



Massachusetts Housing Finance Agency
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April 30, 2020

41 North Main LLC
23 Hunting Lane
Sherborn, MA 01770
Attention: Gary Lybarsky

**Re: Pines Residences
Project Eligibility/Site Approval
MassHousing ID No. 1059**

Dear Mr. Lybarsky:

This letter is in response to your application as “Applicant” for a determination of Project Eligibility (“Site Approval”) pursuant to Massachusetts General Laws Chapter 40B (“Chapter 40B”), 760 CMR 56.00 (the “Regulations”) and the Comprehensive Permit Guidelines issued by the Department of Housing and Community Development (“DHCD”) (the “Guidelines” and, collectively with Chapter 40B and the Regulations, the “Comprehensive Permit Rules”), under the New England Fund (“NEF”) Program (“the Program”) of the Federal Home Loan Bank of Boston (“FHLBank Boston”).

41 North Main LLC has submitted an application with MassHousing pursuant to Chapter 40B. Original application materials were filed with MassHousing on November 18, 2019. The original application proposed to build 60 units of rental housing (the “Project”) on approximately 3.8 acres of land located at 41 North Main Street in Sherborn (the “Municipality”). On January 23, 2020 the Applicant increased the Project’s lot size to approximately 6.25 acres (the “Site”) to provide flexibility to the Applicant for future development and potential alternative means of access to the Site. No other changes to the Project were made. Water and wastewater utilities are located off-site on an approximately 4.88-acre parcel west of the Site, and will be accessed by a utility easement.

In accordance with the Comprehensive Permit Rules, this letter is intended to be a written determination of Project Eligibility by MassHousing acting as Subsidizing Agency under the Guidelines, including Part V thereof, “Housing Programs In Which Funding Is Provided By Other Than A State Agency.”

MassHousing has performed an on-site inspection of the Site, which local boards and officials were invited to attend, and has reviewed the pertinent information for the Project submitted by the Applicant, the Municipality and others in accordance with the Comprehensive Permit Rules.

Municipal Comments

The Municipality was given a thirty (30) day period in which to review the Site Approval application and submit comments to MassHousing. At the request of the Municipality, this period was extended to forty-five (45) days. The Municipality submitted a letter regarding the Application on January 17, 2020, summarizing comments from municipal officials. Additional comments regarding project modifications were submitted to MassHousing on February 14, 2020. In summary, the Municipality opposes the proposed Project, noting concerns relative to water and wastewater safety, traffic and emergency vehicle circulation, and massing, height, and design that is out of character with the surrounding neighborhood.

The following specific areas of concern were identified by the Municipality:

- The Municipality is concerned about potential impacts of the proposed Project on water supply and wastewater management. In light of the town's reliance on private wells and private septic, the Municipality noted that undeveloped land, conservation land, and wetlands are critical for the replenishment of the town's aquifers, and that development of the proposed Project may impose drastic point loads on these resources, threatening the supply of safe drinking water for area residents. The Municipality expressed additional concern for the potential for ledge blasting during construction to contaminate private water supply in the area.
- The Municipality is concerned that the current configuration of the site plan's main entrance, located midway between a signalized intersection and the Hunting Lane intersection, will be difficult for future residents to exit or enter given heavy traffic on North Main Street. The Municipality further noted that previous concept plans for the Site had located the main entrance at the signalized intersection of North Main Street and Eliot Street. The Municipality believes that utilizing the existing signalized intersection would better accommodate both vehicular and pedestrian circulation in the area, particularly given the recent recommendation for a redesign of that intersection by Massachusetts' Complete Streets program.
- The Municipality is concerned that the proposed emergency access at the rear of the Site does not provide adequate width for the passage of emergency vehicles and suggested preference for emergency access to come from Powder House Lane. The Municipality noted additional concern that the emergency vehicles would not be able to access all sides of the apartment building.
- The Municipality expressed concern that the proposed Project's mass, scale, and height are out of character with the surrounding neighborhood and the rest of Sherborn. Specifically, the Municipality noted that the Site's grading and topography augments the height of the building and that the proposed 60-unit apartment block does not appropriately integrate with the town center's historic character.
- The Municipality noted that this is one of the last properties in town available for development in the town center business district and should be reserved for mixed-use development. The Municipality further noted that the Site is eligible for a Planned Unit Development via special permit.
- The Municipality would like more information regarding the financial feasibility of the proposed Project and the marketability of the rental units.

