

R E C E I V E D  
OCT - 2 2013

TOWN CLERK, ACTON

Definitive Subdivision Decision – 13 - 05  
The Residences at Constitution Drive  
October 1, 2013



**TOWN OF ACTON**  
472 Main Street  
Acton, Massachusetts 01720  
Telephone (978) 929-6631  
Fax (978) 929-6340  
pb@acton-ma.gov  
www.acton-ma.gov

---

**DECISION**  
13-05

**The Residences at Constitution Drive**  
Definitive Subdivision (Residential Compound)

October 1, 2013

APPROVED (with Conditions)

Decision of the Acton Planning Board (hereinafter the Board) on the application of Lexington Holding, LLC of 6 Open Space Drive, Sandwich Drive, MA 02563 (hereinafter the Applicant) for property located at 27 Jackson Drive, Acton MA, owned by Xiaohong Qin. The property is shown on the Acton Town Atlas map E3, as parcel 25 (hereinafter the Site).

This Decision is in response to an Application for Approval of a Definitive Subdivision Plan entitled "Definitive Plan for The Residences at Constitution Drive Acton, MA", filed with the Acton Planning Department on June 14, 2013, pursuant to Massachusetts General Laws, Chapter 41, Section 81-K through 81-GG, and the Acton Subdivision Rules and Regulations (hereinafter the Rules).

The hearing was held on September 17, 2013. George Dimakarakos of Stamski and McNary, Inc. presented the Plan on the Applicant's behalf. Board members Mr. Jeff Clymer (Chair), Mr. Roland Bourdon, Mr. Michael Dube (Clerk), Mr. Derrick Chin, and Mr. Ray Yacoubi were present throughout the proceedings of the hearing. The minutes of the hearing and submissions

on which this Decision is based upon may be viewed 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 – The Residences at Constitution Drive Acton, MA 01720", 7-sheets, dated 06/14/13, by Stamski and McNary, Inc., 1000 Main Street, Acton, MA 01720.
- 1.2 A sketch plan entitled Common Drive Pavement Layout, updated August 28, 2013.
- 1.3 Supplemental items and documentation required by the Rules consisting of:
  - A fully executed Application for Approval of a Definitive Plan, form DP, dated 05/23/13;
  - Filing fee;
  - A completed Development Impact Report, form DIR;
  - Designer's Certificate;
  - Certified abutters list;
  - A list of requested waivers;
  - A letter authorizing Town to complete driveway;
  - An authorizing vote of trust, corporation or company;
  - Copy of the deed;
  - List of mortgage holders;
  - Stormwater Management Report, including pre- and post-development drainage maps;
  - Stormwater Operation and Maintenance Manual.
- 1.4 Interdepartmental communication received from:
  - Acton Department of Public Health, dated 06/16/2013;
  - Acton Treasurer's Office, dated 06/26/13;
  - Acton Sidewalk Committee, dated 07/04/13;
  - Acton Tree Warden & Municipal Properties Director, dated 07/08/13;
  - Acton Engineering Department, dated 07/29/13;
  - Acton Fire Chief, dated 08/28/2013;
  - Acton Planning Department, dated 08/28/13;
- 1.5 Correspondence received from abutters:
  - Emails between Elaine Rowles and the Assistant Town Engineer, dated 07/16/13;
  - Email from Christensen Flemming, dated 08/04/13;
  - Email from Eileen Matarese, dated 08/09/13;
  - Email from Paul White, dated 08/12/13;
  - Email from Joe Biggins, dated 08/12/13;
  - Email from Deb Matthews, dated 08/13/13;
  - Email from Karen Kearney, dated 08/14/13.

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 proposed subdivision is located within the Residence 2 (R-2) zoning district, the Groundwater Protection District Zone 4.
- 2.2 The Plan shows the division of approximately 4.02 acres into five lots. The land is currently developed with an existing single family dwelling and a paved driveway.
- 2.3 The plan shows the relocation of the existing dwelling to Lot 5, and construction of four new single-family residential dwellings.
- 2.4 The proposed uses are allowed on the Site in accordance with the Acton Zoning Bylaw.
- 2.5 The proposed lots as shown on the Plan comply with the area and frontage requirements of the Bylaw. Lots 2, 3 and 4 have reduced frontage which comply with Bylaw Section 5.3.3.3.
- 2.6 The Plan shows a +/- 385-foot long subdivision street, Constitution Drive, which intersects with Jackson Drive. The proposed pavement width is 18 feet within a 24-foot wide layout. The proposed loop-turnaround has a center island and a 103-foot centerline radius.
- 2.7 Section 9.6 of the Subdivision Rules require 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 has frontage.
- 2.8 The Plan shows an existing sidewalk along the frontage of Lot 1 and Lot 5 on Jackson Drive. The Plan shows proposed handicap ramps on both sides of the Constitution Drive curb-cut to maintain access to the existing sidewalk.
- 2.9 Traffic on the proposed street will be light. A Residential Compound more or less as proposed is appropriate for the Site.
- 2.10 The design of the proposed subdivision street is intended for approval under Section 10 of the Rules - Optional Residential Compound, which implies waivers from Section 8 and 9 of the Rules. The subdivision is eligible for consideration as a Residential Compound. The Applicant has demonstrated with a "proof plan" that the subdivision street could be built under the otherwise applicable requirements of the Rules. A Residential Compound is less intrusive to the neighborhood, 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 Compounds option.
- 2.11 Ways 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. This requires a legal framework for the maintenance and ownership of the private way. Furthermore, the Board needs assurances that the Town will not be asked to plow, maintain, or accept the private way in the future.
- 2.12 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.

