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Definitive Subdivision Decision – 19-06  
Pond View Way  
December 16, 2019

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**Planning Board**

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

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**DECISION**

19-06

**Pond View Way**

Definitive Subdivision (Residential Compound)

December 16, 2019

APPROVED with Conditions

Decision of the Acton Planning Board (hereinafter the Board) on the application of Salvation Trust LLC (hereinafter the Applicant) for the property that is located at 225 Newtown Road in Acton, Massachusetts. The property is owned by the applicant and shown on the Acton town map as parcels parcel C3-34 (hereinafter the Site).

This Decision is in response to an application for approval of a definitive subdivision - entitled "Definitive Subdivision – Residential Compound "Pond View Way" 225 Newtown Road, Lot 4, Acton MA", filed with the Acton Planning Department on November 15, 2019, pursuant to Massachusetts General Laws, Chapter 41, Section 81-K through 81-GG, and the Acton Subdivision Rules and Regulations (hereinafter the Rules).

The Board held an advertised public hearing about the proposed subdivision on December 16, 2019. Ian Rubin, of Markey & Rubin, presented the application on behalf of the applicant. Board members Mr. Derrick Chin (Chairman), Ms. Emilie Ying (Vice Chair), Mr. Ray Yacouby, Mr. Anping Liu, and Mr. Jon Cappetta 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 Department 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 An application package consisting of the following items and documentation as required by the Rules and Regulations or additionally provided:
  - Cover Sheet
  - A properly executed Application for Approval of Definitive Plan, Form DP, received November 15, 2019;
  - Designer's Certificate, Form DC;
  - Development Impact Form, Form DIR;
  - List of Requested Waivers;
  - Authorization for Access to this Parcel of Land;
  - Acton Certified Abutters List;
  - Littleton Certified Abutters List;
  - Deed;
  - 2016 Approved ANR Plan;
  - Operation & Maintenance Plan;
  - Land Disturbance Permit Application.
- 1.2 A plan entitled, "Definitive Subdivision – Residential Compound "Pond View Way" 225 Newtown Road, Lot 4, Acton MA", dated November 15, 2019 and consisting of eight sheets – Cover Sheet, Existing Conditions Plan, Proof Plan 1, Proof Plan 2, Subdivision Layout Plan, Site Plan, Plan & Profile, Detail Plan.
- 1.3 Interdepartmental communication received from:
  - Acton Water District, dated 11/18/19;
  - Engineering Department, dated 12/03/19;
  - Planning Department, dated 12/04/19;

Exhibits 1.1 through 1.2 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 and the Groundwater Protection District Zone 4.
- 2.2 The Definitive Residential Compound Plan shows the division of +/-5 acres (+/-220,330 square feet) into two lots for single family residential use. The Site currently has one house on it, which would be demolished.
- 2.3 The proposed single-family residential uses are allowed on the Site in accordance with the Zoning Bylaw (hereinafter the Bylaw).
- 2.4 The proposed lots as shown would comply with the dimensional requirements of the Bylaw, Section 5. The proposed lots include land area in Littleton; section 5.3.7 in the Bylaw allows area in an adjacent town to be counted towards minimum lot size.

- 2.5 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 setbacks of the Bylaw.
- 2.6 MGL. Ch. 41. Section 81L defines that a "Subdivision" shall mean the division of a tract of land into two or more lots.
- 2.7 The Applicant proposes the subdivision as a Residential Compound 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 Bylaw as a guideline for designing and constructing residential compound subdivisions. The application contains the requisite waiver request.
- 2.8 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.
- 2.9 The Proof Plan in a general manner demonstrates a standard subdivision road layout that meets the requirements of Section 8 and 9, and zoning compliance for a total of two lots except that:
- a. It shows a consistent 3% grade for 171-foot road length whereas the Rules in Table 1 allow a 10% maximum grade but limit the grade to 2% maximum within 50 feet of the intersection. This slight deviation is acceptable in this case for such a short road serving two lots. And,
  - b. It cannot meet the minimum 1000' centerline offset requirement, whenever possible, between intersections along Arterial or Collector streets of Section 8.1.7 of the Rules. Where the subdivision would only serve one additional lot than previously existed, this deficiency has no consequences for vehicular safety.
- 2.10 The proposed street would replace and relocate the existing street curb cut for 225 Newtown Road.
- 2.11 Elevations and grades on the Site appear suitable for the residential compound to be constructed in compliance with grading requirements of the Rules.
- 2.12 The intersection and turn-around areas as shown appear to accommodate the dimensions of an SU-30 vehicle.
- 2.13 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 approximately  $(113 \times \$20) + (380 \times \$50) = \$21,260$ .

