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Definitive Subdivision Decision – PB 20-02
The Preserve at Audubon Hill
July 21, 2020



Planning Board

TOWN OF ACTON
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DECISION

PB 20-02

The Preserve at Audubon Hill

Definitive Subdivision (Residential Compound)

July 21, 2020

APPROVED with Conditions

Decision of the Acton Planning Board (hereinafter the Board) on the application of Seal Harbor LLC (hereinafter the Applicant) for the property that is located at 46 High Street in Acton, Massachusetts. The property is owned by Marc and Mary Kuta and shown on the Acton town map as parcels parcel H3B-18 (hereinafter the Site).

This Decision is in response to an application for approval of a definitive subdivision - entitled "Application for Approval of a Definitive Subdivision for The Preserve at Audubon Hill", filed with the Acton Planning Division on April 24, 2020, 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 virtual public hearing through zoom about the proposed subdivision on June 16, 2020 and closed the public hearing the same night. Paul Kirchner, of Stamski and McNary, presented the application on behalf of the applicant. Board members Mr. Derrick Chin (Chairman), Mr. Ray Yacouby, Mr. Anping Liu, and Mr. Sam Bajwa 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 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 April 24, 2020;
 - Development Impact Form, Form DIR;
 - Filing Fee;
 - Designer's Certificate, Form DC;
 - Certified Abutters List;
 - List of Requested Waivers;
 - Letter Authorizing Town To Complete Driveway;
 - Preliminary Decision, January 21, 2020;
 - Deed;
 - Mortgage Holders;
 - Earth Removal Calculations;
 - Letter Regarding Meeting with Abutters;
 - Stormwater Management Report;
- 1.2 A plan entitled, "Definitive Subdivision Plan –The Preserve at Audubon Hill Acton Massachusetts", dated April 15, 2020 and consisting of eight sheets – Cover Sheet, Record Plan, Existing Conditions, Site Development Plan, Plan and Profile View, Construction Details, Erosion and Sedimentation Control Plan, and Proof Plan.
- 1.3 Interdepartmental communication received from:
 - Acton Water District, dated 05/21/20;
 - GCG Associates, dated 05/26/20;
 - Planning Division, dated 06/02/20;
 - Fire Department, dated 06/10/20;
 - Design Review Board, dated 6/5/20.

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 Definitive Residential Compound Plan shows the division of +/-2.9 acres (+/- 126,324 square feet) into four lots for single family residential use. The Site currently has one house on it, which would remain.

- 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 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 Zoning Bylaw (hereinafter the Bylaw) as a guideline for designing and constructing residential compound subdivisions. The application contains the requisite waiver request.
- 2.5 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.
- 2.6 There was no road profile for the submitted proof plan, it is unclear as to whether a proof plan could comply with the K value and 2% grade at the intersecting street. This decision requires a road profile for the proof plan to ascertain compliance.
- 2.7 The proposed lots as shown would comply with the dimensional requirements of the Bylaw, Section 5.
- 2.8 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.
- 2.9 The proposed +/-370 foot long subdivision street (proposed as Bumble Bee Way) would intersect with High Street approximately 250 feet east of Audubon Drive and Faulkner Hill Road. The intersection distance is not in compliance with the standard requirements of the Rules.
- 2.10 Elevations and grades on the Site appear suitable for the proposed street to be constructed in compliance with grading requirements of the Rules.
- 2.11 The intersections and turn-around areas as shown appear to accommodate the dimensions of an SU-30 vehicle.
- 2.12 The applicant has provided documentation that, since the public meeting on the related preliminary plan for this subdivision, the owner met with the Audubon Hill Condominium and their direct neighbor (The Fullers) for design consultation of the definitive subdivision plan.
- 2.13 The Plan shows an outdoor pool on lot 2. At the June 16, 2020 public hearing the Applicant stated that the pool would not be constructed.
- 2.14 Depending on the location of any shade trees, the applicant may need to request a shade tree hearing with the town's tree warden. This will result in a planning board scenic road hearing.
- 2.15 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. There exists a sidewalk along the Subdivision's frontage on High Street. 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. In this case the contribution would be approximately $(370 \times \$20) = \$7,400$.

