

Decision –#20-07
22 Elm Street PCRC
April 20, 2021



Planning Board

RECEIVED

MAY - 4 2021

**TOWN CLERK
ACTON, MA**

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

PB20-7

22 Elm Street PCRC

Planned Conservation Residential Community (PCRC)
Special Permit

April 20, 2021

GRANTED WITH CONDITIONS

Decision of the Acton Planning Board (hereinafter the Board) on the application of Andrea Starr, 22 Elm Street, Acton, MA (hereinafter the Applicant) for property in Acton, Massachusetts, owned by Andrea Starr. The property is located at 22 Elm Street and is shown on the Acton Town Atlas as parcel E-2, Lots 192-2 and 192-3 (hereinafter the Site).

This Decision is in response to an application for a PCRC special permit approval received by the Acton Planning Division on July 15, 2020, pursuant to Section 9 of the Acton Zoning Bylaw (hereinafter the Bylaw), the Planned Conservation Residential Community Rules and Regulations (hereinafter the PCRC Rules). Scott Hayes presented the application on behalf of the applicant at a public hearing held on September 15, 2020. The applicant changed civil engineers prior to the October 20, 2020 public hearing. The Board continued the meeting to October 20, 2020 (No Deliberation), November 17, 2020 (No Deliberation), December 15, 2020, January 19, 2021, February 16, 2021 (No Deliberation), March 2, 2021 (No Deliberation), March 16, 2021, April 13, 2021 (No Deliberation), and April 20, 2021. Greg Roy and Seth Donohoe from Dillis & Roy presented the application on behalf of the applicant at public hearings held on December 15, 2020, January 19, 2021, March 16, 2021, April 13, 2021, and April 20, 2021. The Board closed the public hearing on April 20, 2021. Board members Mr. Derrick Chin (Chair),

Mr. Ray Yacouby (Vice Chair), and Mr. Sam Bajwa were present throughout the public hearing sessions. Mr. Jon Cappetta was present throughout the public hearing sessions except for January 19, 2021. Prior to his vote on this matter, Mr. Jon Cappetta provided a written certification pursuant to G.L. c. 39, § 23D that he reviewed the video recording of the hearing session on January 19, 2021. The minutes of the meeting and submissions on which this Decision is based upon may be viewed in the Planning or Town Clerk's offices at the Acton Town Hall.

1 EXHIBITS

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

- 1.1 A plan entitled "The Residences at 22 Elm Street, a Planned Conservation Residential Community under Section 9 of the Zoning Bylaw" dated 6/15/2020, drawn by FORESITE Engineering Associates, Inc. 16 Gleasondale Road, Suite 1-1 Stow, Massachusetts 01775, consisting of ten sheets.
- 1.2 Supplemental items and documentation required by the PCRC consisting of:
 - Properly executed application for a PCRC Special Permit, dated 6/15/2020;
 - Form DIR – Development Impact Report;
 - Certified List of Abutters;
 - Use Description;
 - List of Requested Waivers;
 - Ownership & Maintenance of Common Land (Draft Master Deed);
 - Other Permits and Variances;
 - Recorded Deeds & Plans;
 - Letter Authorizing Completion of Improvements;
 - Letter Regarding Mortgage Holders;
 - Typical Proposed Architectural Floor Plans and Elevations;
 - Additional Waivers Request.
- 1.3 Additional information submitted by the Applicant:
 - Stormwater Management Plan Report dated November 6, 2020 & Stormwater Management Plan Report revised March 8, 2021;
 - Earth Removal Calculations;
 - Water Balance Calculations;
 - Cover Letter in response to the peer review letter, dated November 6, 2020 and December 14, 2020;
 - Revised plans drafted and submitted by Dillis & Roy, Civil Design Group:
 - Revised plans entitled "Planned Conservation Residential Community Plan Acton, MA, The Residences at 22 Elm" dated 11/06/2020, drawn by Dillis & Roy, Civil Design Group, Inc. 1 Main Street, Suite 1, Lunenburg, MA , consisting of eight sheets;
 - Revised plans entitled "Planned Conservation Residential Community Plan Acton, MA, The Residences at 22 Elm" dated 12/03/2020, drawn by Dillis & Roy, Civil Design Group, Inc. 1 Main Street, Suite 1, Lunenburg, MA , consisting of eight sheets;
 - Revised plans entitled "Planned Conservation Residential Community Plan Acton, MA, The Residences at 22 Elm" dated 12/14/2020, drawn by Dillis & Roy, Civil Design Group, Inc. 1 Main Street, Suite 1, Lunenburg, MA , consisting of eight sheets;
 - Revised plans entitled "Planned Conservation Residential Community Plan Acton, MA, The Residences at 22 Elm" dated 03/08/2021, drawn by Dillis & Roy, Civil Design Group, Inc. 1 Main Street, Suite 1, Lunenburg, MA, consisting of eight sheets;
 - Revised C1.3 sheet (Existing Condition), most recently revised 02/26/2021;

