

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

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AMENDED COMPREHENSIVE PERMIT

Hastings Village, Inc.

54-66 Hastings Street

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On May 21, 1997, the Wellesley Zoning Board of Appeals (ZBA) issued a Comprehensive Permit with Conditions to Hastings Village, Inc. authorizing the petitioner to "construct, operate and manage a rental townhouse residential development on the footprint of Buildings A and B, as shown on the submitted plans, said plans showing 2 buildings containing a total of 32 units, on approximately 2.19 acres of land in a Single Residence District and a Water Supply Protection District at 54-66 Hastings Street".

The petitioner had requested a Comprehensive Permit to construct three two to two and one-half story buildings containing 52 two-bedroom rental townhouse apartments, of which 13 units would be designated as Affordable Housing. Buildings A and B would each contain 16 units and Building C would contain 20 units. Parking would be provided for 108 cars; 44 covered garage spaces, 38 spaces at the garages and 26 spaces on the site.

The petitioner appealed the decision by the ZBA on the grounds that it would not be economically feasible to building and operate the development under the restrictions imposed by the Board, notably the requirement that the development be reduced from three buildings to two, effectively decreasing the number of apartments from 52 to 32.

After a site visit and de novo hearing, on January 8, 1998, the Housing Appeals Committee issued its Decision stating:

“Based upon review of the entire record and upon the findings of fact and discussion above, the Housing Appeals committee affirms the granting of a comprehensive permit by the Wellesley Board of Appeals, but concludes that certain of the conditions imposed in the Board’s decision render the project uneconomic and are not consistent with local needs. The Board is directed to issue an amended comprehensive permit for construction of 52 rental units as provided in the text of this decision and in the conditions below.”

On February 6, 1998, the Board of Appeals filed an appeal of the HAC decision in Norfolk Superior Court. On November 12, 1999, the Superior Court issued a Decision upholding the Decision of the Housing Appeals Committee.

In March, 2000, the Board of Appeals filed an appeal of the Decision of the Superior Court to the Appeals Court. On April 25, 2002, the Appeals Court rendered a Decision affirming the Superior Court Judgment upholding the Decision of the Housing Appeals Committee.

In May, 2002, the Board of Appeals filed an Application for Further Appellate Review with the Supreme Judicial Court. On June 6, 2002, the Supreme Judicial Court denied this Application and returned the case to the Superior Court for entry of final judgment.

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On June 18, 2002, Judgment after Rescript entered in the Superior Court, affirming the January 8, 1998 Decision of the Housing Appeals Committee.

In compliance with the Decision rendered by the Housing Appeals Committee on January 8, 1998, the Board of Appeals hereby grants a Comprehensive Permit pursuant to the provisions of MGL Chapter 40B, Sections 20-22, to Hastings Village, Inc., subject to the attached Conditions, to construct, operate and manage a rental townhouse residential development on the footprint of Buildings A, B and C, as shown on the submitted plans showing 52 units of which 25 % (12 units) shall be Affordable Housing, on approximately 2.19 acres of land at 54-66 Hastings Street, in a Single Residence District and a Water Supply Protection District. Parking for 108 cars; 44 covered garage spaces, 38 spaces at the garage and 26 spaces on the site shall be provided.

AMENDED COMPREHENSIVE PERMIT

Hastings Village, Inc.

54-66 Hastings Street

CONDITIONS

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1. The Comprehensive Permit Decision of this Board dated May 21, 1997, and attached hereto, is hereby restated in full and incorporated by reference, except as modified below.
2. A. HOUSING CONDITION 6 in the May 21, 1997 Decision is stricken
- B. SITE CONDITIONS 1, 2, 3, and 4 in the May 21, 1997 Decision are stricken. The housing shall be constructed in accordance with the Proposed Site Plan (Silva Engineering Assoc., 1/4/95, rev. to 6/10/97); Construction Details (drainage)(Silva Engineering Assoc., 1/4/95, rev. to 6/10/97); Landscaping Plan (Silva Engineering Assoc. 1/4/95, rev. to 6/10/97); and Artist's Concept, List of Drawings, Building Plans, Section and Outline Specifications (M.Z.O. Group – 4/16/96).
- C. SITE CONDITIONS 5 and 6 are stricken and WATER/SEWER/DRAINAGE CONDITIONS 6, 7, and 14 are stricken. Any changes in the plans approved by the HAC Decision shall be submitted to the Board for approval.
- D. SITE CONDITION 7 (Sprinkler System) stands, notwithstanding the HAC Decision on this point. The HAC Decision correctly recounts Town Counsel's statement at the hearing to the effect that the optional state standard for sprinklers had not been adopted in Wellesley. However, Town Counsel was in error. This Board has been advised that the Town accepted G.L. Chapter 148, Section 26I on April 24, 1990. Town Counsel has advised this Board that at the time of the hearing in this matter, the list of "accepted statutes" maintained jointly by him and the Town Clerk inexplicably did not include G.L. Chapter 148, Section 26I. He had relied on this list in "offering" at the hearing that Section 26I had not been accepted. Thus his statement at the hearing was a mistake of fact, and certainly not an intentional waiver.

Section 26I provides that upon its acceptance by a town

“...[a]ny building hereafter constructed...and occupied...for residential purposes and containing not less than four dwellings with including, but not limited to, ...apartments...shall be equipped with an approved system of automatic sprinklers in accordance with the provisions of the state building code....Owners of buildings with approved and properly maintained installations may be eligible for a rate reduction on fire insurance.” (G.L. Chapter 148, Section 26I; emphasis supplied).

