

Definitive Subdivision Decision – PB 21-7
Hawk's Crest Reserve
October 19, 2021



Planning Board

TOWN OF ACTON
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DECISION
PB 21-7

Hawk's Crest Reserve
Definitive Subdivision (Residential Compound)
October 19, 2021

APPROVED with Conditions

Decision of the Acton Planning Board (hereinafter the Board) on the application of Seal Harbor, LLC (hereinafter the Applicant) for properties located at 74 Main Street and 5 Fletcher Court in Acton, Massachusetts owned by Michael P. Summers-McGuinness and Michael Hoban. The property is shown on the Acton Town Map as parcels H3-B-27 and 43 (hereinafter the Site).

This Decision is in response to an application for approval of a Definitive Subdivision Plan entitled "Definitive Subdivision Plan for Hawk's Crest Reserve at 74 Main Street and 5 Fletcher Court, Acton, Massachusetts", filed with the Acton Planning Division on July 1, 2021, 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, pursuant to Governor Baker's March 12, 2020 Executive Order Suspending Certain Provisions of the Open Meeting Law, on August 10, 2021 and closed the public hearing on October 19, 2021. Paul Kirchner of Stamski and McNary on behalf of the Applicant and Mark Gallagher of Seal Harbor, LLC presented the

application. Board members Mr. Ray Yacouby (Chair), Mr. Derrick Chin, Mr. Sam Bajwa, and Ms. Michaela Moran 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 plan entitled, "Definitive Subdivision Plan for Hawk's Crest Reserve at 74 Main Street and 5 Fletcher Ct, Acton, Massachusetts", dated June 28, 2021 and consisting of eight sheets – Cover Sheet, Record Plan, Existing Conditions, Site Development Plan, Plan and Profile, Construction Details, Erosion and Sedimentation Control Plan, and Proof Plan, last revised September 17, 2021.
- 1.2 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 July 1, 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;
 - Deeds;
 - Mortgage Holders;
 - Earth Removal Calculations;
 - Stormwater Management Report, last revised 09/17/2021;
- 1.3. Additional information submitted by the Applicant;
 - Cover Letters in response to the peer review letters, dated 09/15/2021;
 - Email from Applicant in response to Staff comments, dated 10/18/2021;
 - Declaration of Private Way Covenant and Maintenance Agreement;
 - Progress Print Plan, dated October 19, 2021;
- 1.4 Interdepartmental communication received from:
 - Historical Commission, dated 07/15/21;
 - Fire Department, dated 07/16/21, 10/15/21;
 - Water Supply District of Acton, dated 07/27/21;
 - Engineering Department, dated 07/29/21;
 - Design Review Board, dated 07/29/21;
 - GCG Associates, dated 08/04/21, dated 10/18/21;
 - Planning Division, dated 08/05/21, 10/12/21;
- 1.5 Extension Agreements
 - Consent and Agreement on Time Extension from September 21, 2021 to October 19, 2021.

1.6 Public Comments

- Three emails from Terra Friedrichs, dated 08/10/21;

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 Compounds 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 two Residential Compounds 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 residential compound extending from Fletcher Court consists of three new lots; the residential compound intersecting with Main Street consists of four new lots.
- 2.4 The Board finds that the proposed Residential Compounds satisfies the purpose of § 10 of the Rules.
- 2.5 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.
- 2.6 The Site is located within the Residence 2 (R-2) zoning district, the Groundwater Protection District Zone 4, the Floodplain Overlay District, and the Affordable Housing Overlay District.
- 2.7 The Definitive Residential Compound Plan shows the division of +/-6.61 acres (+/- 287,931 square feet) into eight lots for single family residential use. The Site currently has two houses on it, one of which would remain (74 Main Street).
- 2.8 The proposed single-family residential uses are allowed on the Site in accordance with the Zoning Bylaw (hereinafter the Bylaw).
- 2.9 The residential compounds will be serviced by public sewer. Approval from the Select Board is required.
- 2.10 The proposed lots as shown on the Progress Print Plan, dated October 19, 2021, complies with the area and frontage requirements of the Bylaw.
- 2.11 The Applicant proposes the subdivision as two separate Residential Compounds under section 10 of the Rules. It provides for 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 Section 3.8.1.5 (a through q) (hereinafter the Bylaw) as a guideline for designing and constructing residential compound subdivisions when proposing a subdivision of not more than five (5) lots.
- 2.12 The Application contains the requisite waiver request and is eligible for consideration as Residential Compound. The Applicant has demonstrated through a single “proof plan”

that the subdivision streets could be built with the same number of units under the otherwise applicable requirements of the Rules and other applicable laws.

- 2.13 The proof plan dated September 17, 2021 shows seven proposed dwelling units and the paved way 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.
- 2.14 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.
- 2.15 Main Street is considered a Local Street in the Town of Acton. The proposed +/-388-foot-long subdivision street would intersect with Main Street approximately 278 feet north of Fletcher Court.
- 2.16 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.
- 2.17 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 way; 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 Place Covenant and Maintenance Agreement which meets the requirements of Section 10.1.1.5 of the Rules.
- 2.18 By reference to the common drive standards of the Bylaw, the Rules require that "adequate drainage" shall be provided. Due to the low-intensity use and vehicle traffic, Low Impact Development (LID) options could be considered for purposes of handling storm water runoff. Generally, LID design seeks to avoid or minimize storm water discharge from the site, to disperse groundwater recharge locations throughout the site rather than concentrate recharge in one or few areas, and to handle storm water primarily with above-ground facilities and structures such as swales, recharge beds, or porous pavers.
- 2.19 Traffic on the proposed streets will be light with the addition of three and four new single-family dwelling units respectively. The Residential Compounds more or less as proposed are appropriate for the Site.
- 2.20 The Plan shows two subdivision streets: a +/- 388-foot long subdivision street extending off Fletcher Court and a +/- 337-foot long subdivision street, which intersects with Main Street. 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.
- 2.21 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.

