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ACTON, MA**

Definitive Subdivision Decision – PB 21-2
Amanda Lane
August 12, 2021



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

DECISION

PB 21-2

Amanda Lane

Definitive Subdivision (Residential Compound)

August 12, 2021

APPROVED with Conditions

Decision of the Acton Planning Board (hereinafter the Board) on the application of Northeast Site Development (hereinafter the Applicant) for property located at 47 Conant Street in Acton, Massachusetts, which is made up of three parcels, shown on the Acton Town Assessors Map as Parcels I2-50-1, I2-50-2, I2-56 (hereinafter, the “Site”). The Site is owned by Austin J. O’Malley III.

This Decision is in response to an Application for Approval of a Definitive Subdivision Plan entitled “Definitive Subdivision Plan for Amanda Lane at 47 Conant Street Acton, Massachusetts”, received by the Acton Planning Division on February 10, 2021, pursuant to Massachusetts General Laws (M.G.L.), Chapter 41, §§ 81K through 81GG, and the Acton Subdivision Rules and Regulations (hereinafter the Rules).

At an advertised virtual public meeting on April 20, 2021 through zoom, pursuant to Governor Baker’s March 12, 2020 Executive Order Suspending Certain Provisions of the Open Meeting Law, the Board continued the opening of the hearing with the applicant’s request, without deliberation, to May 5, 2021, and then to June 8, 2021. The Board opened the hearing on June 8, 2021, and continued it, on the applicant’s request to July 13, 2021. The Board closed the public hearing

on July 13, 2021. On July 27, 2021, the Board re-opened the public hearing to allow for additional public comment that was preempted on July 13, 2021, then again closed the hearing that night.

Molly Obendorf of Stamski and McNary, and Alex Para of D'Agostine, Levine, Para & Netburn, PC, presented the application on behalf of the Applicant.

Board members Mr. Derrick Chin, Mr. Ray Yacoubi, Mr. Jon Cappetta, 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 A Definitive Subdivision Plan entitled, "Definitive Subdivision Plan for Amanda Lane at 47 Conant Street Acton Massachusetts", dated February 2, 2021, consisting of seven sheets: Cover Sheet, Record Plan, Existing Conditions, Site Development and Grading Plan, Plan and Profile, Construction Details, Erosion and Sedimentation Control Plan, revised 04/02/2021, 04/29/2021, 05/28/2021, and last revised 06/07/2021 ("Definitive Residential Compound Plan").
- 1.2 A Proof Plan entitled "Definitive Plan for Amanda Lane in Acton, MA," dated February 2, 2021, consisting of one sheet ("Proof Plan").
- 1.3 An application package titled "Application for Approval of a Definitive Plan Under the Subdivision Control Law and the Acton Planning Board Subdivision Rules and Regulations for Amanda Lane, Map I2, Parcels 56, 50-1 & 50-2 at 47 Conant Street, Acton, MA 01720" 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 February 10, 2021
 - 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;
 - Copies of Recorded Deeds;
 - Past Plans of the Land;
 - August 16, 2019 ANR Plan;
 - Mortgage Holders;
 - Earth Removal Calculations;
 - Stormwater Management Report, last revised 06/07/2021;
- 1.3. Additional information submitted by the Applicant;
 - Cover Letters in response to the peer review letters, dated April 2, 2021, May 10, 2021, May 28, 2021, and June 8, 2021;
 - Sketch of Proof Plan entitled "Definitive Plan for Amanda Lane in Acton, MA," dated February 2, 2021, consisting of one sheet; and
 - Private Way Covenant and Maintenance Agreement.

1.4 Interdepartmental communication received from:

- Health Division, dated 03/02/21 & 03/22/21;
- Fire Department, dated 06/03/21, 06/07/21 and 06/11/21;
- GCG Associates, Inc., project peer reviewer, dated 03/25/21, 04/26/21, 05/19/21, 06/04/21, and 06/08/21;
- Tree Warden, dated 03/29/21;
- Acton Water District, dated 03/30/21 & 06/03/2021;
- Engineering Department, 03/29/21;
- Design Review Board, 03/25/2021;
- Planning Division, dated 06/08/21.