As a matter of law, Wellesley accepted Section 26I, and in doing so made the provisions on sprinklers in the state building code applicable to this project. Municipal officials cannot waive applicable provisions in the state building code, even if they want to, nor does the Housing Appeals Committee have the authority to override them. Therefore, Site Condition 7 stands.

- E. SITE CONDITION 10 is stricken. The plans shall be modified to provide sidewalk access as described in Condition M below. A vegetated buffer shall be provided at the south boundary between Building B and the abutting residential dwelling. All plans shall be signed by a Registered Professional Engineer.
- F. WATER/SEWER/DRAINAGE CONDITION 1(a) is stricken. CONDITION 1(c) is stricken, thus permitting a sewer connection requiring reconstruction of the main in Hastings Street. Permanent wood sheeting shall be placed near Building A in the excavation in which the sewer line from Building C is laid.
- G. WATER/SEWER/DRAINAGE CONDITION 15 is stricken. The developer shall maintain the existing monitoring wells (mw1 and mw2) on site and monitor them quarterly during construction and annually thereafter. All results shall be made available to the Board and the Town’s Water & Sewer Department. The criteria on which the wells shall be monitored shall be agreed upon by the developer and the Town’s Water & Sewer Department.

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H. WATER/SEWER/DRAINAGE CONDITIONS 1(d), (e) and (f) are stricken. The location of the aeration basin and other drainage details shall be as shown on Proposed Site Plan by Silva Engineering Assoc. – 1/4/95, rev. to 6/10/97 and Construction Details (drainage) by Silva Engineering Assoc. – 1/4/95, rev. to 6/10/97 (which are Exhibits 10 and 11 before the Housing Appeals Committee).

I. The drainage swale immediately to the north of Building A shall be lined to prevent erosion.

J. The storm water leaching structure shall be vented.

K. TRAFFIC CONDITION 1 is stricken. All vehicle access to the site shall be from Route 9. A physical barrier shall be installed on Hastings Street at the south end of the site, as shown on Landscaping Plan (Silva Engineering Assoc., 1/4/95, rev. to 6/10/97).

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L. TRAFFIC CONDITIONS 2 through 5 are stricken. Prior to being issued a Certificate of Occupancy, Hastings Village, Inc. shall pay \$35,000 to the Town of Wellesley to be held in escrow for construction of traffic mitigation measures and expended for said purpose in the discretion of the Board of Selectmen.

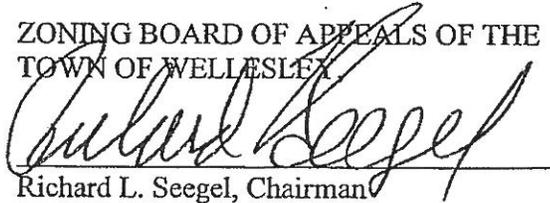
M. Sidewalk access to the parking lot and Building C shall be provided, that is, as shown on the Landscaping Plan (Silva Engineering Assoc., 1/4/95, rev. to 6/10/97 (Exhibit 12), a sidewalk (approximately 70 feet long) shall be constructed in the landscaped area on the north side of Building B connecting the "walkway" (in front of the building) to the parking lot behind Building B; the "walkway in front of Building A shall be extended approximately 20 feet to the driveway, and a second sidewalk (also approximately 70 feet long) shall be constructed in the landscaped area on the south side of Building A connecting the "walkway (in front of the building) to the parking lot behind Building A.

3. Because the Housing Appeals Committee has resolved only those issues placed before it by the parties, the comprehensive permit shall be subject to the following further conditions:

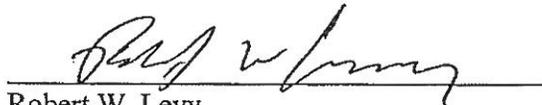
A. Construction shall be in accordance with all presently applicable local zoning and other bylaws except those waived by this decision or in prior proceedings in this case.

- B. The subsidizing agency may impose additional requirements for site and building design so long as they do not result in less protection of local concerns than provided in the original design or by conditions imposed by the Board or this decision.
- C. If anything in this decision should seem to permit the construction or operation of housing in accordance with standards less safe than the applicable building and site plan requirements of the subsidizing agency, the standards of such agency shall control.
- D. No construction shall commence until detailed construction plans and specifications have been reviewed and have received final approval from the subsidizing agency, until such agency has granted or approved construction financing, and until subsidy funding for the project has been committed.

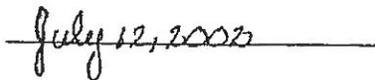
ZONING BOARD OF APPEALS OF THE
TOWN OF WELLESLEY


Richard L. Seegel, Chairman


Robert A. Bastille


Robert W. Levy

Filed with the Town Clerk
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DECISION
of the
TOWN OF WELLESLEY
ZONING BOARD OF APPEALS
On Amended Application of
HASTINGS VILLAGE, INC.

For a
Comprehensive Permit (M.G.L. Chapter 40B)
Remanded by the Housing Appeals Committee
By Order dated April 8, 1997

Dated: May 21, 1997

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ZONING BOARD OF APPEALS

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On April 8, 1997, Werner A. Lohe, Jr., Chairman of the Housing Appeals Committee, issued an Order of Remand regarding the changes in the petition for a Comprehensive Permit, which was originally applied for by Hastings Village, Inc. in June of 1994. The changes involve the funding source (Federal Home Loan Bank of Boston to MHFA), the density (the number of units was reduced from 87 to 52), and new stormwater drainage and sewer designs.

