DOCKET NO. (LND) HHD-CV23-6165456-S

LITTLE HOUSE LIVING, LLC : SUPERIOR COURT

v. : JUDICIAL DISTRICT OF HARTFORD

 AT HARTFORD

PLANNING AND ZONING

COMMISSION OF TOWN OF

BERLIN AND TOWN OF BERLIN : DECEMBER \_\_\_\_, 2023

**STIPULATION FOR JUDGMENT**

1. This above-captioned administrative appeal was commenced by the plaintiff, Little House Living, LLC (“Little House” or “Plaintiff”) against the defendant, the Planning and Zoning Commission of the Town of Berlin (“Planning and Zoning Commission”, “Commission”, or “Defendant”) and the Town of Berlin (“Town of Berlin” or “Town”) to appeal the November 17, 2022 decision of the Commission denying the Plaintiff’s applications for special permit and site plan approval to construct an eighteen (18) unit Planned Residential Infill Development, pursuant to Section XI.DD. of the Zoning Regulations of the Town of Berlin (“Zoning Regulations” or “Regulations”) at the real property located at 1676 and 1688 Berlin Turnpike (Map 22-1 / Block 114 / Lot 10) in the Town of Berlin, Connecticut (“Property”). [The Plaintiff and Defendant may collectively be referred to as the “Parties.”]
2. After this appeal was commenced, the Plaintiff submitted applications to the

Commission, pursuant to Connecticut General Statutes Section 8-30g (“C.G.S. § 8-30g”), for a text amendment to create a new planned residential development regulation entitled “Planned Residential Infill Development — Inclusionary Multi-Family Residential Use with a Housing Opportunity or Workforce Housing Component" at proposed Section XI.EE. of the Zoning Regulations, and for site plan approval to permit a twenty (20) unit development to be constructed at the Property (“Pending Applications”).

1. During the public hearings related to the Pending Applications, the Plaintiff argued that there was a need for affordable housing in the Town in that the Town is not exempt from the provisions of C.G.S. § 8-30g because only 8.8% of the housing stock in the Town qualified as affordable housing as defined by the statute pursuant to the State of Connecticut Department of Housing (“DOH”) 2022 Affordable Housing Appeals List for the purposes of C.G.S. § 8-30g and the Plaintiff submitted a draft Deed Restriction and Affordability Plan with the site plan application.
2. The public hearings on the Pending Applications are closed but the Commission has not yet voted on the applications.
3. It is the intent of the Parties to resolve these matters without the time, expense, and risk of further litigation and without any admission of liability or fault.
4. The Parties stipulate that Judgment should enter in these matters in accordance with the terms and conditions contained herein.
5. The Parties agree that the terms of the Judgment, subject to approval of the Court, shall be as follows:
6. GENERAL TERMS AND CONDITIONS
7. The purpose of the specific terms of the Stipulation is to enable development of the Property pursuant to the site plan as described in general detail in section 7(b) herein and more fully in the site plan set itself attached as hereto as Exhibit A entitled “The Bungalows Proposed Residential Development #1676 & #1688 Berlin Turnpike (Connecticut Route #15) Berlin, Connecticut December 05, 2023 Revised December 13, 2023” prepared by Juliano Associates, LLC, Wallingford, Connecticut (“Settlement Plan” or “Plan”).
8. The Plaintiff agrees to comply with the requirements of all federal, state, and local Codes, Regulations, Ordinances, and laws in developing the Property. The Plaintiff also understands and agrees that it must obtain approvals, including permits, from the Commission and the Planning and Zoning Staff, the Inland Wetlands and Watercourses Commission, the Building Official, the Fire Marshal, and other officials, agencies, and authorities of the Town of Berlin prior to requesting and obtaining a Certificate(s) of Occupancy in compliance with the Building Code and agrees it will provide access to the Town of Berlin’s Building, Fire, and Planning and Zoning Departments, and other officials, agencies, and authorities of the Town, for all required inspections and all inspections of the Property requested by the Town. Furthermore, if the Plaintiff desires and proposes to change any use of the Property in the future, the Plaintiff acknowledges and agrees that such change in use will require additional permits and/or approvals in accordance with the Zoning Regulations and all other applicable laws and agrees that such permits and approvals will be sought and obtained prior to such use being put into effect.
9. It is expressly understood and agreed that no provision of this Stipulation shall be interpreted as requiring the issuance of any permit or approval by any official, employee, department, board, commission, agency, or authority of the Town of Berlin, but for approval by the defendant Planning and Zoning Commission of a site plan submitted by the Plaintiff which is in full compliance with the Settlement Plan described in section 7(b) below and all applicable federal, state, and local Codes, Regulations, Ordinances, and laws.
10. THE SETTLEMENT PLAN

