

R E C E I V E D
OCT 18 2013

Decision 13 - 08
Street Determination – Pine Ridge Road
October 17, 2013

TOWN CLERK, ACTON



Planning Board

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DECISION
13-08

89-93 Central Street
(Pine Ridge Road)

Determination of the Status of Pine Ridge Road

October 17, 2013

Summary: Pine Ridge Road, a way in existence before March 9, 1953, is a street for purposes of providing access and frontage to lots in accordance with section 1.3.16.4) of the Acton Zoning Bylaw and subject to the modifications, conditions, and limitations set forth herein.

This Decision of the Acton Planning Board (hereinafter the Board) is in response to the petition of Mr. Mark M. Gallagher of Seal Harbor, LLC (hereinafter the Applicant), first presented to the Board at a meeting on October 1, 2013, for a determination of the status of the existing way known as Pine Ridge Road (hereinafter the Way) pursuant to section 1.3.16.4) of the Acton Zoning Bylaw (hereinafter the Bylaw). The Way is located between 89 and 93 Central Street shown on the 2013 Town Atlas page G2, parcels 123, 123-1, and 174 (hereinafter the Site).

On October 15, 2013, the Board held a public meeting on the matter to which abutters were invited, several of whom attended the meeting. The Applicant presented, and the Board

deliberated the petition and heard comments from abutters. Board members Mr. Rob Bukowski (Vice Chairman), Mr. Roland Bourdon, Mr. Derrick Chin, and Mr. Ray Yacoubi were present. The minutes of the meeting and submissions on which this decision is based upon may be referred to in the Planning Department at the Acton Town Hall.

1 EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

- 1.1 A proposed Approval Not Required (ANR) plan entitled "Plan of Land; 93 Central Street, Acton, MA 01720" prepared for Seal Harbor, LLC by Acton Survey & Engineering, Inc., dated September 18, 2013.
- 1.2 A proposed "Plan of Lot 2C Driveway, 93 Central Street, Acton, MA 01720", prepared by Acton Survey & Engineering, dated October 9, 2013.
- 1.3 A public meeting notice to abutters for the 10/15/2013 Planning Board meeting with attached letter from Mark M. Gallagher, Seal Harbor, LLC.
- 1.4 A draft "Private Driveway and Maintenance Agreement".
- 1.5 Agreement, by e-mail dated October 7, 2013, to extend the ANR endorsement date to October 18, 2013.
- 1.6 Memo from Regina H. Buckley, Esq. of Scheier Katin & Epstein, P.C. to Mr. Roland Bartl, Director, Town of Acton Planning Department, dated 9/26/2013, under e-mail cover by Mark Scheier with the same date, and with the following attachments:
 - Exhibit A: Plan of land at Central Street showing lots 1 & 2 and Pine Ridge Road, approved by the Acton Board of Survey on June 10, 1952 (MSRD Plan No. 1210 of 1952), with related deed and mortgage for lot 1 from the same year.
 - Exhibits B through G: Various deeds for the lots and Pine Ridge Road dating from 1968 to 2013.
- 1.7 Letter from Paul Alphen, Esq. of Balas, Alphen & Santos, P.C. to Mark Scheier, Esq., dated September 30, 2013, with attached plan of land for the subject location showing Lots 1, 2A, & 3, and showing Pine Ridge Road as a "private Driveway (MSRD Plan No. 43 of 1972).
- 1.8 Various decisions by the Acton Board of Appeals relative to a Comprehensive Permit under M.G.L. Ch. 40B for 93 Central Street.

Exhibits 1.1 through 1.4 above 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 asked the Board to determine whether the Way, pursuant to section 1.3.16.4) of the Bylaw, has "sufficient width, suitable grades, and adequate construction to accommodate the vehicular traffic anticipated by reason of the proposed use of the land abutting thereon or served thereby and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon". An affirmative determination by the Board would declare the Way a street for the purposes of zoning as it pertains to the proposed use or uses and thus allow the issuance of building permit(s) on lots 2B and 2C as shown on the Plan.
- 2.2 The documents available to the Board show reasonable evidence that the Way is a way in existence when the subdivision control law became effective in Acton on March 9, 1953 within the meaning of section 1.3.16.4) of the Bylaw. The Way is shown as Pine Ridge Road on a plan of record on June 10, 1952 and referred to in deeds and plans thereafter variably as Pine Ridge Road and/or Private Driveway.

- 2.3 The Way as shown on the record plans is located between lots and parcels at 89 and 93 Central Street, laid out as $40\pm$ feet wide right-of-way or easement, extending from Central Street in a northeasterly direction for a distance of $300\pm$ feet.
- 2.4 There is a single-family residence at 89 Central Street (lot 1), now owned by Stephen A. Budwick. Lot 1 includes the Way.
- 2.5 There is a single-family residence at 93 Central Street (lot 2; later lot 2A), owned by Charles D. Micol, and now under agreement with Seal Harbor, LLC. Lot 2/2A has right to use the Way for access. Seal Harbor proposes to divide Lot 2/2A into two lots, 2B and 2C, using the Way as a street for purposes of minimum lot frontage.
- 2.6 The Way is improved beginning at Central Street with a paved driveway surface for a distance of $150\pm$ feet.
- 2.7 As shown on the Plan, the applicant proposes to resurface the driveway and extend it for access to a new proposed lot 2C, located in the rear of lot 2B as seen from Central Street. The Plan also shows that the access for lot 2C avoids the septic system for the house on lot 1, which happens to be located within the Way about 170 feet from Central Street. And, the Plan shows a turn-around pad for fire engines and other larger vehicles on lot 2C.
- 2.8 Mr. Budwick, owner of lot 1, indicated that he wishes to be a party to the proposed driveway maintenance agreement.
- 2.9 The zoning district where the site is located is Residence 2 (R-2), which allows one single-family residence per lot, together with any customary accessory uses, all as set forth in the Bylaw.

