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**TOWN OF ACTON
PLANNING DEPARTMENT**

Definitive Subdivision Decision – 21-03
Grassy Pond Way
October 19, 2021



Planning Board

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
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DECISION
PB 21-03

Grassy Pond Way
Definitive Subdivision (Residential Compound)
October 19, 2021

APPROVED with Conditions

Decision of the Acton Planning Board (hereinafter the Board) on the application of Celestine Properties, LLC (hereinafter the Applicant) for the property that is located at 3 and 11 Fort Pond Road in Acton, Massachusetts. The properties are owned by Joseph N. and Donna C. Vaudo and Salvatore C. and Marie Line Vaudo and shown on the Acton town map as parcels D3-7-6 and D3-7-7 (hereinafter the Site).

This Decision is in response to an application for approval of a Definitive Subdivision Plan entitled “Definitive Subdivision Plan for Grassy Pond Way, Acton, Massachusetts”, filed with the Acton Planning Division on May 24, 2021, pursuant to Massachusetts General Laws, Chapter 41, Section 81-K through 81-GG, and the Acton Subdivision Rules and Regulations (hereinafter the Rules).

At an advertised virtual and in person public meeting on July 13, 2021, 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 August 10, 2021. The Board opened the hearing on August 10, 2021 and closed the public hearing on October 19, 2021.

Paul Kirchner, of Stamski and McNary, presented the application on behalf of the applicant. Board members Mr. Ray Yacouby (Chair), Mr. Derrick Chin, Mr. Jon Cappetta, Mr. Nathan Cookson 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:
 - A properly executed Application for Approval of Definitive Plan, Form DP, received May 24, 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;
 - Deed;
 - Mortgage Holders;
 - Earth Removal Calculations;
 - Proof Plan, last revised September 7, 2021;
 - Stormwater Management Report;
- 1.2 A plan entitled, "Definitive Subdivision Plan for Grassy Pond Way, Acton, Massachusetts", dated May 10, 2021, revised September 7, 2021 and October 7, 2021 and consisting of seven sheets – Title Sheet, Record Plan, Existing Conditions Plan, Site Development and Grading Plan, Plan and Profile, Construction Details, and Erosion and Sedimentation Control Plan;
- 1.3 Interdepartmental communication received from:
 - Acton Water District, dated 06/03/2021;
 - Health Division, dated 06/03/2021;
 - Fire Department, dated 06/04/2021;
 - Design Review Board, dated 06/23/2021;
 - Engineering Department, dated 06/24/2021;
 - GCG Associates, dated 07/08/2021, 10/05/2021, and 10/19/2021;
 - Planning Division, dated 08/04/2021;
- 1.4 Extension Agreements
 - Consent and Agreement on Time Extension from July 13, 2021 to August 10, 2021;
 - Consent and Agreement on Time Extension from September 21, 2021 to October 19, 2021.

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 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 Site is located within the Residence 10/8 (R-10/8) zoning district, Groundwater Protection District Zones 3 and 4, and Floodplain Overlay District.
- 2.6 The Definitive Residential Compound Plan shows the division of +/-9.79 acres (+/- 426,452 square feet) into four lots for single family residential use. The Site currently has two houses on it, which would remain.
- 2.7 The proposed single-family residential uses are allowed on the Site in accordance with the Zoning Bylaw (hereinafter the Bylaw).
- 2.8 The proposed lots as shown on the Plan complies with the area and frontage requirements of the Bylaw.
- 2.9 The application contains the requisite waiver request and is eligible for consideration as Residential Compound. The Applicant has demonstrated with a “proof plan” that the subdivision street could be built with the same number of units under the otherwise applicable requirements of the Rules and other applicable laws.
- 2.10 The proof plan dated May 10, 2021, and revised September 7, 2021, shows the proposed dwelling units and septic locations outside the 75-foot wetland buffer. A paved surface area in compliance with the Rules section 8.1.18.2 (T-turnaround) could fit within the proof plan layout and be outside the 75-foot wetland buffer.
- 2.11 A 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 Plan, as modified herein, accomplishes these purposes of the Rules’ Residential Compound option.
- 2.12 Places in a Residential Compound subdivisions can be built to lesser design and construction standards than other streets in Acton. They are intended to remain private ways; 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.
- 2.13 The proposed +/-254 foot long subdivision street would intersect with Fort Pond Road approximately 400 feet from the Fort Pond Road intersection with Newtown Road. The

proposed pavement width is 16 feet with two-foot shoulders. 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.