MassHousing Determination

MassHousing staff has determined that the Project appears generally eligible under the requirements of the Program, subject to final review of eligibility and to Final Approval.¹ As a result of our review, we have made the findings as required pursuant to 760 CMR 56.04(1) and (4). Each such finding, with supporting reasoning, is set forth in further detail on Attachment 1 hereto. It is important to note that Comprehensive Permit Rules limit MassHousing to these specific findings in order to determine Project Eligibility. If, as here, MassHousing issues a determination of Project Eligibility, the Applicant may apply to the Zoning Board of Appeals of the Municipality for a comprehensive permit. At that time local boards, officials and members of the public are provided the opportunity to further review the Project to ensure compliance with applicable state and local standards and regulations.

Based on MassHousing's site and design review, and in light of feedback received from the Municipality, the following issues should be addressed in the application to the Sherborn Zoning Board of Appeals, and the Applicant should be prepared to explore them more fully during the public hearing process:

- Development of this Site will require compliance with all state and federal environmental laws, regulations and standards applicable to existing conditions and to the proposed use related to building construction, stormwater management, wastewater collection and treatment, and hazardous waste safety. The Applicant should expect that the Municipality will require evidence of such compliance prior to the issuance of a building permit for the Project.
- The Applicant should be prepared to discuss the proposed blasting of ledge both on the Site and off-site as it relates to construction of the proposed Project's associated wastewater infrastructure. Public review will be required to address these matters of local concern that may impact public safety.
- The Applicant should be prepared to discuss the impact of the proposed Project on the water resources and private wells in the area and respond to reasonable requests for mitigation.
- The Applicant should be prepared to provide sufficient data to assess potential traffic impacts on area roadways and intersections, including the safety of proposed site access and egress, particularly as it relates to Massachusetts Complete Streets recommendations.
- The Applicant should continue to engage with the Municipality to review and modify plans as needed to ensure adequate access is provided for emergency vehicles and responders.
- The Applicant should be prepared to address Municipal concerns relative to the size, scale and density of the proposed Project and its impact on the character of the surrounding neighborhood, and to fully describe the proposed measures to address and mitigate these

¹ MassHousing has relied on the Applicant to provide truthful and complete information with respect to this approval. If at any point prior to the issuance of a comprehensive permit MassHousing determines that the Applicant has failed to disclose any information pertinent to the findings set forth in 760 CMR 56.04 or information requested in the Certification and Acknowledgment of the Application, MassHousing retains the right to rescind this Site Approval letter.

concerns. In particular, the Applicant is encouraged to explore architectural details, exterior materials, and building setbacks that further minimize the scale and mass of the building.

- The Applicant is encouraged to explore ways to enhance vegetative buffers along the Site's western boundary, given its sloping nature and the nearby single-family residences.
- The Applicant is encouraged to incorporate additional energy-saving and sustainability features into the proposed Project. Possible features may include renewable energy sources, rain-water harvesting, and drought tolerant landscaping.

MassHousing has also reviewed the application for compliance within the requirements of 760 CMR 56.04(2) relative to Application requirements and has determined that the material provided by the Applicant is sufficient to show compliance.

This Site Approval is expressly limited to the development of no more than sixty (60) rental units under the terms of the Program, of which not less than fifteen (15) of such units shall be restricted as affordable for low or moderate income persons or families as required under the terms of the Guidelines. It is not a commitment or guarantee of financing and does not constitute a site plan or building design approval. Should you consider, prior to obtaining a comprehensive permit, the use of any other housing subsidy program, the construction of additional units or a reduction in the size of the Site, you may be required to submit a new Site Approval application for review by MassHousing. Should you consider a change in tenure type or a change in building type or height, you may be required to submit a new site approval application for review by MassHousing.