According to the Order of Remand:

"The matter is remanded to the Wellesley Board of Appeals for a hearing to consider changes in the project proposed by the developer. Pursuant to 760 CMR 31.03(3)(c), only such changes or aspects of the proposal affected by such changes shall be at issue at this hearing. The hearing shall be held on or before May 8, 1997, and a written decision of the Board shall be issued on or before May 22, 1997. Should the Board fail to meet either of these deadlines, it will have waived its opportunity to consider this matter on remand, and the hearing before the Committee will continue."

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On Wednesday, April 16, 1997, a conference attended by Albert Robinson, Wellesley Town Counsel; Steven Nolan, counsel for the petitioner; Robert Engler, consultant to the petitioner; Logan Huffman, principal of Hastings Village, Inc., the petitioner; Anthony Mooney, counsel for the Sheridan Hills Neighborhood Association; and Ellen Gordon, Executive Secretary of the Wellesley Zoning Board of Appeals, was held at Mr. Robinson's office to discuss the process and the submission requirements for the Public Hearing scheduled for May 8, 1997, in compliance with the Order of Remand. A list of requirements with a submission deadline of April 22, 1997 was given to the petitioner.

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On April 24, 1997, due notice of the hearing was given by mailing and publication. The petition was advertised as a remand of a request for a Comprehensive Permit pursuant to the provisions of MGL Chapter 40B, Section 21, to construct three two to two and one-half story buildings containing 52 two-bedroom rental townhouse apartments, of which 13 units would be designated as Affordable Housing. Building A and Building B would each contain 16 units and Building C would contain 20 units. Parking would be provided for 108 cars; 44 covered garage spaces, 38 spaces at the garages and 26 spaces on the site, which is a 2.8 acre parcel at 54-66 Hastings Street, in a Single Residence District and a Water Supply Protection District.

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On April 28, 1997, a letter from Albert Robinson was sent to Steven Nolan, which stated that to date, none of the requested material had been submitted to the Board of Appeals. On April 29, 1997, the following plans were received by the Board of Appeals: Building A/Artist's Concept; Cover sheet listing principals, building sizes and types and the list of plans, both drawn by David O'Sullivan, Registered Architect; Proposed Site Plan, Construction Details and Landscaping Plan, all revised 4/25/97, signed by Lawrence R.

Silva, Registered Professional Engineer; Building A Plans (1); Building B Plans (1A); Building C Plans (1B); Buildings A & B Typical Plans (2); Typical Building Sections (2A); Building C Typical Plans (3); Building C Typical Plans (3A); Building Elevations (4); Typical Wall Sections (5); Typical Wall Sections (6); Outline Specifications (7 and 7A). All the architectural plans were dated 4/16/97 and signed by David O'Sullivan, Registered Architect. A cover letter dated 4/29/97, signed by Logan Huffman; and Drainage Analysis dated 4/28/97, signed by Lawrence P. Silva, Registered Engineer, were also submitted with the aforementioned plans. Subsequently, a Traffic Analysis and Backup Data, which was missing Pages 1-4, together with a Proposed Recommended Improvements Plan, prepared by Bruce Campbell & Associates, was submitted.

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These plans and materials were immediately distributed to the Planning Board, Design Review Board, Wetlands Protection Committee, Town Engineer, Water & Sewer Superintendent; Board of Health, Fire Department, and the Inspector of Buildings. Letters of review were received by the Planning Board, Wetlands Protection Committee, Town Engineer, Water & Sewer Department Superintendent, and the Fire Department. Copies of these reviews were given to the developer as soon as they were received in the office of the Board of Appeals.

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Throughout the past hearings on the petitioner's original 87 unit proposal, the Zoning Board of Appeals has expressed continued special concern in regard to the major interrelated issues: the density of construction on the 2.18 acre site, as it affects the neighborhood and site conditions; and the location of the site within the recharge area of both the Rosemary Well and the Longfellow Well, a DEP Approved Zone II Delineated Area as

of May, 1996, with potential danger of contamination of said well system by the proposed construction in both its pre- and post-development status. The parcel in the rear of the site is Town Waterworks land within which two municipal production wells, which supply drinking water to the Town, exist. It has always been the opinion of the Board of Appeals that the proposed density on the site has a direct correlation with and effect on the critical environmental issues.

In accordance with the Order of Remand, the focus of the Public Hearing was narrowed to the changes in the submitted plans in regard to those two issues.

PUBLIC HEARING - May 8, 1997:

Attending the hearing was Logan Huffman, the petitioner, who was accompanied by his attorney, Steven Nolan; his consultant, Robert Engler; and his architect, David Sullivan.

Mr. Nolan stated that the two changes involve a change in the subsidy from the Federal Home Loan Bank of Boston's NEF program to the MHFA 80/20 Program; and that the 87 unit apartment building has been reconfigured to a 52 unit townhouse arrangement encompassing three buildings. He explained that the drainage plan has been modified in an attempt to divert the "first flush" into the Town storm drainage system located on Hastings Street.

Joseph Duggan, Superintendent of the Water & Sewer Division, gave a thorough analysis of the modified plans, including the proposed sewer connections, particularly in regard to Building C, which also appeared on the submitted engineering plans.

