

HOUSING APPEALS COMMITTEE  
Acton Housing Authority

Decision # **72-09**  
Appellant: **Acton Housing Authority**  
Appellee: **Board of Appeals in the Town of Acton**  
Date: **July 18, 1974**  
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Statement of the Case

The Acton Housing Authority, a housing authority organized and existing under the provisions of the Massachusetts General Laws, Chapter 121B (hereinafter referred to as the "Appellant") submitted an application to the Board of Appeals of the town of Acton (hereinafter referred to as "the Board") for a comprehensive permit to construct 68 units of housing for the elderly on a 5.5 acre site off Elm Street in the town of Acton. The application was submitted under the provisions of MGL., Ch. 40B, Sec. 20-23.

The construction cost for future subsidy financing is to be financed by the Massachusetts Department of City Affairs (hereinafter referred to as "DCA"). After notice pursuant to MGL., Ch. 40A, Sec. 17, a public hearing was held in the town of Acton at which time the Appellant presented the proposal to the Zoning Board of Appeals.

Opportunity to be heard was ended to proponents and opponents of the application. Approximately one month later a second session of the hearing was conducted by the Zoning Board of Appeals. The secretary for the Zoning Board of Appeals kept the minutes of the meetings, and they were attached to the appeal to the Housing Appeals Committee.

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The Zoning Board of Appeals filed its decision within the appropriate time as provided by Ch. 40B, Sec. 22 and a copy of the decision accompanied the appeal to the Housing Appeals Committee. In the decision denying the application to the Housing Authority, the Zoning Board of Appeals set forth as its principal concern "adequacy of the site for the proposed elderly housing use." The Board said specifically, "it therefore, finds unacceptable the premise by the petitioner that in fact this is the best site available" The Board further stated, "the Board of Appeals finds the safety of the occupants of the proposed housing to be in serious doubt. The site is more than one-half mile from the nearest shopping center with no public transportation service available... The streets over which travel to the above-mentioned shopping center would be accomplished are without sidewalks or adequate shoulders of any kind." The Board further stated as a reason for its denial for the application "that on the 5.5 acres

under consideration there is a dense development occasioned by the location of structures, parking lots and leach field which preclude outdoor recreation as a part of overall health program of the occupants."

The final area of concern voiced by the Board in its denial is the "Board's awareness of possible marginal overall drainage of this site. The existence of a large multiple dwelling complex within the immediate vicinity which is now experiencing a failure of previously approved drainage and septic systems indicates that caution in considering similar sites in the sane area must be exercised."

There is no doubt that the Appellant can obtain sufficient property interest in the site to maintain the application since the housing authority can take the land by eminent domain. Statutory minima set forth in Oh. 40B are not items of issue in this case.

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#### ISSUES

Section 23 states that the appeal hearing before HAC, in the case of a denial of the comprehensive permit by the Board, "shall be limited to the issue of whether the decision of the bard of Appeals was reasonable and consistent with local needs."

The definition of "consistent with local needs" in Sec. 20 and the discussion in the S.J.C. decision of the concept of "reasonable and consistent with local needs" indicates the following guidelines in resolving this issue.

First, we need not make any special inquiry as to reasonableness since "reasonableness" is subsumed in "consistent with local needs."

Secondly, in determining "consistency with local needs," we apply general tests:

(1) We inquire whether any one of the three mathematical criteria set out in Sec. 20., i.e. the 10%, 1 1/2% or 0.3% criteria has been met. If any one of these criteria has been met, we must uphold the Board' s denial as "consistent with local needs."

(2) If no one of the three mathematical criteria has been met, we apply the second general test. This requires us to balance certain factors - health and safety hazards or valid planning concerns, i.e., site or building design, or need for open space, against regional low income elderly housing needs, together with the number of low income persons in the town (see Sec. 20).

Although the Zoning Board of Appeals was concerned that the project would pose health or safety hazards to the occupants of the proposed development, the Appeals Hearing concerned itself primarily with one issue: namely, do any valid planning objectives

to the details of this proposal outweigh the

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the required need for low income elderly housing?

As has been stated, it was stipulated by the parties that the town of Acton does not meet any of the three mathematical statutory criteria set forth in Sec. 20. It was also stipulated that a number of low income elderly persons reside within the town of Acton and that there is a regional need for low income elderly housing. Since the local and regional need has been established, we need only determine whether or not health and safety hazards or valid planning concerns exist which outweigh the housing need and justify the denial of the application by the Board of Appeals. In its Hanover and Concord Decision, the S.J.C. required that in balancing the objections to the plan against the need, the fact that the city has not met its minimum housing standards as defined in Section 20 is "compelling evidence" that the regional need for housing does in fact outweigh the objections to the proposal. [1]

1. AVAILABILITY OF OTHER SITES IN THE TOWN.

The HAC has before it only one site which is the subject of this appeal case. The administrative decision by the Acton Housing Authority (the Appellant here) has been approved by the Financing Agency (Mass. Department of Community Affairs) and the HAG will not intervene in the official administrative decision of the appellant as approved by The question is not whether this is the "most ideal" site for housing for the elderly but rather whether the site selected can qualify under the provision of MGL., Ch. 40B, Secs. 20-23. We concur with the statement in the Appellee town's brief "intelligent planning is not be disregarded in the enthusiasm for building needed housing" but would go on to point out to the Appellee that the state depot which approved the Housing

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[1] Hanover and Concord Gases, SJC 1973 Advance Sheets, p. 515

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Authority's selection is the chief planning agency of state government and that its approval of the site was not in any way

restricted or reserved. [2] The real question is whether the plan for this site as selected and approved by the financing agency, not some other site (which in the case of the Windsor Avenue site was rejected by DCA) is reasonable and consistent with local needs.