For guidance on the comprehensive permit review process, you are advised to consult the Guidelines. Further, we urge you to review carefully with legal counsel the M.G.L. c.40B Comprehensive Permit Regulations at 760 CMR 56.00.

This approval will be effective for a period of two (2) years from the date of this letter. Should the Applicant not apply for a comprehensive permit within this period this letter shall be considered to be expired and no longer in effect unless MassHousing extends the effective period of this letter in writing. In addition, the Applicant is required to notify MassHousing at the following times throughout this two-year period: (1) when the Applicant applies to the local ZBA for a Comprehensive Permit, (2) when the ZBA issues a decision and (3) if applicable, when any appeals are filed.

Should a comprehensive permit be issued, please note that prior to (i) commencement of construction of the Project or (ii) issuance of a building permit, the Applicant is required to submit to MassHousing a request for Final Approval of the Project (as it may have been amended) in accordance with the Comprehensive Permit Rules (see especially 760 CMR 56.04(07) and the Guidelines including, without limitation, Part III thereof concerning Affirmative Fair Housing Marketing and Resident Selection). Final Approval will not be issued unless MassHousing is able to make the same findings at the time of issuing Final Approval as required at Site Approval.

Please note that MassHousing may not issue Final Approval if the Comprehensive Permit contains any conditions that are inconsistent with the regulatory requirements of the New England Fund Program of the FHLBank Boston, for which MassHousing serves as Subsidizing Agency, as reflected in the applicable regulatory documents. In the interest of providing for an

efficient review process and in order to avoid the potential lapse of certain appeal rights, the Applicant may wish to submit a “final draft” of the Comprehensive Permit to MassHousing for review. Applicants who avail themselves of this opportunity may avoid significant procedural delays that can result from the need to seek modification of the Comprehensive Permit after its initial issuance.

If you have any questions concerning this letter, please contact Katherine Miller at (617) 854-1116.

Sincerely,



Colin McNiece
General Counsel

cc: Jennifer Maddox, Undersecretary, DHCD
The Honorable Rebecca L. Rausch
The Honorable David Paul Linsky
George Morrill, Chair, Sherborn Board of Selectmen
Richard S. Novak, Chair, Sherborn Zoning Board of Appeals
David Williams, Sherborn Town Administrator

Attachment 1

760 CMR 56.04 Project Eligibility: Other Responsibilities of Subsidizing Agency
Section (4) Findings and Determinations

Pines Residences, Sherborn, MA #1059

MassHousing hereby makes the following findings, based upon its review of the application, and taking into account information received during the site visit and from written comments:

(a) that the proposed Project appears generally eligible under the requirements of the housing subsidy program, subject to final approval under 760 CMR 56.04(7);

The Project is eligible under the NEF housing subsidy program and at least 25% of the units will be available to households earning at or below 80% of the Area Median Income, adjusted for household size, as published by the U.S. Department of Housing and Urban Development (“HUD”). The most recent HUD income limits indicate that 80% of the current median income for a four-person household in Sherborn is \$96,250.

Proposed rent levels of \$1,673 for a one-bedroom affordable unit, \$2,007 for a two-bedroom affordable unit and \$2,319 for a three-bedroom affordable unit accurately reflect current affordable rent levels for the Boston-Cambridge-Quincy HMFA under the NEF Program, less utility allowances of \$137, \$177 and \$218 for the one two- and three-bedroom units, respectively.

The Applicant submitted a letter of financial interest from Rockland Trust, a member bank of the FHLBank Boston under the NEF Program.

(b) that the site of the proposed Project is generally appropriate for residential development, taking into consideration information provided by the Municipality or other parties regarding municipal actions previously taken to meet affordable housing needs, such as inclusionary zoning, multifamily districts adopted under c.40A, and overlay districts adopted under c.40R, (such finding, with supporting reasoning, to be set forth in reasonable detail);

Based on a site inspection by MassHousing staff, internal discussions, and a thorough review of the application, MassHousing finds that the Site is suitable for residential use and development and that such use would be compatible with surrounding uses and would address the local need for housing.

Section IV-A (3) (a) of the Guidelines provide guidance to Subsidizing Agencies for evaluating a municipality’s actions intended to meet affordable housing needs.

