

RECEIVED

NOV 29 2018

**TOWN CLERK
ACTON**

PCRC / Definitive Subdivision – 18-03
180 Newtown Road
November 20, 2018



Planning Board

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 929-6631
pb@acton-ma.gov
www.acton-ma.gov

DECISION
18-03

180 Newtown Road PCRC
Planned Conservation Residential Community (PCRC)
Definitive Subdivision
November 20, 2018

GRANTED AND APPROVED WITH CONDITIONS

Decision of the Acton Planning Board (hereinafter the Board) on the application of Chris Coughlin, P.O. Box 492 Concord, MA (hereinafter the Applicant) for property in Acton, Massachusetts, owned by Ernest K. Anderson Jr. The property is located at 180 Newtown Road and is shown on the Acton Town Atlas as parcel D3-10 (hereinafter the Site).

This Decision is in response to an application for a PCRC special permit and Definitive Subdivision Approval received by the Acton Planning Division on July 10, 2018, pursuant to Section 9 of the Acton Zoning Bylaw (hereinafter the Bylaw), the Planned Conservation Residential Community Rules and

Regulations (hereinafter the PCRC Rules) and the Acton Subdivision Rules and Regulations (hereinafter SRR).

Greg Roy of Ducharme and Dillis presented the application on behalf of the applicant at a duly noticed public hearing held on September 4 and 25, 2018 (continued without presentations or deliberations), and October 2, 2018 and October 23, 2018. The Board closed the public hearing on October 23, 2018. Board members Mr. Ray Yacoub (Chair), Mr. Derrick Chin, Mr. Jon Cappetta, Mr. Anping Liu, and Ms. Emilie Ying were present throughout the meeting. The minutes of the meeting and submissions on which this Decision is based upon may be viewed in the Planning or Town Clerk's offices at the Acton Town Hall

1 EXHIBITS

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

- 1.1 A plan entitled "Definitive Subdivision PCRC Development, Genevieve Lane - 180 Newtown Rd Acton, MA" dated 3/20/18, last revised 10/18/18, drawn by Ducharme & Dillis Civil Design Group, Inc, of 1092 Main Street, P.O. Box 428 Bolton, MA 01740 consisting of fifteen sheets.
- 1.2 Supplemental items and documentation required by the PCRC consisting of:
 - Properly executed applications for a Definitive Subdivision Approval and a PCRC Special Permit, dated 4/27/18 and 05/10/18 respectively;
 - Project Narrative;
 - Designer Certificate;
 - Filing fee;
 - Certified abutters list;
 - Development Impact Report;
 - Use Description;
 - Copy of the deed;
 - Stormwater Report; dated 04/06/18, last revised 09/11/18;
 - Earth work calculations;
 - List of requested waivers last revised 9/11/18.
- 1.3 Additional information submitted by the Applicant:
 - A letter regarding Parcels A & B, dated 08/08/18;
 - Applicant response letter to the board, dated 09/11/18;
 - Applicant waiver letter to the board, dated 09/11/18;
 - Revised Stormwater Report, dated 09/11/18;
 - Fire Turning Exhibit, dated 09/20/18;
 - Applicant response letter to the Board, dated 10/18/18;
 - Overview plan, last revised 10/18/18;
 - Soil Map.
- 1.4 Interdepartmental communication received from:
 - Natural Resources Division, dated 08/13/18 and 10/18/18;
 - Health Division, dated 08/23/18;
 - Acton Water District, dated 08/24/18;
 - Acton Engineering Department. dated 08/24/18 and 09/25/18;
 - Acton Planning Division, dated 08/24/18 and 10/22/18 ;
 - Acton Tree Warden & Municipal Properties Dir, dated 08/30/18;
 - Acton Fire Department Turning Exhibit, 10/23/18.

1.5 Public Comments:

- Jim Synder-Grant, dated 09/04/18;
- Ralph & Mary Abbott, dated 10/10/18;
- Rick & Diane Hryniewich, dated 10/18/18;
- Terra Friedrichs, dated 10/23/18.

