

March 8, 2021

Via Email

Jessica Malcolm, Manager of Planning and Programs
Massachusetts Housing Finance Agency
One Beacon Street
Boston, Massachusetts 02108

Re: Thorndike Place, Arlington (MassHousing ID #778/#779)
Notice of Project Revision Under 760 CMR 56.04(5)

Dear Jessica:

On behalf of the Applicant, Arlington Land Realty LLC, and in accordance with 760 CMR 56.04(5), we are notifying MassHousing, as the Subsidizing Agency, of the desire of the Applicant to change certain aspects of its respective project known as Thorndike Place. As more fully described herein, the revisions come about in light of feedback from the Zoning Board and others within the public hearings on the Applicant's Comprehensive Permit Application.

Original Proposal and Permitting Process Background:

The Applicant was granted a Project Eligibility Letter ("PEL") from MassHousing for Thorndike Place on December 4, 2015. At that time, the Thorndike Place project proposal included a total of 219 dwelling units, twelve (12) of which were townhouse homeownership units together with 207 units of rental housing situated on a triangular parcel consisting of 17.8+/- acres of land (5.6 +/- buildable acres), located on Dorothy Road, in Arlington, Massachusetts. The described project included six (6) duplex-style townhouses (2.5 stories/32 feet) and one (1) multifamily apartment building (4 stories/53 feet). The project's unit mix included 104 one-bedroom units, 92 two-bedroom units and 23 three-bedroom units.

The project locus is within the Planned Unit Development ("PUD") zoning district under the Arlington Zoning Bylaw, for which duplex homes are allowed as of right and multifamily housing is conditionally allowed. In the PUD district, the maximum building height is 85 feet and residential housing is limited to five (5) floors. As described in the Project Eligibility application, the developed portion of the site would be along Dorothy Road and would extend along the length of Dorothy Road, including surface parking and the easternmost third of the four-story apartment building located behind six lots on Dorothy Road. Off-street parking for the apartment building was proposed both via surface parking (102 spaces) and parking under the apartment building (178 spaces). As an amenity, not just to the Thorndike Place community but to the Town itself, the Applicant proposed to set aside approximately 10+ acres of the site as open space.

The original project design included eight driveway entrances off Dorothy Road, seven of which were associated with the townhouse duplexes and a main access drive near the intersection of Littlejohn Street and Dorothy Road, leading to the surface and garage parking associated with the multifamily building. In addition, the original Project included a secondary access drive at the intersection of Burch Street and Edith Street at the eastern boundary of the site.

Mass Housing's PEL was issued on December 4, 2015. On September 1, 2016, the Applicant filed a Comprehensive Permit application with the Arlington Zoning Board of Appeals ("ZBA"). On September 27, 2016, the ZBA opened the public hearing on the Application and by letter dated October 6, 2016, the ZBA notified the Applicant that the ZBA sought protection under the General

Land Area Minimum Safe Harbor, asserting its belief that the Town had 1.5% or more of its General Land Area dedicated to Subsidized Housing Inventory (“SHI”) eligible housing. The Applicant submitted a challenge to the DHCD pursuant to 760 CMR 56.03(8), noting that the Town had double discounted land area associated by water bodies, thereby inaccurately calculating the general land area in performing its calculations. On November 21, 2016, DHCD issued its written determination finding that the ZBA had not achieved safe harbor status. In December 2016, the ZBA filed an interlocutory appeal with the Housing Appeals Committee (“HAC”). The HAC decision was issued on October 15, 2019,¹ again determining that the Town did not establish qualifying for the safe harbor.

Project Revisions

Subsequent to the HAC’s Decision on the interlocutory appeal, the Application was remanded to the ZBA in late fall 2019. Due to Covid19, the ZBA did not conduct public hearings for a number of months and it was not until late September 2020 that public hearings, via Zoom, were reestablished on the application. With input from the ZBA as to the size, scale and location of buildings near or within resource areas, the Applicant presented revised plans to the ZBA in November 2020. The revised plans, reduced the density by removing the standalone duplex buildings and shifting the multifamily building to the north, away from resource areas as defined in the Massachusetts Wetlands Protection Act and the Arlington Wetlands Bylaw.

