

COMMONWEALTH OF MASSACHUSETTS
HOUSING APPEALS COMMITTEE

GREENDALE AVENUE VENTURE, LLC)
Appellant)

v.)

No. 2014-02

NEEDHAM BOARD)
OF APPEALS,)
Appellee)

**ORDER GRANTING
JOINT REVISED MOTION FOR STAY AND REMAND**

The Joint Revised Motion for Stay and Remand dated October 13, 2015, submitted by Greendale Avenue Venture, LLC and the Needham Board of Appeals, which is attached hereto, after consideration, is hereby granted on the terms and conditions requested therein.

Furthermore, Greendale shall file a status report with the Committee on or before December 9, 2015.

HOUSING APPEALS COMMITTEE

Date: October 14, 2015



Shelagh A. Ellman-Pearl
Presiding Officer

circulation, parking and emergency access. Prior to October 28, 2015, the Town Engineer, Fire Department and DPW will indicate in writing or via email whether or not the Plans, as may be further revised in accordance with the cooperative review discussed below, are acceptable, and, if not, what improvements are still required.

- d. The Applicant's technical team and the Town's above-referenced staff and the Board agree to work cooperatively with each other in a good faith effort to resolve any issues that may be apparent or which may arise in the review of the Revised Project, as shown on the Plans, as may be revised. In the event that the Applicant and the Town's technical staff, as aforesaid, are unable to reach agreement on the technical matters, the Applicant, may at its option, submit a written notice, by no later than October 30, 2015, to the Board (with a copy to the Board's Special Counsel) and the HAC terminating the remand proceedings, at which point, the stay of the HAC Appeal shall be lifted and the currently pending HAC Appeal shall resume with the first day of hearing on December 15, 2015. Alternatively, the Applicant may, at its option, proceed with the remand process, notwithstanding any disagreement with the Town's staff on technical matters.
- e. In the event that the Board determines that the Revised Project, as may be further revised during the hearing, is consistent with local needs, the Applicant and the Board shall use good faith efforts to cooperate in the draft a final decision for an approval of the Revised Project. The Board, via its Chairman and Town Counsel, will prepare a draft decision, which such draft will be supplied to the Applicant for its review.
- f. The Board will timely provide the required public notice of the public hearing on the Revised Project so that the Board's public hearing on the Revised Project shall commence no later than October 20, 2015. The subject of the hearing shall be the Revised Project as shown on the Plans, as the same may be amended and agreed to as a result of the above-referenced review by technical staff. The hearing shall terminate no later than December 1, 2015, unless the parties agree to an extension.
- g. The Board's decision on remand ("Remand Decision") shall be filed with the Needham Town Clerk no later than December 8, 2015.
- h. The Housing Appeals Committee shall retain jurisdiction over this matter and the pending HAC Appeal shall be stayed during the remand process.
- i. If the Remand Decision is not issued by the Board and filed with the Town Clerk within the time set forth above, the Revised Project, as may be further revised pursuant to agreement of the Applicant and the Board, shall be deemed constructively approved and the HAC shall forthwith issue a decision (the "HAC Decision") in such form as the HAC deems appropriate, approving the Revised Project as shown on the Plans, as may have been further revised by agreement between the Town and the Applicant as aforesaid, and the HAC Decision so

issued shall become the decision in this matter, subject to all rights of appeal by any third party with sufficient standing, the Board and the Town hereby waiving any right either may have to appeal from the HAC Decision so issued.

