

HOUSING APPEALS COMMITTEE
Country Village Corporation

Decision # **70-03**
Appellant: **Country Village Corporation**
Appellee: **Board of Appeals of the Town of Hanover**
Date: **September 13, 1971**
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BACKGROUND

On April 27, 1970, Country Village Corporation, the appellant, submitted an application to the Board of Appeals of the Town of Hanover (hereinafter called the Board) for a comprehensive permit to erect 88 units of low and moderate income housing for the elderly on approximately 10 acres of land situated at Oakland Avenue, Hanover, Massachusetts.

The Board held public hearings on May 20, 1970, June 10, August 16 and September 16. On December 1, 1970 the Board filed with the Town Clerk its decision denying the application for a comprehensive permit.

The appellant duly filed an appeal with the Housing Appeals Committee (hereinafter called the Committee) on December 18, 1970. The appellee filed its answer on January 20, 1971. Thereafter the Committee held public hearings on March 5th and March 12th, 1971. The Committee made a verbatim stenographic record of these hearings.

The application for the comprehensive permit, and the subsequent proceedings above described, were instituted pursuant to Chapter 774 of the Acts of 1969, now G.L., Chapter 40B, Secs. 20-23.

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PROCEDURAL RULES

The Housing Appeals Committee conducted its hearings under the provisions governing adjudicatory proceedings set forth in Chapter 30A of the General Laws.

This Chapter provides in Section II (2) as follows:

"Unless otherwise provided..., agencies need not observe the rules of evidence observed by the courts, but shall observe the rules of privilege recognized by law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs..."

ISSUES BEFORE THE COMMITTEE

The statute (G.L., Ch. 40B, Sec. 23) defines the issue before

the Housing Appeals Committee as follows:

"the hearing by the Housing Appeals Committee... shall be limited to the issue of whether, in the case of the denial of an application, the decision of the board of appeals was reasonable and consistent with local needs..."

BURDEN OF PROOF

We agree with the appellee that the burden of proof is on the appellant.

The court established in *Dion vs. Board of Appeals of Waltham*, 344 Mass 547, at 555, 1962, and reaffirmed in *Sullivan vs. Board of Appeals*

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of Canton, 345 Mass 117, at 120, 1962, the principle, that in seeking a zoning varieance:

"the burden rests upon the person seeking the variance to produce evidence at the hearing in the Superior Court that the statutory prerequisites have been met and that the variance is justified."

While these cases dealt with the "burden of going forward", the implication is clear that the same principle applies to the burden of proof.

We do not agree with the appellee that to sustain the burden of proof the appellant must show that the denial of the application by the Board was "whimsical, capricious or arbitrary."

The cases cited by the appellee for this proposition are clearly distinguishable.

In *Gulf Oil Corp. vs. Board of Appeals of Framingham*, 335 Mass 275, 244 N.E. and 311 (1969), the court was construing a zoning enabling statute that stated that a zoning by-law may provide that exception be allowed, and that the board of appeals may grant a variance in its judgement...

The court rightly held that this statute and the by-law and the rules and regulations thereunder set up a broad criterion of discretionary powers in the board of appeals; so broad that the mere fact that an appellate court disagreed with the board of appeals did not mean that the action of the board could be called "arbitrary and

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capricious". Nor did it justify the appellate court in substituting its judgement for that of the board of appeal.

By contrast the sparer and sterner language of Ch. 774 sets

up a much simpler criterion. The appellant, to sustain his burden of proof, must prove only that the action of the Board is not reasonable, and is not consistent with local needs.

The other case cited by the appellee in this connection, *Kidder vs. City Council of Brockton* 329 Mass 288, 107 N.E. 2d 774 (1952), is distinguishable on the same ground. There too the court was construing another statute, which prescribed a criterion for judgement much different than in the case at bar.

WAS THE DENIAL BY THE BOARD REASONABLE?

The Board, in denying the application for the comprehensive permit, set forth seven grounds for its action. These are tabulated as follows:

- a. Chapter 774 of the Acts of 1969 could be held to be unconstitutional.
- b. Appellant does not own the site on which the project is to be built. (Board Decision, par. 1(c), (p.5))
- c. Appellant is not a limited dividend corporation. (Board Decision, par. 1(c), (p. 5)).
- d. There is no actual need for low and moderate income housing in Hanover. (Board Decision par. 1(c), (p.5))
- e. The project would increase traffic congestion and would not be acceptable for the present road construction. (Board Decision, par. 2(a), (p.5)).