Since that time, the Applicant and the ZBA have conducted continued public hearings in November, December, January and February together with multiple work sessions with the Applicant’s professional team, the ZBA’s peer review professionals, the Conservation Commission, the Transportation Advisory Committee (“TAC”) and Town staff. As a result of the feedback provided to the Applicant by the ZBA, the Town Planner, Town Engineer, the Conservation Commission and its agent, the ZBA’s Peer Review professionals from BETA Group as well as the public, the current proposal is as follows:

- One multifamily building, which consists of 172 dwelling units, consisting of 88 one-bedroom units, 55 two-bedroom units, 18 three-bedroom units and 11 studios.
- The six 2.5 story duplex-style townhouses, and the associated seven access drives to enter the private garages off Dorothy Road, are no longer included in the project.²

¹ In large part, the length of time (nearly three years) for a decision in the HAC interlocutory appeal was attributable to the ZBA’s request to stay the appeal and subsequent pursuit of a separate civil lawsuit brought by the ZBA against the DHCD, Department of Mental Health and Department of Developmental Services, seeking confidential address information as to special needs housing. Ultimately, the ZBA never sought to use this information within the underlying HAC appeal.

² In other projects, MassHousing has concluded that a change in tenure does not justify revisiting a PEL. For instance, with respect to the Abbyville Commons 40B proposal in Norfolk, subsequent to obtaining site approval for a 48-unit rental project, the Developer notified MassHousing that due to input from the community, the proposal was changed from a rental project located in two buildings to 88 duplex-style condominiums. In response to the Section 56.04(5) notice, MassHousing affirmed that no new project eligibility letter was required, stating, “[i]t is MassHousing’s interpretation of the Comprehensive Permit Regulations that Subsidizing Agencies should normally not update Project Eligibility Letters as a project develops but should rather, consider whether the initial proposal is eligible for a subsidy project at the project eligibility stage and then consider with the final approval is eligible directly before the construction at the Final Approval state. Any other approach could interfere with a Chapter 40B’s goal of expedited permitting. It is for this reason that a Project Eligibility Letter issued pursuant to the comprehensive permit regulations shall, pursuant to 760 CMR 56.04(6) be conclusive evidence that the project and the applicant have satisfied the project eligibility requirements.” A copy of the MassHousing letter is attached as Attachment C (Emphasis added).

- The developed portion of the site is largely confined to an approximately 5.15-acre limit of work, with the balance of the site to remain as open space/conservation land. This is largely consistent with the original proposal, but it is noted that by condensing the overall length of the apartment building and adjusting its location further to the north on the site, the building and all infrastructure are outside of vegetated wetland areas to the east and south, with only limited impacts to the wetland buffer for a small portion of the subsurface garage under the southwest courtyard, grading, stormwater management systems and a portion of the permeable emergency access road around the back of the building.
- Garage parking under the multifamily building for 179 vehicles plus 176 secured bicycle parking spaces. (The original proposal as set out in the Project Eligibility application included garaged parking for 178 vehicles in the multifamily building garage).
- The building adheres to the PUD zoning district use and dimensional regulations; in particular multifamily use is allowed by special permit in the PUD district, the project is far below the maximum height in the PUD district (which maximum height is set at 85 feet/5 floors for residential uses), the project meets or exceeds the setbacks of the PUD district and it is below the allowable FAR for the site (.80 FAR).

Attached hereto, please find the updated site drawings prepared by BSC Group, revised November 3, 2020 and January 21, 2021 (Attachments A.1 and A.2) and updated architectural elevations and perspective drawings by Oaktree/Bruce Hamilton Architects, as presented to the ZBA at the February 16, 2021 hearing (Attachment B).

The present building design retains the four-story apartment building, but has revised its layout such that there is a central building spine set back approximately 90+ feet from Dorothy Road. Extending northerly (toward Dorothy Road) are three separate wings, or building tabs, the width of each approximate the width of the townhomes on the opposite side of Dorothy Road. These front portions of the building will be two stories tall (approximately 25 feet in height) and set back 25 feet from Dorothy Road.³ In between the building's northerly wings are two large courtyards, one which provides access to the building entry and allows temporary parking/drop offs and the other to be landscaped open space. The courtyards further create a less crowded/more open feel along Dorothy Road. The building graduates to three floors and thereafter to four floors along the central building spine and the building wings to the south of the site, substantially removed from Dorothy Road and any abutting property.

