COMMONWEALTH OF MASACHUSETTS

HOUSING APPEALS COMMITTEE

LIFE SAVERS MINISTRIES, INC.

v.

CHELMSFORD ZONING BOARD OF APPEALS

No. 02-18

DECISION

AUGUST 2, 2004

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LIFE SAVERS MINISTRIES, INC., Appellant	)	
v.	)	No. 02-18
CHELMSFORD BOARD OF APPEALS, Appellee	)	

DECISION

This is an appeal, pursuant to G.L. c. 40B §§ 20-23, brought by Appellant, Life Savers Ministries, Inc. (LSM), from a decision of the Chelmsford Zoning Board of Appeals, denying a comprehensive permit for the construction of one building with five affordable rental units between Highland Avenue and James Street in Chelmsford. The Board denied the project based on the contention that it failed to provide adequate access for fire and emergency vehicles and that vehicular access and egress along Highland Avenue posed unacceptable risks that outweighed the project's benefits.

Based on the testimony and evidence provided during the hearing process, the Committee finds that the project as proposed will not result in a risk to the health and safety of either the occupants of the proposed housing or the residents of the town. Although Highland Avenue consists of grades that would restrict access by the Town's largest piece of fire fighting equipment, access to the site by this vehicle is possible from the project's proposed main entrance off of James Street. The Town argues that illegal parking along this

road limits its use for access by emergency vehicles. The responsibility lies with the Town to ensure that illegal parking does not impede emergency vehicle access to homes within the Town, including those located along James Street.

The Board failed to prove that access and egress to Highland Avenue poses any greater risk or concern than access into and out of other properties along that road. Additionally, LSM has agreed to mitigate this concern by limiting vehicle movement so that vehicles will be limited to performing only right hand turns into and out of the site, attenuating the sight-distance problems that might be caused in crossing both traffic lanes.

I. PROCEDURAL HISTORY

On September 12, 2001, Appellant submitted an application to the Chelmsford Zoning Board of Appeals for a comprehensive permit in accordance with G.L. c. 40B, §§ 20-23, to build five rental units of affordable housing. Public hearing was duly noticed and commenced October 11, 2001, with continued sessions on November 8, 2001, January 10, 2002, March 14, 2002, May 9, 2002, and June 6, 2002, at which time the hearing was closed.

A written decision denying the comprehensive permit was recorded with the Town Clerk on June 20, 2002. Appellant filed an appeal with the Committee on July 10, 2002.

On July 11, 2003, the Board and LSM submitted a Joint Motion to Remand the matter to the Board to allow for a public hearing to consider renovations to the plan that would address access and egress to the project site using James Street as a secondary or alternative access way. The Committee granted the motion on July 15, 2003.

Public hearing re-opened on August 7, 2003, and continued on September 25, 2003, and October 16, 2003. The Board rendered its final decision on November 4, 2003, again denying the comprehensive permit. The Committee then conducted a site visit, held a 2-day de novo hearing, with witnesses sworn and full rights of cross examination, and a verbal transcript. Following the presentation of evidence, counsel submitted post-hearing briefs.

A. Jurisdiction

To be eligible for a comprehensive permit and to maintain an appeal before the Housing Appeals Committee, three jurisdictional requirements must be met. See 760 CMR 31.01(1)(a)-(c). The parties have stipulated that Appellant meets all of these requirements. Specifically LSM is a non-profit organization, the project is fundable under the Massachusetts Housing Innovation Fund program, and LSM controls the site. Pre-Hearing Order, § I – 3 through 5. In addition, the Board acknowledges that the Town of Chelmsford has not satisfied any of the statutory minima defined in G.L. c. 40B, § 20 (e.g., that 10% of its housing stock is subsidized housing). Pre-Hearing Order, § I – 2.

