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ACTON BOARD  
OF APPEALS



Board of Appeals

**TOWN OF ACTON**  
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**DECISION**

**#20-02**

**Amendment #1**

**Comprehensive Permit**

**Apartment at Powder Mill**

**2, 4, & 12 Powder Mill Road**

August 1, 2023

GRANTED with Conditions

This is a Decision (the "Decision") of the Acton Zoning Board of Appeals (hereinafter the "Board") on the request for a Comprehensive Permit amendment under Massachusetts General Laws ("M.G.L.") Chapter 40B, §20-23 (the "Act"), made by the Applicant, Apartments at Powder Mill, LLC, 205 Willow Street, Waltham, MA 02453 (hereinafter the "Applicant") for the property located at 2, 4, & 12 Powder Mill Road in Acton, Massachusetts (the "Site"). The Site is identified on the Acton Town Atlas map as parcels J3, Lots 39, 42, 43, 44 & 45. This Decision amends Comprehensive Permit Decision #20-02 issued to Apartments at Powder Mill, LLC dated August 4, 2020, filed with the Acton Town Clerk on August 10, 2020, recorded with the Middlesex (South) Registry of Deeds at Book 75635, Page 228. The Site is identified on the Acton Town Atlas map as parcel B5-9.

This Decision is in response to an application for an amendment to a comprehensive permit for a rental housing development. The proposed amendment consists of 3 buildings (including 2 residential structures with an adjoining clubhouse and one standalone garage) with 230 rental units and additional resident amenities including outdoor amenities. The comprehensive permit application amendment was submitted to the Board of Appeals on June 30, 2023. The Board held a duly noticed public meeting on July 11, 2023 at which time they voted to hold a duly noticed public hearing on August 1, 2023. The hearing was held and closed on August 1, 2023. Throughout the duration of the hearing sessions, the Board heard testimony from the Applicant, Town staff, and abutters to the Project and Acton residents. Board members Kenneth Kozik (Chair), Adam Hoffman (Member), and R. Scott Robb (Member) were present throughout the hearing. The minutes of the hearings and submissions on which this Decision is based may be referred to in the Town Clerk's office or the office of the Board at Acton Town Hall.

## **1 EXHIBITS**

Submitted for the Board's deliberation were the following exhibits:

- 1.1 Cover letter and Narrative for a Comprehensive Permit amendment entitled "Request for an Insubstantial Change ZBA Decision #20-02 Comprehensive Permit – The Apartments at Powder Mill," from Nick Dewhurst and Randy Miron, dated June 30, 2023. The drawings and documents submitted as part of the amendment application are as follows:
  - A Plan set titled, "Comprehensive Permit Plans for Dolben, Proposed Apartments at Powder Mill, dated 06/30/2023, consisting of 23 sheets;
  - Architectural plans, dated 06/26/2023, consisting of 16 sheets;
  - Floor plans, dated 06/26/2023;
  - Drainage Report, dated 06/30/2023;
  - Water Commitment Letter from Matt Mostoller, dated 06/16/2023;
  - Accountable Mail;
  - Letter from the Dolben Company, Inc., dated 8/1/2023.
- 1.2 Interdepartmental communications were received from:
  - Acton Community Housing Corporation comments, dated 6/1/2023;
  - Health Division comments, dated 7/5/2023;
  - Acton Water District memo, dated 7/10/2023;
  - GCG Associates memo, dated 07/31/2023;
  - Design Review Board memo, dated 07/10/2023;

## **2 FINDINGS AND CONCLUSIONS**

Based upon its review of exhibits, and the record of the proceedings, the Board finds and concludes that:

- 2.1 There are no changes to the original approved 230-unit count; 58 or 25% of which will be deed restricted affordable units.
- 2.2 The previously approved stand-alone 4,400± SF clubhouse building has been eliminated and the northerly residential building size has been increased to include the on-site Leasing and Management office as well as amenities that were previously proposed in the clubhouse building such as the fitness center, community room, leasing office, mail room, etc. The overall building shape & footprint remains similar to the previously approved plan.
- 2.3 The southerly residential building has shifted approximately 10-12 feet to the northeast from the previously approved plans, and remains within the limits of work previously approved.
- 2.4 The previously approved subsurface parking area underneath the southerly residential building has been eliminated. Additionally, the previously approved eastern driveway from Powder Mill Road to the parking area has also been eliminated, resulting in only one proposed driveway connection to Powder Mill Road.
- 2.5 The previously approved layout provided 51 surface parking spaces and 370 garage spaces for a total of 421 proposed parking spaces. The current proposed layout now provides for a total count of 419 parking spaces. The Board finds adequate parking remains on site.
- 2.6 The proposed layout and orientation of the turnaround area near the northerly building has been slightly revised, while the fire access road around the perimeter of the site remains.
- 2.7 The proposed layout and orientation of the pool and patio area have been slightly modified.