- Revised C3.0 sheet (Landscape Plan), most recently revised 02/26/2021;
 - Revised Stormwater Management Plan Report, dated November 6, 2020 & December 14, 2020;
 - Pre-Development Drainage map;
 - Post-Development Drainage map;
 - Turning Exhibit & Revised Turning Exhibit;
 - Cover Letter in response to items requested during the December 15, 2020 Public Hearing, dated December 29, 2020;
 - Neighborhood Analysis;
 - Cover Letter in response to the existing barn structure, dated January 18, 2021;
 - Cover Letter in response to the request of public outreach with the abutters that asked during the January 19, 2021 Public Hearing, dated February 26, 2021;
 - Unit Exhibit Plan;
 - Cover Letter in response to Third GCG Peer Review Comments, dated March 9, 2021;
 - Cover Letter in response to Third GCG Peer Review Comments, received March 15, 2021;
 - Applicant's Town Counsel letter to the Board;
 - Neighborhood Exhibit.
- 1.4 Interdepartmental communication received from:
- Acton Fire Department, 07/17/2020;
 - Health Division, dated 07/30/2020;
 - Acton Water District, dated 08/21/2020;
 - Acton Engineering Department, dated 08/21/2020;
 - GCG Associates, dated 08/31/2020, 12/04/2020, 02/22/2021, & 03/16/2021;
 - Design Review Board, dated 09/01/2020 & 11/30/2020;
 - Acton Planning Division, dated 09/14/2020, 12/09/2020 & 03/16/21;
 - Health Division, dated 01/19/2021 & 02/01/2021;
 - Fire Department, dated 01/19/2021;
 - Natural Resource Department, dated 02/11/21.
- 1.5 Public Comments
- Nina & Cem Oruc, dated 09/13/2020, 03/15/2021 & 04/13/2021;
 - Terra Friedrichs, dated 09/15/2020, 03/16/2021, 04/13/2021 & 04/20/2021;
 - Fran Davis, dated 09/15/2020;
 - Lokesh and Ruby Jha, dated 09/15/2020;
 - Nina Oruc, dated 10/19/2020, & 01/18/2021;
 - Green Acton, dated 11/16/2020;
 - Cem Oruc, dated 11/16/2020 & 01/19/2021;
 - Alana Flores, dated 11/16/2020;
 - Carol Russell, dated 11/16/2020;
 - Christina M. Russell, dated 11/16/2020 & 12/15/2020;
 - Corrine Hogseth, dated 11/16/2020;
 - Deborah Diamond, dated 11/16/2020;
 - Ellen O'Doherty, dated 11/16/2020;
 - Emily Richmond, dated 11/16/2020;
 - Frances H. David, dated 11/16/2020;
 - Gregory Voss, dated 11/16/2020;
 - Heather deBethencourt, dated 11/16/2020;
 - Jacqueline Arendt, dated 11/16/2020;