MassHousing carefully reviewed the information provided by the Municipality describing previous municipal actions intended to provide affordable housing. Specific examples cited by the Municipality include:

- Completion of a DHCD approved Housing Production Plan (HPP), effective June 9, 2017, and expiring on June 8, 2022.
- Endorsement of 2019 Master Plan, which addresses various housing goals and needs.
- Creation of an Affordable Housing Trust in 2019.
- Permitting the following 40B projects, which are currently under construction:

- Meadows Edge at Whitney Farm (fka Whitney Farm) – 48 homeownership units, 12 which are affordable, permitted in 2006.
- 59 North Main Street – 12 homeownership units, 3 which are affordable, permitted in 2018.
- Fields at Sherborn – 32 homeownership units, 8 which are affordable, permitted in 2018.
- Special Town Meeting approval of 67-unit senior and 88-unit affordable housing rental projects in 2017. The Municipality notes that development has not yet begun on these projects. Furthermore, the Municipality notes that there may be a Warrant Article on the 2020 Annual Town Meeting to expand the project beyond the previous 2017 approval, which may help the Municipality achieve the 10% Statutory Minima.

MassHousing recognizes Sherborn’s efforts as meaningful; however, municipal actions to date have not been of a character and scale that meets the municipality’s need for affordable housing as measured by the Statutory Minima. According to DHCD’s Chapter 40B Subsidized Housing Inventory (SHI), updated in April 2020, Sherborn has 34 Subsidized Housing Inventory (SHI) units (2.30% of its housing inventory), which is 114 units short of the statutory minima requirement of 10%.

(c) that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns (such finding, with supporting reasoning, to be set forth in reasonable detail);

In summary, based on an evaluation of the site plan using the following criteria, MassHousing finds that the proposed conceptual Project design is generally appropriate for the Site. The following plan review findings are made in response to the conceptual plan, submitted to MassHousing:

- **Relationship to Adjacent Streets/Integration into Existing Development Patterns**
The proposed Project is located at the corner of Hunting Lane and North Main Street (Route 27) in Sherborn’s town center. North Main Street is a main thoroughfare for local vehicular traffic and is characterized by a mix of low-density uses. Several retail, commercial and institutional amenities, including a bank, autobody, post office, elementary school, and other small restaurants and retail uses are in the immediate vicinity of the Site. The area is otherwise characterized by single-family homes in a predominantly rural setting.

The Site is an approximate 10-minute drive to Route 9 and an approximate 15-minute drive to Interstate 90. The Framingham, West Natick and Natick Center MBTA Commuter Rail Stations are each within an approximate 10-min drive of the Site, providing inbound service to Boston and outbound service to Worcester.

- **Relationship to Adjacent Building Typology (Including building massing, site arrangement, and architectural details):**
The proposed Project is immediately adjacent to two existing historic buildings located to the south on North Main Street, one which contains 4 rental dwelling units, and one barn outbuilding. The Site borders an active railroad bed immediately to the west. Further west along Hunting Lane, large single-family homes are set on large, wooded lots. Adjacent

residential building typologies predominately reflect colonial New England architectural styles.

The developer intends to build one three- to four-story apartment building with a total of 60 rental units. The building has two wings and is oriented so that it wraps the corner of North Main Street and Hunting Lane. Building heights at the end of each wing are reduced from four- to three- stories to limit the impact on abutting properties. Proposed building elevations indicate projecting bays and fenestrations that use a variety of materials, and pitched roof features to articulate the façade and break up the massing of the building.

- **Density**

The Developer intends to build 60 homes on approximately 6.25 acres, all of which are buildable. The resulting density is 9.6 units per buildable acre, which is acceptable given the proposed housing type.