1.6 Extension Agreements:

- Consent and Agreement to Extension of Hearing to September 25, 2018;
- Consent and Agreement to Extension of Hearing to October 2, 2018;
- Consent and Agreement to Extension of Hearing to October 23, 2018.

Exhibits 1.1 through 1.3 are referred to herein as the Plan.

2 FINDINGS and CONCLUSIONS

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

- 2.1 The Site is located within the Residence 10/8 (R-10/8) zoning district; partially in the Flood Plain overlay district, and Zones 3 &4 of the Groundwater Protection District.
- 2.2 The proposed eight single-family detached dwellings may be allowed on the Site in accordance with the Bylaw, including all overlay district requirements, and subject to this special permit under Section 9 of the Bylaw.
- 2.3 The Plan shows the proposed division of approximately $16.68\pm$ acres into two areas with $4.59\pm$ acres for residential use and $12.09\pm$ acres of common land to be deeded to the Town and to be preserved as open space.
- 2.4 The Plan shows approximately 5.2 acres of wetlands on the site. Some of the proposed house lots are within the 100 foot wetland buffer zone; they will be subject to review and approval by the Acton Conservation Commission.
- 2.5 PCRC does not require lot frontage on a street, but under the special permit the Board is obligated to ensure safe and adequate access to residences and buildings.
- 2.6 The Plan shows a ± 400 foot long private road that provides access for the eight single-family houses. The proposed private road is 16 feet wide. It has a turn-around landscape island. The alignment, the intersection roundings, and the turn-around accommodate emergency vehicles (up to SU-30 design vehicles) except as noted in sketch received from the Fire Department on 10/23/18.
- 2.7 Water to the Site would be provided by the Acton Water District with a water main extension from the Newtown Road/Arlington Street intersection.
- 2.8 The Site abuts existing Town owned conservation land to the south and west.
- 2.9 The Applicant went on record that he intends to offer the Common Land to the Town for conservation purposes. The proposed use of the common land complies with the Bylaw.
- 2.10 The Applicant also stated that he would offer the Town a 40' wide drainage & access easement shown on the Plan on lot 5 along with a limited access easement over the Genevieve Lane.
- 2.11 The Applicant further has indicated that, in lieu of construction sidewalks or making a payment to the Town sidewalk fund, he is willing to construct a gravel parking lot on the Town-owned land on Arlington Street for four vehicles with a pedestrian trail & bridge over the wetland system for a cost not to exceed the amount that would otherwise be required to be paid in lieu of construction of the sidewalk.

- 2.12 The Board has received comments from various Town departments, which are listed in Exhibit 1.4 above. The Board also received comments from abutters and the public in writing and verbally during the public hearing; the written public comments are listed in Exhibit 1.5. The Board considered these comments in its deliberations, made them available to the Applicant, and incorporated into this decision those comments that it deemed appropriate.
- 2.13 Under Massachusetts Law, property taxes must be paid prior to plan recording. Under the Town of Acton Bylaws, no permit or special permit shall be issued to any party “that has neglected or refused to pay any local taxes ...” (Chapter O).
- 2.14 The proposed PCRC as shown on the Plan and as amended herein complies with the applicable requirements of the Bylaw; is in harmony with and enhances the purpose and intent of the Bylaw, specifically Section 9; is in harmony with the existing and probable future uses of the area and with the character of the surrounding area and neighborhood; is consistent with the Master Plan; will not be detrimental or injurious to the neighborhood; and is appropriate for the Site.

3 BOARD ACTION

Therefore, the Board voted unanimously on November 20th 2018 to GRANT the requested Special Permit and to approve the Definitive Subdivision subject to and with the benefit of the following waivers, conditions, plan modifications, and limitations.