- Janice R. VanDerAa, dated 11/16/2020;
- Kara A Flyg, dated 11/16/2020;
- Kevin Howard, dated 11/16/2020;
- Kim Kuhn, dated 11/16/2020;
- Lauren O'Neil, dated 11/16/2020;
- Lokesh Jah, dated 11/16/2020;
- Mark Albano, dated 11/16/2020;
- Matthew Travers, dated 11/16/2020;
- Mimi Kirkman, dated 11/16/2020;
- Peter Benjamin, dated 11/16/2020;
- Rebecca Brooks, dated 11/16/2020;
- Robert G. Wildes Jr, dated 11/16/2020;
- Ruth Thatcher, dated 11/16/2020;
- Ryan Russell, dated 11/16/2020;
- Sabrina Carmichael, dated 11/16/2020;
- Sarah Protopopov, dated 11/16/2020;
- Wendy Hammond-Wilde, dated 11/16/2020;
- David Merberg, dated 11/16/2020;
- Alison Katsoulis, dated 11/16/2020;
- Paul Orr, dated 11/16/2020;
- Peter Katsoulis, dated 11/16/2020;
- Aliza Lamdan, dated 11/16/2020
- Meaghan Wildes, dated 12/15/2020
- Catherine S. Trotter Wilson, dated 12/15/2020
- Kevin Wilson, dated 12/15/2020;
- Rebecca MacNeill, dated 12/15/2020;
- Craig J. VanDerAa, dated 12/15/2020;
- Jennifer Progin, dated 12/15/2020;
- Phil LoPiccolo, dated 12/15/2020
- Gustavo Gurrieri, dated 12/15/2020;
- Andrea Cohen, dated 12/15/2020;
- Tracy Schauer, dated 12/15/2020;
- Sally Abbott dated 12/15/2020;
- Douglas Campbell, dated 12/15/2020;
- Bradley Judson, dated 12/15/2020;
- Alissa Nicol, dated 01/18/2021, 02/28/2021, 03/16/2021, & 04/09/2021;
- Nyanna Tobin, dated 01/18/2021;
- Danny Factor, dated 01/19/2021;
- Peter Darlow, dated 02/26/2021;
- Richard Keleher, dated 03/16/21;
- Jim Kirkman, dated 03/28/2021.

1.6 Other:

- Agreement on time extension to continue the hearing to October 20, 2020;
- Agreement on time extension to continue the hearing to November 17, 2020;
- Agreement on time extension to continue the hearing to December 15, 2020;
- Agreement on time extension to continue the hearing to January 19, 2021;
- Agreement on time extension to continue the hearing to February 16, 2021;

- Agreement on time extension to continue the hearing to March 2, 2021;
- Agreement on time extension to continue the hearing to March 16, 2021;
- Agreement on time extension to continue the hearing to April 13, 2021;
- Agreement on time extension to continue the hearing to April 20, 2021.

Exhibits 1.1 through 1.3 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 Zone 3 of the Groundwater Protection District.
- 2.2 The proposed five single-family detached dwellings and one existing single-family dwelling may be allowed on the Site in accordance with the Bylaw, and subject to this special permit under Section 9 of the Bylaw.
- 2.3 The Plan shows that the property consists of 8.009± acres and proposes 5.871± acres of common land ("Common Land").
- 2.4 The Plan shows approximately 2.67± acres of wetlands on the Site. Unit 5 is within the 100-foot wetland buffer zone.
- 2.5 The draft condominium documents propose the condominium association will own the entirety of the land, including the Common Land. The use of the Common Land complies with the bylaw.
- 2.6 The common driveway provides access for the six proposed single-family units. The proposed driveway is 16-feet wide with 2-foot shoulders. The proposed common drive complies with the standards set forth in Zoning Bylaw section 3.8.1.5. A turnaround detail was provided which accommodates emergency vehicles.
- 2.7 Water to the Site would be provided by the Acton Water District with a water main extension from Elm Street.
- 2.8 The applicant submitted draft architectural floor plans for four different proposed unit types.
- 2.9 As requested by the Planning Board at the January 19, 2021 public hearing, the applicant submitted 3D renderings of the proposed view shed of the PCRC development from Elm Street.
- 2.10 By request of the Planning Board, the Applicant held a neighborhood meeting on January 28, 2021 via zoom to discuss the proposed PCRC plan and how the Applicant could make improvements to the development. The Applicant submitted an updated landscape plan based on the abutters' feedback.
- 2.11 The plan shows a total upland calculation within the Common Land as 3.20 acres. The Planning Division's calculations show the required upland within the Common Land was short by 153.90 square feet. The applicant shall readjust the lot lines to relocate 153.90 square feet of uplands from Lot 1 to the Common Land to comply with Bylaw Section 9.6.3.1.
- 2.12 The Natural Resource Director suggested, and the Board agrees, that the Applicant should file an Abbreviated Notice of Resource Area Delineation (ANRAD) to confirm the exact wetlands boundary at the Site.
- 2.13 Section 9.6 of the PCRC 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 Elm 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. Based on the Board's standard contribution rate of \$50/foot of sidewalk on the frontage. In this case the contribution would be $(270 \times \$20) + (190 \times \$50) = \$14,900$.

