



**Planning Board**

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

20-06

**Victorian Place**

Preliminary Subdivision (Residential Compound)

September 15, 2020

APPROVED (with Guidance)

Decision of the Acton Planning Board (hereinafter the Board) on the application of Royce A. Fuller and Susanne J. Fuller, Trustees of the North Star Realty Trust (hereinafter the Applicant/Owner) for property in Acton, Massachusetts. The property is located in Acton, MA at 40 High Street. The property is shown on the Acton Town Atlas as parcel H3-B-10 (hereinafter the Site).

This Decision is in response to an Application for Approval of a Preliminary Subdivision entitled “Victorian Way”, a Residential Compound at 40 High Street, Acton, Massachusetts”, filed with the Acton Planning Division on July 14, 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 public meeting about the proposed subdivision on August 18, 2020 (without deliberation) and it was continued to September 15, 2020.

Paul Kirchner from Stamski & McNary presented the application on behalf of the applicant. Board members Mr. Derrick Chin (Chairman), Mr. Ray Yacouby (Vice-Chair), Mr. Jon Cappetta (Clerk), Mr. Anping Liu, and Mr. Sam Bajwa 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 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:
  - A properly executed Application for Approval of Preliminary Plan, received July 14, 2020;
  - Form PP;

- Development Impact Report;
  - Certified Abutters List;
  - Filing Fee;
  - Current Deed;
  - Requested Waivers Letter;
  - Soil Suitability Assessment.
- 1.2 A plan entitled, “Preliminary Subdivision Plan for Victorian Place Acton, Massachusetts”, dated July 14, 2020 and consisting of five sheets – Title Sheet, Proof Plan, and Preliminary Plan Residential Compound.
- 1.3 Interdepartmental communication received from:
- Roland Bartl Correspondence, dated 04/13/20;
  - Acton Fire Department, dated 07/17/2020;
  - Engineering Department, dated 07/27/2020;
  - Planning Division, dated 07/28/2020 and revised 09/14/2020;
  - Historical Commission, dated 07/29/2020;
  - Health Division, dated 07/30/2020;
  - Design Review Board, dated 09/01/2020.
- 1.4 Public Comments
- Richard Keleher, dated 08/02/2020 & 08/15/2020;
  - Peter Darlow, dated 08/10/2020;
  - Terra Friedrichs, dated 08/13/2020;
  - Judith Aronstein, dated 08/14/2020;
  - William Bethune, dated 08/16/2020 & 09/11/2020;
  - Carole Enright, dated 08/17/2020;
  - Bill Klauer, dated 09/15/2020;
  - David Shoemaker, dated 09/15/2020;
  - Annette Lochrie, dated 09/15/2020.
- 1.5 Extension Agreements:
- Consent and Agreement to Extension of Hearing to September 15, 2020.

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 R-2 (R-2) zoning district and the Groundwater Protection District Zone 4.
- 2.2 There is currently one four-family dwelling located on the Site.
- 2.3 The Preliminary Plan shows the division of +/-2.5 acres (+/-108,900 square feet) into three lots for single family residential use and one lot for the existing four-family dwelling, for a total of four lots.

- 2.4 Section 10.1.1.1 of the Subdivision Rules and Regulations limits the use of a Residential Compound to single family dwellings.
- 2.5 The proposed single-family residential uses are allowed on the Site in accordance with the Bylaw. The multifamily use would require approval of a waiver from the Subdivision Rules and Regulations Residential Compound.
- 2.6 The proposed subdivision reduces the total area of the lot retained by the pre-existing non-conforming 4-family dwelling, but meets the minimum lot area that is required in the Residence 2 (R-2) zoning district. A Section 6 finding may be required to determine that the reduction in lot size does not make the 4-family dwelling substantially more detrimental than the existing non-conforming use in the neighborhood. The applicant was previously advised by Planning Division staff in the email dated April 13, 2020, to seek counsel on this matter.
- 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 Zoning Bylaw (hereinafter 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 demonstrates the feasibility of 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 four lots.
- 2.10 The proposed lots as shown would comply with the dimensional requirements of the Bylaw, Section 5.
- 2.11 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.
- 2.12 The proposed +/-422 foot long subdivision street would intersect with High Street approximately +/-150 feet east of the proposed Bubble Bee Way at 46 High Street. The intersection distance is not in compliance with the standard requirements of the Rules and would require a waiver.
- 2.13 There were no plan views of the proposed proof plan and residential compound streets submitted with the preliminary subdivision plans. This should be included in the definitive subdivision submission.
- 2.14 There was no fire turning analysis included in the plans for a SU-30 vehicle. This should be included in the definitive subdivision submission.
- 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. 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  $(422 \times \$20) = \$8,440$ . The applicant proposes to make sidewalk donation rather than build the sidewalk in the proposed street.

- 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**

The Board voted at its meeting on August 18, 2020, 4 in favor, 1 opposed to approve the Preliminary Subdivision with the Waivers and Other Guidance set forth below.

#### **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 and subject to the guidance provided in this decision.
- 3.1.2 Section 10.1.1.1 of the Subdivision Rules and Regulations limits the use of a Residential Compound to single family dwellings.

### **4 GUIDANCE FOR SUBMISSION OF A DEFINITIVE PLAN**

Unless stated or implied otherwise, the following shall be fulfilled and any necessary modifications to the Plan shall be made when filing an application for approval of a Definitive Plan:

- 4.1 The applicant should provide a swept path analysis for an Acton ladder truck and incorporate a fire hydrant into their plan as required by the Fire Department. The applicant shall increase the turning radius if needed after consulting with the Fire Department.
- 4.2 Plan views of the proposed proof plan and residential compound.
- 4.3 The applicant should consult with the Design Review Board prior to the submittal of the definitive plans.
- 4.4 Include a proposal for how to address the Rules' requirement for sidewalks; either building the required sidewalk on site or making a donation to the Town's sidewalk funds for amount listed under Section 2.13 above.
- 4.5 A cogent legal argument that supports the ability to maintain the existing multifamily dwelling on the reduced lot size should be made in regards to the zoning compliance or a Section 6 finding may be required.
- 4.6 Submit a proposed Street Covenant and Maintenance Agreement per Section 10 of the Rules, including an operations and maintenance manual for the storm water drainage system.

- 4.7 The applicant should label any trees or stone walls that are proposed to be removed or relocated on the definitive plans. If needed, the applicant shall seek the public shade tree or scenic road public hearings prior to the submission of the definitive subdivision.
- 4.8 The Definitive Plan application shall address all of the outstanding staff/agency comments that were submitted for the public meeting and listed under Exhibits 1.3 above.
- 4.9 Unless directed otherwise by this Decision, the Definitive Plan and application shall comply with all the detailed requirements of the Rules whether specifically listed in this Decision or not, including but not limited to drainage details and calculations, profiles, cross sections, documentation on sight distances, sidewalks, and planting plans.
- 4.10 If applicable, the Applicant shall pay in full all property taxes and other municipal charges due, and penalties and back charges resulting from the non-payment of taxes prior to the application for approval of a Definitive Plan.



Kristen Guichard, AICP, Interim Planning Director  
for the Town of Acton Planning Board

Applicant / Owners-  
GIS  
Town Clerk

Acton Water District  
Police Chief  
Manager's Department

Engineer Department  
Fire Department  
Land Use Departments