- 2.16 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 4-0 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 private way maintenance agreement for Bumble Bee Way that will assign the responsibility for snow and ice removal and for general maintenance to the owners of lots 1, 2, 3, & 4.
- 3.2.2 Submit for Planning Department approval a private way covenant, enforceable by the Town of Acton, declaring that Bumble Bee Way shall remain a private way and serve not more than four single family homes, that the owners of lots 1, 2, 3, & 4 shall be jointly responsible for the removal of snow and ice in Bumble Bee Way; that the owners of lots 1, 2, 3, & 4 shall be jointly responsible for any general maintenance and upkeep of Bumble Bee Way and any associated drainage structures and other utilities; that the owners of lots 1, 2, 3, & 4 shall not petition the Town to accept Bumble Bee Way as a public way; and that the owners of lots 1, 2, 3, & 4 shall not petition the Town to provide snow and ice removal services or any other maintenance of Bumble Bee Way.
- 3.2.3 A road profile for the proof plan should be submitted.
- 3.2.4 The applicant shall show that a SU-30 vehicle can successfully turn at the subdivision's turn around.
- 3.2.5 Show a "Private Way" sign at the entrance of Bumble Bee Way on plan sheet 4.
- 3.2.6 The applicant shall comply with any outstanding GCG Associates comments.

- 3.2.7 In the General Notes on Plan sheet 6, 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 In lieu of constructing a sidewalk within the subdivision as otherwise required by the Rules, the applicant may opt to donate \$7,400 to the Town of Acton sidewalk fund. If so chosen the donation shall be made prior to the Plan Endorsement.
- 3.3.2 The Town constructed a sidewalk along the frontage of 46 High Street in 2010. The owner of the property signed a right-of-entry for the Town to construct the sidewalk with the understanding that an easement would be given to the Town. It appears from the town's records that the easement was never executed. The applicant shall resolve the easement issue with the Acton Department of Public Works prior to the first building permit.
- 3.3.3 Prior to endorsement of the Plan, the Applicant shall provide the Board with a performance guarantee in accordance with Section 6 of the Rules.
- 3.3.4 To the best of the applicant's ability, the applicant shall try to use tree preservation techniques to save as many trees as possible that don't need to be removed.
- 3.3.5 The installation of water service lines shall be made in compliance with requirements of the Acton Water Supply District. The applicant shall work with the Acton Water District to abide by their May 21th, 2020 comments.
- 3.3.6 The applicant shall work with the GIS and Fire Departments to determine the street addresses.
- 3.3.7 The applicant will be responsible for providing an as-built plan and certification form per the Chapter X rules & regulations. A cost estimate for the engineering items (as-built plan, bounds, etc) should be provided with the Chapter X stormwater cost estimate to provide a bond amount for the subdivision.
- 3.3.8 All requirements of the Board of Health must be met.
- 3.3.9 Bumble Bee 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, 3, & 4 file a petition with the Town to accept it as a public way.
- 3.3.10 Bumble Bee Way in its entirety shall be maintained by the owners of lots 1, 2, 3, & 4 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, 3, & 4 shall not petition the

Town to provide snow and ice removal services in Bumble Bee Way or to provide any other maintenance and upkeep of Bumble Bee Way.

- 3.3.11 Bumble Bee Way shall not serve more than four residential lots.
- 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 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 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.
- 3.3.14 No work on the Site shall begin prior to the endorsement and recording of the Plan.
- 3.3.15 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.
- 3.3.16 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.
- 3.3.17 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.
- 3.3.18 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.

Robert Hummel

Robert Hummel, Assistant Town Planner
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

Design Review Board

Manager's Department

Engineer Department

Fire Department

GIS Department