The Parties agree that the Plaintiff’s Property can be developed pursuant to the Settlement Plan attached hereto as “Exhibit A”, subject to a complete submission to and review of a final site plan set and approval of said site plan set by the Town Planner and other Town officials and employees and incorporation of and compliance with all Commission and departmental, official, agency, and authority comments and conditions, which complete site plan submission is to generally include the following:

1. General Terms and Conditions
2. Six (6) two unit/duplex residential buildings and two (2) three unit/triplex residential buildings are to be constructed upon the Property. There shall be a total of eighteen (18) residential housing units and the Parties specifically agree that no additional housing units will be constructed. The maximum total floor area for each housing unit in the duplex and triplex residential buildings shall not exceed 1,200 square feet. The total footprint of each duplex building shall not exceed 54 feet by 28 feet. The total footprint of each triplex building shall not exceed 60 feet by 32 feet. All housing units shall contain two (2) bedrooms, two and one-half (2.5) baths, and a garage. One (1) of the housing units will be compliant with Type A accessibility guidelines in the 2021 IBC and ANSI standards [or any revised codes and standards that may be applicable]. None of the residential buildings will exceed 27 feet in height to the peak of the roof. A community center of a height not to exceed 17 feet will also be constructed as a resident amenity in the community courtyard area and a property maintenance room with an overhead garage door will adjoin the community center.
3. The Plaintiff has agreed that 20% of the total residential housing units, or four (4) housing units, shall be deed restricted as “affordable housing units” as defined by C.G.S. § 8-30g, calculated at 80% of the median income applicable to the Town of Berlin. In terms of the distribution of the affordable housing units, generally two (2) affordable units shall be located among the duplex buildings and one (1) affordable unit shall be located in each of the triplex units. The specific units designated as affordable shall be designated in the site plan set and in the required affordability plan. A revised Deed Restriction compliant with the Model Deed Restriction contained in the Regulations of Connecticut State Agencies for the Department of Economic and Community Development shall be submitted to the Town Planner and shall be subject to approval by the Commission and the Town Attorney. A revised Affordability Plan is attached hereto as “Exhibit C.” An updated draft of the Affordability Plan with any referenced exhibits and schedules shall be submitted to the Commission by the Plaintiff with the draft site plan and shall be subject to approval by the Town Planner and the Town Attorney. Both the Deed Restriction and Affordability Plan shall be recorded on the Berlin land records prior to issuance of the initial building permit.
4. Approval by the Town Planner, subject to the discretion of the Commission, of all architectural, landscaping and streetscape, and material and design standards and all lighting, fencing, and signage shall be required. Based upon the Settlement Plan, the following details are of note with regard to some of these aspects of the Plan, but are not representative of all requirements for compliance with or completion of the Plan:
5. Architecturals

Attached hereto as Exhibit B are architectural renderings of the duplex and triplex residential buildings and the community center and property maintenance room building. As depicted in Exhibit B, building materials shall be selected to convey a sense of quality, durability, and permanence, and shall be economically maintained and able to retain their appearance over time. The overall architecture and color palate shall be traditional Craftsman in nature.

1. Landscaping and Streetscape

The Commission has reviewed a proposed landscaping and streetscape plan, which incorporates existing trees and other vegetation. A Registered Consulting Arborist (RCA) shall be retained by Plaintiff to prepare and execute a plan to preserve and maintain existing trees in sensitive locations and the Town Planner or Assistant Planner shall be included in all meetings and communications with the retained RCA.

1. Lighting

The final lighting plan shall be consistent with the architecturals and compliant with the Zoning Regulations.

1. Fencing

Black estate fencing shall be installed along the west property line and shall extend eastward along the north and south property lines.

1. The Plaintiff’s submission shall comply with all requirements of the Zoning Regulations and the Inland Wetlands and Watercourses Regulations of the Town of Berlin, including but not limited to the submission of all required plans, reports, and documents and the Plaintiff shall conduct all necessary testing and studies for submission of same. The Plaintiff specifically acknowledges and agrees that it must obtain a permit to conduct regulated activity from the Inland Wetlands and Watercourses Commission to develop the Property in accordance with the Settlement Plan.
2. The Plaintiff shall post a bond in an amount to be determined by Town Staff in accordance with the applicable provisions of the Zoning Regulations and Connecticut General Statutes.
3. Permitted Uses

Residential housing use and supporting facilities. All units within the duplex and triplex building shall be used for residential housing only. In addition, the Plaintiff is committed to providing amenities which will enhance the quality of life of residents, including but not limited to, indoor and outdoor recreational areas. A community center and a property maintenance room with an overhead garage door shall be constructed in the community courtyard area. Mailboxes for residents shall be constructed on the exterior of the community center/maintenance room building and four (4) parking spaces shall be provided in the courtyard area as shown on Exhibit A. The community center shall be used as a resident amenity and adjoining the center shall be a pervious paver patio and a fire pit area. In the northwest corner of the Property shall be a community recreation/terrace area. All residential housing units shall have a patio in the rear separated from adjoining units by a privacy fence.