- 2.14 The Board solicited comments from various Town departments. They are listed in Exhibit 1.3 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, 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**

The Applicant requested waivers from Section 8 (Design Standards) and Section 9 (Improvements) of 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 Submit for Planning Department approval a revised private way maintenance agreement that will assign the responsibility for snow and ice removal and for general maintenance to the owners of lots 4A and 4B. Correct the street name on page 1 of the submitted Operations & Maintenance Plan.
- 3.2.2 Submit for Planning Department approval a private way covenant, enforceable by the Town of Acton, declaring that Pond View Way shall remain a private way and serve not more than two single family homes, that the owners of lots 4A and 4B shall be jointly responsible for the removal of snow and ice in Pond View Way; that the owners of lots A and B in shall be jointly responsible for any general maintenance and up keep of Pond View Way and any associated drainage structures and other utilities; that the owners of lots 4A and 4B of Pond View Way shall not petition the Town to accept Pond View Way as a public way; and that the owners of lots A and B in Pond View Way shall not petition the Town to provide snow and ice removal services or any other maintenance of Pond View Way.
- 3.2.3 Provide a recordable restriction for lot 4A that prohibits any driveway off Newtown Road.
- 3.2.4 Show a "Private Way" sign at the entrance of Pond View Way on plan sheet 6.
- 3.2.5 Show any trees or stone wall that may be located within the Town's right of way on plan sheet 4.
- 3.2.6 In the General Notes on Plan sheet 7, add a note that all construction activity on the property relating to this subdivision approval shall be limited to the hours of: 7:00am – 5:00pm, Monday – Friday; 8:00am – 5:00pm on Saturday; Sundays & Holidays: No work permitted

- 3.2.7 Unless directed otherwise by this decision, the definitive plan shall be modified to comply with all requirements of the Rules, and shall address all departmental comments from the Engineering Department and any other 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 the following conditions shall be reason to rescind this subdivision approval pursuant to MGL Ch.41, S.81-W. The Town of Acton may elect to enforce compliance with this decision using any and all powers available to it under the law.

- 3.3.1 In lieu of constructing sidewalks as otherwise required by the Rules, the applicant shall prior to the first building permit donate \$21,260 to the Town of Acton sidewalk fund.
- 3.3.2 The applicant shall submit Earth Works calculations.
- 3.3.3 Prior to endorsement of the Plan submit a list of mortgage holders, if any.
- 3.3.4 Prior to endorsement of the Plan, the Applicant shall provide the Board with a performance guarantee in accordance with Section 6 of the Rules.
- 3.3.5 The installation of water service lines shall be made in compliance with requirements of the Acton Water Supply District.
- 3.3.6 Lot 4A shall be 223 Newtown Road.
- 3.3.7 Lot 4B shall be 225 Newtown Road
- 3.3.8 All requirements of Chapter X and their rules and regulations shall be met.
- 3.3.9 All requirements of the Board of Health must be met.
- 3.3.10 Pond View Way shall remain a private way. It shall not be accepted as a public way, nor shall the Applicant or the owners of lots 4A and 4B file a petition with the Town to accept it as a public way.
- 3.3.11 Pond View Way in its entirety shall be maintained by the owners of lots 4A and 4B in accordance with the private way maintenance agreement. This shall include the removal of snow and ice. The Applicant and the owners of lots 4A and 4B shall not petition the Town to provide snow and ice removal services in Pond View Way or to provide any other maintenance and upkeep of Pond View Way.
- 3.3.12 Pond View Way shall not serve more than two residential lots.
- 3.3.13 Lot 4A shall not have a driveway directly off Newtown Road.
- 3.3.14 The subdivision street shall have no street name and no street name sign.
- 3.3.15 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.
- 3.3.16 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.

- 3.3.17 No work on the Site shall begin prior to the endorsement and recording of the Plan.
- 3.3.18 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.
- 3.3.19 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.
- 3.3.20 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.
- 3.3.21 This Decision, the endorsed Record Plan, the Private Way Maintenance Agreement and Covenant, Recordable Restriction, and the Restrictive Covenant if any, 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 one 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 eight 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.

## **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, §. 81-U.



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

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.

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Eva Szkaradek, Town Clerk

Date

Copies

furnished:

Applicant / Owners-

certified mail #

Town Clerk

Land Use Departments

Acton Water District

Police Chief

Historical Commission

Manager's Department

Engineer Department

Fire Department

Sidewalk Committee

GIS Department