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Mr. Duggan stated emphatically that neither of the two plans for sewer connections for Building C were satisfactory. One alternative, in which the sewer pipe would travel through the rear of the property, tying into the town sewer trunk main on Waterworks land, is unsatisfactory because there is a lack of access to the pipe for maintenance and cleaning. The town has set a precedent in not allowing other developers to go cross-country (i.e. across Town land) to tie into town sewer mains.

The second alternative proposed by the developer was to tie into the existing sewer on Hastings Street. The grade of the proposed connection is too flat, does not meet allowable industry standards, and would be prone to clogging and back-up. It would also have required that the main in the street be relayed. The necessary depth of excavation to relay the pipe would be 18 feet, which is dangerous if not properly sheeted, but more important, could jeopardize the structural integrity of the town water main on Hastings Street. For these reasons, the second alternative is also unsatisfactory.

Mr. Duggan proceeded to critique the proposed drainage plans. The proposed detention basin does not conform to the Woodard & Curran standards, which have been discussed in the previous decision on 87 units. The proposed outflow weir is located at the bottom of a basin and thereby would not retain stormwater. The weir allows the stormwater to flow out at the bottom of the channel. The Woodard & Curran report recommended that a detention basin be constructed to hold water. It should be lined with an organic liner so that it would slow or retard percolation through the ground. The soil in this location, only 700 feet upgradient from the wells, is very porous, and stormwater drainage must be slowly dispersed into the ground, while being treated in the lined detention basin. The Woodard & Curran report

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recommended that the drainage system consist of hooded catch basins, a two-chambered oil trap, an aeration basin and ultimate disposal in storm water (leaching) trenches.

Furthermore, the outflow pours directly onto Waterworks land. The Woodard & Curran report recommended an infiltration swale which would receive the outflow from the basin.

The three potentially hazardous factors, which have not been mitigated in these plans, are the location of the outflow, the fact that the outflow provides for no capture of stormwater, and the fact that there is no organic liner in the basin to provide for detention with gradual treatment and disbursement.

Mr. Duggan reviewed the "first flush" improvement that Mr. Nolan had alluded to previously. On the new plan, the "first flush" in a storm would be directed to the diversion manhole, which would divert the first flush, by means of a weir, through an oil/water separator, and then flow into the street drain on Hastings Street. Mr. Duggan stated that the street drain, as determined by the Camp Dresser McKee drainage study, is not of proper capacity for existing conditions, and questioned whether it had the capacity for additional stormwater flows.

Furthermore, in order to make the grade at this potentially unsuitable storm drain, a section of the drain would have to be relayed, which again, would require an 18 foot cut on the other side of the existing town water main, causing the same aggravation, or the same susceptibility to damage.

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Mr. Duggan noted that the elevations on the plans were implausible, as there is a discrepancy in the elevation between the oil/water separator and the diversion manhole. He questioned the effectiveness of the use of an 8 inch diameter pipe going through the oil/water separator in handling a very high flow through rate. As the grades are incorrect, he could not determine the slopes. He could not determine the velocities, but, in his opinion, the rate of flow is probably somewhere in the neighborhood of half a million gallons per day. The oil/water separator itself was mysterious, as it is composed of four chambers on one plan and three chambers on another plan.

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Mr. Huffman stated that his engineer, Lawrence Silva, was not present due to a personal emergency, but that he would attempt to respond to Mr. Duggan's comments. Mr. Huffman's explanations did not satisfy Mr. Duggan, who stated that the 8 inch connection to Building C, which is at .0008 foot drop per foot of length, or 8 feet in 10,000 feet, is unacceptable, as the industry standard is .004 feet per foot, or five times as steep. The service connection from Building C to Hastings Street is destined for blockage, and the invert of the manhole just outside of Building C is less than two feet below the first floor.

Mr. Duggan elaborated on the Camp Dresser McKee report as to the adequacy of the storm drainage main on Hastings Street. The report calls for a 12 inch pipe at the top of Hastings Street, a 15 inch pipe further down the street, and an 18 inch pipe at the bottom of the street. Clearly, the existing 10 inch pipe is not adequate. Furthermore, the pipe requires capacity up to at least 18 inches to cross under Route 9. There is simply not enough capacity for existing stormwater drainage in the existing pipe, much less for any additional

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As to the overflow which now goes into Town land, it doesn't travel over an impervious paved parking lot, nor does it presently come from impervious roofs that drain into the ground. The proposed construction will create a concentration of drainage that will enter the Waterworks land over the outflow. Woodard and Curran strongly recommended that the area be a wetland because wetlands naturally treat contaminants. Mr. Huffman's plans have no wetland area, and he has stated that he does not want a wetland.

Mr Duggan stated that Mr. Huffman is doing something that the town does not want, and that Woodard & Curran recommended against. The town has asked that the outflow from the detention basin be directed to an infiltration trench that would disperse what has been treated, rather than dumping the overflow in one spot onto Waterworks land within proximity of the wells.

Douglas Stewart, Assistant Town Engineer, spoke about the deficiencies in the parking plan. Parking on Hastings Street requires that vehicles back directly onto the street, a situation which is not duplicated at any other site in town. He questioned where the runoff from the parking area on Hastings Street would go, and the specific location of the interior parking spaces, which are not clearly depicted. He further questioned the adequacy of space in the interior parking lot for resident vehicle maneuvering, and more importantly, for maneuvering of fire and police vehicles, especially if residents vehicles were parked in front of Building C and behind Buildings A and B.

