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Definitive Subdivision Decision – 18-05  
110 Nagog Hill Road  
January 14, 2019

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**Planning Board**

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

18-05

**110 Nagog Hill Road**

Definitive Subdivision (Residential Compound)

January 14, 2019

**APPROVED with Conditions**

Decision of the Acton Planning Board (hereinafter the Board) on the application of James & Roberta King (hereinafter the Applicant) for property located in Acton, MA at 110 Nagog Hill Road. The Applicant owns the property. It is shown on the Acton Town Atlas as parcel E4-28 (hereinafter the Site).

This Decision is in response to an Application for Approval of a Definitive Subdivision at 110 Nagog Hill Road, filed with the Acton Planning Division on October 3, 2018, pursuant to Massachusetts General Laws, Chapter 41, Section 81-K through 81-GG, and the Acton Subdivision Rules and Regulations (hereinafter the Rules).

Sean Donohoe of Ducharme & Dillis presented the application on behalf of the applicant at a duly noticed public hearing held on November 20, 2018 and was continued to January 8, 2019. Board members Mr. Ray Yacouby (Chair), Mr. Derrick Chin, Mr. Anping Liu and Ms. Emilie Ying were present throughout the hearing. The minutes of the hearing and submissions on which this Decision is based upon may be viewed in the Planning Division or the Town Clerk's office at the Acton Town Hall.

## **1 EXHIBITS**

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

- 1.1 A definitive subdivision plan entitled, "Definitive Subdivision & Residential Compound Plan of Land in Acton, 110 Nagog Hill Road, Map E4, Lot 28, Acton, Massachusetts", prepared by Ducharme & Dillis, dated September 10, 2018 and last revised on December 28, 2018, consisting of seven sheets.
- 1.2 An application package dated September 10, 2018, prepared by Ducharme & Dillis containing the following:
  - A properly executed Application For Approval of a Definitive Plans, Form DP, dated August 24, 2018;
  - Filing fee calculation;
  - Project narrative;
  - Development Impact Report, Form DIR;
  - Use description;
  - List of requested waivers from the Rules;
  - Designer certificate;
  - Record deed;
  - Certified abutters list;
  - Letter Authorizing Town to Complete Roadway;
  - Drainage and water balance calculation;
  - Earth removal calculation.
- 1.3 Attachments:
  - Turning exhibit for ladder truck.
  - Stormwater Report, dated July 16, 2018, revised December 28, 2018.
- 1.4 Ducharme & Dillis response letter, dated December 28th, 2018.
- 1.5 Interdepartmental communication received from:
  - Planning Division, dated 11/15/18, revised 1/3/19;
  - Health Division, undated;
  - Water Supply District of Acton, dated 11/8/18 and (e-mail) 1/3/19;
  - Engineering Department, dated 11/8/18 and 1/8/19;
- 1.6 E-mail from abutter Jacqueline Weymouth of 3 Putnam Road, dated 11/20/18.
- 1.7 Agreement on Time Extension dated 11/20/18.

Exhibits 1.1 through 1.4 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 Applicant proposes a Residential Compound Subdivision under section 10 of the Rules. It provides for broad waivers from design standards set forth in section 8 and 9 of the Rules. It refers to the common driveway standards of the Zoning Bylaw (the Bylaw) as a guide for designing and constructing Residential Compounds. The subdivision is eligible for consideration as a Residential Compound. A Residential Compound is less intrusive to the neighborhood, preserves more of the natural environment of the Site, and helps

preserve the present character of the neighborhood. The Plan, as modified herein, accomplishes these purposes of the Rules' Residential Compounds option.