- 2.14 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.
- 2.15 Elevations and grades on the Site appear suitable for the proposed street to be constructed in compliance with grading requirements of the Rules.
- 2.16 The intersections and turn-around areas as shown appear to accommodate the dimensions of an SU-30 vehicle.
- 2.17 There are existing bordering vegetated wetlands along the eastern section of the parcel(s). The Conservation Commission approved an Order of Resource Area Delineation for the site on March 17, 2021.
- 2.18 Fort Pond Road is a scenic road. The Plan does not appear to require the removal of any public shade trees at this time. If public shade trees are proposed for removal, the applicant may need to request a shade tree hearing with the town's tree warden and Planning Board.
- 2.19 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 the frontage. In this case the contribution would be approximately $(254 \times \$20 + 480 \times \$50) = \$29,080$.
- 2.20 The Applicant offered a donation to the sidewalk fund in lieu of constructing sidewalks on the site.
- 2.21 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, at their October 19th, 2021 meeting the Board voted 4 to 1 to APPROVE the definitive subdivision plan for the residential compound.

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 Additional elevations shall be provided to the Tree Box filter detail on sheet 6.
- 3.2.2 Erosion control shall be relocated to cover the drinking well on Lot 2 on sheet 7.
- 3.2.3 General note 2 on sheet 6 shall be revised to include the Subdivision Rules and Regulations. Acton Rules and Regulations for Site Plan Special Permits shall be removed.
- 3.2.4 Street names and addresses shall be determined with the Fire Department and Engineering Department and shall be noted on the plan.
 - a. The Sign Detail on sheet 6 shall be revised with the revised street name.
 - b. Any other location on the plan referring to 'Grassy Pond Way' shall be revised accordingly.
- 3.2.5 Submit a private way covenant and maintenance agreement, enforceable by the Town of Acton, declaring that the subdivision street shall remain a private way and serve not more than 3 single family homes, that the owners of lots 2, 3 and 4 shall be jointly responsible for the removal of snow and ice in the subdivision street that the owners of lots 2, 3 and 4 shall be jointly responsible for any general maintenance and upkeep of the subdivision street and any associated drainage structures and other utilities; that the owners of lots 2, 3 and 4 shall not petition the Town to accept the subdivision street as a public way; and that the owners of lots 2, 3 and 4 shall not petition the Town to provide snow and ice removal services or any other maintenance of the subdivision street. The private way maintenance agreement shall include a provision that lots 1, 2, 3 and 4 are responsible for brush removal within of the area of the site line easements 1 and 2 and shall include a clear easement plan.
- 3.2.6 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 offered to donate \$29,080 to the Town of Acton sidewalk fund. A donation of \$29,080 shall be made to the Sidewalk Fund prior to the Plan Endorsement.

- 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 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 The applicant shall obtain approval from the Engineering and Fire Departments to determine the street addresses prior to endorsement of the plan.
- 3.3.5 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.
- 3.3.6 All requirements of the Board of Health must be met.
- 3.3.7 The subdivision street shall remain a private way. It shall not be accepted as a public way, nor shall the Applicant or the owners of lots 2, 3, & 4 file a petition with the Town to accept it as a public way.
- 3.3.8 The subdivision street in its entirety shall be maintained by the owners of lots 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 2, 3, & 4 shall not petition the Town to provide snow and ice removal services for the subdivision street or to provide any other maintenance and upkeep of the subdivision street.
- 3.3.9 The subdivision street shall not serve more than three residential lots.
- 3.3.10 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.
- 3.3.11 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.
- 3.3.12 No work on the Site shall begin prior to the endorsement and recording of the Plan.
- 3.3.13 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.
- 3.3.14 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.
- 3.3.15 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.

- 3.3.16 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:

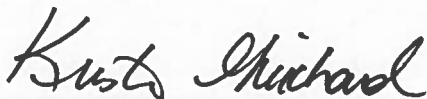
- 3.4.1 The foregoing required modifications and conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Rules and other applicable laws and regulations.
- 3.4.2 This subdivision approval applies only to the 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 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.
- 3.4.6 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 MGL, Ch. 41, §. 81-U.



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 / 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