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TOWN OF ACTON
PLANNING DEPARTMENT

PCRC and Common Driveway Special Permit Amendment #2
123 Quarry Road (Old Westford Road PCRC)
January 16, 2023



Planning Board

TOWN OF ACTON
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DECISION

93-9

Amendment #2

123 Quarry Road (Old Westford Road)

PCRC and Common Driveway Special Permit
Amendment #2

January 16, 2024

APPROVED (with Conditions)

This is an amendment by the Planning Board (hereinafter the Board) of its decision on the application of Mascarli LLC (here and after the Applicant) issued to the (hereinafter the Applicant), on October 4, 1993 and amended on June 5, 2018 for property 123 (formerly 115 & 119) Quarry Road shown on the Acton Town Atlas as map B-5, parcels 22,23,24,28,29, 14-1 (hereinafter the Site).

This Second Amendment Decision is in response to the request for a re-arrangement of the developable lot from the eastern portion of the site to the southwestern portion of the site, with an increase of 3 dwelling units for a total of 6 dwelling units. The Decision of the Acton Planning Board (hereinafter the Board) on the application of Mascarli LLC (hereinafter the Applicant) for property in Acton, Massachusetts, owned by Bettina Norton of 6 Rollins Place, Boston, MA

Decision – #93-9 Amendment#2 , PCRC and Common Driveway Special Permit

123 Quarry Road January 16, 2024

Page 1 of 8

02114. The property is located at 123 Quarry Road and shown on the 2023 Acton Town Atlas map B5 as parcels 23, 24, 28, 29 (hereinafter the Site).

This Decision is in response to an Application for Approval of an Amendment to the Planned Conservation Residential Community and Common Driveway Special Permit, received by the Acton Planning Department on June 28th 2023.

The Applicant presented the PCRC and Common Driveway Special Permit to the Board at a public hearing on September 19, 2023 and December 20, 2023 and closed on January 16, 2024. Nathaniel Cataldo of Stamski and McNary assisted the Applicant with the presentation. Board members Mr. Jon Cappetta (Chairman), Sam Bajwa, James Fuccioni, and Michaela Moran and were present throughout the hearing. The minutes of the hearing and submissions on which this decision is based upon may be referred to in the Planning Department 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 "Planned Conservation Residential Community Special Permit Plan for 123 Quarry Road in Acton Massachusetts, dated June 26, 2023 and revised on October 24, 2023 drawn by Stamski and McNary of 1000 Main Street, Acton, MA 01720 consisting of 9 sheets.
- 1.2 Supplemental items and documentation required by the Rules consisting of:
 - A properly executed Application for Approval of a Planned Conservation Residential Community Special Permit, dated June 26th 2023.
 - Filing fee.
 - A completed Development Impact Report, form DIR.
 - Certified abutters list.
 - Use description
 - Ownership and Maintenance of Common Land
 - Other Permits and Variances
 - Recorded Plans and Deeds
 - A Letter Authorizing Completion of Improvements
 - A list of mortgage holders.
 - A draft maintenance agreement
 - Stormwater Management Report including drainage and water balance calculations, last revised October 23, 2023.
- 1.3 Additional information submitted by the Applicant:
 - Peer Review response, dated October 26, 2023
 - Landscape Plan, dated October 24, 2023
 - House Plans for Lots 3 & 4 and Lots 5 & 6, dated January 6, 2012 and received November 9, 2023.
- 1.4 Interdepartmental communication received from:
 - Acton Fire Chief, dated January 9, 2023 .
 - Acton Health Division, dated September 13, 2023.
 - Acton Conservation Division September 13, 2023.

- Acton Design Review Board, dated October 5, 2023.
- Acton Planning Division, last revised November 17, 2023.

1.5 Other Public Comments:

- Two Emails from Terra Friedrichs, January 7, 2024.

1.6 Other:

- Hearing continuance to October 17, 2023,
- Hearing continuance to December 20, 2023,
- Hearing continuance to January 16, 2024.

Exhibits 1.1 through 1.4 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 10/8 (R-10/8) zoning district and Zone 3 of the Groundwater Protection District.
- 2.2 The proposed additional three single-family detached dwellings are allowed on the Site in accordance with the Bylaw, including all overlay district requirements, and subject to this special permit. Section 9.6.2.3 allows for a maximum of 6 units.
- 2.3 The proposed single-family residential uses are allowed on the Site in accordance with the Bylaw.
- 2.4 The proposed lots as shown would comply with the dimensional requirements of the Bylaw.
- 2.5 The Plan shows the proposed division of approximately 556,285 square feet into three areas: 213,522 square feet (or approximately 4.9 acres) for residential use; 342,763 square feet (or approximately 7.86 acres) of common land of which approximately 7.18 acres is to be deeded to the Town of Acton Conservation Commission and to be preserved as open space. The remaining approximately 30,000 square feet (0.68 acres) shall be preserved as open space reserved for the septic disposal site for the 6 single family homes. Bylaw Section 9.6.3.2 (c) allows for a portion of the Common Land to be used for the construction of leaching areas, if associated with septic disposal systems serving the PCRC.
- 2.6 The previously approved PCRC contained 334,351 square feet of common land. The proposed plan would increase the common land area to 342,763 square feet for an increase of 5,528 square feet.
- 2.7 The Plan shows a small area of isolated vegetative wetlands on an abutting lot, to the northerly side of the existing portion of Quarry Road. Given its proximity to the proposed extended driveway, the project is subject to review and approval by the Acton Conservation Commission.
- 2.8 PCRCs do not require lot frontage on a street, but under the special permit the Board is obligated to ensure safe and adequate access to residences and buildings.