1.5 Public Comments

- Terra Friedrichs, dated 03/08/21 & 05/12/21;
- Ginny Kremer, dated 04/21/21, 04/29/21, 5/28/21, 6/7/21, 6/16/21;
- Kelley D'Ambrosio, dated 6/4/21, 6/7/21, 7/12/21, and 7/23/21;
- Joan Cirillo, dated 5/4/21, 6/7/21.

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 Board finds the proposed Residential Compound satisfies the purpose of the Subdivision Control Law, G.L. c. 81K-81GG, to protect the safety, convenience, and welfare of town inhabitants.
- 2.2 The Applicant proposes the subdivision as a Residential Compound under § 10 of the Rules, the purpose of which is to permit small-scale Residential Compounds in a manner that minimizes Town maintenance responsibility and cost, while simultaneously preserving the rural character of the Town.
- 2.3 The Board finds that the proposed Residential Compound satisfies the purpose of § 10 of the Rules.
- 2.4 Section 10.1.1.1 of the Rules authorizes the Board to broadly waive design and improvement requirements of §§ 8 and 9 of the Rules, if the required criteria are satisfied.
- 2.5 The proposed Residential Compound will contain five or less lots. The Site currently consists of three nonconforming parcels totaling +/- 1.94 acres, with a single family house on one of the parcels. The Plan shows the reallocation of land into three (3) conforming lots for single family residential use, and the addition of two houses. The existing house on the Site would remain.
- 2.6 The Site is located within the Residence 2 (R-2) zoning district and the Groundwater Protection District Zone 4. The proposed single-family residential use are allowed on the Site in accordance with the Bylaw.
- 2.7 The proposed lots comply with all dimensional requirements of the R-2 and Groundwater Protection District Zone 4 of the Acton Zoning Bylaw (hereinafter the Bylaw). The siting of the homes remains flexible within the building setback envelopes shown on the Plan.
- 2.8 The Plan shows a +/- 276-foot long subdivision street, Amanda Lane, that intersects with Conant Street. Conant Street is considered a Local Street in the Town of Acton. The

proposed +/-276-foot-long subdivision street would intersect with Conant Street approximately 125 feet west of Country Club Road.

- 2.9 The Plan shows that each building lot has the frontage required by the Bylaw, and that all present and future owners of the lots within the Residential Compound have adequate and legally enforceable rights of access to a public street (Conant Street).
- 2.10 Page 7 of the Plan contains the Drainage System Operation and Maintenance Plan. All comments on drainage by GCG Associates, Inc., were resolved by the Applicant and requisite changes were incorporated into the Plan.
- 2.11 Residential Compound Subdivisions are intended to remain private; the owners are prohibited from petitioning the Town to maintain the road way or to accept it as a public way. This requires a legal framework for the maintenance and ownership of the private way. The Applicant submitted a draft Private Way Covenant and Maintenance Agreement that meets the requirements of Section 10.1.1.5 of the Rules.
- 2.12 The Conditions included in § 3 below provide that there shall be no further division of lots contained therein (Condition 3.3.10); the development of the land is permitted only in accordance with the land uses indicated hereon (Condition 3.2.14); and the covenants of the developer regarding ownership, maintenance and utilization of the streets, easements, and drainage systems, continue to be complied with (Condition 3.3.8, 3.3.9)
- 2.13 The Conditions included in § 3 below provide that the written assurances regarding ownership, operation, maintenance, and utilization of the street, easements, and drainage systems required by the Board shall be recorded with the approved Definitive Plan.
- 2.14 As articulated in Findings 2.3 to 2.13, the Applicant's proposed Residential Compound Subdivision satisfies the criteria in § 10.1.1.1 of the Rules, so the Board may waive some or all of the design and improvement requirements of §§ 8 and 9 of the Rules.
- 2.15 The Proof Plan, required by §10.1.2 of the Rules, is the same scale as the proposed residential compound. The Proof Plan demonstrates that even without the requested waivers, the street and lots can be designed in compliance with the requirements of §§ 8 and 9 of the Rules, the dimensional requirements applicable to the zoning district in which the land is located, and other applicable laws.
- 2.16 The Proof Plan, dated February 2, 2021 shows three proposed dwelling units and septic locations outside the 75-foot wetland buffer. A paved surface area in compliance with the Rules § 8.1.18.2 (T-turnaround) could fit within the proof plan layout and be outside the 75-foot wetland buffer.
- 2.17 Section 10.1.3 of the Rules recommends the Board apply the design and construction standards for Common Driveway Special Permits, Bylaw § 3.8.1.5 (a-q)).
 - 2.17.1 The Applicant has resolved all issues identified by the Fire Chief as noted in the Fire Chief's emails dated 6/3/21 and 6/11/21.
 - 2.17.2 Elevations and grades on the Site appear suitable for the proposed Residential Compound street to be constructed and follow grading requirements of Bylaw § 3.8.1.5.