As opposed to the eight driveway curb cuts proposed on Dorothy Road under the original proposal, the revised design streamlines the access off Dorothy Road to one main driveway which provides access to the surface parking lot to the west and to the garaged parking under the building.

³ It is noted that the height of the currently revised building wings (25 feet) closest to Dorothy Road are actually lower than the height of the previously proposed townhouses, which were 2.5 stories/32 feet in height. By the use of low, two-story front wings of the building set back 25 feet off Dorothy Road, the architecture of the building is consistent with the setbacks, width and heights of the surrounding townhomes on the opposite side of Dorothy Road and to the east of the site. The revised design has incorporated the municipal input with respect to massing, scale, topography and environmental resources.

For short-term or drop-off/deliveries, there is a second semi-circular access drive located closer to the center of the building at the location of the building's lobby entrance.

Further, in response to requests by the ZBA and the TAC for a reduction in parking, the revised design incorporates a reduced number of parking spaces and corresponding commitments to a number of transportation demand management (TDM) measures, further enhancing the transit-oriented nature of the Project. Representative TDM measures include: a 23-dock Bluebikes station, a transit-screen display in the building entrance lobby, first month MBTA passes to new residents, a designated transportation coordinator as part of building management staff; secured parking for up to 176 bicycles and a bicycle repair area within the garage; and transportation information packages to be provided to all residents.

The revised design not only reduces impervious access drives and parking areas, but also avoids direct impact to wetland areas and limits permanent project improvements to the outer edges of the 100-foot buffer. Further, the revised proposal significantly limits the amount of work within the floodplain as compared to the original application. Impacts to floodplain are limited to two shallow fingers of the floodplain with the revised plans providing for the creation of compensatory storage at a ratio of 2:1, as consistent with the Arlington Wetlands Regulations.

The ZBA has expressed interest in having MassHousing's clarification concerning the process through which these project changes may be handled. In accordance with 760 CMR 56.04(5), the Applicant provides written notification to the Subsidizing Agency of these project changes. As stated in Section 56.04(5), only changes affecting project eligibility requirements as set forth in Section 56.04(1) are to be assessed.⁴ These described changes do not impact the Applicant's qualification as a limited dividend entity under Section 56.04(1)(a). Similarly, as the proposed changes address density, scale and environmental concerns that had been raised within the public review process, the changes are specifically responsive to otherwise enhance the project and its consistency with the existing environmental resources and topography and do not adversely impact the project or its fundability in accordance with Section 56.04(1)(b). Lastly, there has been no change to site control as Applicant continues to own the site. *See* Section 56.04(1)(c).

⁴ The limits of MassHousing's review under 760 CMR 56.04(5) is similarly described in prior requests submitted to the agency directly on behalf of a Zoning Board. For instance, with respect to the Goodridge Brook Estate's 40B proposal in Lancaster (PEL-963) in which the ownership portion of the proposed development (120 apartments/40 duplexes) was revised by developer (from 40 duplexes to 62 four-bedroom homes), the Lancaster ZBA Chair requested MassHousing to review the changes. By letter dated October 29, 2018, MassHousing reaffirmed the conclusiveness of its prior project eligibility determination in writing to the Lancaster ZBA Chair, stating "[s]ince the changes outlined in your letter have been proposed prior to issuance or denial of a Comprehensive Permit, 760 CMR 56.04(5) narrowly limits the Subsidizing Agency's review to changes which affect the project eligibility requirements set forth in Section 56.04(1)." *See* Attachment D (Emphasis supplied).

SMOLAK & VAUGHAN LLP

Jessica Malcolm, Manager
Comprehensive Permit Programs

We thank you for your review of this matter and request that MassHousing reaffirm its prior PEL. Please feel free to contact me should you have any additional questions. Thank you.

Sincerely,

/s/ Stephanie A. Kiefer

Stephanie A. Kiefer

sak/

Encl.

cc: Peter Mugar, Arlington Land Realty LLC
Gwen Noyes/Arthur Klipfel, Oaktree Development
Robert Engler, SEB Housing Consultants
Christian Klein, Chairman, Arlington Zoning Board of Appeals (via email)
John V. Hurd, Chairman, Arlington Board of Selectmen (via first class mail)
Jennifer Maddox, Undersecretary for Housing and Community Development (via first class mail)