Michael McGrath, of Holmes & McGrath, a civil engineer retained by the Town as an expert, presented his review of the engineering plans. In his opinion, the weir, constructed

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in the drain manhole, which is supposed to divert the stormwater runoff to either the detention basin or a reconstructed manhole in Hastings Street, could not be built the way it is drawn because it is too narrow. The weir design is critical to the protection of the environment. The plans therefore fail to protect the Water Supply of the Town.

Mr. McGrath reiterated many of Mr. Duggan's concerns regarding the oil/water separator, the lack of lining in the detention basin, the storage volume, if any, for the detention basin, and the lack of a leaching structure for the runoff volume that exceeds the capacity of the basin. He stated that in order to construct a properly designed leaching structure, Building C would have to be eliminated.

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He also expressed concern as to the siting of the detention basin, in permeable soils in close proximity to the steep downhill bank southwesterly off the northwesterly corner of the parcel, as leachates could break out through the slope. The proposed location of the detention basin, which according to Mr. Silva's narrative is an important element in the mitigation of the runoff generated on the site, might provide an opportunity for catastrophic failure of the detention basin with the potential for damage to Town land.

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Mr. McGrath echoed Mr. Duggan's concerns about the design of the sewer connection on Hastings Street, stating that, in his opinion, there were significant problems with the sewer connections for Building C. The sewer connection for this building is designed to be located 3 feet from the northeasterly corner of Building A. The pipe at that location is about 10 feet below the lowest floor in Building A. All sewer pipes should be designed to be capable of being excavated for servicing. This will be impossible with the design shown on the plans.

Mr. McGrath agreed with and expanded on Mr. Stewart's concerns regarding the inadequacy of maneuvering space for a first response vehicle in the interior parking area, particularly if vehicles were parked in the area. Furthermore, he stated that a standard unit vehicle could not enter the site without either encroaching over the opposing lanes on Hastings Street or driving over the landscaping at the entrance.

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Cynthia Hibbard, a representative of the Sheridan Hills Neighborhood Association (SHNA) as well as an engineer employed by Camp Dresser McKee, requested that the stormwater drainage aspects of the project be evaluated in respect to the State's new Stormwater Management Policy, which is applicable to residential subdivisions with a discharge to potentially critical areas such as recharge areas for public water supplies. This new policy requires infiltration measures, an equality between pre- and post-development peak discharge rates, and that for new developments, stormwater management systems must be designed to remove 80% of the average annual load of total suspended solids, as well as other design criteria.

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Robert Owen (SHNA) expressed concerns about the density of the project which could result in covering the majority of the site with buildings and blacktop.

Robert Sheehan (SHNA) stated that since the project was first proposed, there has been a constant lack of good basic data and certifiable plans.

William Scully, of McDonough & Scully, the Town's traffic consultants, explained that although the traffic that would be generated by the project would not have a substantial effect

on the operating conditions at the significant intersections of Hastings Street/Worcester Street and Worcester Street/Cedar Street, there is still a site distance and safety issue for vehicles entering the Worcester Street ramp from Hastings Street. Mitigation measures proposed in the past should be implemented, if the project is to advance.

After closing the evidentiary portion of the Public Hearing, the Chairman stated the Board's disappointment that the developer's engineer, Lawrence Silva, had to be absent. Wanting to give the petitioner every opportunity to respond to the engineering issues he was unable to answer due to his engineer's absence, the Board extended an offer to Mr. Huffman to reconvene the Public Hearing at some other date, in order for Mr. Silva to have the time to present his point of view and respond to the serious questions that had been raised, especially regarding Building C.

Mr. Nolan, speaking for Mr. Huffman, declined the Board's offer, stating that they would be content to submit on the basis of the plans before the Board.

In the opinion of the Board, the inability of Mr. Silva to be present, while understandable because of his personal emergency, was particularly discouraging. When Mr. Nolan declined the Board's offer to reconvene so that Mr. Silva could appear before the Board, the Board felt that the developer's approach was obviously a strategy of muteness, simply going through the motions until he could return before the Housing Appeals Committee. The Board viewed this approach as a mockery of the proper process.

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Following a short recess, the Board turned its attention to the site, and discussed the issues of density and environment as related to the changes in the petition and plans.

In the opinion of the Board, the density of the project had a direct bearing on the environmental issues of the safety of the stormwater drainage system and the sewer system in their proximity to the Rosemary Well and the cone of influence directly leading to the well system.

It was apparent to the Board from the concerns voiced by Mr. Duggan, Mr. Stewart, and Mr. McGrath that the major problems as to stormdrainage design, sewer connections and vehicle maneuvering space, all affecting local health and safety, were focused on and directly connected with Building C. To construct Building C, the plans show the reconstruction of both sewer and drainage facilities in Hastings Street, the design of a substandard sewer pipe in a location that makes future maintenance impracticable, the design of a drainage pipe that appears to be impossible without encroachment onto Town Waterworks land and the design of a detention basin in an unsafe location. The Board agreed that it could not condition suitable safeguards to revise the design to alleviate the problems in the design, all of which relate to the proposed construction of Building C.

The Board agreed that the elimination of Building C would resolve most of these problems and would allow sufficient space for the recommended Woodard & Curran stormwater drainage design. The Board reached a conclusion that the approval of Building C was not in the Public interest, and that the approval of Building C entails unacceptable risks to the Town and its water supply.