- 2.17.3 The Applicant has resolved all issues identified by the Town's consulting engineer, GCG, Associates, Civil Engineering and Land Surveying.
- 2.17.4 The minimum site distance at the intersection of Conant Street and Amanda Land is met on the Plan. The Sight Distance Detail on Sheet 5 of 7 shows an area to be cleared.
- 2.17.5 Condition 3.3.6 requires the Applicant meet the Acton General Bylaw Chapter X and Rules & Regulations thereunder.
- 2.17.6 The proposed pavement of Amanda Lane is 16 feet wide with three-foot shoulders, within a 25-foot wide layout. This exceeds the minimum pavement width and clear path requirement for Residential Compounds design standards where only a 12-foot wide pavement width and four-foot shoulders is required.
- 2.17.7 Plan page 5 of 7 shows the requisite "Private Way" sign posted at the intersection of Amanda Land and Conant Street. Plan Modification 3.2.2 requires the addition of a sign with the name of the Private Way.
- 2.17.8 Section 9.6 the Rules governs sidewalk construction, which 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 waives this requirement if the Applicant makes an equivalent contribution to the Town's sidewalk fund. The Board's standard contribution rate is \$20/foot of sidewalk in proposed new subdivision streets and \$50/foot of sidewalk along the frontage. In this case the contribution would be approximately $(276 \times \$20 + 150 \times \$50) = \$13,020$.
- 2.17.9 Condition 3.3.9 of this Decision provides that the owners of lots served by Amanda Way are responsible for its maintenance and repair in accordance with the Private Place Maintenance Agreement, which shall be recorded.
- 2.18 The proposed Residential Compound is less intrusive to the neighborhood than a standard subdivision, it preserves more of the natural environment of the Site, and helps preserve the present character of the neighborhood. The Definitive Residential Compound Plan, as modified herein, accomplishes the purposes of the § 10 of the Rules.
- 2.19 Traffic on the proposed street will be light with the addition of two new single family dwelling units. The Residential Compound as proposed is appropriate for the Site.
- 2.20 The Health Department approved the septic plans for the Site as noted in their email dated 3/22/2021.
- 2.21 There are existing bordering vegetated wetlands on the northwest section of the parcel(s). The Conservation Commission issued an Order of Conditions for the proposed development on June 30, 2021.
- 2.22 The Board solicited comments from various Town departments. They are listed in Exhibit 1.4 above. The Board considered all comments in its deliberations and made them available to the Applicant. The comments were addressed by the Applicant as required plan modifications, or are included in this decision as conditions as deemed appropriate by the Board.
- 2.23 The Residential Compound Subdivision Application satisfies the applicable criteria.

