

TOWN OF CARLISLE

BOARD OF APPEALS

DECISION ON APPLICATION OF MKCKMK, LLC FOR COMPREHENSIVE PERMIT PURSUANT TO
M.G.L. CHAPTER 40B §§20-23

I. Applicant:

MKCKMK, LLC
34 Autumn Lane
Hamilton, Massachusetts 01772

II. Property Owner:

Michael J. Kenny
34 Autumn Lane
Hamilton, Massachusetts 01772

III. Property Location (the "Site"):

302 Lowell Street
Carlisle, Massachusetts 01741
(consisting of approx. four (4) acres)

IV. Zoning District:

The subject property is located in the General Residence B Zoning District.

V. Action Sought:

Comprehensive permit pursuant to M.G.L. c.40B §§20-23 to subdivide the Site into two (2) lots and to construct on each resulting lot a four (4)-unit condominium development with (2) units being restricted for sale to income-eligible persons or families.

VI. Hearing:

The Board of Appeals ("the Board") opened its hearing on the Application on April 3, 2003 in compliance with the requirements of M.G.L. c.40B §21. The Board held several continued sessions of the hearing at which it heard testimony from representatives of the Applicant, Town boards and departments and from members of the public. The Board closed its hearing on the Application on September 11, 2003.

VII. Board Vote.

The Board deliberated on the Application on September 23, October 1 and October 16, 2003. On October 16, 2003, the Board voted unanimously to grant the Application subject to the following Findings and Conditions.

VIII. Findings

1. The Application includes a request for waivers from the following local permits and approvals:

- a. Board of Health Water Supply Regulations:
 - i. Section 2.3 – Waive requirement to provide a well for each dwelling unit.
- b. Zoning Bylaw:
 - i. Section 3, District Use Regulations – to allow multi-family dwellings on a lot;
 - ii. Section 4.1.2.3 – allow 90 feet of frontage (instead of 250) in Residence B;
 - iii. Section 4.1.3.3 – waive ellipse requirement;
 - iv. Section 4.3.2 – allow 25 foot side setback (instead of 40 feet);
 - v. Section 5.4.4 – allow common driveway without special permit;
 - vi. Section 7.6 – waive requirement for Site Plan Review.
- c. Earth Removal:
 - i. Section 8.5.5 – (If necessary) exceed removal of 1,000 cubic yards of fill each month.

2. The Applicant is a limited dividend organization within the meaning of General Laws, Chapter 40B eligible to receive a subsidy under a state or federal affordable housing program after a Comprehensive Permit has been granted.

3. The Applicant has shown evidence of its interest in the proposed Site sufficient to qualify it as a recipient of a Comprehensive Permit for this Site.

4. This Comprehensive Permit is based upon a site approval letter issued to the Applicant on January 16, 2003 from the Massachusetts Housing Finance Agency (“M.H.F.A.”). The M.H.F.A. shall be the subsidizing agency within the meaning of the procedural regulations of the Housing Appeals Committee. A true copy of said project eligibility letter is attached hereto and incorporated herein as Exhibit A.)

5. The number of low or moderate income housing units in the Town of Carlisle constitutes less than ten (10%) percent as reported in the latest decennial census of the Town and reported by the Department of Housing and Community Development as of July 1, 1997.

6. The development as conditioned in this Decision is consistent with local needs within the meaning of General Laws, Chapter 40B, Section 20.

IX. Conditions

A. Conditions To Be Satisfied Prior To Commencement Of Work

1. The project shall be built generally according to the plans entitled “Comprehensive Permit Plan for Laurel Hollow, 302 Lowell Street, Carlisle Massachusetts ... For: MKCKMK, LLC Scale:1”=30’ January 7, 2003 Revised July 21, 2003 and August 25, 2003” Sheets 1-5 (“the Preliminary Approved Plans”), and shall consist of (i) the subdivision of the Site into two lots as shown on the plan, (ii) the construction on each of the resulting lots of four (4) dwelling units located in two (2) two-story walk-up buildings (total of eight (8) dwelling units), (iii) the construction of roads, utilities, pathways and other infrastructure associated therewith, and (iv) the installation of landscaping, all as more fully provided herein (collectively, the “Project”).