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The Board asked Mr. Huffman if he would consider voluntarily deleting the rear building.

Mr. Huffman stated that he would not consider the suggestion at this time.

The Board stated that the elimination of Building C would achieve most of what the Board wanted and would still achieve most of the developer's goals.

The Chairman then called for a vote on the question of approval of the plan that was submitted with respect to the buildings on Hastings Street, which contain 32 units at this time, allowing modification of that number insofar as the proposed number fit within the footprint, height and walls of the current structure shown on the submitted plans, with conditions addressing the concerns voiced at the present hearing, at past hearings and in regard to general issues.

DECISION:

By a voice vote, all three members of the Board of Appeals unanimously voted to grant a Comprehensive Permit to Hastings Village, Inc. in accordance with MGL Chapter 40B, Sections 20 through 23, as amended, authorizing the petitioner to construct, operate and manage a rental townhouse residential development on the footprint of Buildings A and B, as shown on the submitted plans, said plans currently showing 32 units, on approximately 2.19 acres of land in a Single Residence District, at 54-66 Hastings Street. This comprehensive permit is granted subject to the conditions listed below:

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CONDITIONS OF PERMIT:

THRESHOLD

1. Control of the Site

The petitioner shall demonstrate total control of the site. The Board of Appeals notes that the original petition for a comprehensive permit stated that Eastland Partners, Inc. held title to the entire premises, 54-66 Hastings Street. On December 13, 1995, Eastland Partners, Inc. conveyed a portion of the premises to Richard J. Girasole, sole Trustee of the Hastings Investment Trust.

HOUSING

1. Percentage of Affordable Units

Hastings Village, Inc. shall maintain 25% of its rental units for "low and moderate income" households, defined by EOCD as households earning less than 80% of the median household income in the Boston Standard Metropolitan Statistical Area.

2. Tenant Selection Criteria

Of the 25% of the affordable units, 70% shall be offered first to Wellesley households or those households with Wellesley ties, which meet the definition of "low and moderate income households".

3. Affordable Units To Be Maintained in Perpetuity

At the conclusion of the lock-in period determined by MHFA, the proposed subsidizing agency, the developer shall continue to maintain the affordable units as affordable.

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4. Rental Housing in Perpetuity

The development shall continue as rental housing in perpetuity after the "lock-in" period, unless the developer petitions the Board of Selectmen to convert the market rental units to ownership.

5. Mix of Affordable Units

Affordable units shall not be separated, concentrated or isolated from market rate units, but shall be intermingled and dispersed throughout the development.

6. The petitioner shall submit, for the Board's approval, a plan for ensuring the monitoring and ensuring compliance with the foregoing Conditions 1 through 5.

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SITE CONDITIONS

1. Construction of residential buildings shall be limited to the space occupied by Buildings A and B on the submitted plans. At present, these buildings contain a total of 32 units. This number can be modified to the extent that there is no change in the building footprint and/or the height of the tallest building as shown on the submitted plans. Furthermore, the architectural design, as shown on the submitted elevations, shall remain the same. Should the number of units be increased, the number of affordable units shall increase proportionately.

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2. The proposed driveway to serve the rear of Buildings A and B, as shown on the site plan, shall be revised so that the revised design will allow sufficient turning radius for a truck as defined by a Standard Unit Vehicle and for any first response vehicle.

3. Each off-street parking space shall be designed so that any motor vehicle may proceed to and from said space without requiring the moving of any other vehicle or passing over any other parking space.

4. The plans are to be revised to eliminate the 23 parking spaces along Hastings Street. The revised plans shall show the additional spaces to the rear (westerly) of Buildings A and B.

5. Three copies of a revised site plan showing the configuration and dimensions of Buildings A and B, all parking spaces and drives, all landscaping, all sewer and drainage connections, all outdoor lighting facilities are to be submitted to the Board of Appeals for its approval, and two copies of this plan are to be submitted to the Department of Public Works for its review.

6. Three copies of revised floor plans, elevations, and cross sections of Buildings A and B with a listing of the number of units and the number of bedrooms in each unit is to be submitted to the Board of Appeals.

7. A residential-type sprinkler system shall be installed in each unit and all public areas.

8. Lighting

All artificial lighting used to illuminate the exterior premises shall be arranged and shielded so as to prevent direct glare from the light source into any public street or private way or onto any adjacent property. No free standing light stanchion shall be of a height greater than 18 feet.

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9. Buffer Zone

A 20 foot buffer zone shall be maintained at the northern and southern property boundary lines.

10. Planting/Screening

- a. The setback areas abutting land used for residential purposes, as well as the Town Forest, shall be landscaped and screened by way to sufficiently shield abutting from parking areas and buildings, all in accordance with a plan drawn by a registered landscape architect. Three copies of said plan shall be submitted to the Board of Appeals for its approval and one copy shall be submitted to the Design Review Board for review.
- b. The stormwater drainage plan shall be reviewed and approved by a registered landscape architect.