- j. If the Board timely issues a Remand Decision, but (i) the Applicant is dissatisfied with any of the conditions of the Remand Decision due to conditions that either materially alter the Revised Project or materially increase the cost of constructing the same, or (ii) if any state legislation is enacted that would require certain areas on the Site to be maintained undisturbed or vegetated or would otherwise adversely impact the Revised Project or require changes to it, the Applicant may terminate the remand and resume the HAC proceedings by sending written notice (the "Notice") to the Board and the HAC within 20 days of the filing of such Remand Decision with the Town Clerk. Upon any such Notice, the HAC stay shall be lifted so that the Board, the Applicant and the Intervener may proceed to litigate the HAC Appeal before the Housing Appeals Committee with all of their claims and defenses preserved and as if the Remand Decision or the HAC Decision had never been issued. The Notice contemplated under this paragraph is not intended to be, and may not be construed as an Appeal of the Remand Decision or the HAC Decision but, rather is intended to be and can only be construed as a Notice to lift the existing stay and resume the HAC Appeal.
- k. Any Remand Decision or HAC Decision would be subject to appeal by a third party, including the Intervener. In order to preserve its rights in the event that a third party (including but not limited to the Intervener) should appeal the Remand Decision or HAC Decision, the Applicant may also preemptively send the Notice to the HAC as outlined in the preceding paragraph, even though the Remand Decision is otherwise acceptable to the Applicant. Such Notice is not intended to be, and may not be construed as an Appeal of the Remand Decision or HAC Decision but, rather can only be construed as a Notice to lift the existing stay and resume the HAC Appeal. In such event, if a third party does not file an appeal of the Remand Decision or HAC Decision within twenty days from the filing thereof with the Town Clerk, the Applicant shall withdraw its Notice, thereby accepting an otherwise acceptable Remand Decision or HAC Decision which shall be the operative decision and, in such case, the HAC Appeal shall be dismissed. If a third party does file an appeal of the Remand Decision or HAC Decision (the "Third Party Appeal"), and notwithstanding any Notice given pursuant to paragraph "j" above or pursuant to this paragraph "k," the Applicant agrees to further stay the HAC proceeding to allow the Applicant to forthwith file a Motion to Dismiss on standing or other grounds. The stay shall be in effect until the presiding trial court issues a decision on said Motion to Dismiss. The Town agrees to cooperate and support such Motion to Dismiss. If the Motion to Dismiss is granted, and the Court's ruling to grant the Motion to Dismiss is not appealed, the Applicant shall withdraw its Notice, thereby accepting the Remand Decision or HAC Decision which shall become the operative decision, as aforesaid. If the Motion to Dismiss is not granted, or is granted but the order granting the Motion to Dismiss is appealed, the Applicant may, at its option lift

the stay by providing written notice (the "Motion to Dismiss Notice") to the HAC and the Board within twenty (20) days of such denial of the Motion to Dismiss, or within twenty (20) days of an appeal of the grant of the Motion to Dismiss so that the Board, the Applicant and the Intervener may proceed to litigate the HAC Appeal before the Housing Appeals Committee with all of their claims and defenses preserved and as if the Remand Decision or the HAC Decision had never been issued. If the Applicant does not issue such Motion to Dismiss Notice and, instead chooses to defend said appeal, the Notice shall be deemed withdrawn and the Remand Decision or HAC Decision shall be the operative permit and the HAC Appeal shall be dismissed.

1. In the event that the Applicant does not send a Notice to the HAC within twenty days from the filing of the Remand Decision or HAC Decision, as aforesaid, the Remand Decision or the HAC Decision as the case may be, shall be the operative Comprehensive Permit decision and the present HAC Appeal shall be dismissed.

WHEREFORE, the Movants respectfully request that the Committee allow this motion and issue the order in the form attached hereto as Exhibit A.

GREENDALE AVENUE VENTURE, LLC,

By its attorneys,



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NEEDHAM ZONING BOARD OF APPEALS,

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Dated: October 13, 2015

CERTIFICATION OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail (by hand) on 10.13.15

and email
J. O. Flaherty

Certificate of Service

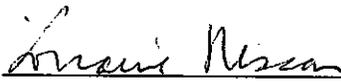
I, Lorraine Nessar, Clerk to the Housing Appeals Committee, certify that this day I caused to be mailed, first class, postage prepaid, a copy of the within Order Granting Joint Revised Motion for Stay and Remand in the case of Greendale Avenue Venture, LLC v. Needham Board of Appeals, No. 2014-02, to:

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Dated: 10/14/15



Lorraine Nessar, Clerk
Housing Appeals Committee