1. Parking

Plaintiff shall provide parking in accordance with the layout shown on Exhibit A.

1. Stormwater Management, Inspection, and Maintenance

Plaintiff shall submit a Stormwater Management, Inspection, and Maintenance Plan, subject to the approval of the Town Engineer and Town Attorney and said Plan shall be incorporated into the site plan set.

1. Timeframe for Completion of Site Plan Improvements

All site improvements in connection with the approved site plan shall be performed and completed in strict compliance with the site plan as approved by the Commission and shall be completed within five (5) years from the date of the Commission’s approval thereof. Any extensions of this five (5) year timeframe that may be permitted by the Connecticut General Statutes must be expressly approved by the Commission. Failure to complete all site improvements within the initial five (5) year period, or such longer period as may permitted by approval of an extension by the Commission, shall result in automatic expiration of the approval of such site plan. In the event of automatic expiration, a new site plan must be submitted as the Settlement Plan will be void.

1. In the event that it is necessary for any Party to file a Motion to Enforce any provision of this Stipulation, the said Party shall be entitled to recover all costs incurred in connection with enforcement, including reasonable attorney’s fees.
2. This Stipulation for Judgment shall be recorded on the Berlin land records following entry of judgment in accordance therewith by the Court in the above-captioned action.
3. This Court shall maintain continuing jurisdiction over this matter for the purpose of enforcing the rights and obligations of the Parties as set forth herein.
4. All costs and attorney’s fees incurred by the Plaintiff in pursuit of this action, for preparation and execution of the Settlement Plan, the preparation and submission of the final site plan set to the Commission, and the preparation and submission of any other required applications and documents shall be borne by the Plaintiff alone.
5. The terms and provisions of this Stipulation shall inure to the benefit of and be binding upon the Parties and their respective heirs, legal representatives, successors, and assigns.
6. This Stipulation is absolute and unconditional and, together with the attached Exhibits, constitutes the full, complete and entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes any prior negotiations, commitments, agreements, representations, promises, statements, warranties, covenants, or understandings, whether oral or in writing, that any party hereto may claim exists, all of which negotiations, commitments, agreements, representations, promises, statements, warranties, covenants, or understandings are expressly merged herein. No other representations, promises, statements, warranties, covenants, or understandings or other prior or contemporaneous negotiations, commitments, or agreements, oral or written, respecting such matters that are not specifically incorporated herein shall be deemed in any way to exist or to bind any of the Parties hereto. Each of the Parties hereto acknowledges and affirms that it has not executed this Stipulation in reliance upon any representations, promises, statements, warranties, covenants, or undertakings not contained within this Stipulation. The Parties acknowledge that they were represented by legal counsel of their choice in connection with the review and negotiation of this Stipulation. This Stipulation shall be deemed to have been drafted by the Parties, not by any individual party. This Stipulation may not be amended, modified, altered, changed, limited, or terminated, except by a writing signed by the Parties hereto. This Stipulation contains the entire agreement between the Parties with respect to the matters set forth herein and may not be changed or terminated orally.
7. In accordance with the Rules of Practice, the Commission published notice of its consideration of this Stipulation in a newspaper of general circulation on December 13, 2023 advising interested members of the public that they could appear and offer public comment on same at a special meeting held on December 20, 2023. After review and consideration of the Stipulation and all public comments received, at the special meeting held on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the Commission voted to authorize undersigned counsel for the Commission to execute the Stipulation on its behalf.
8. Immediately following the court hearing held pursuant to C.G.S. § 8-8(n) and approval of this Stipulation and entry of Judgment by the Court thereon, the Pending Applications shall be withdrawn by Plaintiff.
9. In the event that the Stipulation is not approved and entered as a Judgment by the Court, the Parties agree that the Commission shall have thirty (30) days from the date of the court hearing held pursuant to C.G.S. § 8-8(n) to act on the Pending Applications. Plaintiff specifically and unequivocally agrees that it has no claim to an automatic approval of either of the Pending Applications.
10. This Stipulation may be executed by signature transmitted via facsimile or by

e-mail in PDF format, each of which shall be an original signature. The Stipulation may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but all of which together shall constitute one agreement binding upon the Parties hereto.

THE PLAINTIFF – THE DEFENDANTS –

LITTLE HOUSE LIVING, LLC PLANNING AND ZONING

COMMISSION OF TOWN OF BERLIN

AND TOWN OF BERLIN

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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