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WATER/SEWER/DRAINAGE

- 1. The plans are to be revised to show the following:
 - a. Building C is to be eliminated from the plans. All appurtenant grading and utility connections and facilities are to be eliminated.
 - b. The drainage design will be modified to eliminate the proposed reconstruction of the Hastings Street drain and any on-site connection to the Hastings Street drain.
 - c. The proposed sewer reconstruction in Hastings Street shall be eliminated.
 - d. The drainage design shall be revised to show the aeration basin be moved a suitable distance from the steep down hill slope at the northwesterly corner of the site.

e. The aeration basin shall be redesigned to show the following:

1) Storage volume equivalent to 120% of the "first flush", a first flush meaning one inch of runoff to the aeration basin, including the one inch of rainfall falling directly into the basin.

2) A suitable intake structure in or at the edge of the detention basin with suitable grating or weir to divert the excess runoff from the aeration basin into a system of leaching trenches. The volume from a twenty-four hour one in twenty-five year storm will be leached from a single or a series of subsurface leaching trenches of crushed stone wrapped in a suitable filter cloth.

f. The bottom of the aeration basin will be lined with either a claylike material or a suitable impermeable liner overlain with suitable cover materials and an organic layer. The detention basin should be water tight. The basin should be planted with wetland plants described as follows:

The basin should be planted with a variety of wetland plantings known to remove or reduce nutrients (i.e. nitrogen, phosphorus), heavy metals (i.e. copper, lead, zinc, cadmium) and/or suspended solids (i.e. sand silts, clays) from stormwater. The basin shall be planted with the following species which have been documented by research to provide such pollutant removal capabilities. These species include, but are not limited to, wild celery (*valisneria americana*), cattail (*Typha sp.*) softstem bulrush (*Scirpus validus*), three square (*Scirpus pungens*), duck potato (*Sagittaria sp.*) and pickerweed (*Pontederia cordata*).

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A detail of the proposed basin and the selected plantings shall be shown on the Landscape Plan drawn by a registered Landscape Architect.

g. The precast oil separator is to be relocated to serve the pipeline between the last catch basin and the aeration basin. The precast oil separator is to be completely dimensioned on the plans, and the detailed cross sections shall agree with the plan dimensions. A diversion weir to direct flows through the separator shall ensure the effective operation of the separator. Detailed cross sections of the diversion weir shall be included.

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2. The plans shall be revised to show and describe the organic soil layer to be installed on all landscaped areas.

3. The revised plan shall show or describe suitable grading, loaming and seeding for the area formerly the site of Building C. The plan shall describe landscaping efforts over the entire site once revised.

4. The proposed trees along Hastings Street shall be planted on the locus parcel, and the plan revised to show the revised location.

5. All proposed catch basins and drainage manholes shall have a minimum cover over the proposed drain pipes of 4 feet.

6. The proponent shall prepare an erosion control plan which shall be submitted to the Board for administrative approval.

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7. The proponent shall prepare suitable maintenance manuals for the drainage system. The manual shall be submitted to the Board for administrative approval. The manual shall be kept on site and all maintenance personnel and managers of the site shall be familiar with the manual. The manual shall describe what activities are required if an accidental release of any pollutants occurs. The manual shall require immediate notification of any spill to the Town Health Department and the Department of Public Works. The manual shall be prepared by a Professional Engineer, who is also a Licensed Site Professional. The manual will describe how often the catch basins, oil separator and detention basin are inspected. The manual shall describe what standards are used in the inspection and what threshold event requires cleaning. The manual shall specify that each inspection shall be reported to the town Department of Public Works.

8. There shall be no floor drains in the garage spaces inside Building A and B.

9. No petroleum products, fuels or solvents may be stored on site during construction.

10. No fueling of vehicles or equipment shall occur on site during construction.

11. Construction vehicles or equipment shall be fueled and maintained on the paved portion of Hastings Street.

12. Construction vehicles or equipment shall be stored or parked on the paved portion of Hastings Street.

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13. Fill brought on site shall be clean fill, free of trash, organic material and debris. If requested by the Town, grain size analysis shall be submitted within forty-eight hours of the request by the Inspector of Buildings, any representative of the Department of Public Works, the Board of Health agent or the Wetlands Protection Committee. Any unsuitable fill is to be removed immediately. The Inspector of Buildings is empowered to issue a Stop Work Order for a violation of this condition.

14. Three copies of the revised plans shall be submitted to the Zoning Board of Appeals for its approval and two copies shall be submitted to the Department of Public Works. The plans will be reviewed administratively. The approval, or approval with conditions, shall be given in twenty-one days. Resubmissions shall be repeatedly accomplished until plans are satisfactory to the Board and the Department of Public Works.

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15. The proponent shall prepare a groundwater monitoring plan. The monitoring plan shall require the reporting of ground water quality from testing and the elevations of the water table during each event. The monitoring plan will require testing quarterly for three years and then yearly. The monitoring plan will require the restarting of quarterly testing in the event of a spill of reportable qualities. The testing program shall be prepared by a Professional Engineer, who is also a Licensed Site Professionalsal. The testing program shall require the testing of constituents in accordance with EPA Method 8010 and 8020 and Standard Drinking Water series including sodium.

16. The proponent shall apply for individual permits from the Town of Wellesley for the necessary services. If the Department of Public Works requires Typical Cross-sections and Profiles, the proponent shall furnish the required plans.

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17. The proponent shall install the drainage system prior to the issuance of a building permit for any structure. Foundation permits can be issued simultaneously with the drainage construction.

18. A report by a Professional Engineer accompanied by a Certified As-Built plans of the construction of the drainage improvements shall be submitted and accepted prior to the issuance of any other Building Permit other than a foundation permit.