- 2.22 Elevations and grades on the Site appear suitable for the proposed residential compound street to be constructed and follow grading requirements of Bylaw section 3.8.1.5.
- 2.23 There are existing bordering vegetated wetlands on the northwest section of the parcel(s). The Application is subject to Conservation Commission approval.
- 2.24 The Applicant has resolved all issues identified by the Fire Chief as noted in the Fire Chief's emails dated 7/16/21 and 10/15/21.
- 2.25 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 $(725 \times \$20) = \$14,500$.
- 2.26 The Applicant offered to make a donation to the sidewalk fund in lieu of constructing the sidewalks.
- 2.27 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. 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 3 to 1 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.

The Board also grants a waiver from Section 10.1.2 of the Rules to allow for one proof plan for two residential compounds.

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 All outstanding issues outlined in the GCG Associates, Inc. memo dated October 18, 2021, shall be resolved.
- 3.2.2 Street names and addresses shall be approved by the Fire and Engineering Departments and shall be noted on the plan.

- 3.2.3 There shall be a sign shown on the plan, posted at both Common Drive intersections, with the Street displaying "Private Way".
- 3.2.4 On the Record Plan, sheet 2 of 9, show the frontage of Lot 1 using the sideline intersection method.
- 3.2.5 The applicant shall submit a revised private way covenant and maintenance agreement, enforceable by the Town of Acton, declaring that the two subdivision streets shall remain private ways. The agreement shall state the subdivision street extending from Fletcher Court shall not serve more than three residential lots and the subdivision street intersecting with Main Street shall not serve more than four new lots. The private maintenance agree shall state the owners of lots 2, 3, 4, 5, 6, 7, & 8 shall be jointly responsible for the removal of snow and ice on the two subdivision streets; that the owners shall be jointly responsible for any general maintenance and upkeep of the two subdivision streets and any associated drainage structures and other utilities; that the owners shall not petition the Town to accept the two subdivision streets as public ways; and that the owners shall not petition the Town to provide snow and ice removal services or any other maintenance of the two subdivision streets. The private way maintenance agreement shall include a clear easement plan.
- 3.2.6 Prior to endorsement of the Plan, the Applicant shall provide the Board with a performance guarantee in accordance with Section 6 of the Rules.
- 3.2.7 A General Note section shall be added to sheet 7 of the plan with the following information:
- a. 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.
 - b. No paving shall take place after November 15th and the final course of pavement shall be placed after the binder has been exposed to one winter season.
 - c. Any fill material used shall be free of hazardous materials or waste.
 - d. Prior to the installation of the of the wearing surface, the binder shall be swept clean, dried if necessary, and treated with an asphalt emulsion or tack coat to ensure a satisfactory bond between pavement courses.
 - e. Following the installation of the wearing surface, no excavations shall be permitted in the road surface for a period of five years except in emergency cases.
 - f. Transportation of fill, earth, and construction debris to or from the site shall be restricted to daytime hours (9 AM to 4 PM) Monday through Friday.
- 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 shall donate \$14,500 to the Town of Acton sidewalk fund prior to the Plan Endorsement.
- 3.3.2 The installation of water service lines shall be made in compliance with requirements of the Acton Water Supply District.
- 3.3.3 The applicant shall, prior to the issuance of any building permit, pay the sewer privilege fee of \$210,000 in accordance with the Sewer Assessment Bylaw.
- 3.3.4 The applicant shall obtain approval from the Engineering and Fire Departments to determine the street addresses prior to the 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 The two subdivision streets shall remain private ways. They shall not be accepted as a public way, nor shall the Applicant or the owners of the lots file a petition with the Town to accept it as a public way.
- 3.3.7 The two subdivision streets in its entirety shall be maintained by the owners of lots 2, 3, 4, 5, 6, 7, and 8 in accordance with the Private Place Maintenance Agreement. This shall include the removal of snow and ice. The Applicant and the owners of lots 2, 3, 4, 5, 6, 7, and 8 shall not petition the Town to provide snow and ice removal services in the two subdivision streets or to provide any other maintenance and upkeep of the two subdivision streets.
- 3.3.8 The subdivision street extending from Fletcher Court shall not serve more than three residential lots; the subdivision street intersecting with Main Street shall not serve more than four new lots.
- 3.3.9 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, Place 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.
- 3.3.10 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.
- 3.3.11 No work on the Site shall begin prior to the endorsement and recording of the Plan.

- 3.3.12 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.
- 3.3.13 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.
- 3.3.14 All construction activity on the property relating to this Subdivision, including demolition, shall be limited to the hours of: Monday – Friday: 7:00am – 6:00pm; Saturday 8:00am – 5:00pm; Sundays & Holidays: No work permitted.
- 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 Place 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:

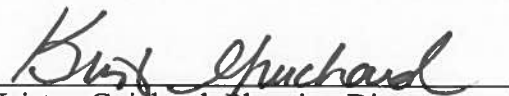
- 3.4.1 The foregoing required modifications and conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Rules and other applicable laws and regulations.
- 3.4.2 This subdivision approval applies only to the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