2.13 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 to APPROVE the definitive subdivision.

#### **3.1 WAIVERS**

3.1.1 The Applicant has 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.

The waiver is GRANTED pursuant to Section 10 of the Rules (Residential Compounds) and subject to any required Plan modifications and conditions stated herein.

#### **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 Modify the plan to show roadway pavement reductions as shown on the sketch plan dated August 28, 2013.

3.2.2 Submit a private way maintenance agreement and covenant, enforceable by the Town of Acton, that (1) specifically calls out the Stormwater and Operation Maintenance Manual; (2) assigns the responsibility for snow and ice removal and for general maintenance to the owners of the subdivision lots 1 through 5; and declares and covenants that (2) Constitution Drive remain a private way; (3) Constitution Drive shall not serve more than five single family homes; (4) the owners of lots 1 through 5 in Constitution Drive shall be jointly responsible for any general maintenance and upkeep of Constitution Drive and any associated and built-in drainage structures and utilities; (5) the owners of lots 1 through 5 in Constitution Drive shall not petition the Town to provide snow and ice removal services of any other maintenance of Constitution Drive.

3.2.3 Submit street address numbers for all lots.

3.2.4 Submit a construction plan for a sidewalk on the south side of Washington Drive from the current sidewalk end at Coolidge Drive to Musket Drive.

3.2.5 Unless directed otherwise herein, the definitive plan shall be modified to comply with all requirements of the Rules, and shall address all departmental comments received by the Board in a manner that resolves to the Board's satisfaction any concerns raised therein.

#### **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 on Constitution Drive, the Applicant shall construct a sidewalk on the south side of Washington Drive from the current sidewalk end at Coolidge Drive to Musket Drive in accordance with the Plan approved under paragraph 3.2.2 above.
- 3.3.2 Constitution Drive shall remain a private way. It shall not be accepted as a public way. The Applicant and the owners of Lots 1, 2, 3, 4 or 5 shall not petition the Town to accept it as a public way.
- 3.3.3 Constitution Drive in its entirety shall be maintained by the owners of Lots 1, 2, 3, 4 and 5 in accordance with the common driveway easement and covenants. This shall include the removal of snow and ice. The Applicant and the owners of Lots 1, 2, 3, 4 and 5 shall not petition the Town to provide snow and ice removal services in Constitution Drive or to provide any other maintenance and upkeep of Constitution Drive.
- 3.3.4 Constitution Drive shall not serve more than five (5) residential lots. There shall be no further division of the tract or Lots contained therein and development of the land is permitted only in accordance with the land uses indicated thereon.
- 3.3.5 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.
- 3.3.6 The Applicant shall be diligent in designing the stormwater management system to be consistent with Massachusetts Stormwater Regulations.
- 3.3.7 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.
- 3.3.8 Prior to endorsement of the Plan, the Applicant shall provide the Board with a performance guarantee in accordance with Section 6 of the Rules.
- 3.3.9 No work on the Site shall begin prior to the endorsement and recording of the Plan.
- 3.3.10 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.
- 3.3.11 The installation of water service lines shall be made in compliance with requirements of the Acton Water Supply District.
- 3.3.12 Prior to the issuance of a building permit on the Site the following documents shall be recorded at the Middlesex South District Registry of Deeds or the Land Court:
  - This Decision;
  - The endorsed Record Plan;
  - The Restrictive Covenant unless another performance guarantee is provided;
  - The Common Drive Easement and Covenants as required herein;
  - The "Stormwater Operation and Maintenance Manual".

3.3.13 Submit an as-built plan to the Acton Engineering Department upon the completion of all construction approved hereunder.

### **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 are not completed within 3 years from the date that this Decision has been filed 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.
- 3.4.5 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 M.G.L. ch. 41, s. 81-BB 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.



---

Roland Bartl, 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

---

Copies

furnished:

Applicant -  
certified mail #  
Town Clerk  
Fire Chief  
Owner

Building Commissioner  
Engineering Administrator  
Natural Resource Director  
Police Chief  
Historical Commission

Health Director  
Municipal Properties Director  
Town Manager  
Acton Water District  
Assistant Assessor