- 2.2 Section 10.1.2 of the Rules requires a Proof Plan for Residential Compound Subdivisions that demonstrates the ability to comply with the standard design and improvement requirements in Sections 8 and 9 of the Rules, including their subsections, and the dimensional requirements applicable to the zoning district in which the land is located. This requirement ensures that waivers granted for Residential Compound Subdivisions under section 10 of the Rules do not result in the creation of more lots than would be possible when observing the standard requirements of the Rules under Sections 8 and 9.
- 2.3 The Proof Plan (Plan sheet 3) demonstrates a standard subdivision road that meets the requirements under section 8.1.18 and the Typical Roadway Section, and zoning compliance for a total of two lots.
- 2.4 The Site is located within the Residence 2 (R-2) zoning district and the Groundwater Protection District Zone 4.
- 2.5 The proposed +/-150 foot long subdivision street would intersect with Nagog Hill Road approximately 60 feet north of Greenwood Lane. These distances does not comply with the Rules. The proposed street replaces and relocates one leg of an existing double driveway further away from Greenwood Lane. In the case of this small subdivision the intersection proximity to Greenwood Lane is not a safety concern.
- 2.6 Nagog Hill Road is a scenic road.
- 2.7 Sight distances and intersection angles appears adequate in all directions.
- 2.8 The intersections and turn-around areas as shown appear to accommodate the dimensions of an SU-30 vehicle.
- 2.9 The design of proposed Residential Compound subdivision street appears to comply with Common Drive standards of Bylaw Section 3.8.1.5.
- 2.10 The Definitive Residential Compound Plan shows the division of +/-1.7 acres into two lots for single family residential use. The Site currently has one house on it, which would remain.
- 2.11 The proposed single-family residential uses are allowed on the Site in accordance with the Bylaw.
- 2.12 The proposed lots as shown would comply with the dimensional requirements of the Bylaw, Section 5.
- 2.13 The proposed siting of the homes on each lot complies with the minimum setback dimensions of the Bylaw, although the siting of the homes remains flexible within the building setback envelopes shown on the Plan.
- 2.14 Section 9.6 of the Rules requires the applicant to provide sidewalks on one side of the traveled street within the proposed subdivision and along the portion of any existing public street upon which the subdivision Site has frontage. The Board does not waive this requirement, except for allowing on a case by case basis (a) equivalent sidewalk construction in suitable alternative locations, or (b) an equivalent contribution to the Town's sidewalk fund, based on the Board's standard contribution rate of \$20/foot of sidewalk in proposed new subdivision streets and \$50/foot of sidewalk along existing street frontages. In this case the contribution would be  $(150 \times \$20) + (232.75 \times \$50) = \$14,637.50$ .

- 2.15 In lieu of constructing a sidewalk within the new subdivision and along the existing street frontages, the Applicant's representative at the public hearing stated that his client would opt for the sidewalk fund contribution in the amount stated above.
- 2.16 The Board solicited comments from various Town departments. They are listed in Exhibit 1.5 above. The Board considered all comments in its deliberations and made them available to the Applicant. They are restated herein as required plan modifications or conditions as deemed appropriate by the Board.

### **3 BOARD ACTION**

Therefore on January 8, 2019, subject to and with the benefit of the following waivers, conditions, plan modifications, and limitations, the Board voted unanimously to APPROVE the definitive subdivision.

#### **3.1 WAIVERS**

- 3.1.1 The Applicant requested waivers from Section 8 (Design Standards) and Section 9 (Improvements) from the Rules to allow the construction of the street generally as shown on the Plan. This waiver is granted pursuant to Section 10 of the Rules, except for the requirement for sidewalks.

#### **3.2 PLAN MODIFICATIONS**

The Plan shall be revised prior to its endorsement to include the following additional, corrected, or modified information. Except where otherwise provided, all such information shall be subject to the approval of the Board or its designee. Where approvals are required from persons or agencies other than the Board, the Applicant shall be responsible for providing evidence of such approvals to the Board or its designee.

- 3.2.1 Reposition the proposed truck turning area enough to move pavement and shoulder entirely to within the street layout while making sure the turn-around continues to work as a 3-point turn for SU-30 trucks.
- 3.2.2 For the 21 trees shown between lot 2 and the abutting Weymouth property, add a planting detail consistent with Appendix B of the Rules. Specify that the trees shall be at least 4-5 feet in height or have a minimum 2" caliper size.
- 3.2.3 Submit for Planning Division approval a private way maintenance agreement that will assign the responsibility for snow and ice removal and for general maintenance equally to the owners of the subdivision lots 1 and 2. The maintenance agreement shall include the approved Stormwater Operation and Maintenance Manual.
- 3.2.4 Submit for Planning Division approval a private way covenant, enforceable by the Town of Acton, declaring that subdivision street shall remain a private way and serve not more than two single family homes, that the owners of lots 1 and 2 shall be jointly and equally responsible for the removal of snow and ice in subdivision street; that the owners of lots 1 and 2 shall be jointly responsible for any general maintenance and upkeep of the subdivision street and any associated drainage structures and other utilities; that the owners of lots 1 and 2 shall not petition the Town to accept the subdivision street as a public way; and that the owners of lots 1 and 2 shall not petition the Town to provide snow and ice removal services or any other maintenance of the subdivision street.

- 3.2.5 Submit for Planning Division approval a deed restriction that limits Lot 1 to the southerly driveway as its only access directly to Nagog Hill Road and that requires a second driveway to be maintained to the new subdivision street.
- 3.2.6 Unless directed or waived otherwise by this decision, the definitive plan shall be modified to comply with all requirements of the Rules, and shall address all departmental comments received by the Board in a manner that resolves any concerns raised therein to the satisfaction of the Board.