- 2.14 The Board determined that, in defining the character of the neighborhood, the following be included: the single family homes abutting the site and along Elm Street, the condominiums at 11 Elm Street which is 500 feet away or four lots away, the Douglas School across the street.
- 2.15 The Board determined that the gross floor areas of the proposed homes are within the same range on the lots nearby.
- 2.16 The Board determined that the PCRC would add preserved open space to the neighborhood.
- 2.17 The Board has received comments from various Town departments, which are listed in Section 1.4 above. The Board also received comments from abutters and the public in writing and verbally during the public hearing; the written public comments are listed in Section 1.5. The Board considered these comments in its deliberations, made them available to the Applicant, and incorporated into this decision those comments that it deemed appropriate.
- 2.18 Under Massachusetts law, property taxes must be paid prior to plan recording. Under the Town of Acton Bylaws, no permit or special permit shall be issued to any party "that has neglected or refused to pay any local taxes ..." (Chapter O).
- 2.19 The PCRC as shown on the Plan and as amended herein:
 - a) complies in all respects with the applicable requirements of the Bylaw;
 - b) enhances the purpose and intent of PCRC Development;
 - c) enhances the goals of the Open Space and Recreation Plan;
 - d) is in harmony with the character of the surrounding area and neighborhood; and
 - e) complies with the requirements of Section 10.3.5 of the Bylaw.
- 2.20 The proposed PCRC as shown on the Plan and as amended herein complies with the applicable requirements of the Bylaw; is in harmony with and enhances the purpose and intent of the Bylaw, specifically Section 9; is in harmony with the existing and probable future uses of the area and with the character of the surrounding area and neighborhood; is consistent with the Master Plan; will not be detrimental or injurious to the neighborhood; and is appropriate for the Site.

3 BOARD ACTION

Therefore, the Board voted 4-0 on April 20, 2021 to GRANT the requested Special Permit subject to and with the benefit of the following waivers, conditions, plan modifications, and limitations.

3.1 WAIVERS

The Applicant has requested the following waivers from the PCRC Rules:

- 3.1.1 Section 3.13 Traffic Study. Due to the small size of the development serving only 5 additional dwelling units on a single shared driveway, with egress to Elm Street having excellent grade and sight lines, a waiver is requested to conducting a traffic study for the proposed development. The waiver is **granted**.

The Applicant has requested the following waivers from the Subdivision Rules:

- 3.1.2 Section 8 (Design Standards) and Section 9 (Improvements) of the Subdivision Rules, to allow the construction of the street generally as shown on the Plan. This waiver is granted pursuant to Section 10 of the Subdivision Rules. The waiver is **granted**.
- 3.1.3 Section 9.6 (Sidewalks, Pedestrian Ways, Cross Walks and Bicycle Paths). Section 9.6 of the Subdivision 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 waiver is **granted**.

3.2 **PLAN MODIFICATIONS**

Prior to endorsement and recording of the Plan or any construction on the Site that relates to implementing this special permit, the Plan shall be revised to include the following additional, corrected, or modified information. Except where otherwise provided, all such information shall be subject to the approval by of the Zoning Enforcement Officer (ZEO).

- 3.2.1 The applicant shall readjust the lot lines to relocate 153.90 square feet of uplands from Lot 1 to the Common Land to comply with Bylaw Section 9.6.3.1.
- 3.2.2 In lieu of constructing a sidewalk within the subdivision as otherwise required by the PCRC Rules and Bylaw, the applicant may opt to donate \$14,900 to the Town of Acton sidewalk fund. If the Applicant does not construct the required sidewalks, a donation of \$14,900 shall be made to the Town of Acton sidewalk fund prior to plan endorsement.
- 3.2.3 The applicant shall submit a road profile plan of the proposed street.
- 3.2.4 Prior to plan endorsement, the applicant shall file an Abbreviated Notice of Resource Area Delineation (ANRAD) to confirm the wetlands boundary. If modifications are required the Applicant shall submit a revised plan and wetlands calculation for compliance with Bylaw Section 9.6.3.1.
- 3.2.5 Submit for the Board's or its designee's approval a common driveway maintenance agreement and covenant for the private street and all its appurtenances that shall:
- a) apportion the responsibility for snow and ice removal and for general maintenance among the owners of the homes;
 - b) declare that the street shall remain a private way and serve not more than six single family homes;
 - c) declare that the owners of the residences shall be jointly responsible for the removal of snow and ice and for any general maintenance and upkeep of the common driveway and any associated drainage structures and utilities;
 - d) that the owners shall not petition the Town to accept the street as a public way and/or to provide snow and ice removal services or any other maintenance;
 - e) include an operation and maintenance plan for the proposed drainage system to be approved by the Engineering Department;
 - f) acknowledge and accept that the forgoing declarations are enforceable by the Town in a court of law; and
 - g) reference the access easement deed.