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- f. Appellant failed to submit adequate plans incorporating changes recommended by the Board. (Board Decision, par. 2(b), (e), and (f), (p.5 and 6).)
- g. Appellant failed to submit to the Board sewage plans acceptable to the State Department of Public Health or to the Hanover Board of Health.

In discussing whether the Board's action was reasonable, it is proposed to discuss each of the grounds enumerated above separately, except that the constitutional issue will be discussed last as a separate section.

Property Interest in the Site

The appellant has sufficient property interest in the site to qualify as the applicant. The site in question is owned by Mr. George Oulton, President and Treasurer of appellant corporation and his wife, Anne R. Oulton, Director of the appellant corporation.

(Appeal, par. 2, attachment A, Answer par. 2, Tr I 10, Exs. 1, 3 Board Decision Ex. A Tr. I 27, 28, II 32, 33.)

The owner leased the locus to the appellant corporation, the lease to take effect on April 10, 1970, for a 55 year term

with renewal options for an additional 20 years. Notice of the lease was filed with Plymouth Deeds, June 9, 1970.

The appellant's long term leasehold estate gives it sufficient ownership standing to apply for this comprehensive permit.

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Canton vs. Board of Appeals of Lexington, 321 Mass 649, (1947)
Dion vs. Board of Appeals of Waltham, 344 Mass 547, (1962)

The existence of the lease was not disclosed at the Board hearings, although all the other facts reported above were

disclosed. The appellant claims that no member of the Board questioned the appellant's standing to make application for a comprehensive permit (Appeal, attachment D-G. Tr I 27-28 II 32-33).

We find on the facts that the appellant did have a property interest in the site, and rule, on the basis of the cases above cited, that the appellant did have standing to submit this appeal.

The lease provides for a rental Of \$150 per month which becomes 5% of the gross rentals after the 88 units have been constructed. It provides that the property will revert to the lessor at the expiration of the lease.

Had the Board been in possession of the facts relative to the lease, denial of the comprehensive permit would still have been unreasonable, assuming its other objections were satisfied, because the Board could have decided to exercise one of the following options, either of which this Committee would have found reasonable.

1. The Board could have decided to treat the lease as if its terms had been bargained out at arms length between two separate parties. It could have issued the comprehensive permit without conditions on this point, and left it to the financing agency to decide if the terms were sufficiently reasonable from a business point of view to justify their financing.

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2. The Board could have decided that this arrangement, where the lessor and the lessee are not dealing at arms length, may give to the lessor advantages that the Legislature did not intend when it designated limited dividend private organizations as one category of eligible applicants under Ch. 774. In that case, the Board could have issued the comprehensive permit subject to the condition that the appellant and lessor submit to the Board a statement setting forth in full detail the terms of the lease, and the reasons for electing to lease rather than to deed in fee simple; such statement to be in sufficient detail to satisfy the Board that it constituted a full disclosure, and such statement to

be included as part of the appellant's application to the M.H.F.A. (or other financing agency).

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Limited Dividend Organization

We strongly disagree with the Appellant's contention that the question of whether or not the Appellant is a limited dividend organization is not within the scope of relevant inquiry by the Board, which is whether or not issuance of the comprehensive permit would be "consistent with local needs"; and that the question of site ownership has relevance only to the applicant's ability to obtain financing, which is not a concern of the Board.

In our view status as a limited corporation and ability to obtain financing are "reasonable" concerns of the Board before the Board ties up a piece of potentially developable property with a comprehensive permit, or risk encouraging a financially weak developer to embark on what could potentially become a local and financial disaster.

The statute (Ch. 40B Sec. 21) provides that application for a comprehensive permit may be submitted only by a public agency, limited dividend or non-profit organization. The Board was clearly entitled to be shown that the applicant qualified under one of these categories to have standing to pursue this application.

In fact the appellant did satisfy this requirement. The Rules and Regulations of the Housing Appeals Committee define a "limited dividend organization" as follows:

"Limited Dividend Organization means any applicant which (a) proposes to sponsor housing under Chapter 40B, and (b) is not a public agency and (c) is eligible to receive a subsidy from a State or Federal Agency after a comprehensive permit has been issued." (Rules and Regulations of Housing

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Appeals Committee, 1(f)).

