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Definitive Subdivision Decision – PB 23-10

Fairy Place

January 21, 2025



Planning Board

TOWN OF ACTON
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Acton, Massachusetts 01720
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DECISION
PB 23-10

Fairy Place

Definitive Subdivision (Residential Compound)
January 21, 2025

APPROVED with Conditions

Decision of the Acton Planning Board (hereinafter the Board) on the application of Overlook Design Build (hereinafter the Applicant) for properties located at 40 High Street in Acton, Massachusetts owned by North Star Realty Trust of 5 Robert Road, Acton MA 01720. The property is shown on the Acton Town Map as parcel H3-B-10 (hereinafter the Site).

This Decision is in response to an application for approval of a Definitive Subdivision Plan entitled “Definitive Subdivision Plan for Fairy Place at 40 High Street, Acton, Massachusetts”, filed with the Acton Planning Division on November 9, 2023, 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 public hearing virtually and in person, pursuant to Governor Baker’s March 12, 2020 Executive Order Suspending Certain Provisions of the Open Meeting Law, on

January 16, 2024 and was subsequently continued to February 20, 2024, March 19, 2024, April 16, 2024, May 21, 2024, June 26, 2024, July 16, 2024, September, 16, 2024, October 16, 2024, November 19, 2024, and then closed on December 17, 2024. Robert Melvin of Stamski and McNary on behalf of Applicant presented the application.

Board members Mr. Jon Cappetta (Chairman), Mr. James Fuccione, and Ms. Patricia Clifford 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, "Definitive Subdivision Plan for Fairy Place, Acton, Massachusetts", dated November 6, 2023 and consisting of eight sheets – Title Sheet, Record Plan, Existing Conditions, Site Development Plan, Plan and Profile, Construction Details, Erosion and Sedimentation Control Plan, and Proof Plan, last revised October 28, 2024.
- 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 November 6, 2023;
 - 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, dated November 6, 2023 and revised February 9, 2024, June 13, 2024, September 18, 2024, and October 28, 2024 (Addendum);
- 1.3. Additional information submitted by the Applicant;
 - Landscape Plan for 40 High Street, dated June 13, 2024;
 - Letters in response to GCG Associates, dated February 29, 2024, May 7, 2024, June 25, 2024, September 18, 2024, and November 8, 2024;
- 1.4 Interdepartmental communication received from:
 - Fire Department, dated January 9, 2024;
 - Design Review Board, dated May 16, 2024;
 - Engineering Department, dated December 28, 2023;
 - Historical Commission, dated December 15, 2023;
 - GCG Associates, dated December 29, 2023, April 11, 2024, May 9, 2024, August 8, 2024, October 15, 2024, and December 10, 2024;
 - Planning Division, dated January 12, 2024;

1.5 Extension Agreements

- Agreement on time extension to continue the hearing to February 20, 2024;
- Agreement on time extension to continue the hearing to March 19, 2024;
- Agreement on time extension to continue the hearing to April 16, 2024;
- Agreement on time extension to continue the hearing to May 21, 2024;
- Agreement on time extension to continue the hearing to June 26, 2024;
- Agreement on time extension to continue the hearing to July 16, 2024;
- Agreement on time extension to continue the hearing to September 16, 2024;
- Agreement on time extension to continue the hearing to October 16, 2024;
- Agreement on time extension to continue the hearing to November 19, 2024;
- Agreement on time extension to continue the hearing to December 17, 2024;

1.6 Public Comments

- William J. Bethune on behalf of Audubon Hill Community Center and Audubon Hill North Condominium Association, dated March 26, 2024, April 26, 2024, and May 20, 2024, and July 15, 2024;
- AHCC & AHNCA Statement of Position, dated January 10, 2024, March 22, 2024, and May 7, 2024;
- Geoff Beach, dated April 1, 2024, April 2, 2024, April 12, 2024, May 20, 2024, September 3, 2024, September 5, 2024, and November 19, 2024;
- Richard Keleher, dated January 8, 2024, March 3, 2024, March 16, 2024, April 22, 2024, and May 19, 2024;
- Emily Laubscher, dated January 16, 2024;
- Matthew Hoffmann & Emily Laubscher, dated May 20, 2024;
- Laura Helmuth, dated March 19, 2024;
- Royce Fuller, dated April 22, 2024;
- Anne Forbes, dated January 16, 2024;

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 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.

2.2 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.

2.3 The Board finds that the proposed Residential Compound satisfies the purpose of § 10 of the Rules. 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.

- 2.4 The Site is located within the Residence 2 (R-2) zoning district and the Groundwater Protection District Zone 4.
- 2.5 The Plan shows the division of +/- 2.54 acres (+/- 110,642 square feet) into four lots for single family residential use. The Site currently has one four-family multifamily dwelling on it, which will remain.
- 2.6 The Plan proposes a 427-foot long subdivision street, named Fairy Way, which intersects with High Street.
- 2.7 The name of the way was originally proposed as “Nash Place,” but changed to “Fairy Place” based on comments from the Fire Department.
- 2.8 The proposed single-family residential uses are allowed on the Site in accordance with the Zoning Bylaw (hereinafter the Bylaw). The existing four-family multifamily dwelling is legal, pre-existing non-conforming and is on Acton’s Cultural Resource List.
- 2.9 The proposed lots as shown on the Plan comply with the area and frontage requirements of the Bylaw, including all overlay district requirements.
- 2.10 The Plan shows typical house and driveway locations on lots that comply with the minimum setback dimensions of the Bylaw. They are shown for illustrative purposes only. Actual driveway locations may vary, except for specific requirements of this Decision and where compliance with section 8.1.18 of the Rules is required. House locations may shift within the parameters of setbacks required under the Bylaw.
- 2.11 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.
- 2.12 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. The proof plan dated November 6, 2023 shows one existing four-family multifamily dwelling and three proposed single-family dwelling units and the paved way outside the 100-foot wetland buffer. A paved surface area in compliance with the Rules section 8.1.18.1 (loop turnaround) could fit within the proof plan layout and be outside the 100-foot wetland buffer.
- 2.13 The Residential Compound design layout retains the historic four-family structure as the focal point on the lot. The Board agrees with the Historical Commission’s notes in their email dated December 15, 2024 that this design helps to preserve Acton’s built cultural heritage.
- 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 High Street is considered a Minor Collector in the Town of Acton.
- 2.16 Places in 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.

