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Definitive Subdivision Decision – 19-10
Diplatzi Place
February 11, 2020



Planning Board

TOWN OF ACTON
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DECISION

19-10

Diplatzi Place

Definitive Subdivision (Residential Compound)
February 11, 2020

APPROVED with Conditions

Decision of the Acton Planning Board (hereinafter the Board) on the application of Michael Diplatzi of Property Acquisitions Group, LLC (hereinafter the Applicant) for land that is located at 66 Maple Street in Acton, Massachusetts. The property is owned by the applicant and shown on the Acton town map as parcels H2-A-23 & H2-A-41-6 (hereinafter the Site).

This Decision is in response to an application for approval of a Definitive Subdivision - entitled "Definitive Subdivision Plan for Diplatzi Place Acton Massachusetts", filed with the Acton Planning Division on December 23, 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 February 11, 2020. Daniel Carr from Stamski & McNary, presented the application on behalf of the applicant. Board members Mr. Derrick Chin (Chairman), Mr. Ray Yacoubi, 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 December 23, 2019;
 - Form DP;
 - Development Impact Form, Form DIR;
 - Filing Fee;
 - Designer's Certificate, Form DC;
 - Acton Certified Abutters List;
 - List of Requested Waivers;
 - Letter authorizing town to complete driveway;
 - Authorization for Access to this Parcel of Land;
 - Deed;
 - Mortgage Holders;
 - Earth Removal Calculations.
 - Architectural Renderings, dated February 11, 2020 and earlier.
- 1.2 A plan entitled, "Definitive Subdivision Plan for Diplatzi Place Acton Massachusetts", dated December 9, 2019 and consisting of five sheets – Cover Sheet, Record Plan, Existing Conditions Plan, Site Development Plan, and Erosion & Sediment Control Plan.
- 1.3 Interdepartmental communication received from:
 - Acton Historical Commission, dated 5/16/19 & 02/11/20;
 - Fire Department, dated 12/24/20;
 - Health Division, dated 12/27/20;
 - Acton Water District, dated 01/17/20;
 - Engineering Department, dated 01/21/20;
 - Planning Division, dated 01/27/20.

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 2 (R-2) zoning district and the Groundwater Protection District Zone 4.
- 2.2 The rear of the property in question is in the Flood Plain District and has wetlands.
- 2.3 The Definitive Residential Compound Plan shows the division of +/-1.43 acres (+/-62, 290.8 square feet) into two lots for residential use. The Site currently has one two-family dwelling on it, which will be modified; the historical portion of the existing building will be rehabilitated. A new single-family dwelling is proposed on the other lot.

2.4 The proposed single-family residential use and the pre-existing two-family dwelling use are allowed on the Site in accordance with the Zoning Bylaw (hereinafter the Bylaw).

2.5 The proposed lots as shown would comply with the dimensional requirements of the Bylaw, Section 5.

2.6 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.

2.7 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. An applicant may ask for waivers from the proof plan requirement, and the Planning Board may grant them if it is in the public interest. The applicant has met and discussed with the Historical Commission their development plans, and the Historical Commission is in favor of accommodating the historic preservation component for the existing dwelling. The Historical Commission wrote a supportive letter prior to the applicant's preliminary meeting with the Planning Board in the Spring of 2019. At a preliminary informational meeting that spring, the surrounding neighbors that attended also spoke in favor of the development. The Planning Board at that meeting took an informal straw poll suggesting a favorable view on the project, and recommended that the applicant work closely with the Historical Commission, Planning staff, and all relevant departments to explore ways of preserving the historic structure and construct a new residential structure that fits within the character of the neighborhood. In February 2020, the Historical Commission wrote another letter to the Planning Board to express their support for the waiver request and the project.
In conclusion: While it is clear that granting the requested waiver from the proof plan requirement effectively allows the creation of a zoning compliant residential lot that would not otherwise be possible, the Board finds that granting the waiver facilitates and supports the restoration and rehabilitation of the historic building. Therefore, the granting of the requested waiver is in the public interest.

2.9 The proposed street would replace the existing paved driveway.

2.10 Elevations and grades on the Site appear suitable for the residential compound to be constructed in compliance with grading requirements of the Rules.

2.11 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 $(70 \times \$20) + (165 \times \$50) = \$9,650$. The Applicant has indicated a preference for the contribution.

2.12 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 (4-0).