The appellant corporation is an eligible applicant for a comprehensive permit. The appellant corporation sets forth in its articles of organization the fact that the corporation is organized for the specific purpose of constructing low and moderate income housing. The articles of organization further state that the appellant may not make any distributions to a stockholder in any year in excess of the amount allowed by Chapter 708 of the Acts of 1966 as amended, and this was done in order to insure the appellant's eligibility for state and federal subsidies under the state and federal programs.

The Appellant submitted its articles of organization to the

Board, and also a letter from the M.H.F.A. which indicated that Appellant is a limited dividend organization eligible for this type of financing, and that "if the local approvals are given, or approval is secured through Chapter 774 of the Acts of 1969, a loan probably would be issued." (Board Record Exhibit Q. Appellee's Answer (9)).

Testimony from the Board chairman indicated they were leaving the question of eligibility as a limited dividend organization to the appropriate state agencies, and that they did not intend to deny the Appellant's application for a comprehensive permit on this ground. (Tr. II 83-84-85; Appeal, Attachment E).

We find that the Appellant is a limited dividend organization within the meaning of Chapter 774 and the Rules and Regulations of the Housing Appeals Committee.

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Traffic and Parking

The Appellant's traffic consultant submitted an exhaustive traffic report, (Exhibit 9) and testified at length. (Tr. (101)

The minimal daily trip generation per day from elderly tenants, and the comparatively light total traffic on Oakland Avenue, from actual count at peak travel periods, compared to the total traffic capacity of Oakland Avenue and Washington Streets, uncontroverted, clearly warrant a finding that traffic generated by this development will have an absolutely minimal effect on traffic flow in the area abutting the locus,

Plans submitted showed one parking space provided for each unit, a total of 88 parking spaces (Tr. I 53, 61). In a 120 unit elderly development in Framingham only 50 parking spaces were provided. An actual night count at this development showed 40 cars parked of which many, covered with ice and snow, were obviously not in daily use. The number shows however, roughly, the proportion of elderly in these developments who own cars. (Tr. I 100, 104, 169). This indicates that a ratio of one parking space per 2.4 housing units was shown to be adequate. Newton's zoning ordinance requires only one parking space per four apartment units. (Appellant's Exhibit 16).

We find that by the provisions of one parking space for every dwelling unit sufficient parking will be provided for both tenants and guests.

Plans

The record shows that applicant submitted with its application for a comprehensive permit copies of all plans then requested by the Board

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in the form instruction sheet furnished the applicant. Before the end of the hearings the applicant had submitted site plans showing the location of the buildings, walks, driveways and sewer lines; sewage plans, foundation details, social center and service buildings. (Tr. I 40, 41, 46, 48, 49). The plans as submitted met the Hanover Building Code and were approved by the Hanover Building inspector except for a change relating to firestops to which the parties had agreed. (Tr. II 67, 78)

Driveway Plans

The plans show a driveway system to a turn-around parking space inside the development for vehicular traffic, and a separate set of foot paths connecting the units and leading out of the development, thus making walking on automobile driveways unnecessary. In addition, auto traffic can drive on the foot paths in an emergency. (Tr., (25-26 Appeal, Attachments E & F).

The proposed driveway is a private driveway and not a public street. It is twenty feet wide (Tr. 53-61-62), adequate for both passenger vehicles and fire trucks to pass. (Tr., I 62, 103, 104 II 39, 46). Few cars would normally use the driveway at any one

time (Tr. I 103). Since adequate parking is provided and it is all off-street, no parking would obstruct the driveway. (Tr. I 63)

The Board produced witnesses who testified that the driveway should be a minimum of forty feet up to "double" street in width.

Oakland Avenue has a paved area of only twenty feet (Tr. I 14, 55, 97; II 40) and the average street in Hanover is between 18 and 32 feet. (Tr. II 38)

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present width of Oakland Avenue adequate for emergency vehicles, (Tr. II 37) even though at times cars would possibly be parked on that street.

The driveways, walkways, site design, unique building design and placement of the units and landscaping were all designed by Architects Collaborative, a well-known, highly experienced and competent firm. Mr. Peter Morton, its Principal, testified to the adequacy of all these items. In addition, Norman Abend, the traffic engineer testified to the adequacy of the driveway system.

It is difficult to justify the insistence by the Board that the driveway to this development be wider than the public street (Oakland Avenue) from which it leads.

We find that the driveway plans are adequate.