- 2.9 The Plan shows a ± 417-foot-long common driveway that appears to comply with the Common Driveway standards set forth in Bylaw Section 3.8.1.5
- 2.10 The Board finds that the proposed cluster arrangement of the homes and location of the leaching field allows for better preservation of natural resources and overall better site planning and aesthetics for the neighborhood.
- 2.11 The Plan shows an existing cart path extending from Quarry Road across the property to the most southeasterly point, connecting to Town owned land, parcel B5-34. Under current conditions, there is no formal legal public access onto the land.
- 2.12 The Applicant has offered to donate 7.87 acres of the common land area, exclusive of the septic disposal area, as well as an access easement over the septic disposal area. The septic disposal area will be held in ownership by the owners of the dwelling units. The proposed use of the common land is in compliance with Section 9.6.3.3 of the Bylaw.
- 2.13 Bylaw Section 9.6.3.2 (c) requires that any portion of the Common Land used for the purpose of such leaching areas, requires adequate assurances and covenants that such facilities shall be maintained by the LOT owners within the PCRC.
- 2.14 At the Conservation Commission's meeting of December 6, 2023, the Commission expressed enthusiasm for acquiring the proposed donation of conservation land adjacent to the Town Forest.
- 2.15 The Board found that given the donation of land allowing future trail connections, and the isolated nature of the site, sidewalks were not necessary.
- 2.16 The Board has received comments from various Town departments, which are listed in Exhibit 1.4 above. 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.
- 2.17 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).
- 2.18 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 on January 16, 2024, 4 in favor, 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:

3.1.1 A waiver from the sidewalk requirements of the Rules. The waiver is GRANTED subject to further conditions as stated below. 3.1.2 Section 3.14.7.4 (Outdoor lighting details). Where no outdoor lighting is proposed as part of the development, no waiver is needed.

3.2 PLAN MODIFICATIONS

The Zoning Enforcement Officer (ZEO) shall not sign off on a building permit, no building permit shall be issued on the Site, nor shall any construction activity begin on the Site, until and unless the ZEO finds that the Plan is revised to include the following additional, corrected, or modified information. Except where otherwise provided, all such information shall be subject to the approval of the ZEO.

3.2.1 The Plan shall be modified to show the "proposed septic disposal easement" as a separate lot, to be held in common ownership by the owners of the PCRC, and subject to Bylaw Section 9.6.3.2 (c).

3.2.2 Unless directed otherwise by this decision, the definitive plan shall be modified to comply with all requirements of the Rules, and shall address all comments from GCG Associates Inc., and any other departmental comments received by the Board in a manner that resolves any concerns raised therein to the satisfaction of the Board.

3.2.3 Submit for the Board's or its designee's approval a revised common driveway maintenance agreement and covenant for the private driveway and all its appurtenances that shall:

- (a) correct that the common driveway shall remain a private way and serve not more than six single family homes;
- (f) reference the 40-foot wide access easement and utility easement in the covenant for the private driveway.

3.2.4 Submit for the Board's or its designee's approval:

- a) An updated fee simple deed to reflect the approximate 7.18 acre donation of common land to the Town of Acton Conservation Commission as shown on the plan as "Common Land," with the exclusion of the septic disposal area, consistent with the requirements of the Bylaw for public ownership of common land in PCRCs and consistent with this decision.
- b) Adequate assurances and covenants for the Common Land area designated for the septic disposal area (approximate 0.7 acre area) that such facilities shall be maintained by the LOT owners within the PCRC.

3.2.5 The Plan shall be modified 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 shall render this special permit null and void, without force and effect, and shall 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 Prior to the issuance of a building permit on the Site, the Applicant shall provide the Board with a performance guarantee for the common driveway pursuant to Section 6 of the Acton Subdivision Rules and Regulations. The Board reserves the right to require additional performance guarantees for any and all items and improvements shown on the Plan.
- 3.3.2 Prior to issuance of any building permit for any of the proposed homes on the site, the applicant shall deliver a deed acceptable to the Town of Acton Conservation Commission, endorsed by the Applicant, for the donation of the approximate 7.18 acre and to convey said common land and easement free of all encumbrances, mortgages, tax liens, or other claims, except as to easements, restrictions and encumbrances required or permitted by the Bylaw.
- 3.3.3 No work on the Site shall begin prior to the endorsement and recording of the Plan, Covenants and decision.
- 3.3.4 Notification to the Planning Division must be given prior to construction on the site.
- 3.3.5 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.
- 3.3.6 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.
- 3.3.7 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.
- 3.3.8 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.
- 3.3.9 All requirements of the Board of Health Regulations must be met.
- 3.3.10 All requirements of the Conservation Commission must be met.
- 3.3.11 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.
- 3.3.12 The common land shown on the Plan and approved hereunder, including any portion that exceeds minimum zoning requirements, shall not be reduced in area.
- 3.3.13 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 or house lots.

- 3.3.14 The number of six dwelling units on the Site shall not be increased.
- 3.3.15 Deeds, Easements, and Restrictions - Common Land Parcel shall be used only for purposes as deemed appropriate by the Conservation Commission and as outlined herein and on the approved plan.
- 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 driveway, and survey monuments for the entire Common Driveway; 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, and the approved common driveway maintenance agreement and covenant 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.

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 MGL, Ch. 40A, S. 17 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, s. 81-U.



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 #	Building Department	Health Department
Town Clerk	Engineering Department	Tree Warden
Fire Chief	Natural Resources Dept.	Town Manager
Owner	Police Chief	Acton Water District
[Historic District Commission]	Historical Commission	Assistant Assessor