3 BOARD ACTION

Therefore, subject to and with the benefit of the following waivers, conditions, plan modifications, and limitations, at their July 27, 2021 meeting the Board voted 3 to 1 to APPROVE the definitive subdivision plan for the residential compound.

3.1 WAIVERS

The Applicant requested waivers from § 8 (Design Standards) and § 9 (Improvements) of the Rules to allow the construction of the street as shown on Sheet 2 of the Plan. This waiver is partially granted pursuant § 10 of the Rules if the Applicant makes an equivalent contribution to the Town's sidewalk fund. The Board's standard contribution rate is \$20/foot of sidewalk in proposed new subdivision streets and \$50/foot of sidewalk along the frontage. In this case the contribution would be approximately $(276 \times \$20 + 150 \times \$50) = \$13,020$.

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 Show a site distance easement on Lot 1 for the area delineated on the Sight Distance Detail on Sheet 5 of 7.
- 3.2.2 Show a sign posted at the intersection of Conant Street and Amanda Land displaying the name of the Lane on sheet 5 of 7.
- 3.2.3 In the General Notes on Plan sheet 6 of 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.
- 3.2.4 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 comments from GCG Inc.

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 G.L. Ch.41, § 81W. 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 § 6 of the Rules.
- 3.3.2 The Board's approval of the Definitive Subdivision Plan for the Residential Compound shall expire within one year unless a final Definitive Plan, in accordance with the Decision, is submitted and endorsed by the Board.
- 3.3.3 The Applicant is authorized to forego construction of sidewalks if the Applicant donates \$13,020 to the Town of Acton sidewalk fund. If so chosen the donation shall be made prior to the Plan Endorsement.

- 3.3.4 The installation of water service lines shall be made in compliance with requirements of the Acton Water Supply District.
- 3.3.5 The applicant shall work with the GIS and Fire Departments to determine the street addresses.
- 3.3.6 The applicant will be responsible for providing an as-built plan and certification form per the with the Acton General Bylaw Chapter X, Stormwater Management and Erosion & Sediment Control, and the Rules & Regulations. A cost estimate for the engineering items, including as-built plan and bounds, should be provided with the Chapter X stormwater cost estimate to provide a bond amount for the subdivision.
- 3.3.7 All requirements of the Board of Health must be met.
- 3.3.8 Amanda Lane 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 file a petition with the Town to accept it as a public way.
- 3.3.9 Amanda Lane in its entirety shall be maintained by the owners of lots 1, 2, & 3 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 shall not petition the Town to provide snow and ice removal services in Amanda Place or to provide any other maintenance and upkeep of Amanda Place. The Private Way Maintenance Agreement should include all requirements of the Conservation Commission as it relates to the Order of Conditions for the site.
- 3.3.10 Amanda Lane shall not serve more than three residential lots.
- 3.3.11 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 results 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.
- 3.3.12 As required under G.L., c. 60, § 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.
- 3.3.13 No work on the Site shall begin prior to the endorsement and recording of the Plan.
- 3.3.14 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.
- 3.3.15 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.
- 3.3.16 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.

3.3.17 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.

3.4.5 A request to extend time limitations set forth in this Decision 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 if good cause for such extension is not shown.

3.4.6 Amendments to the Approved Definitive Subdivision Plan must be made in accordance with § 5.4 of the Rules. The Board shall have the power to modify or amend the Plan and the terms and conditions of this decision upon the request of the Applicant, his designees or assigns, or upon its own motion, pursuant to G.L. c. 81W.

4 APPEALS

Appeals, if any, shall be made pursuant to G.L. c. 41, § 81BB and shall be filed within 20 days after the date of filing this Decision with the Town Clerk.

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 G.L., Ch. 41, § 81U.


Kristen Guichard, 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 #

Owner -

certified mail #

Building Department

Engineering Department

Natural Resources

Fire Chief

Historical Commission

Health Department

Town Clerk

Dept. Town Manager

Acton Water District