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Decision – #13-06 – Corrected Amendment 1
Comprehensive Permit – 6 Post Office Square
March 4, 2019



Board of Appeals

TOWN OF ACTON
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**Comprehensive Permit
Post Office Square Acton, LLC
6 Post Office Square, Acton, MA
DECISION
#13-06**

Corrected Amendment #1
March 4, 2019

GRANTED with Conditions

Decision of the Acton Zoning Board of Appeals (hereinafter the “Board”) on the request by William Luster of Charing Cross Realty Trust, 2 Centennial Drive, Suite 5E, Peabody, MA 01960 on behalf of Post Office Square Acton LLC (hereinafter the “Applicant”), for an amendment of Comprehensive Permit Decision #13-06 (the Decision) issued for the property located at 6 Post Office Square in Acton, Massachusetts, owned by the Applicant. The property as approved under the Comprehensive Permit is a subdivision of twelve house lots and parcel A on a private street off Post Office Square named Jasmine Circle (previously proposed as Danielle Circle) shown on a plan recorded in the Middlesex South District Registry of Deeds as Plan No. 803 of 2017 and identified on the current Town assessors as parcels E4-59-1-1 through E4-59-1-13 (hereinafter the “Site”).

The Applicant specifically requests that condition 4.2.4 of the Decision which states that “The entire Project, all twelve (12) dwelling units, including the affordable units, shall be LEED certified.” The construction of the project on the Site is underway with several houses completed or nearly completed without meeting the required LEED standard. The Applicant’s amendment request is to resolve the discrepancy.

The Board discussed this matter at two of its scheduled meetings on February 4 and February 21, 2019. The Applicant was in attendance on February 4, 2019. The minutes of the meetings and submissions on which this decision is based upon may be referred to in the office of the Board at the Acton Town Hall.

1 EXHIBITS

Submitted for the Board's deliberation were the following Exhibits:

- 1.1 Comprehensive Permit Decision #13-06.
- 1.2 Memoranda to the Board from the Roland Bartl, Acton Planning Director dated February 1 and February 15, 2019.
- 1.3 Letters from Mr. Luster to Mr. Bartl dated June 4, 2018 and February 11, 2019.
- 1.4 Energy Star v3.1 Home Verification Summary for 1 Jasmine Circle, dated January 11, 2019.
- 1.5 E-mails from Mr. Bartl to Mr. Luster dated June 5, 2018.
- 1.6 E-mail exchange between Fred Schultz, site contractor, and Mr. Bartl, dated January 29, 2019.
- 1.7 Table entitled "Post Office Square Residences, Acton – Status of Energy Star by Unit".
- 1.8 Inspection memo for Lot 10 dwelling unit by GDS Associates, Inc., dated February 12, 2019.

2 FINDINGS AND CONCLUSIONS

Based upon its review of the exhibits, and the record of the proceedings, the Board finds and concludes that:

- 2.1 Condition 4.2.4 of the Decision requires that "The entire Project, all twelve (12) dwelling units, including the affordable units, shall be LEED certified."
- 2.2 In June 2018 Mr. Bartl, in his capacity as Zoning Enforcement Officer, approved a de-minimis modification of condition 4.2.4 allowing that all units must be Energy Star certified.
- 2.3 With the application for the first Certificate of Occupancy for lot 12, 1 Jasmine Circle, it became apparent that the dwelling unit would not be able to achieve Energy Star certification, using the standards for certification that applied in 2014 at the time when the Comprehensive Permit Decision was issued (V.3 (Rev.07) of 2013).
- 2.4 Further, it became apparent that four other completed or nearly completed dwelling units would not meet the said Energy Star certification standard.
- 2.5 Seven other dwelling units are either only framed or not yet constructed and can be made compliant with the said Energy Star certification standard. Mr. Luster proposes that these seven dwelling units be completed with the requisite Energy Star certification.
- 2.6 For the five completed or nearly completed dwelling units that do not meet the certification standard Mr. Luster proposes a mitigation payment totaling \$5,200.00 'to the Town of Acton, memo line "Acton Community Housing Program Fund" to be used for the specific purpose of energy efficiency improvement assistance to low or moderate income housing units in Acton shown in the Acton Subsidized Housing Inventory, as amended from time to time'.
- 2.7 Consistent with paragraph 4.5.8 of the Decision, the matter at hand and the Decision Amendment approved hereunder are sufficiently minor in nature so as to not warrant a public hearing.

3 BOARD ACTION

The Board voted unanimously on March 4, 2019 to GRANT the requested Decision Amendment, subject to and with the benefit of the following conditions and limitations.

3.1 CONDITIONS

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to any of these conditions shall constitute grounds to deny any building permit pursuant to this Comprehensive Permit. Failure to cure any violation of these conditions upon written notice from the Board or the Zoning Enforcement Officer, within the deadline set in the notice and to the satisfaction of the Board or the Zoning Enforcement Officer, shall constitute grounds for the revocation of any building or occupancy permit issued hereunder. The Town of Acton may elect to enforce compliance with this Comprehensive Permit using any and all powers available to it under the law.

3.1.1 The seven unbuilt or unfinished dwellings on lots 2-8 shall be Energy Star certified to meet the ES certification standard of V.3 (Rev.07) of 2013.

3.1.2 The five completed or nearly completed dwelling units on lot 1 and lots 9 – 12 may be occupied without said certification.

3.1.3 Prior to the issuance of any further Building Permits or Certificates of Occupancy for any dwelling units on the Site, the Applicant shall make a mitigation payment in the amount of \$5,200.00 payable to the Town of Acton, memo line "Acton Community Housing Program Fund" to be used for the specific purpose of energy efficiency improvement assistance to low or moderate income housing units in Acton shown in the Acton Subsidized Housing Inventory, as amended from time to time.


3.1.4 This Amendment Decision shall be recorded at the Registry of Deeds prior to the issuance of any further Building Permits or Certificates of Occupancy for any dwelling units on the Site.

4 EFFECT AND SCOPE OF THIS AMENDMENT DECISION

This Amendment Decision only responds to and decides on the limited matters before the Board as outlined herein. Except as herein specified, the Original Decision, including all modifications, conditions and limitation required and contained therein, shall remain in full force and effect.

The Town of Acton Zoning Board of Appeals


Kenneth F. Kozik, Chairman


Adam Hoffmann


Emilie Ying

Copies furnished:

Applicant
Town Manager

Land Use Department
ACHC

Town Clerk