- **Conceptual Site Plan**

The site plan consists of one three- to four-story, 60-unit apartment building that sits at the northeast corner of the Site. The building has two wings that front North Main Street and Hunting Lane. Each frontage is set back approximately 60 feet to maintain existing vegetative buffers along property lines. Vehicular access to the Site is provided from North Main Street via a 24-foot wide two-way driveway that services the Site's 105 surface parking spaces. The resulting parking ratio is 1.75 parking spaces per unit. The parking area is located to the rear of the building to hide it from street-view. A 16-foot wide fire access drive is provided through a gated entry at the rear of the Site from Hunting Lane. Pedestrian circulation is indicated on the site plan through sidewalks along the perimeter of the building and crosswalks, which connect to sidewalks along North Main Street. A modest outdoor seating area is located at the Site's western boundary.

Water and wastewater utilities are located off-site on land to the west of the Site and adjacent railroad bed. The utility site is owned by an affiliate of the Applicant and will be accessed by a proposed easement. A railroad crossing will be needed for utilities to access the Site. The Applicant is in the process of working with the Massachusetts Department of Transportation to obtain the necessary permits.

- **Environmental Resources**

Based on MassHousing's site inspection and information provided by the Applicant, no significant natural or cultural resources, endangered species habitat, or areas prone to flooding have been identified on the Site. No jurisdictional wetland resource areas are present within the Site boundary. However, the parcel is within the 100-foot buffer of approximately 3.45 acres of wetland area located on the adjacent off-site utility parcel, which is separated by an existing elevated railroad bed.

According to information provided by the Applicant, a formal Request for Determination (RDA) was filed with the Sherborn Conservation Commission on September 15, 2018. A Negative Determination was issued by the Sherborn Conservation Commission on September 24, 2018 indicating that the work described in the RDA is within the Buffer Zone but will not alter any area subject to the Wetlands Protection Act.

- **Topography**

The Site has steeply sloping topography characterized by a knoll which is located at the center of the Site that steeply slopes down towards North Main Street and Hunting Lane to the north and east and the active railroad bed to the west. The result is a change in grade of up to 40 feet from the highest point to the lowest point of the Site. The existing topography is proposed to be regraded to assist the development's integration into the Site. Careful attention must be taken in reworking the existing slope.

(d) that the proposed Project appears financially feasible within the housing market in which it will be situated (based on comparable rentals or sales figures);

According to the appraisal report for the Site, Sherborn's residential market appears healthy, with single-family homes comprising approximately 90% of the sales recorded for residential properties and an overall upward trajectory in sales volume since the last recession. MassHousing's Appraisal and Marketing team (A&M) performed a Competitive Market Analysis and found that proposed market rents for each unit type fall within the range of adjusted comparable market rents.

(e) that an initial pro forma has been reviewed, including a land valuation determination consistent with the Department's Guidelines, and the Project appears financially feasible and consistent with the Department's Guidelines for Cost Examination and Limitations on Profits and Distributions (if applicable) on the basis of estimated development costs;

MassHousing has commissioned an "As-Is" appraisal which indicates a land valuation of \$1,540,000. Based on a proposed investment of \$7,717,445 in equity and permanent financing the development pro forma appears to be financially feasible and within the limitations on profits and distributions.

f) that the Applicant is a public agency, a non-profit organization, or a Limited Dividend Organization, and it meets the general eligibility standards of the housing program; and

MassHousing finds that the Applicant must be organized as a Limited Dividend Organization. MassHousing sees no reason this requirement could not be met given information reviewed to date. The Applicant meets the general eligibility standards of the NEF housing subsidy program and has executed an Acknowledgment of Obligations to restrict their profits in accordance with the applicable limited dividend provisions.

(g) that the Applicant controls the site, based on evidence that the Applicant or a related entity owns the site, or holds an option or contract to acquire such interest in the site, or has such other interest in the site as is deemed by the Subsidizing Agency to be sufficient to control the site.

The Applicant or a related entity to the Applicant controls the entire 6.25-acre Site by virtue of the following deeds:

- Deed from Kent A. Fitzpatrick, Trustee of Orchard Hill Trust to Igor Lybarsky, Trustee of Barsky estate Realty Trust, dated March 11, 2016 and recorded in the Middlesex South Registry of Deeds in Book 66954, Page 354.
- Deed from Powder House Lane, LLC to Five Rocks, LLC, dated March 18, 2016 and recorded in the Middlesex South Registry of Deeds in Book 66954, Page 356.