3 BOARD ACTION

Therefore, the Board determined at the October 15, 2013 meeting by a vote of 4 in favor - 0 opposed, that the Way at 89-93 Central Street, also known as Pine Ridge Road, is a street within the meaning of section 1.3.16.4) of the Bylaw for its entire length of $300\pm$ feet, and for purposes of frontage and access for proposed lots 2B and 2C, and for access for lot 1.

This determination shall not render illegal or non-conforming any lawfully erected buildings and structures located on the Site.

Furthermore, this determination is made subject to the following conditions and limitations:

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 Decision. 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 the issuance of a building permit for a new single family dwelling on either proposed lot 2B or 2C, the applicant shall, together with Mr. Budwick, complete, subject to approval by the Planning Department, a private way covenant and maintenance agreement for the three lots governing the use, maintenance and upkeep of the Way, and record the same at the Registry of Deeds or Land Court.
- 3.3.2 Prior to the issuance of a Certificate of Occupancy for a new building on lot 2C, the large vehicle turnaround on lot 2C shall be completed more or less as shown on the Plan and sufficient in size to accommodate a three-point turnaround by a SU-30 design vehicle.
- 3.3.3 Additional runoff from the Site shall be contained and recharged within the lots on the Site or otherwise managed in compliance with Massachusetts Storm water Regulations. Evidence of compliance with this requirement shall be submitted to the Engineering

Department, and shall be subject to their approval before the issuance of a building permit on lots 2B or 2C.

- 3.3.4 The Way shall remain a private way. It shall not be accepted as a public way, nor shall the Applicant or the owners of any lots with frontage on the Way file a petition with the Town to accept it as a public way.
- 3.3.5 The Way in its entirety shall be maintained by the owners of lots with frontage and/or access on the Way in accordance with the private way covenant and maintenance agreement as required herein. This shall include the removal of snow and ice. The Applicant and the owners of the three lots shall not petition the Town to provide snow and ice removal services in the Way or to provide any other maintenance and upkeep of the Way.
- 3.3.6 Any 'Approval Not Required' plan showing lots with frontage on the Way, shall not be recorded with the 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.
- 3.3.7 No building permit shall be issued on lots 2B and 2C prior to the endorsement and recording of an 'Approval Not Required' plan showing said lots with frontage on the Way and the recording of this Decision.
- 3.3.8 The street address for lot 2C shall be 91 Central Street.
- 3.3.9 All work on the Site shall be conducted in accordance with the terms of this approval, and shall conform with and be limited to the improvements shown on the Plan as approved hereunder.
- 3.3.10 The installation of water service lines shall be made in compliance with requirements of the Acton Water Supply District.
- 3.3.11 Upon completion of all work as shown on the Plan as approved hereunder, and before the issuance of the last Certificate of Occupancy, the Applicant shall submit:
 - a. An as-built plan for the Way, drainage, utilities, and other improvements within or related to the Way, and survey monuments for the lots with frontage on the Way.
 - b. A certification from a registered professional engineer stating that the project was constructed according to the Plan as conditioned and approved hereunder.
 - c. A bound certification from a registered land surveyor as set forth on form CB of the Acton Subdivision Rules and Regulations.
- 3.3.12 This Decision shall be referenced on any plan submitted for 'Approval Not Required' endorsement under the Subdivision Control Law and showing lots with frontage on the Way.
- 3.3.13 This Decision, 'Approval Not Required' plans with lots having frontage on the Way, the Restrictive Covenant under section 6 of the Subdivision Rules if any, and the Private Way Covenant and Agreement as amended herein shall be recorded at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit on Lots 2B and 2C.

3.4 **LIMITATIONS**

The determination of the Board and the authority granted to the Applicant under this decision is limited as follows:

- 3.2.1 This determination that the Way is a street within the meaning of section 1.3.16.4) of the Bylaw applies only to the land and use specified herein. The Way shall not be considered a street under zoning for any other land use or any other parcel of land. Further, this determination is limited only to the portion of the Way specified herein. No determination is made herein with respect to any other portion of the Way.
- 3.2.2 The validity of this determination shall expire, if no building permit is issued on the Site for an use authorized hereunder within two years from the date of filing this decision with the Town Clerk, or if the improvements on the Way are not completed in accordance with the approved Plan within 3 years from the date of filing this decision with the Town Clerk. 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.
- 3.2.3 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.
- 3.4.1 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.

Signed on behalf of the Acton Planning Board



Roland Bartl, AICP, Town Planner
for the Town of Acton Planning Board

Copies furnished:

Applicant – Seal Harbor, LLC
Engineering Department
Natural Resources Director
Acton Water District

Building Commissioner
Municipal Properties Director
Town Manager
Assistant Assessor

Health Director
Town Clerk
Fire Chief