2. No clearing, grading, land disturbance, issuance of any building permit or construction of any structure or infrastructure (all or any part of the foregoing referred to herein as the “Work”) shall commence until detailed construction plans have been submitted to the Carlisle Department of Public Works, Carlisle Fire Department and Carlisle Building Department and approved by the Building Inspector. The Applicant shall submit to the Building Inspector for review and final acknowledgement of consistency with this Decision, final and detailed site development plans prepared by a Professional Engineer registered in the Commonwealth of Massachusetts prepared to the detail required for use as on-site construction drawings and/or to obtain a building permit in accordance with the State Building Code, whichever requirement is more detailed. Such site development plans shall be prepared on the same scale with the same orientation to north and include, without limitation,

- (i) an existing conditions plan,
- (ii) a layout plan including metes and bounds, easements and ties to proposed features,
- (iii) a grading and drainage plan,
- (iv) septic plans,
- (v) final and detailed scaled architectural drawings for all structures as approved by this Decision, including interior floor plans, current and finished elevations, construction type and exterior finishes,
- (vi) a final and detailed utilities plan, indicating that all utilities servicing this Project shall be underground within the Site,
- (vii) a final roadway plan and profile,
- (viii) a final and detailed lighting plan, providing for adequate safety lighting but minimizing impact on abutters,
- (ix) fire cistern plans as provided in Paragraph A.3 below, and
- (x) a landscaping plan as provided in Paragraph A.4 below.

The Board shall hire, at the Applicant's expense, a licensed civil engineering firm (the "Consulting Engineer") whose personnel or other experts engaged by such firm as necessary shall review such plans and recommend such changes to the Board as may be consistent with sound engineering practices.

3. A water cistern or cisterns shall be required. In order to determine the minimum water supply required, the Fire Department shall be provided with the details on the type of construction, the structure dimensions, and, in order to determine exposures, a site plan showing the proximity of the structures to each other. The cistern(s) shall conform to Carlisle Fire Department specifications for water cisterns as well as applicable sections of NFPA (National Fire Protection Association) Standard 1142, 2001 edition, and shall be approved by the Fire Chief.

4. No part of the Work shall commence for this Project until the Applicant submits to the Board for its approval a formal landscape plan, prepared by a landscape architect. The landscape plan shall comply generally with the requirements stated in Article II, Section 6.B.(2)(a)(i)-(vii) of the "Carlisle Planning Board Rules and Regulations Governing the Subdivision of Land (the "Subdivision Rules"). The Consulting Engineer shall review such plans and require such changes as may be necessary to control erosion, discourage unsafe use of slopes, ensure adequate sight distances and adequately screen improvements from abutters and the public ways.

5. When reviewed by the Town's Consulting Engineer and approved by the Fire Chief, the Building Inspector, and/or the Board as provided above, the plans submitted in accordance with paragraph IX.2 above shall constitute the "Approved Plans" for purposes of this Decision.

6. The Board shall hire a licensed civil engineering firm (the "Inspecting Engineer"), at the Applicant's expense, to inspect the Project (including without limitation earthwork, underground infrastructure and road construction with a special concern relative to soil erosion) during the construction phase. Failure of the Applicant to maintain guaranteed deposit funds for inspection fees shall constitute failure to comply with this Comprehensive Permit. The Inspecting Engineer shall visit the Site at least weekly or as sufficiently often to ensure compliance with the Approved Plans and conduct construction inspections as required in Article IV, Section 1.D(1)(a-g) of the Subdivision Rules and shall prepare field reports for each observation to submit to the Building Inspector. Any change from the Approved Plans shall require a determination by the Building Inspector, with the advice of the Town's Inspecting Engineer, that such change is not a substantial change. If the Building Inspector determines that such change is a substantial change, no further Work may continue until the Applicant conforms the Work to the Approved Plans or minimizes the discrepancies therewith so that the Building Inspector may determine that any deviation from the Approved Plans is not substantial. In the absence of such conformance or minimization, any change deemed by the Building Inspector to be a substantial change shall require an amendment to this Comprehensive Permit. The Approved Plans, incorporating any changes as approved by the Building Inspector, on the advice of the Town's Inspecting Engineer, or approved by amendment to this Comprehensive Permit, shall be referred to herein as the "Final Approved Plans."