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TRAFFIC

The concerns of the Board of Appeals regarding traffic, as stated in its June 19, 1995 decision, are still present; namely:

1. Limited site distances to/from the west along Worcester Street, primarily due to Motorquest of Wellesley vehicles parked along the southwest corner of the intersection encroaching on the State right-of-way.
2. Danger to vehicles making turns from Hastings Street onto Worcester Street conflicting with eastbound Route 9 traffic.
3. Danger to vehicles making left turns onto Hastings Street from Worcester Street westbound.

Both the traffic studies done in 1995 by Bruce Campbell & Associates and Louis Berger Associates, and the traffic studies done in 1997 by McDonough & Scully and Bruce Campbell & Associates agree that these three concerns can be mitigated, and furthermore agree on the mitigation measures to be taken.

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Therefore, the following traffic conditions, as recommended in all four traffic studies, shall be required:

1. The existing barrier, at the northerly end of the property, may be, but is not required to be, moved to the southerly end of the site. To move it, permission must be obtained from the Board of Selectmen. The Board of Appeals shall be notified as to the decision of the Board of Selectmen.
2. The three-lane cross-section on Worcester Street shall be maintained all the way from Cedar Street to Hastings Street. Two lanes eastbound at Hastings Street shall be maintained.
3. The geometric modifications proposed by Louis Berger & Associates for the Hastings Street/Worcester Street intersection, shown on a plan submitted with a memo from Donald Cooke dated 5/2/95, entitled "Conceptual Improvement Plan - Worcester Street @ Hastings Street" shall be implemented. These improvements include:
 - a. Widening the eastbound Worcester Street off-ramp from Route 9 approaching Hastings Street in order to provide an exclusive right turn deceleration lane for vehicles turning to Hastings Street.
 - b. Provision of a channelized right turn for vehicles exiting Hastings Street, including a painted traffic island which would emphasize the no left turn restriction from Hastings Street, as well as develop a right turn acceleration lane. The painted traffic island will also provide additional warning for vehicles traveling east along Worcester Street as to the presence of entering vehicles.

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- c. Widening along the westbound Worcester Street approach to construct a more pronounced neck-down for westbound Worcester Street traffic, thereby physically prohibit vehicles from continuing "head-on" into the eastbound traffic.
 - d. The northerly curb of Worcester Street shall be moved 2 feet to 4 feet further north, giving westbound Worcester Street traffic more protection from the high speed traffic exiting Route 9.
 - e. Motorquest of Wellesley frontage will be moved 3 feet to 4 feet to the south with two lanes provided eastbound, one for a right turn and the other for straight through Worcester Street traffic. These two lanes are tilted to the south so that the eastbound high speed traffic is tilted away from the slow speed westbound Worcester Street traffic.
 - f. Additional advanced intersection warning signs and advisory speed plates of 30 mph shall be posted along the eastbound Worcester Street off ramp.
4. Re-examination of signal timings at the Cedar Street/Worcester Street intersection shall be done. Modifications to the timing should be made to improve conditions during the evening peak hour to maintain a LOS "C" along the northbound left turn movement; and LOS "D" can be provided along the Worcester Street eastbound approach.
 5. The developer shall submit traffic engineering designs and plans, approved by the Massachusetts Highway Department, to the Board, ensuring compliance with the foregoing conditions 1 through 4.

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PERFORMANCE GUARANTEE

1. Before final approval of this project, the Board of Appeals will require that the construction of all on-site and off-site structures and installations of municipal services be secured by the following method:

a. Bond or Securities - By a proper bond or a deposit of money or negotiable securities, sufficient in form and content, in the opinion of the Board of Appeals to secure performance of the on-site construction and installations of municipal services required for the project. The status of such security will be reviewed at least annually by the Board of Appeals and may be increased to reflect increases in estimated costs for completion of construction.

b. The Board may refuse security based on advice from the Town Treasurer as to the financial status of the bank, company or institution involved. Letters of credit shall not be accepted as security.

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CERTIFICATE OF INSURANCE

The proponent shall submit a Certificate of Insurance to the Board of Appeals, which shall include coverage minimums: for general liability (1 million/3 million), automobile liability (1 million/3 million), umbrella coverage (5 million) and Workmens' Compensation.

CONVEYANCE OF UTILITIES AND EASTMENTS TO THE TOWN.

Before the Board will release the Performance Guarantee at the conclusion of the work, the applicant shall execute an instrument transferring to the Town, without cost, valid

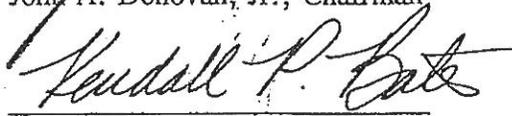
unencumbered title to all common sewers, storm drains and water mains, the underground electrical distribution system and appurtenances thereto, constructed and installed, and conveying to the Town without cost and free of all liens and encumbrances, perpetual rights and easements to construct, inspect, repair, renew, replace, operate and forever maintain the aforesaid underground utilities, with any manholes, pipes, conduits and other appurtenances.

APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PURSUANT TO MGL CHAPTER 40B, SECTION 21, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THIS DECISION IN THE OFFICE OF THE TOWN CLERK.

cc: Planning Board
Board of Selectmen
Board of Public Works
Inspector of Buildings
edg

Dated and filed in the Office of the Town Clerk on Wednesday, May 21, 1997.


John A. Donovan, Jr., Chairman


Kendall P. Bates


William E. Polletta

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