Landscape Plans

The site is particularly easy to landscape because of an abundance of trees which will remain. (Tr. 1 49). The topography of the site requires a minimum of grading (Tr. I 65). It is not even contemplated that fill from the outside will be necessary.

An attractive landscape projection was shown to the Board and not questioned (Tr. II 94)
We find the landscape plans adequate.

Wiring and Plumbing Plans

The appropriate town officials approved the plans submitted by the Appellant, and stated that neither wiring nor plumbing plans were required from Appellant as such matters are subject to state codes to which Appellant must, as a matter of course, adhere.

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Fire Chief Slaney testified at the May 20, 1970, hearing before the Board that fire safety requirements would have to meet FHA requirements and that he had nothing to add to these requirements. (Tr. II 48-50)

Subdivision Plans, Zoning Requirements

The discussion of these subjects is deferred to the discussion of the constitutional issue and the interpretation of Chapter 774.

Drainage and Sewage Plans

The only significant plans requested by the Board which the applicant failed to supply were a set of revised drainage and sewage disposal plans.

The plans for a subsurface sewage system had been submitted with the original application, (Tr. I 70-71), but tests later taken showed the soil unsuitable.

Alternative schemes were explored including an extended aeration plant that had been approved by the State for nearby Hanover Mall (Tr. I 59, 60, 61, 71, 72, 76, 81, II 62-63).

The cost to design this system would be \$10,000 to \$15,000 (tr. 73), and the cost of designing a comprehensive drainage plan (which normally is prepared at a later stage (Tr. I, 70) would be an additional \$15,000 to \$20,000 (Tr. I 77)

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In addition, it had been clearly indicated by this time that the town officials intended to deny the application, and let the matter go up to the Housing Appeals Committee. At the Board hearing on August 26, 1970, the Board chairman stated that:

"if it is the interest of the Town of Hanover to take it to Court, the Board of Appeals has to go along with them. From now on it would be facetious of us to ask you

(the appellant) for specifics, knowing it would cost money." (Tr. II 102)

It was clearly unreasonable to expect the applicant to make this large investment with no assurance that he would receive his comprehensive permit after he had spent this money.

Further, since sewage and drainage for this size of project required compliance with the State Code, it stood in the same position as the wiring or plumbing. Even if the Board had issued an unconditional permit, the Board was protected on the sewage and drainage, since the applicant must comply with the State Sanitary Code in any event, and receive the approval of the State Water Pollution Control Division and the State Department of Public Health.

The Board could have made the issuance of a comprehensive permit conditional on approval by the proper state authorities of a satisfactory drainage and sewage disposal plan.

We consider inapplicable the argument that the applicant had to comply, as a condition precedent to receiving a comprehensive permit,

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with paragraph 2.5 of Article XI of the State Sanitary Code, which provides in part that

"No building or plumbing permit shall be issued until a Sewer Entrance Permit or Disposal Works Construction permit has first been obtained" (Appellant's Exhibit 11).

That provision applies to an orthodox building permit, such as was issued in the Hanover Mall situation (Tr. II 56). It does not apply to the comprehensive permit safeguarded with conditions contemplated by Chapter 774.

We rule, therefore, that insofar as the denial of the comprehensive permit was based on applicant's failure to supply satisfactory drainage and sewage plans at the time of the hearing, the action of the Board of Appeals was unreasonable.

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"CONSISTENT WITH LOCAL NEEDS"

The definition of this term is set out in Ch. 40B Sec. 20 which states in part as follows:

"requirements shall be considered consistent with local needs if they are reasonable in view of the need for low and moderate income housing considered with the number of low income persons in the city or town affected..."

There follows a mathematical formula which in effect says that there is a local need under the statute where (1) less than 10% of the housing units of a town consist of low or moderate income housing, or on sites less than 10% of the total land areas; or (2) the application would not result in building of more than 0.3% of such land or 10 acres, whichever is the larger, in one calendar year, with certain exceptions.

An exhibit entitled "Maximum Housing and Annual Land Area Guidelines for Hanover Massachusetts" under Chapter 774 (Exhibit 14) prepared by the Metropolitan Area Planning Council, the regional planning body for this area, showed that under the statutory formula there exists a current deficit for this kind of housing of 165 units, and that under the same statutory formula there is available annually for this kind of development 25.9 acres.

This application is for 88 units on ten acres.