7. Prior to the issuance of a building permit, wells shall be drilled at the locations shown on the Approved Plans. When drilled, a licensed civil engineer hired by the Board, at the Applicant's expense, shall attest to the quality of the water and whether those new wells significantly draw down on the neighbors' wells or affect the neighbors' water quality. If the neighbors' wells are significantly affected, the Applicant shall promptly restore such wells to their original condition. The drilling, sealing and pump testing of the wells shall be witnessed by the Town's pump and well inspector.

8. Prior to the issuance of a building permit, a Water Management Plan for each Condominium Association shall be provided to the Building Inspector. The plan must be certified by the Consulting Engineer as to the plan's ability to meet the water demands of an eight (8)-bedroom residential facility serviced by each well. The plan shall take into consideration potential irrigation needs or restrictions.

9. No part of the Work shall commence until the Applicant requests a determination of applicability to the Site of the Scenic Roads Act and the Public Shade Tree Act from the Carlisle Planning Board and the Tree Warden respectively.

10. No part of the Work shall commence until the M.H.F.A. has supplied the Board with written correspondence indicating that, subject to customary loan conditions, the M.H.F.A shall provide the funds necessary to complete the Project.

11. No part of the Work shall commence for this Project until the Applicant has posted with the Carlisle Town Clerk a bond or surety in the amount equal to a reasonable estimate of the cost to complete the Project roadway, utilities, footpath and required landscaping.

12. Prior to the issuance of a building permit, the Applicant shall obtain the approval of the Fire Department for a new Project name and for street numbering. The present name of the Project is not acceptable for public safety response purposes because Carlisle currently has a Laurelwood Drive.

13. The Project shall be subject to a Regulatory Agreement substantially in the form attached hereto as Exhibit B. The Regulatory Agreement shall be executed and delivered by the parties thereto prior to the commencement of any part of the Work. The Board shall have the opportunity to review and approve the Regulatory Agreement, as to form and consistency with this Decision, said approval to not be unreasonably withheld. The Regulatory Agreement shall include a form of deed rider to be attached to the two (2) income-restricted units, which shall provide that such units shall be restricted, in perpetuity, to persons or families earning not more than 80% of the area median income for the Boston PSMA and a form of monitoring agreement providing for long-term monitoring of compliance with the terms of the deed rider.

14. The Approved Plans and the Subdivision Plan shall be recorded at the Middlesex County Registry of Deeds under the provisions of G.L. c. 41, s.81-X with this Decision. Recording information shall be submitted to the Board prior to commencement of construction.

15. All outstanding invoices to the Town for review of the Project plans shall be paid prior to issuance of a building permit.

B. Conditions To Be Satisfied Prior to Issuance of Occupancy Permits

1. To ensure compliance with the terms and conditions of this Decision and any approval or order by any federal, state or local agency, the Applicant shall, as part of its request for Certificates of Occupancy for any of the structures approved in this Decision, submit to the Board complete and detailed “as-built” plans, together with a certification from a Professional Engineer registered in the Commonwealth of Massachusetts, that the Project “as built” complies in all substantive respects with this Decision and any other approval or order by any federal, state or local agency. Prior to the issuance of any Occupancy Permits, the Town’s Inspecting Engineer shall confirm to the Board that the Project “as built” conforms to the Final Approved Plans. The Board may delegate to such other Town Boards or Officials, as it may determine, the responsibility for complete review and analysis of the Project as being in compliance with this Decision. Any increased cost to the Town for said complete review and analysis shall be borne by the Applicant.