3.1 WAIVERS

The Applicant has requested the following waivers from the PCRC Rules:

- 3.1.1 Section 3.14 (all sheets contain a legend) of the PCRC Rules. The waiver is **granted**; a plan legend is provided on sheet C1.1 (Legend, Notes and Specifications).
- 3.1.2 Section 3.14.5.12 (Building dimensions shown on plan) and Section 3.14.5.13 (Dimensions of building setbacks, distances between buildings, and building heights). The plan shows lots for single-family homes. The applicant represents that home plans have not been selected and will be chosen for or by potential buyers. The record plan (sheet C3.1) shows building envelopes for each lot that meet the Bylaw’s minimum setback and building separation requirements. The waivers are **granted**.
- 3.1.3 Section 3.14.7.4 (Outdoor lighting details). Where no outdoor lighting is proposed as part of the development, no waiver is needed.
- 3.1.4 Section 3.14.8.7 (Location, size and proposed fate of existing trees larger than 16” in diameter shall be shown). The clustered development portion of the site does not leave an opportunity to preserve individual significant trees, if any, in a manner that would secure their long-term viability. The existing natural vegetation on the contiguous common land will for the most part be preserved. This is an acceptable plan. The waiver is **granted**. Trees within the Newtown Road ROW are subject to the laws for the protection of public shade trees.
- 3.1.5 Section 3.14.10 (Architectural Floor and Elevation Plan). The plan shows lots for single-family homes. The applicant represents that home plans have not been selected and will be chosen for or by potential buyers. The record plan (sheet C3.1) shows building envelopes for each lot that meet the Bylaw’s minimum setback and building separation requirements. The waiver is **granted**.

The Applicant has requested the following waivers from the Subdivision Rules:

- 3.1.6 Section 5.3 (Key sheet shown at 1”=200’). The plan includes a key sheet at a scale of 1”=100’. The waiver is **granted**.

- 3.1.7 Section 8.4.4 (Base flood elevation and one foot contours for land within the Flood Plain District). No work is proposed within the flood plain district. The waiver is **granted**.
- 3.1.8 Section 8.2.2.4 (Rational method/formula for sizing drainage structures and pipes). The Applicant proposes an alternate methodology. The Acton Engineering Department has indicated that there would not be a problem. The waiver is **granted**.
- 3.1.9 Section 8.5.2 (Retention and treatment of first inch of every storm event). The Acton Engineering Department indicates that the alternative design meets the groundwater quality objectives of the Rules. The waiver is **granted**.
- 3.1.10 Section 9.1.6 (top pavement course not until major construction completed). The applicant suggests that construction of the homes may extend over a longer period of time and that in the interim new homeowners should have the benefit of a finished pavement surface. The waiver is **granted**. However the construction plan shall clearly specify that the binder course must be exposed to one full winter season (Subdivision Rules 9.1.5, and that no pavement shall take place after November 15 of any year (Subdivision Rules 9.1.9).
- 3.1.11 Section 8 and 9 generally to allow the private street to be constructed in accordance with Common Driveway Standards as allowed under Section 10.1.3 (Residential Compound) of the Subdivision Rules and as shown on the Plan. The waiver is **granted** subject to the required Plan Modifications, Conditions and other instructions set forth in this Decision.
- 3.1.12 With respect to Section 9.6 (Sidewalks, etc.). This section is **waived in part and conditionally** as follows:
 - a. The plan shall be modified to show a sidewalk along the north side of Genevieve Lane between Newtown Road and the foot trail on the Lot 5 access easement to the common land. Near the Newtown Road end the sidewalk shall be widened to include a paved school bus waiting area for students (10ft. X 5 ft. minimum).
 - b. In lieu of constructing a sidewalk along Newtown Road, the applicant shall contribute \$15,600 to the Town's sidewalk fund (312 feet Newtown Road frontage X \$50 per linear foot) payable prior to the issuance of the Certificate of Occupancy for 5th dwelling on the Site.
 - c. In addition, the Applicant shall construct on the adjacent Town-owned land a four-space gravel parking lot off Arlington Street, and a trail with boardwalk from said parking lot to connect with existing conservation land trails on the land. The Applicant shall work closely with the Acton Natural Resources Department in laying out, designing and constructing the parking lot and trail; and no work shall be done on the land without the approval of the Natural Resources Director. The Natural Resources Director may consult with the Conservation Commission and defer all matters to the Commission as he may be required or may find appropriate and necessary. However, the Applicant's maximum obligation for this shall not exceed the amount of the required contribution to the Town's sidewalk fund; i.e. \$15,600.