**Copies furnished:**

**Applicant -  
certified mail #  
Town Clerk  
Fire Chief  
Acton Water District  
GIS**

**Land Use Department  
Engineering Department  
Town Manager  
Police Department  
Board of Selectmen  
Historical Commission**

**RHSO  
Assessor's Office  
Design Review Board  
Owner  
ACHC**

- 2.8 The current proposed trash enclosure has been relocated to the northerly side of the front parking field while the previously approved trash enclosure was located closer to Powder Mill Road.
- 2.9 The height of the building has been reduced from 7 stories to 5 stories.
- 2.10 Minor changes to the drainage, grading and utility design have been made to accommodate the adjustments to the building layout and reduction of impervious coverage.
- 2.11 The engineering peer review memo dated, July 31, 2023 from GCG Associates, notes minor adjustments that need to be made to the site plan.
- 2.12 At the hearing, the Applicant rescinded their request for waivers from the Water Supply District of Acton's fees in the cover letter dated, June 30, 2023.
- 2.13 The Board received comments from various Town departments, which are listed in exhibit 1.3 above. These comments were considered by the Board in its deliberations, were made available to the Applicant, and are incorporated into this Decision as deemed appropriate by the Board.

### **3 WAIVERS**

The Applicant requested amended waivers from the following Town of Acton Zoning Bylaws:

- Section 3 - Multifamily dwelling is not a permitted use in Powder Mill District
- Section 3.3 - Not more than one building for dwelling purposes shall be located upon a lot
- Section 5 - Maximum FAR of 0.20, where a maximum FAR of .96 is proposed
- Section 5 - Maximum building height of 40 feet, where a height of 63 feet is proposed
- Section 6.3.1.1 - Two parking spaces for each dwelling unit (460 spaces required), where 415 are provided.

- 3.1 Given the regional need for affordable housing the Board finds that the requested waivers, including for increased density and reduced setbacks, are reasonable in relation to the size of the Site, its location, and the specifics of the proposed development and its proposed use. Therefore, the Board grants all of the waivers as requested and necessary as enumerated above, subject to the conditions of this Decision.
- 3.2 The proposed amendments, when conforming to the conditions set forth in this Decision, will adequately provide for stormwater drainage and sewage, will not be detrimental or injurious to the surrounding neighborhood, will provide for convenient and safe vehicular and pedestrian movement within and through the site, all without an undue burden on the occupants of the project or on the surrounding neighborhood or the Town.
- 3.3 The proposed amendment will, when conforming to the conditions in this Decision, not be a threat to the public health and safety of the occupants of the project, the neighborhood, or the Town.
- 3.4 The proposed project as supported by the evidence, and as conditioned below, (i) would not be rendered uneconomic by the terms and conditions of this Decision, and (ii) would represent a reasonable accommodation of the need for low and moderate income housing.

### **4 BOARD ACTION**

Therefore, the Board voted unanimously on August 1, 2023 to **GRANT** the requested Comprehensive Permit Amendment for the Project as described herein and as presented in the application, subject to and with the benefit of the following Plan modifications, conditions, and limitations.

**4      PLAN MODIFICATIONS**

The Building Commissioner shall not issue a building permit until and unless the Zoning Enforcement Officer confirms that any proposed building permit plans are substantially in compliance with information submitted, reviewed and approved as part of this Comprehensive Permit. Except where otherwise provided, all such information shall be subject to the approval of the Zoning Enforcement Officer. Where approvals are required from persons or agencies other than the Zoning Enforcement Officer, the Applicant shall be responsible for providing evidence of such approvals to the Zoning Enforcement Officer.

- 4.1    The Applicant shall address all outstanding items outlined in the engineering review memo submitted by GCG Associates, date August 31, 2023.

**5      CONDITIONS**

- 5.1    Except as modified herein, the Original Decision, the plan approved thereunder, shall remain in effect.

**6      APPEALS**

- 6.1    Any person aggrieved by the issuance of this Decision has the right to appeal pursuant to M.G.L. Ch. 40A, § 17 and shall file such appeal within 20 days after the date of filing this Decision with the Town Clerk.
- 6.2    The Applicant shall have the right to appeal the issuance of this Decision to the Housing Appeals Committee pursuant to M.G.L. Ch. 40B, § 22 and shall file such appeal within 20 days after the date of filing this Decision with the Town Clerk.

The Town of Acton Zoning Board of Appeals



Kenneth F. Kozik, Chairman



Adam Hoffman, Member



R. Scott Robb, Member

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

Eva K. Szkaradek, Town Clerk

Date