2. The Applicant shall obtain approval from the U. S. Post Office as to the placement of mail boxes for the eight families residing at 302 Lowell Road

3. The Applicant shall install a pathway along Lowell Road in front of the property. The pathway shall be in keeping with the Carlisle Pathway Plan as follows:

- a. The pathway shall be five feet in width and separated from the road by a verge (grass strip) of at least two feet;
- b. The sub base of the pathway shall be constructed of six to eight inches of compacted dense graded material;
- c. The top surface of the pathway shall be constructed of three to four inches of a mix of fifty (50%) percent stone dust and fifty (50%) percent ¼ inch graded base material compacted to a level surface.

4. The fire alarm system for the Project shall be connected directly to the Carlisle Fire Department Communications Center at 41 Lowell Road.

5. A “KNOX BOX” shall be required for access to all dwellings in the event of emergencies.

6. The Applicant shall pay for appropriate and reasonable police details as necessary to protect public safety during construction close to or in the public right of way.

7. During construction, the Applicant and his agents and employees shall conform to all local, state and federal laws regarding noise, vibration, dust and use of Town roads and utilities. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Construction shall not commence on any day Monday through Friday before 7:00AM or on Saturday before 8:00 AM, and shall cease by 7:00 PM on all days. No construction activity shall take place on Sunday. Further, during construction, all employees,

agents and independent contractors of the Applicant shall be employed in full conformity with all applicable Employment Security Laws and regulations, Worker's Compensation Insurance laws and regulations and worker health and safety regulations. The Applicant shall designate a Project Manager and provide the Board with a telephone number at which the Project Manager can be reached during the construction hours stated in this paragraph. The Applicant may perform emergency construction on Sundays and/or after hours, provided that the Applicant has reasonably demonstrated the nature of the emergency to the Carlisle Building Inspector and obtained any necessary approvals.

8. All staging areas, including without limitation parking areas for construction labor, shall be on site. No parking on Town ways in the vicinity of the site by any person associated with the construction of the Project shall be permitted.

9. The Applicant will comply in all respects with the Order of Conditions issued for the project on September 22, 2003 by the Carlisle Conservation Commission. Failure to follow the Order of Conditions may result in the imposition of daily fines according to the Carlisle Local @Wetland Protection Bylaw, Section 13.10.6 of the Town of Carlisle General Bylaws as outlined below.

13.10.6.1 First Offense \$75.00

13.10.6.2 Second Offense \$150.00

13.10.6.3 Third Offense \$300.00

10. All outstanding invoices to the Town for engineering and legal services concerning this Project are to be paid prior to issuance of an occupancy permit.

C. Ongoing Conditions

1. No parking shall be allowed on Lowell Road. Parking in the driveway shall be configured to preserve a fire lane for emergency vehicle access. The fire lane shall conform to the NFPA Fire Prevention Code 2000 edition.

2. There shall be no enlargements of living space, or structural alterations to the structures that are not in conformance with the Final Approved Plans.

3. No more than two bedrooms per unit are allowed. This requirement is to be specified in the Master Deed for the property.

4. The roads in the Project shall be maintained as private ways in perpetuity.

5. No land clearing, grading or site disturbance of any kind shall occur within 10 feet of any property boundary of land not owned by the Applicant except for and with respect to improvements shown on the Final Approved Plans or on the approved landscaping plan.

6. There shall be no on-site storage of fuels, oils, automotive fluids, fertilizers, pesticides, insecticides, herbicides, cleaning chemicals, and other hazardous materials of significant concern, other than of such nature and quantities as are customarily used for projects similar to the Project.

7. The requirements of the foregoing six (6) paragraphs immediately above shall be incorporated into the condominium trust document and recorded with the land records relating to the Site.

8. The Applicant shall conduct a Title 5 inspection at least every three years commencing from the date of issuance of the Certificate of Compliance (10B) and upon transfer of a unit in accordance with 310 CMR 15.301(3)(a)(1).

9. Landscaping must not impede access to septic system components such as the septic tanks and distribution boxes, which require regular inspections.