The evidence showed that there is a need, both actual and under the statutory provisions above noted, for low and moderate income housing in Hanover. A town meeting report (Exhibit 12) showed that over 100 elderly Hanover residents both desire and would be eligible for such housing. A 1969 supplement to the Town Plan (Exhibit 15) projects a

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steady increase in elderly persons residing in Hanover.

The Board accepted the fact that a statutory need for low and moderate housing existed in Hanover. (Tr II 104-106) The Board also admitted in its answer that at the present time there is no

low or moderate income housing in Hanover.

Reference has been made above to the caliber of the professional attention that went into landscaping, provisions for adequate driveways and pedestrian safety, and unique site and building design and placement in relation to the surroundings.

We find that there is a need, both actual and under the mathematical parameters in the statute (Ch. 40B Sec. 20) for this kind of housing in Hanover. We find further that the proposed development comes within the requirements of regional need set out in the statute, that adequate safeguards have been provided for the health and safety of occupants and residents, or, in the case of sewage and drainage can be safeguarded by a condition in the comprehensive permit, and that proper steps have been taken to assure better site and building design in relation to the surroundings.

We rule that the proposed development is "consistent with local needs" within the meaning of Ch. 40B, Sec. 20, and that the appellant has sustained the burden of proving that the action of the Board in denying its application was not "consistent with local needs."

THE CONSTITUTIONAL ISSUE

We disagree with the appellant's contention that the Board could not challenge the constitutionality of Chapter 774 in this review. The

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appellant bases its argument on the statute previously quoted (G.L. Ch. 40 Sec. 23) limiting the inquiry "to the issue of whether...the decision of the board...was reasonable and consistent with local needs". The appellant argues further that this language does not embrace the question of the constitutionality of the legislation.

The question of constitutionality lies at the heart of any legislation. The Board is entitled to challenge the constitutionality of Chapter 774 at the first opportunity, and this appeal is its first opportunity.

It would be a novel approach to argue that when a constitutional attack on a statute is made before a reviewing body, the body cannot consider the question unless the statute by its terms confers that power.

While the appellee's decision stated that the statute "Could" be found to be unconstitutional, the appellee's brief dealt with this issue at some length. In covering the matters raised in the appellee's brief we propose to follow the rule stated by Qua J. in Attorney General vs. Inhabitants of Dover 100 N.E. 2nd 1, 5 (1951), and deal only with the constitutional issues raised in this case, and not with the general question of the constitutionality of Chapter 774.

The Appellee argued that Chapter 774 is so vague as to be void under the Fourteenth Amendment to the Constitution of the United States and Article 12 of the Declaration of Rights of the

Constitution of the Commonwealth.

The principle is enunciated in the case of O'Connell vs. Brockton Board of Appeals, 181 NE 2nd 800 (1962), which holds that a statute, ordi-

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nance, or regulation, (in that case it was a zoning ordinance) which is so vague that persons of intelligence must guess at its meaning and differ as to its application, violates the first essential of due process and is void and unconstitutional.

We rule that Chapter 774 is clear in its language and intent, and free of the fatal vagueness that rendered void and unconstitutional the ordinance in the O'Connell case (supra).

To support his contention that Chapter 774 is so vague as to be constitutionally void the appellee contends that it raises but does not answer a number of questions. To support our ruling we

propose to show that there are clear answers to those questions, and that those answers come from the statute itself. We take the liberty of abbreviating the questions.

At the same time our answers to these questions will dispose of the argument of the appellee that the appellant failed to comply with Hanover's Zoning By-Law, and its Subdivision Rules and Regulations.

Question 1. Does the act restrict multi-family housing to districts so zoned, or is the board obligated and empowered to allow such housing in districts not so zoned?

Answer. Ch. 774 says that the Board of Appeals is empowered and obligated to allow multi-family units in zoning districts that heretofore did not allow multi-family units, if such action is reasonable and consistent with local needs.

The cases cited by the appellee invalidating spot zoning under Chapter 40A, and purporting to prove that Ch. 774 did not intend to

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cut into local powers over zoning, are distinguishable.

Senkarnick vs. Atty. General, 319 Mass. 34 1,257 NE 2nd 470 (1970), and Smith vs. Board of Appeals of Fall River, 65 N.E. 2nd 547 (1946), both struck down local zoning by-laws on the ground they went beyond the powers granted under the Zoning Enabling Act (Ch. 40A), and in effect authorized spot zoning.