II. FACTUAL BACKGROUND

LSM's proposal is for a single colonial style building, containing five units, three of which will be at street level and two will be at the lower level (i.e. rear walk-out). Each unit will contain two bedrooms and one bath and will consist of approximately 816 square feet. All five units are proposed to be affordable rental units for single mothers and their children who have graduated from LSM's group home facility where they have been taught parenting skills. LSM has found that after graduation from this highly structured parenting program, it

is difficult for the participants to find adequate housing for themselves and their children. LSM designed the proposed housing to address this problem, by allowing the occupants to experience independence while still being afforded the physical and financial safeguards of oversight by LSM. LSM estimates that the occupants will remain in the housing for one to two years, during which time LSM will work with them to locate other housing that is safe and affordable. Tr. I, 13-14, 17.

The project site is approximately 20,000 square feet in size and is located at the corner of Princeton Street and Highland Avenue. Additionally, the site fronts on an unconstructed portion of James Street. Along the east side of James Street are open fields used for youth soccer. Immediately north of the project area is a privately owned lot with an existing dwelling and a vacant lot that directly abuts James Street. The site is located in the RG-General Residence zone under the Chelmsford Zoning Bylaw. There are no wetlands on the site.

III. ISSUES

Where the Board has denied a comprehensive permit, the ultimate question before the Committee is whether the decision of the Board is consistent with local needs. Under the Committee's regulations, the developer may establish a prima facie case by showing that its proposal complies generally with state and federal requirements or other generally recognized design standards. 760 CMR 31.06(2).

The burden then shifts to the Board, requiring a two-step inquiry to determine whether the denial by the Board complies with G.L. c. 40B, § 23. The Board must initially

establish that there is a valid health, safety, environmental, design, open space, or other local concern, which supports the denial. 760 CMR 31.06(6). If the Board can establish the existence of a valid local concern, it must then further demonstrate that the local concern outweighs the regional need for housing. 760 CMR 31.06(6); see also *Hanover v. Housing Appeals Committee*, 363 Mass. 339, 365, 294 N.E.2d 393, 412 (1973); *Hamilton Housing Authority v. Hamilton*, No. 86-21, slip op. at 11 (Mass. Housing Appeals Committee Dec. 15, 1988).

Two issues have been raised in this case, both involving access. The first is a concern for the adequacy of emergency vehicle access to and from the site, and the second is a concern for the adequacy of emergency access to the two units located on the opposite side of the building from the fire lane.

A. Adequacy of Access for Emergency Response Vehicles

According to the Board, denial of the permit was based primarily on LSM's inability to provide an adequate means of emergency access to the proposed development. The Board argues that the two routes proposed for access to the project are deficient because an essential piece of firefighting equipment, known as the "quint truck,"[1] cannot navigate the slope on Highland Avenue[2] and since cars frequently park along James Street during soccer events,

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1. "Originally when fire apparatus was horse-drawn, every aspect of a vehicle was separate. The pump was on a wagon. The hose was on a wagon. The ladders were on a wagon. And when apparatus became motorized, they had more power. So they started putting on more than one thing. Most fire trucks that you see are called triple combination pumpers because they have a pump, a hose bed and they have a water tank. If you add ground ladders, that's called a quad. And if you add an aerial ladder on top of that, it's called a quint because it performs five functions." Tr. II, 77.

2. The Board also asserts that this problem would be exacerbated by snow and ice conditions in the winter months. However, testimony from the Town's community development coordinator indicated

the unblocked portion of that street is often too narrow to allow access by emergency vehicles. Therefore, the Board concludes that the development does not have a reliable route by which emergency vehicles may safely and expeditiously access the project.

Although the original design envisioned only one access off of Highland Avenue, LSM's current proposal includes a main access from James Street with a limited access along Highland Avenue.[3] Tr. I, 71. James Street is a partially constructed, partially dirt, paper street. Tr. I, 49. It has not been fully constructed to its entire length, but has approximately 20 feet of pavement with gravel shoulders and terminates at the project boundary. Tr. I, 49. James Street is a public way controlled and maintained by the Town of Chelmsford. Vol. I, 49, 71. There are a number of residential homes along this street, as well as a multifamily housing project operated by the Chelmsford Housing Authority. Tr. I, 50-51. In addition, there are two public soccer fields along the east side of this street. Tr. I, 50-51. LSM proposal includes completion of the remaining portion of James Street, in compliance with the Town's standard for the construction of paper streets, to provide access into the development. Tr. I, 52, 54.