3.2 PLAN MODIFICATIONS

Prior to endorsement and recording of the Plan the Plan shall be revised to include the following additional, corrected, or modified information. Except where otherwise provided, all such information shall be subject to the approval by of the Zoning Enforcement Officer (ZEO).

- 3.2.1 To comply with Bylaw section 9.6.3.2 e) revise all applicable Plan sheets so that the drainpipe (DP4), its outlet, rip rap, sediment forebay, etc. are not located within the minimum required common land area.

- 3.2.2 Provide drainage calculations for the 100-year storm event showing that the project as designed will not increase runoff as compared to pre-development conditions nor increase downstream flood levels.
- 3.2.3 Between the Plan and the drainage report reconcile (1) the cover type for sub-catchment area B1 and (2) the roof area.
- 3.2.4 Clarify and adjust as needed the post-development model for sub-catchment area A.2 and pre-development sub-catchment area A.4.
- 3.2.5 On all applicable Plan sheets add the dimensions for the stone fields and the estimated seasonal high groundwater elevation to the details, particularly for the roof runoff infiltration systems.
- 3.2.6 On all applicable Plan sheets show a MUTCD compliant Street/Private Way sign for Genevieve Lane.
- 3.2.7 On all applicable Plan sheets specify and show the construction of a foot trail within the Lot 5 drainage & access easement including durable and clearly visible delineators such as granite posts or split rail fence corners.
- 3.2.8 On all applicable Plan sheets show one wayfinding sign at Genevieve Lane and Newtown Road and one the foot trail entrance at the Lot 5 easement for trail access to the common land via Genevieve Lane. The signs shall be small in scale sufficient only to be legible by nearby pedestrians. For sign type and material coordinated with the Natural Resources Department.
- 3.2.9 On all applicable Plan sheets show a sidewalk on the north side of Genevieve Lane between Newtown Road and the foot trail of the Lot 5 access easement to the common land, including a 10ft. X 5 ft. minimum waiting area near the Newtown Road end of the sidewalk for the safety of children waiting for a school bus.
- 3.2.10 On all applicable Plan sheets increase the intersection curb radius at Lot 3 from 35 feet to 45 feet or such other reasonable radius that the Fire Department may specify.
- 3.2.11 On plan sheet C1.1, under Grading Notes/Specifications – B. Roadway, add a note that no paving shall take place after November 15 of any year (Subdivision Rules 9.1.9).
- 3.2.12 On Plan sheet C9.1 revise the granite bound detail (for the common land boundary markers) to specify a 6-foot long marker that will extend 2 feet above the ground, or propose an alternative method that provides clear and permanent above ground monumentation in addition to the in-ground bounds.
- 3.2.13 On plan sheet C10.0 –
 - a) Adjust the limit of clearing slightly so that it does not encroach onto the common land.
 - b) Increase the height of the berms in the rear of lots 6 through 8 and Lots 1 and 2 to match the elevation of the abutting land. The lines of evergreen plantings or fence shall be placed on top of the raised berm.
 - c) For the lines of proposed evergreen plantings, note as alternative to the plantings, the installation of a fence sufficient to provide effective visual screening. The fence shall be specified to be at least 6 feet high but not exceed 8 feet in height.
 - d) Extend the line of evergreen plantings with the fencing alternative to include the +/-99 foot long southeasterly side of lot 3.
 - e) The Applicant shall give the respective abutters a choice between evergreen plantings or fencing.

- 3.2.14 An obligation to maintain the evergreen plantings and/or fencing in reasonable condition or replace them as necessary to continue to fulfill their intended screening function shall be entered into the deeds to lots 1 through 3, and lots 6 through 8.
- 3.2.15 On the Record Plan sheets show street addresses as assigned by the Acton Engineering Department (memo dated August 24, 2018).
- 3.2.16 On the Record Plan sheets add a reference to Parcels A & B as shown on Plan 857 of 2013 with clear indication to which lot they belong to.
- 3.2.17 Submit for the Board's or its designee's approval a common driveway maintenance agreement and covenant for the private street and all its appurtenances that shall:
 - a) apportion the responsibility for snow and ice removal and for general maintenance among the owners of the homes;
 - b) declare that the street shall remain a private way and serve not more than eight single family homes;
 - c) declare that the owners of the residences shall be jointly responsible for the removal of snow and ice and for any general maintenance and upkeep of the common driveway and any associated drainage structures and utilities;
 - d) that the owners shall not petition the Town to accept the street as a public way and/or to provide snow and ice removal services or any other maintenance;
 - e) include an operation and maintenance plan for the proposed drainage system to be approved by the Engineering Department;
 - f) acknowledge and accept that the forgoing declarations are enforceable by the Town in a court of law; and
 - g) reference the access easement deed.