2. IS THE SITE WITHIN SAFE WALKING DISTANCE OF NEIGHBORHOOD SHOPPING FACILITIES?

The committee viewed the locus and the surrounding neighborhood and also the village of est Acton and its shopping sections and the business areas north and south of the intersection of routes 111 and 27. There was testimony concerning the routes which would be taken by the tenants for shopping and related activities. The Chairman of the local council on the aging testified in detail on the adequacy and suitability of the site for elderly residents (Tr. V.2 p.4-80). There was also substantial evidence in the same areas of the transcript concerning the present and proposed services provided by the Acton Council on the Aging.

### 3. SIDEWALKS

There was evidence produced at the hearing that there was a program in effect in Acton to extend sidewalks in the town. The evidence produced by Ms. Julia Stevens (Tr. V.1, p. 83) showed that sidewalk development had been proceeding in the area adjacent to the locus which is the subject of this appeal. There was further evidence produced by the witness that they would be extended to the site very shortly. The Appellant's attorney in his brief has set forth as a fact that the work has actually been completed.

### 4. OUTDOOR RECREATION

The HAC has considered the site and the plans for its development and finds that there is adequate area in the proposal for any type of recreation appropriate to the needs of the users of the housing.

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[2] See Tr., 11/27/72 P.4041 especially Mid. 41 where it is stated that the other site had been granted tentative approval by D.C.A. D.C.A. withdrew its approval of the other site.

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### 5. DRAINAGE AND SEWAGE

The Appellant prepared detail plans to show that the drainage on the site be accommodated by ditches and a holding pond (Tr. V.2-24). Joseph Hart, a qualified engineer, testified that the flood plain was at two hundred four (204) feet (Tr.V.2-18), the water table was two hundred five and 45/100 (205.45) feet (Tr.V.2-17, and the leach bed would be five feet above the water table (Tr.V. 2-18). A water problem existing on property Northeast of the locus would also be accommodated (Tr.V.2-20). The holding pond would also take care of any speed up of run-off water because of the development (Tr.V.2-21,24). Mr. Calichmen of the Acton Board of

Health initially, and Mr. Joly of the State Department of Health found no serious problems with drainage and sewage disposal (Exhibits 10b and 18).

The only evidence on this issue on behalf of the Appellee was the testimony of Mr. Calichman (Tr.V.2-91-108). Mr. Calichman became Health Director for Acton in January, 1972 (Tr.V.2-100).

Mr. Calichman further responded to a question of what his opinion of this site or sewage disposal system is as follows: (Tr.V.2-p.95)

"Well, basically, I felt that it did pass the criteria. The deep test hole does have to be properly designed. You do have to bring in an extensive fill to get above the proper elevation, above the water table."

Since the proposed-on site disposal system must in the long run conform to approval standards of the state agency and since such approval will be made a condition of the permit, we find that the issue of sewage and drainage is properly addressed and answered by the Appellant.

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#### FINDINGS, RULINGS AND ORDER

In view of our subsidiary findings and rulings, and upon a review of the whole record, under the provisions of G.C. Ch. 40B, ss. 23, the Committee rules that the decision of the Hoard of Appeals of the Town of Acton was unreasonable and not consistent with local needs.

The decision of the Board is hereby vacated and the Hoard is directed to issue a comprehensive permit to the Appellant.

Said comprehensive permit shall provide for the construction of a housing development on the locus which is the subject of this appeal in the approximate number of units and design as presented before the Housing Appeals Committee, subject to such changes in site and building design, and amenities, as are recommended or required by the subsidizing agency.

Said comprehensive permit shall be subject to the following conditions:

- (1) Construction shall in all particulars be in accordance with all present applicable zoning and building by-laws for the construction of multi-family apt buildings, except those which are not consistent with this decision.
- (2) No construction shall commence until detailed construction plans and specifications, substantially in accordance with the preliminary plans submitted to the Housing Appeals Committee, shall have been

approved by the Massachusetts Depot of city Affairs.

- (3) No construction shall commence until the petitioner has provided the Board with satisfactory evidence that its proposed provisions for sewage disposal have received approval from the appropriate state authorities.
- (4) The comprehensive permit shall provide as a condition thereof that

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prior to final financial commitment, the Depot of Community Affairs shall, as part of its project review, comply with the requirements of the Massachusetts Environmental Policy Act, G.L. Ch. 30, ss 61-62.

- (5) The Housing Authority shall provide at least one automobile parking space for each unit of housing constructed under this comprehensive permit.
- (6) If anything in the decision of this Committee would seem to permit the building or operation of such housing in accordance with standards less safe than the applicable building and site plan requirements of the Depot of Community Affairs, the standards of D.C.A. shall control.
- (7) The comprehensive permit shall provide that local officials shall carry out compliance inspections in the usual manner. Should disagreement between the builder and local officials arise, certification by the Department of Community Affairs, if requested, shall be adequate proof of compliance with any requirement under the comprehensive permit, or any of the other terms of this order.

HOUSING APPEALS COMMITTEE

Maurice Corman, Hearings  
Officer

William C. Ames

C. Wesley Dingman

SUBSEQUENT HISTORY: Affirmed, No. 1248, Suffolk Superior Court, November 18, 1974.

End Of Decision