In responding to the Board's concern for access to the site by the quint truck, LSM points out that despite the fact that Highland Avenue includes areas of significant slope, it is none-the-less a public way controlled and maintained by the Town for all purposes that roadways are utilized, including access by emergency vehicles. Tr. I, 60. The Board,

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that Highland Avenue is maintained as a typical public road during the winter months, which includes snowplowing. Tr. II, 65.

3. LSM had proposed limiting access to Highland Avenue through the use of a gate, however, the final proposal includes the installation of a mountable curb so that traffic can only exit right going

however, asserts that the Fire Department has determined that due to the slope along Highland Avenue in the vicinity of the project area, the quint truck is incapable of accessing existing homes off of Highland Avenue, including those on James Street, and must access them by means of a secondary route. Tr. II, 77-78, 105-107; Exh. 10. LSM responds that as none of the existing homes can be accessed via Highland Avenue, the same means of access now used for those existing homes could be used to access the project site. Appellant's Post-hearing Brief at 5. LSM provided evidence to show that the North Chelmsford Fire Station is less than one mile from the project site and the Central Station is less than two miles distant, use of the alternative routes to the project area for the quint truck would add approximately one third and two thirds of a mile respectively to those distances. Tr. II, 23; Exh. 12, p. 3. On cross-examination the Town's Deputy Fire Chief testified that access off of James Street would provide an adequate access for fire response vehicles. Tr. II, 94, 100-101; Exh. 11. In addition, LSM provided the testimony of a fire protection engineer in support a finding that James Street would provide adequate access for emergency response vehicle. Based upon the evidence and testimony provided during the hearing, the Committee finds that LSM has established its *prima facie* case by showing it is more likely than not that the proposal provides a safe and adequate access for emergency vehicles using the proposed extension of James Street. 760 CMR 31.06 (2).

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northwest uphill on Highland Avenue and enter by turning right off of Highland Avenue. This keeps vehicles from crossing both traffic lanes when entering or exiting. Tr. I, 24; Exh. 3.

Therefore, the burden shifts to the Board to prove there is a valid safety concern with the use of James Street for emergency vehicle access. 760 CMR 31.06 (6). The Board admits that James Street does not pose a problem for emergency vehicles when the street is empty. Board's Brief at 8. Instead, the Board's concern is for emergency vehicle access during soccer events when parking along James Street results in a narrowing of the passageway of the street. Exh. 1, at 4; Exh. 5. Parking occurs on both sides of the street during these events, which are predominately held in the evenings and on Saturday. Tr. II, 58.

LSM indicated that it has attempted to work with the Chelmsford Housing Authority, which is the owner of an undeveloped piece of property adjacent to the soccer fields, to develop a portion of its land for parking. Tr. I, 38-39. However, as Massachusetts's case law indicates, "the [] regulation of the use and operation of vehicles on public ways, including parking, is a legitimate subject of State concern." *Commonwealth v. Petralia*, 372 Mass. 452, 456 362 N.E.2d 513, 517 (1977). See also *Opinion of the Justices*, 297 Mass. 559, 563-564, 566, 8 N.E.2d 179, 181-183 (1937). The responsibility for ensuring that unsafe or illegal parking along James Street does not impede access by emergency vehicles lies not LSM, but with the Town.

This conclusion is also in keeping with 760 C.M. R. 31.06 (8), which states that a denial which is based upon the inadequacy of existing municipal services, in this instance safe and adequate parking adjacent to public playing grounds, the Board shall have the burden of proving that the installation of services adequate to meet local needs is not technically or financially feasible. The Board has made no effort to do so and has not

indicated why it is not technically or financially feasible to ensure that James Street is maintained in a passable manner for vehicle access, and specifically access by emergency vehicles. Therefore, the Board has failed to meet its burden in showing that there is a valid local concern supporting the denial of this project based on either 760 CMR 31.06 (6) or (8).