Examples of such documents are available in the Acton Planning Division. If the proposed development is to become a condominium the foregoing provisions shall be incorporated in the condominium master deed.

- 3.2.18 Submit for the Board's or its designee's approval:
 - a) The fee simple deed to the Town of Acton for the Common Land consistent with the requirements of the Bylaw for public ownership of common lands in PCRCs and consistent with this decision.
 - b) The perpetual conservation restriction for the Common Land Parcel in compliance with provisions of M.G.L. Chapter 184.
 - c) The trail easement deed to the Town with an accompanying easement plan that memorializes public rights to pass and re-pass on foot and Town rights to access on foot or by vehicle for maintenance purposes the Common Land from Newtown Road via Genevieve Lane and the drainage and access easement on Lot 5.
- 3.2.19 The Plan shall be modified as needed to comply in all respects with the Bylaw and, unless directed otherwise by this decision, with all applicable requirements of the PCRC and Subdivision Rules.

3.3 CONDITIONS

The following conditions shall be binding upon the Applicant and its successors and assigns. Failure to adhere to these conditions may render this special permit null and void, without force and effect, and may

constitute grounds for the revocation of this special permit, and of any building or occupancy permit issued hereunder. The Town of Acton may elect to enforce compliance with this special permit using any and all powers available to it under the law.

- 3.3.1 Prior to the endorsement of the Plan pursuant to the Subdivision Control Law, the Applicant shall provide the Board with a performance guarantee pursuant to Section 6 of the Acton Subdivision Rules and Regulations. In addition to the street construction, the performance guarantee shall include all miscellaneous obligations shown on the Plan and required hereunder such as but not limited to perimeter berms, fencing or evergreen plantings, signage, parking lot and trail off Arlington Street, and an as-built plan. The Board reserves the right to require additional performance guarantees for any and all items and improvements shown on the Plan.
- 3.3.2 No private irrigation wells shall be allowed within the subdivision. A restriction to this effect shall be entered into the deed to the purchasers of each of the eight lots.
- 3.3.3 An obligation to maintain the evergreen plantings and/or fencing in reasonable condition or replace them as necessary to continue to fulfill their intended screening function shall be entered into the deeds to lots 1 through 3, and lots 6 through 8 (see also par. 3.2.13 and 3.2.14 herein).
- 3.3.4 The applicant shall follow up with the Acton Tree Warden to determine the status of all trees that exist within the Newtown Road ROW in front of the site. No trees that the Tree Warden deems public shade trees shall be removed, trimmed or pruned without the express permission of the Tree Warden. The Board understands that a public shade tree hearing is a prerequisite to the removal of any public shade tree.
- 3.3.5 The Applicant shall comply with the requirements and conditions set forth under Section 3.1 above (Waivers).
- 3.3.6 The applicant shall construct a four space parking lot off Arlington Street with a pedestrian trail and boardwalk as specified and limited in par. 3.1.12 b) of this Decision.
- 3.3.7 Prior to the issuance of any building permit for any of the proposed homes on the site, the applicant shall offer the Common Land to the Town subject to a conservation restriction (see par. 3.2.18 a) and b) above) and the trail easement (see par. 3.2.18 c) above) to the Town of Acton and shall agree to convey said Common Land and easement to the Town after and subject to acceptance of the land and easement by Town Meeting.
- 3.3.8 The deed to Lot 5 shall clearly state that the lot is subject to the drainage and access easement shown on the Plan, which includes the public and Town access rights required in this decision.
- 3.3.9 Prior to blasting, the applicant or site contractor shall contact and consult with the Acton Fire Department and follow all requirements, regulations and instructions of the Fire Department before during and after the blasting occurs.
- 3.3.10 All work on the Site shall be conducted in accordance with the terms of this special permit and shall conform with and be limited to the improvements shown on the endorsed Plan.
- 3.3.11 All taxes, and penalties and back charges resulting from the non-payment of taxes, if any, shall be paid in full prior to issuance of any building permit on the Site.
- 3.3.12 The Applicant shall be diligent in complying with the erosion and sediment control plan. The Applicant shall not cause or permit the runoff of water or erosion that result in the flooding or siltation of any street, way or drainage facility owned or maintained by the Town. If such runoff or erosion occurs, the Board or the Building Commissioner may order the immediate cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.

