However, this agreement was not captured in the letter of May 3rd.

Rita Osborne stated that Vincent Tynan, former Northbridge Housing Authority Chairman in 2009, attended all of the meetings but when he passed away the communication was lost. Once they found out tenants were moving in they became concerned. She stated that at no time did they refuse to meet or hold meetings with them.

Mr. Hansson asked Mr. Mittelstadt if he is against the Housing Authority becoming involved at this point. He responded by stating that they would not have an issue once the spectrum training has taken place and they have come to an agreement, including DHCD.

Mr. Talerman stated that they are willing to work with them but he believes that there should not be any further tenant lease up or monitoring until the Housing Authority’s role is defined. They will work immediately with E.A. Fish but in the meantime every tenant that is selected and every tenant that is monitored is in violation of the By-law and special permit. The Housing Authority can have a role right now without the spectrum training as that is only a component of the tenant selection process. Any role right now would be better than none.

Mr. Mittelstadt stated for the record that they do not believe they are in violation of the permit and it would be a huge step backwards at this point to stop the tenant selection. They know what they are doing, DHCD trusts them, and he cannot agree to stop the lease up process at this time.

Chairman Thomas Hansson reiterated for the Board that the Building Inspector has determined that the applicant is in compliance and it is the Board’s role to determine if the Building Inspector is correct. It’s not the Boards role to determine if they are in compliance or not but to determine if the Building Inspector is correct.

Mr. Hansson then asked Mr. Mittelstadt if he was open to bringing the Housing Authority to the table to work things out. Mr. Mittelstadt replied that they are committed to a continued dialogue

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with the only condition being that DHCD be a part of the final solution and that they do not cease from continuing with the tenant selection process.

Mr. Hansson asked Mr. Mittelstadt when the tenant screening began. Mr. Mittelstadt replied that income certification goes stale so it has to be 60 days prior to occupancy. So the actual screening wouldn't have begun until February, 2012.

When Mr. Hansson asked what the Northbridge Housing Authority's role was during this time, Mr. Shannahan, Chairman of the Northbridge Housing Authority replied that their initial contact with Mr. Mittelstadt was when they saw the listings for the units. There was a "dead spot" prior to that where there was no communication.

Mr. Hansson asked when that "dead spot" occurred and Mr. Shannahan replied about a year and a half ago. Correspondence was going back and forth and then Mr. Tynan passed away and there was none. Whether they dropped the ball or E.A. Fish dropped the ball there was a gap in the correspondence. They had no idea on what the status was on tenant screening until they saw the listing. Mr. Mittelstadt responded to that by stating that there was representation by the Northbridge Housing Authority at the groundbreaking ceremony and it was pretty clear.

Board Member Brett Simas stated that as he sees it, the Board has 3 options:

- Support the decision of the Building Inspector, which takes away any negotiating leverage the NHA has with E.A. Fish; or
- Support the appeal of the NHA which includes issuance of a Cease & Desist Order which puts the lease-up, affordable housing allocations, tax credits, and DHCD support at risk; or
- Continue the Public Hearing with the expectation that the parties negotiate in good faith to reach an agreement over the next 30 days. The Board will then revisit the appeal and make a decision.

Mr. Hansson responded by stating that he is looking at a 4th option. Condition #8 of the Special Permit states that the Housing Authority and the applicant shall coordinate. It appears to him that they are and cannot see where they are in violation of zoning. He sees it as a difference of opinion.

Mr. Simas stated that Condition #8 explicitly states there shall be agreement, not simply coordination, among the parties with regard to the role of each in the process. In his opinion, this agreement does not exist and therefore Condition #8 is not being met.

Mr. Talerman stated that he would like to see the public hearing continued and see if progress can be made in the next 30 days. Mr. Mittelstadt was agreeable to the continuance as long as tenant selection was not impeded.

A motion was made by Brett Simas to continue the Public Hearing until the Board's next meeting on September 13, 2012. The motion was seconded by Sharron Ampagoomian, the vote being 5-0 in favor.

There being no further business the meeting was adjourned.

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Attested by,

Brenda M. Ouillette
Administrative Asst.

**THESE MINUTES ARE SUBJECT TO THE APPROVAL OF THE ZONING BOARD OF
APPEALS (Approved on September 13, 2012)**