Examples of such documents are available in the Acton Planning Division. If the proposed development is to become a condominium the foregoing provisions shall be incorporated in the condominium master deed.

- 3.2.6 On all applicable Plan sheets show a MUTCD compliant Street/Private Way sign for the common driveway.
- 3.2.7 Add a Plan note stating that the binder course shall be exposed to one winter season.
- 3.2.8 Show areas intended to be utilized for snow storage on the Plan.
- 3.2.9 The applicant shall work with the Engineering and Fire Departments on the proposed street addresses. The applicant should use the draft street addresses in Engineering Department's August 21, 2020 memo as reference.
- 3.2.10 The Plan shall be modified as needed to comply in all respects with the Bylaw and, unless directed otherwise by this decision, with all applicable requirements of the PCRC Rules.

3.3 CONDITIONS

The following conditions shall be binding upon the Applicant and its successors and assigns. Failure to adhere to these conditions may render this special permit null and void, without force and effect, and may 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 The foundations for all five new dwelling units shall be certified by the Registered Land Surveyor prior to framing to ensure the buildings abide by the 15-foot setback from the common driveway, the 40-foot minimum distance between units and dwelling units #1, #2, #3, #4, and #6, and the 30-foot setback from the PCRC boundary line.
- 3.3.2 Prior to blasting, if any, the Applicant or Site contractor shall contact and consult with the Acton Fire Department and follow all requirements, regulations and instructions of the Fire Department before during and after the blasting occurs.
- 3.3.3 The number of six dwelling units on the Site shall not be increased.
- 3.3.4 All work on the Site shall be conducted in accordance with the terms of this special permit and shall conform with and be limited to the improvements shown on the endorsed Plan.
- 3.3.5 All requirements of the Board of Health Regulations must be met.
- 3.3.6 The installation of public water services to the Site shall be done in compliance with the specifications of the Water Supply District of Acton (see also memo from Chris Allen, District Manager dated August 21, 2020).
- 3.3.7 All taxes, and penalties and back charges resulting from the non-payment of taxes, if any, shall be paid in full prior to issuance of any building permit on the Site.
- 3.3.8 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 or the Building Commissioner may order the immediate cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.
- 3.3.9 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.
- 3.3.10 All Common Land areas shall remain in their natural state and remain undisturbed during and after construction except as shown on the Plan and allowed under this decision.
- 3.3.11 The Common Land shown on the Plan and approved hereunder, including any portion that exceeds minimum zoning requirements, shall not be reduced in area.

- 3.3.12 No portion of the Common Land shown on the Plan and approved hereunder, including any portion that exceeds minimum zoning requirements, shall be used to meet area, setback, or any other zoning requirements for any other development or improvement that is not shown on the Plan, specifically, it shall not be used to support additional dwelling units.
- 3.3.13 Prior to the issuance of the last Certificate of Occupancy the Applicant shall submit an as-built plan certified by a PLS and a statement by a PE stating that the common driveway have been constructed as designed and if not, any differences shall be noted in the statement. The PE shall field inspect all components of the stormwater system and shall certify that the system, as built, functions as designed and approved despite any potential differences.
- 3.3.14 This Decision, the endorsed Record Plan, the consolidated conservation restriction, the public access easement and the approved private way maintenance agreement and covenant (as part of the master deed) shall be recorded by the Applicant at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit on the Site. The demolitions of the existing structures are exempt from this requirement.

3.4 LIMITATIONS

The authority granted to the Applicant under this special permit 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 Bylaw, the PCRC Rules, and other applicable laws and regulations.
- 3.4.2 This special permit approval applies only to the Site identified in this decision and to the proposed use and activity as shown on the Plan.
- 3.4.3 Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.
- 3.4.4 This special permit shall lapse if substantial use thereof has not commenced within two years of the filing date of this decision with the Town Clerk, except for good cause, or if construction under this special permit is not continued through to completion as continuously and expeditiously as is reasonable. For substantial use to have commenced, clearing and grading on the Site as approved hereunder must be under way. For construction to continue towards completion as continuously and expeditiously as is reasonable, construction activity shall not rest for more than 1 year. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration dates, and the Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to the special permit 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 G.L. c. 40A, § 17 and shall be filed within 20 days after the date of filing this decision with the Town Clerk.

Signed on behalf of the Town of Acton Planning Board:



Kristen Guichard, 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 -
certified mail #
Town Clerk
Owner

Land Use Department
Engineering Department
Town Manager
Tree Warden

Police Chief
DRB
Fire Chief