B. Fire Department Access to the Building

The Board next argues that as there is no direct vehicle approach to the two units located on the opposite side of the building from the fire lane, there is no way for response equipment and personnel to safely and efficiently reach the lower two units in emergency situations. Tr. 1, 30-31. The Board asserts that this configuration would require fire personnel to park in the front of the building and carry hoses and other equipment down this walkway and stairs. Tr. II, 37, 81-82. This would be unsafe in normal conditions, but is likely to result in physical harm to responding emergency personnel during winter snow and ice conditions. Tr. II, 83. Due to the inadequacy of emergency access to the back two units, the Board concludes that the building does not meet the mandates of 527 CMR 25.07, which requires a clear unobstructed way shall be provided from such fire apparatus access point to all exits of such building.

According to the testimony of the LSM's expert on fire protection and building codes, 527 CMR 25.07, only requires access to one side of the building. Tr. II, 26-27. As the project provides for a fire lane access along the entire front of the building, LSM has met the requirement of this regulation. TI, 5; Tr. II, 26-27; Exh. 12. The Town does not have a written regulation regarding the requirement that access be provided to more than one side of a building. Tr. II, 86. Although not yet adopted in Massachusetts, the National Fire

Protection Code establishes that the farthest point on the exterior of a building from a fire lane or public street should be no greater than 450 feet. Tr. II, 27-28; Exh. 12 at 4. The farthest point from the fire lane for this project is 90 feet and all areas within the farthest unit are less than 150 feet from the parking area. Tr. II, 28; Exh. 12 at 4.

In addition, LSM notes that the building proposed for this project is classified as a User Group R-2, residential. Tr. II, 17. As such there are certain requirements with regard to egress requirements for the building. Tr. II, 19. This project proposes five separate, ground level points of egress along with windows that satisfy all applicable requirements. Tr. II, 20. Additionally, the project also complies with all applicable codes and regulations for smoke detection systems. Tr. II, 20. The project exceeds the regulations in that it provides for a building wide alarm system. Tr. II, 21. The sprinkler system for this project will exceed the applicable requirements of NFPA 13R, by providing a system that will sprinkle the entire building including the attic and crawl space. Tr. II, 21. The operation of the sprinkler system is expected to control most fires in the proposed building. Exh. 12 at 4.

Based on the testimony and evidence provided, LSM has established that access to the building is adequate and that it meets or exceeds federal or state statues or regulations, or with generally recognized standards for on-site fire suppression access, as well as providing for fire protection and early warning systems. The Board has failed to show that the fire protection measures proposed for this development are inadequate and form the basis of a valid local concern.

IV. CONCLUSION

Based upon review of the entire record and upon the findings of fact and discussion above, the Housing Appeals Committee concludes that the decision of the Town Board of Appeals is not consistent with local needs. The decision of the Board is vacated and the Board is directed to issue a comprehensive permit as provided in the text of this decision and the conditions below.

1. The comprehensive permit shall conform to the application submitted to the Board except as provided in this decision.

2. The comprehensive permit shall be subject to the following conditions: The development shall be constructed as shown on drawings entitled "Affordable Housing Highland Ave., North Chelmsford, MA." Exhibits 2 & 3.

The entrance to Highland Avenue will include a mountable curb that prohibits left-hand turns, to keep vehicles from crossing both lanes of traffic when entering or exiting.

3. Should the Board fail to carry out this order within thirty days, then, pursuant to G.L. c. 40B, s. 23 and 760 CMR 31.09(1), this decision shall for all purposes be deemed the action of the Board.

4. 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 in all particulars shall be in accordance with all presently applicable local zoning and other by-laws 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.

(e) The Board shall take whatever steps are necessary to insure that a building permit is issued to the applicant, without undue delay, upon presentation of construction plans, which conform to the comprehensive permit and the Massachusetts Uniform Building Code.

This decision may be reviewed in accordance with the provisions of G.L. c. 40B, s. 22 and G.L. c. 30A by instituting an action in the Superior Court within 30 days of receipt of the decision.

Date: August 2, 2004

Housing Appeals Committee

Werner Lohe, Chairman

Joseph P. Henefield

Marion V. McEttrick

Glenna J. Sheveland, Counsel