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HOLDEN, MA
December 9, 2019

BY EMAIL AND FEDEX

Planning Board
Town of Holden
1196 Main Street
Holden, MA 01520-1067

PAID

CL # 2063

\$1250.⁰⁰

RE: Permittee/Applicant: Newell Road Realty, LLC (as successor in interest to prior developer, Fafard Real Estate and Development Corp.)
Project: Village at Westminster Place (f/k/a Sanctuary at Holden and Trulson Property Retirement Community)
Property: Newell Road, southeast of Chaffins Pond
Assessor Map 223, Parcel 1
Property Owner: Newell Road Realty, LLC
Case #: SPR-0207 as amended (SPR 0207, 0607, 0901, 0516, 0317, 0118)
Relief Sought: Renewal/Extension of Site Plan Review Special Permit issued pursuant to ZBL §§ XVIII and XI.J.3.g
(if and to the extent necessary, all rights reserved)

Dear Members of the Planning Board:

I write on behalf of Newell Road Realty, LLC ("Permittee") in connection with the Village at Westminster Place retirement community to request a 1-year extension of the Planning Board's Site Plan Review Special Permit decision filed with the Town Clerk on September 17, 2003, as subsequently amended/extended (the "Special Permit Decision").

The extension request is made if and to the extent necessary, all rights reserved – and without waiver of Permittee's position that the Special Permit Decision has not lapsed, that it remains in effect, and that no renewal or extension is necessary.

I. ENCLOSURES

Enclosed with this letter are a check for the \$250 filing fee and an original and 8 copies of this letter with the following enclosures. A certified abutters list was requested on December 2. Two sets of stamped envelopes with abutter labels will be submitted once the certified list and labels are provided by the Assessor's office.

- A. Completed Application Form
- B. Dec. 2, 2019 Request for Certified Abutters List

- C. 2003 Site Plan Review Special Permit Decision (SPR 207)
- D. 2006, 2008, 2009, 2016, 2017 and 2018 Special Permit Amendments/Extensions (SPR 0207, 0607, 0901, 0516, 0317, and 0118)
- E. Various plans (2003-2019) related to the approved development – including the originally approved site plan, a 2014 Approval Not Required plan, and various as-built plans, including an as-built plan depicting the current build-out status.

II. BACKGROUND

The Village at Westminster Place development is a retirement community that the Planning Board approved in 2003 pursuant to its Site Plan Review Special Permit Decision under the Town's Retirement Community Bylaw (Section XVIII). In approving this development, the Board found (Page 1 of Special Permit Decision) as follows:

- The development “meets the objective and intent of the Retirement Community Bylaw....”
- The development “is a development that meets the needs of the residents of Holden and is in the best interest of the Town.”
- The development “successfully protects environmentally sensitive areas and preserves open space by limiting the total area to be disturbed by the development.”
- The development “represents an enhancement to the tax base while minimally impacting Town Resources infrastructure and services.”
- The development “meets the objectives set forth in Section 1 and 5 of the Retirement Community Bylaw.”

These findings remain valid today.

III. EXTENSION REQUEST - CONDITION 6 CONSTRUCTION DEADLINE

Condition 6 of the Special Permit Decision originally provided as follows:

“Failure to complete construction within thirty-six (36) months of the day of approval shall result in an automatic rescission of approval by the Planning Board.”

The Planning Board amended its decision on several occasions, including Condition 6. Most recently, in its 2018 decision (SPR #0118), the Board amended Condition #6 to read as follows:

CONDITIONS #6 IS AMENDED AS FOLLOWS

If construction is not completed by **December 18, 2019** the applicant must apply for an extension of time or approval will be automatically revoked. Construction shall refer to the completion of all common areas, utilities, drainage, and off-site improvements. Once construction is complete the applicant must notify the Holden Planning Board, the Board must issue a Certification of Completion ensuring that all conditions have been satisfied.

To date, the Permittee has substantially completed the roadways, utilities, drainage and other infrastructure components of the development prior to that deadline. In addition, it has constructed many of the dwelling units, as depicted in the enclosed as-built plans included in Exhibit E.¹ The only roadway and related infrastructure details not yet completed (e.g. finish coat of paving, sidewalks, curbing, granite bounds) is work that is appropriately and typically completed after the construction of the buildings – so as to avoid damage to the final condition of those details. In addition, the Permittee has provided appropriate security in the form of bonds for the completion of all work that is pending.

The Permittee, in submitting this extension request, also reserves its position that Condition 6 is an invalid condition because it is in direct conflict with the special permit time limits of M.G.L. 40A § 9 and Section XI.J.3 of the Town's Zoning Bylaw. Chapter 40A, § 9 provides as follows (emphasis added):

[A] special permit granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

Similarly, Section XI.J.3 of the Town's Zoning Bylaw provides that "A special permit granted pursuant to this bylaw shall lapse two years from the granting thereof unless substantial use or construction thereunder shall have commenced within such period" (underline added).

Accordingly, under this statutory and bylaw authority, a permittee's rights in a special permit vest once substantial use or construction has begun. Here, the Permittee commenced construction shortly after receiving the Special Permit Decision and has substantially completed construction of the roadways, utilities and other infrastructure, as well as many of the dwelling units. As such, the Permittee's rights in the Special Permit Decision have vested. Condition 6 cannot be interpreted or applied in a manner that would deprive the Permittee of these vested rights.

¹ A variety of unit configurations have been constructed to facilitate marketing of the units. The pace of construction of the units is dependent in large part on the real estate market and the ability of the Permittee to sell units that have been constructed or are under construction.

Notwithstanding these questions regarding the validity of Condition 6 and the need for an extension of the time limit provided for in Condition 6, the Permittee is hereby requesting an extension to avoid any uncertainties.

The Permittee's extension request should be granted because, among other reasons:

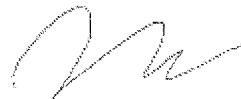
1. The Permittee (a) has invested millions of dollars to date in connection with this development, (b) has proceeded in good faith towards completion of the development, (c) has substantially completed the roadways, drainage, sewer and water connections, and other improvements and infrastructure associated with the development, (d) is continuing in a reasonable manner with its construction activities, (e) has posted bonds sufficient to secure completion of outstanding work items, and (f) has complied with the additional requirements imposed by the Board in its extension decisions.
2. Granting the requested extension will allow the Permittee to continue with construction activities and avoid the significant delays that would be associated with any purportedly required re-permitting proceedings or related uncertainties as to permit status for the project.
3. Granting the requested extension, and allowing the construction activities to proceed without delay, is consistent with the findings made by the Planning Board in support of its Special Permit Decision in 2003.
4. Granting the requested extension will avoid any uncertainties associated with the scope and/or validity of Condition 6 and will otherwise provide clarification related to such questions.

IV. CONCLUSION

For the foregoing reasons, the Permittee respectfully requests that the Board grant a 1-year extension of the construction time limit set forth in Condition 6 of the Special Permit Decision.

The Permittee requests that the Board place this request on its first available meeting for which required notices can be provided. In the meantime, the Permittee will coordinate with Pam Harding and the Town's Office of Planning and Development with respect to hearing notices and compiling any additional information relevant to this request.

Sincerely,



Jeffrey L. Roelofs

Enclosures

cc: Town Clerk (By Federal Express)