10. Provide the Board of Health with a draft of the governing documents describing how funds will be held and in what amount for the future repair and/or replacement of the soil absorption system prior to the release of the construction permit.

11. Changes to the proposed soil absorption system designs or site development design must be submitted to the Board of Health for review.

12. The Applicant shall be required to meet the regulations cited in the Town of Carlisle Supplementary Sewerage Disposal Regulations, paragraphs 15.290-15.293.

13. Roof recharge drywells are not to be used for any other purpose, including without limitation backwash from filter systems.

14. There shall be "local preference" for applicants of the income-restricted units. Preference for the purchase of the income-restricted units to the maximum amount allowed by law shall be given to Carlisle residents, children or parents of Carlisle residents, and/or employees of the Town of Carlisle and employees of the Concord Carlisle Regional School District pursuant to a lottery or selection process that is reviewed and approved by the Board.

15. The Permit is granted based on the Approved Plans and no use and no other improvements substantially different from those contemplated by the Approved Plans shall be deemed permitted by virtue of the granting of the Permit. The Board requires that a note be placed on the Approved Plans stating that the plan is the subject of a comprehensive permit under Mass. Gen. L. ch.40B, s.20-23.

16. This Permit runs with the land in perpetuity provided that all conditions of approval remain satisfied.

17. Subject to the provisions of the Regulatory Agreement, the dividend and the profit limitation of 20 percent shall be enforced by a certified cost accounting by a Certified Public Accountant, hired by the Applicant, on an annual basis from the date of this approval or the date of disposition of a final appeal of this permit, whichever is later. The Certified Public

Accountant shall be approved by the Monitoring Agent (as defined in the Regulatory Agreement) or the Board, which approval shall not be unreasonably withheld, conditioned or delayed.

18. In accordance with the powers conferred on the Board by 760 CMR 31.08(4), if construction authorized by this Decision has not begun within 36 months of the date on which the permit becomes final, the permit granted by this Decision shall lapse, shall be declared void and shall be considered without force or effect unless otherwise extended by appeal or by the Board.

19. This Decision is issued under the provisions and limitations imposed by the Comprehensive Permit Law. It shall not be read by any local, state or federal agency or official to include any analysis of substantive issues beyond the narrow parameters established by the Comprehensive Permit Law. This Decision provides no assurance that the Project shall or can comply with the requirements of any other law, including without limitation 310 CMR 10.00 et seq., 310 CMR 15.00 et seq., 310 CMR 22.00 et seq., 314 CMR 5.00 and 6.00 et seq., the State Building Code or rules and regulations promulgated and enforced by federal, state and local agencies or officials not otherwise waived by this Decision.

20. The Applicant shall provide the Board with copies of all permits and approvals from any and all local, state and federal agencies, departments or commissions pertaining to this Project.

21. This Decision and the Board's endorsement of the Approved Plan shall have no "freeze" effect pursuant to M.G.L. c.40A, Section 6, Paragraph 5 on the applicability of the Zoning Bylaw.

22. The Town of Carlisle shall be free of any liability for any act, omission or negligence caused by the Applicant, its employees, agents, subcontractors, beneficiaries or trustees with relation to this Project. By recording this permit, the Applicant hereby consents and agrees to indemnify the Town, its employees, agents and officials for any harm, damage or injury caused by the Applicant, its employees, agents, subcontractors, beneficiaries or trustees with regard to this Project.

23. The issuance of this Comprehensive Permit does not waive the requirement that the Project comply with the requirements of all local bylaws, rules, regulations and requirements except those included on the list of exceptions attached hereto as Exhibit C, subject to the findings and conditions stated in this Decision.

X. Certification of Filing.

It is hereby certified that a copy of this Decision has been filed with the Town Clerk of the Town of Carlisle.

TOWN OF CARLISLE BOARD OF APPEALS, ACTING AS PERMIT GRANTING AUTHORITY PURSUANT
TO M.G.L. CHAPTER 40B, §§20-23

Harold Sauer

Shann Kerner

Scott Batchelder

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