### **3.3 CONDITIONS**

The following conditions shall be binding upon the Applicant and its successors and assigns. Failure to adhere to these conditions shall render this special permit null and void, without force and effect, and shall 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 endorsement of the Plan submit a list of mortgage holders.
- 3.3.2 In lieu of constructing sidewalks as otherwise required by the Rules, the applicant shall prior to the Plan endorsement donate \$14,637.50 to the Town of Acton sidewalk fund.
- 3.3.3 Prior to endorsement of the Plan, the Applicant shall consult with the Acton Tree Warden and Engineering Department to ascertain if the proposed construction removes or alters any public shade trees or stone walls within the street layout of Nagog Hill Road. In the event that it does, no such construction shall occur after posting, hearing, and approval in accordance with the Acton Scenic Road Bylaw.
- 3.3.4 Prior to the start of construction on lot 2, the Applicant shall consult with the abutter at 3 Putnam Road regarding the screening that is shown on the Plan as 21 spruce trees. The purpose of the consultation shall be to ascertain what mutually agreeable screening is most appropriate. Alternate screening arrangements, if any, shall in cost not exceed the cost for the 21 spruce trees shown on the plan, including the cost of planting. The screening shall be installed prior to the issuance of an occupancy permit for the house on lot 2.
- 3.3.5 The subdivision street as approved hereunder in its entirety shall be maintained by the owners of lots 1 and 2 in accordance with the private way maintenance agreement. This shall include the removal of snow and ice. The Applicant and the owners of lots 1 and 2 shall not petition the Town to provide snow and ice removal services in the subdivision street or to provide any other maintenance and upkeep of the subdivision street.
- 3.3.6 The subdivision street shall not serve more than 2 single-family residential lots, including accessory uses allowed in the Bylaw.
- 3.3.7 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 may order the immediate cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.
- 3.3.8 As required under Massachusetts General Laws, Ch. 60, S. 23, the Plan approved hereunder shall not be recorded with the Middlesex South District Registry of Deeds or



the Land Court unless it is accompanied by a municipal lien certificate, indicating that all taxes, assessments, and charges then assessed against the land shown on the Plan have been paid in full. If not paid at the time of endorsement of the Plan, the Board will add a Plan note to remind the Registry of Deeds or the Land Court of this legal requirement.

- 3.3.9 Prior to endorsement of the Plan, the Applicant shall provide the Board with a performance guarantee in accordance with Section 6 of the Rules.
- 3.3.10 No work on the Site shall begin prior to the endorsement and recording of the Plan.
- 3.3.11 All work on the Site shall be conducted in accordance with the Rules, except as waived, and the terms of this approval, and shall conform with and be limited to the improvements shown on the endorsed Plan.
- 3.3.12 The installation of water service lines shall be made in compliance with requirements of the Acton Water Supply District.
- 3.3.13 Upon completion of all work as shown on the Plan, and before the final release of any performance guarantee, the Applicant shall submit an as-built plan showing the road pavement, drainage, utilities, and other improvements within or related to the street, and survey monuments for the entire Subdivision; a surveyor's bound certification; and a certification from a registered engineer that the work has been completed in accordance with the Plan approved hereunder with any deviations clearly noted and explained.
- 3.3.14 All construction activity on the property relating to this Subdivision shall be limited to the hours of: Monday – Friday: 7:00am – 5:00pm; Saturday 8:00am – 5:00pm; Sundays & Holidays: No work permitted.
- 3.3.15 This Decision, the endorsed Record Plan, the Restrictive Covenant if any, the approved Private Way Covenant/Maintenance Agreement, and the approved driveway restriction for lot 1 as required herein shall be recorded at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit on the Site.

#### **3.4 LIMITATIONS**

The authority granted to the Applicant under this approval 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 Rules and other applicable laws and regulations.
- 3.4.2 This subdivision approval applies only to the Site identified in this decision and to the activity as shown on the Plan.
- 3.4.3 Other approvals or permits required by law and other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.
- 3.4.4 This subdivision approval shall expire if not endorsed on the Plan within 1 year from the date that this decision has been filed with the Town Clerk. It shall also expire, if street construction and installation of services is not completed within 8 years from the date that this decision has been filed with the Town Clerk. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration date. The Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to this decision and to require any appropriate modifications of the Plan.

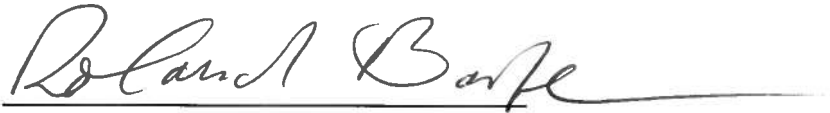
3.4.5 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this decision with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

#### **4 APPEALS**

Appeals, if any, shall be made pursuant to MGL, Ch. 41, S. 81-BB 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.



Roland Bartl, AICP, Planning Director  
for the Town of Acton Planning Board

Copies

furnished:

Applicant -

certified mail # \_\_\_\_\_

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Town Clerk

Information Technology

Land Use Department

Engineering Department

Municipal Properties Director

Acton Water District

Town Manager

Fire Chief

Police Chief

Assessor