- 2.17 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.
- 2.18 The proposed enlarged drywell system on Lot 2 will capture up to the 100-year storm runoff and would improve High Street’s existing drainage conditions.
- 2.19 The proposed stormwater design exceeds the minimum requirements of Chapter X, improves the post-development drainage conditions on High Street and provides for additional drainage mitigation measures as recommended in GCG Associates civil engineering review memo dated December 10, 2024.
- 2.20 Traffic on the proposed street will be light with the addition of three new single-family dwelling units respectively. The Residential Compound more or less as proposed is appropriate for the Site.
- 2.21 The proposed pavement width is 12 feet with four-foot shoulders.
- 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 The intersections and turn-around areas as shown appear to accommodate the dimensions of an SU-30 vehicle.
- 2.24 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 an existing public street which the subdivision Site has frontage, the contribution would be approximately $(427 \times \$20) = \$8,540$. (There is an existing sidewalk along the High Street frontage of the property.)
- 2.25 The Applicant offered to make a donation to the sidewalk fund in lieu of constructing the sidewalks.
- 2.26 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.
- 2.27 The Applicant has requested certain waivers from the Rules. These are discussed in section ‘3.1 Waivers’ below.

3 BOARD ACTION

Therefore, subject to and with the benefit of the following waivers, conditions, plan modifications, and limitations, the Board voted on January 21, 2025 to APPROVE the definitive subdivision.

3.1 WAIVERS

The Applicant has requested the following waivers from the applicable Rules.

- 3.1.1 The Applicant requested waivers from Section 8 (Design Standards) and Section 9 (Improvements) of the Rules to allow the construction of the street as shown on the Plan. This waiver is GRANTED pursuant to Section 10 of the Rules, except for the requirement for Sidewalks and Trees and other Vegetation, as set forth in Section 9.6 and 9.8 of the Rules and Regulations.
- 3.1.2 The Applicant requested a waiver from Section 10.1.1.1 of the Rules to allow for the legal, pre-existing non-conforming four-family multifamily dwelling to remain. This waiver is GRANTED.

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 December 10, 2024 shall be resolved.
- 3.2.2 The applicant shall compile the stormwater report into one document as described in the civil engineering review memo from GCG Associates, dated December 10, 2024.
- 3.2.3 Street names and addresses shall be approved by the Fire and Engineering Departments and shall be noted on the plan.
- 3.2.4 All Plan sheets submitted for endorsement shall have the requisite professional designer stamps (P.E., R.L.S., and R.L.A.)
- 3.2.5 The applicant shall 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 and one 4 family multifamily home, that the owners of lots 1, 2, 3, and 4 shall be jointly responsible for the removal of snow and ice in the subdivision street; that the owners of lots 1, 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 1, 2, 3, and 4 shall not petition the Town to accept the subdivision street as a public way; and that the owners of lots 1, 2, 3, and 4 shall not petition the Town to provide snow and ice removal services or any other maintenance of the subdivision street.
- 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 There is a maximum impervious surface area per lot that the stormwater systems can handle. The individual home recharge storm systems shall be constructed prior to the issuance of an occupancy permit, and certified that it does not exceed the capacity of what was designed.
- 3.3.2 In lieu of constructing a sidewalk within the subdivision as otherwise required by the Rules, the applicant shall submit the offered donation of \$8,540 to the Town of Acton sidewalk fund prior to the Plan Endorsement.
- 3.3.3 Prior to endorsement of the Plan, the applicant shall provide a recorded copy of a sidewalk easement along the frontage of 40 High Street in accordance with the Engineering Department's memo dated December 28, 2023.
- 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 Fairy Place shall remain a private way. The street 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 subdivision street in its entirety shall be maintained by the owners of lots 1, 2, 3, and 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 1, 2, 3, and 4 shall not petition the Town to provide snow and ice removal services in the subdivision street or to provide any other maintenance and upkeep of the subdivision street.
- 3.3.8 Fairy Place shall not serve more than four residential 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 Prior to endorsement of the Plan, the Applicant shall provide the Board with a performance guarantee in accordance with Section 6 of the Rules.
- 3.3.12 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 All construction activity on the property relating to this subdivision shall be limited to the hours of: Monday – Friday: 7:00am – 5:00pm; Saturday 8:00am – 5:00pm; Sundays & Holidays: No work permitted.
- 3.3.17 This Decision, the endorsed Record Plan, and the Restrictive Covenant if any, Private Way Maintenance Agreement and Covenant, and other documents as applicable 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.

Leo Mercado, 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