- 3.3.13 All work on the Site shall be performed in compliance with the applicable law and regulations protecting wetlands and wildlife habitat in the Town of Acton.
- 3.3.14 All requirements of the Board of Health Regulations must be met.
- 3.3.15 The installation of public water services to the Site and the lots shall be done in compliance with the specifications of the Water Supply District of Acton (see also memo from Chris Allen, District Manager dated August 24, 2018).
- 3.3.16 All common land areas shall remain in their natural state and remain undisturbed during and after construction except as shown on the Plan and allowed under this decision.
- 3.3.17 The common land shown on the Plan and approved hereunder, including any portion that exceeds minimum zoning requirements, shall not be reduced in area.
- 3.3.18 No portion of the common land shown on the Plan and approved hereunder, including any portion that exceeds minimum zoning requirements, shall be used to meet area, setback, or any other zoning requirements for any other development or improvement that is not shown on the Plan, specifically, it shall not be used to support additional dwelling units or house lots.
- 3.3.19 The number of eight dwelling units on the Site shall not be increased.
- 3.3.20 The applicant is advised to check the yard area of the existing house for residual contamination from possible oil changes that the previous residents may have done on their vehicles (as reported by abutter).
- 3.3.21 Prior to the issuance of the last Certificate of Occupancy the Applicant shall submit an as-built plan certified by a PLS and a statement by a PE stating that the subdivision has been constructed as designed and if not, any differences shall be noted in the statement. The PE shall field inspect all components of the stormwater system and shall certify that the system, as built, functions as designed and approved despite any potential differences.
- 3.3.22 This Decision, the endorsed Record Plan, and the approved private way maintenance agreement and covenant shall be recorded by the Applicant at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit on the Site. The demolition of the existing house is exempt from this requirement.

3.4 LIMITATIONS

The authority granted to the Applicant under this special permit is limited as follows:

- 3.4.1 The foregoing required modifications and conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Bylaw, the PCRC Rules, and other applicable laws and regulations.
- 3.4.2 This special permit approval applies only to the Site identified in this decision and to the proposed use and activity as shown on the Plan.
- 3.4.3 Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.
- 3.4.4 This special permit shall lapse if substantial use thereof has not commenced within two years of the filing date of this decision with the Town Clerk, except for good cause, or if construction under this special permit is not continued through to completion as continuously and expeditiously as is reasonable. For substantial use to have commenced, clearing and grading on the Site as approved hereunder must be under way. For construction to continue towards completion as continuously and expeditiously as is reasonable, construction activity shall not rest for more than 1 year. A request to extend said time limits must be made in writing to the Board at

least 30 days prior to said expiration dates, and the Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to the special permit and to require any appropriate modifications of the Plan.

3.4.5 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this decision with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

4 APPEALS

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, S. 17 and shall be filed within 20 days after the date of filing this decision with the Town Clerk.

5 CERTIFICATE OF ACTION

This document stating the Decision of the Board shall serve as the Certificate of the Board's Action to be filed with the Town Clerk pursuant to MGL, Ch. 41, s. 81-U.

Signed on behalf of the Town of Acton Planning Board:



Roland Bartl, AICP, Planning Director

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 Szkaradek, Town Clerk

Date

Copies furnished:

Applicant -
certified mail #
Town Clerk
Owner

Land Use Department
Engineering Department
Town Manager

Police Chief
Municipal Properties Director
Fire Chief