The distinguishing feature of those cases is found in language in the Smith case where the court said, of the zoning ordinance amendment it declared invalid:

"The suggestion is made that the amendment was adopted in an attempt to relieve the acute housing shortage by providing living accommodations for additional families. But however laudable the purpose may be, a municipality cannot in this manner wander beyond the confines of the

statutory authority under which alone it can act on the subject matter. Only the Legislature can determine whether existing conditions call for a relaxation of the rules." (Underlining ours).

And that is precisely what the legislature did in passing Chapter 774. These words, written in 1946, are almost prophetic. Where Chapter 774 applies, therefore, it is no longer a valid objection that a comprehensive permit may create spot zoning. Where the Zoning Enabling Act, or local zoning by-laws say otherwise, they are superseded by Chapter 774.

The broad powers of the Legislature in this area are stated in language in Bennett vs. Board of Appeal of Cambridge, 268 Mass. 419, 422, 167, NE 659, 660, quoted and affirmed by Qua, J in

vs. Dover, 100 N.E. 2nd 1, 3 1951:

"The power of the General Court over the subject of zoning is supreme. Article 60 of the Amendments to the Constitution. When it has spoken as to any branch of that subject, conflicting by-laws or ordinances established by local authority must give way."

In enacting Chapter 774 the legislature has spoken, and it has spoken clearly and unequivocally.

We must recognize that in instances where Chapter 774 applies, the Zoning Enabling Act (G.L. Ch. 40A) local zoning by-laws, subdivision regulations, building codes and all other applicable rules and regulations must give way before the new criteria of reasonableness and consistency with local needs.

Question 2. Can the local board, under Chapter 774, insist that the applicant conform to local zoning by-laws or subdivision laws?

Answer. Yes it can, where the facts found warrant the conclusion that the zoning requirements are, under the circumstances, reasonable and consistent with local needs. In other words the board of appeal can insist on following the zoning requirements; not, however, qua zoning requirements, but because they are reasonable requirements.

Questions 3 and 4. Is Chapter 774 inconsistent with Chapter 40A, which grants powers to cities and towns to establish zoning districts and procedures for granting special permits and variances?

Answer. It is true that where Chapter 774 applies it has

superseded and made considerable inroads into rights and powers previously reserved to local cities, towns, and boards of appeal under the Zoning Enabling Act. This was clearly the legislative intent.

Question 5. Is the applicant for a comprehensive permit under Ch. 774 in a special category, or do the same state and local rules and regulations apply to him as to any other applicant for a building permit?

Answer. The applicant for a comprehensive permit is in a "special" category only to the extent that Chapter 774 puts him in a special category. In all other respects, and where Chapter 774

is silent, he is subject to the same state and local rules and regulations as any other applicant for a building permit.

Subdivision Plans; Zoning Requirements

In view of our discussion of the applicability of local subdivision and zoning by-laws and regulations, on an application for a comprehensive permit under Chapter 774, and on the basis of our previous findings and rulings on reasonableness and consistency with local needs, we rule that the insistence by the appellee that the appellant conform to its local zoning by-laws and subdivision rules and regulations, was unreasonable.

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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.L. Ch. 40B. Sec. 23 the Committee finds that the decision of the Board of Appeals was unreasonable and not consistent with local needs.

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

Said comprehensive permit shall provide for the construction of an elderly 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.

Said comprehensive permit shall be subject to the following conditions:

1. Before beginning construction the Appellant shall provide the Board with satisfactory evidence that its proposed provisions for drainage and sewage disposal have received approval from the appropriate state authorities.
2. 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 Federal Housing Administration of the Massachusetts

Housing Finance Agency, standards of whichever agency is financially assisting such housing shall control.

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3. The Board shall, at its option, be empowered to attach a condition to the comprehensive permit that the permit is not effective until the appellant and lessor submit to the Board a statement setting forth in full detail the terms of the lease, and the reasons for

electing to lease rather than to deed in fee simple. Such statement shall be in sufficient detail to satisfy the Board that it is a full disclosure, and shall be included as part of the appellant's application to the Massachusetts Housing Finance Agency (or other financing agency).

Should disagreement arise between the Board and the Appellant on the question of sufficiency of the statement, certification by the Department of Community Affairs shall be adequate proof of compliance with the requirements of this condition.

4. 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.

So ordered.

Date 9/13/71
Housing Appeals Committee
HAROLD G. ROSS, JR.
Chairman

SUBSEQUENT HISTORY: Aff'd, [363 Mass. 339](#), 294 N.E.2d 393 (1973)

End Of Decision