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. The applicant also requested a specific waiver from the proof plan (Rules Section 10.1.2.). This specific waiver is also granted.

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 private way covenant, enforceable by the Town of Acton, declaring that Diplatzi Way shall remain a private way and serve not more than one single family home and one two-family home, that the owners of both lots shall be jointly responsible for the removal of snow and ice in Diplatzi Way; that the owners of lots 1 & 2 shall be jointly responsible for any general maintenance and up keep of Diplatzi Way and any associated drainage structures and other utilities; that the owners of lots 1 & 2 of Diplatzi Way shall not petition the Town to accept Diplatzi Way as a public way; and that the owners of lots 1 & 2 on Diplatzi Way shall not petition the Town to provide snow and ice removal services or any other maintenance of Diplatzi Way.
- 3.2.2 Submit a private way maintenance agreement in which both lots proportionately share in the responsibility for plowing, maintenance and upkeep of the new subdivision street.
- 3.2.3 Delineate the floodplain on the plan, including on the record plan.
- 3.2.4 Show a turning template for an SU-30 vehicle for the intersection of the new street with Maple Street, and adjust the curb radii if needed to accommodate SU-30 vehicles in compliance with the Rules.
- 3.2.5 Show a "Private Way" sign at the entrance of Diplatzi Place on plan sheet 4.
- 3.2.6 The Definitive Plans shall include General Construction Notes according to the Subdivision Rules and Regulations.

- 3.2.7 On Plan sheet 5, 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.
- 3.2.8 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 Prior to endorsement of the Plan, the Applicant shall provide the Board with a performance guarantee in accordance with Section 6 of the Rules.
- 3.3.2 The proposed new single family dwelling shall be set back from the Maple Street a distance that is not greater than the minimum setback required under the Zoning Bylaw.
- 3.3.3 Prior to the first building permit, the applicant shall meet with the Historical Commission and request that the Historical Commission submit a recommendation letter to the Planning confirming that based on the final architectural plans all work on the Site will be done in a historically appropriate manner and especially that the front facade of the proposed new dwelling will be compatible with the neighboring houses along Maple Street.
- 3.3.4 Prior to the first building permit, the applicant shall receive the necessary sewer permits to tie into the town's public sewer.
- 3.3.5 In lieu of constructing sidewalks as otherwise required by the Rules, the applicant shall prior to the first building permit donate \$9,650 to the Town of Acton sidewalk fund.
- 3.3.6 The houses shall be built substantially in accordance with the architectural plan shown at the 2/11/20 public hearing. Any change or modification to the plans after meeting with the Historical Commission, which in the opinion of the Planning Division are deemed to be de minimis in nature, shall be deemed to be within the scope of this approved Definitive Subdivision.
- 3.3.7 All requirements of Chapter X and their rules and regulations shall be met.
- 3.3.8 All requirements of the Board of Health must be met.
- 3.3.9 The applicant shall comply with all of the outstanding comments in the Acton Water District memo, dated January 17, 2020.
- 3.3.10 The applicant shall comply with all of the outstanding comments in the Engineering Department memo, dated Januaray 21, 2020.
- 3.3.11 Diplatzi Way shall remain a private way. It shall not be accepted as a public way, nor shall the Applicant or the owners of lots 1 & 2 file a petition with the Town to accept it as a public way.

3.3.12 Diplatzi Way in its entirety shall be maintained by the owners of lots 1 & 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 & 2 shall not petition the Town to provide snow and ice removal services in Diplatzi Way or to provide any other maintenance and upkeep of Diplatzi Way.

3.3.13 Lot 1 shall be 66-68 Maple Street.

3.3.14 Lot 2 shall be 64 Maple Street

3.3.15 Diplatzi Way shall not serve more than two residential lots, one with a two-family dwelling, and one with a single-family dwelling.

3.3.16 The subdivision street shall have no street name and no street name sign.

3.3.17 The Applicant shall be diligent in complying with the erosion and sedimentation 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.

3.3.18 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.

3.3.19 No work on the Site shall begin prior to the endorsement and recording of the Plan.

3.3.20 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.

3.3.21 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.

3.3.22 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.

3.3.23 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.

Eva Szkaradek, Town Clerk

Date

Copies
furnished:

Applicant / Owners-
certified mail #

Town Clerk

Land Use Departments

Acton Water District
Police Department

Historical Commission

Manager's Department

Engineer Department
Fire Department

Design Review Board

GIS Department