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Definitive Subdivision Decision #16-15  
Summer Place  
9/6/2016



Planning Board

**TOWN OF ACTON**  
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**DECISION**  
**#16-15**

**Summer Place**  
Definitive Subdivision (Residential Compound)  
9/6/2016

APPROVED (with Conditions)

Decision of the Acton Planning Board (hereinafter the Board) on the application of Paulette Barros of 18 Saratoga Boulevard, Devens, MA 01434 (hereinafter the Applicant) for her property in Acton, Massachusetts. The property is located at 111 Summer Street and shown on the 2014 Acton Town Atlas map F1 as parcel 87 (hereinafter the Site).

This Decision is in response to an Application for Approval of a Definitive Subdivision Plan entitled "Summer Place", received by the Acton Planning Department on July 18, 2016, pursuant to Massachusetts General Laws, Chapter 41, Section 81-K through 81-GG, and the Acton Subdivision Rules and Regulations (hereinafter the Rules).

Bill Hall of Stamski and McNary presented the subdivision proposal to the Board at a public hearing on September 6, 2016. Board members Mr. Derrick Chin, (Vice Chairman), Mr. Jeff Clymer, Mr. Mike Dube, Mr. Mike Mai, and Mr. Bharat Shah 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 definitive subdivision plan entitled "Summer Place at 111 Summer Street Acton, Massachusetts" dated May 11, 2016, drawn by Stamski and McNary of 1000 Main Street, Acton MA consisting of 7 sheets.
- 1.2      Supplemental items and documentation required by the Rules consisting of:
  - A Properly Executed Application For Approval Of A Definitive Plan, Form DP, Dated July 18, 2016;
  - Filing Fee;
  - A Completed Development Impact Report, Form DIR;
  - Designer's Certificate;
  - Certified Abutters List;
  - Applicant's Statement To Retain The Fee In The Street;
  - Legal Notice Of Public Hearing;
  - A List Of Requested Waivers;
  - A Letter Authorizing Town Entry Into The Site To Complete The Street;
  - Copy Of The Deed;
  - A List Of Mortgage Holders;
  - Proof plan dated March 10, 2016;
  - Drainage and Water Balance Calculations.
- 1.3      Interdepartmental communication received from:
  - Acton Natural Resources Department, dated 7/19/2016;
  - Acton Historical Commission, dated 8/3/2016;
  - Acton Fire Chief, dated 8/26/2016;
  - Acton Public Health Department, dated 8/26/2016;
  - Acton Building Commissioner, dated 8/29/2016;
  - Acton Engineering Department, dated 8/31/2016;
  - Acton Planning Department, dated 9/1/2016.

Exhibits 1.1 through 1.2 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 subdivision is located within the R-2 zoning district and Groundwater Protection District Zones 2 and 3.
- 2.2 The Plan shows the division of approximately 1.84 acres into 2 residential lots. The land is currently developed with one single family dwelling and a paved driveway. The existing dwelling is proposed to remain.
- 2.3 The Residential Compound Plan shows a 270-foot long subdivision street, Summer Place, which intersects with Summer Street.
- 2.4 The proposed use, single family dwelling, is allowed on the Site in accordance with the Acton Zoning Bylaw (hereinafter the Bylaw). The Groundwater Protection Zones 2 and 3 have restrictions listed under Table 4.3.7.2 in the Zoning Bylaw.

- 2.5 The proposed lots comply with the area, frontage and lot width requirements of the Bylaw.
- 2.6 The Plan shows typical house and driveway locations on lots 1 and 2. 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.
- 2.7 The design of the proposed subdivision street is intended for approval under Section 10 of the Rules - Optional Residential Compound, which implies waivers from the Rules. The subdivision is eligible for consideration as a Residential Compound. The Applicant has demonstrated with a "proof plan" that a 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.
- 2.8 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.
- 2.9 The submitted plans show the proposed Residential Compound Road with 12 feet of pavement and 4 feet of gravel shoulders on both sides and this complies with the current fire code regulations.
- 2.10 Section 9.6 of the Subdivision 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 has frontage.
- 2.11 In lieu of constructing sidewalks in accordance with Section 9.6 of the Rules, the Applicant may construct a sidewalk along Willow Street for approximately 430 feet in length.
- OR
- In lieu of constructing sidewalks in accordance with Section 9.6 of the Rules, the Applicant can offer a donation to the Sidewalk Fund. The property has 270 feet of newly constructed road and 160 feet of frontage on Summer Street in Acton. Based on the Town's established calculation, the standard contribution to the Town of Acton sidewalk fund would be \$20.00 per foot along new street construction plus \$50.00 per foot of existing street frontage. For this subdivision the contribution would amount to (270 feet subdivision street X \$20) + (160 feet subdivision frontage X \$50) = \$8,000 + \$5,400 = \$13,400.
- 2.12 The Board solicited comments from various Town departments and has received comments that are listed in Exhibit 1.3 above. The Board considered these 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.
- 2.13 Under Massachusetts Law property taxes on the land must be paid prior to recording of a definitive plan.
- 2.14 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, plan modifications, conditions, and limitations, the Board voted on September 6, 2016 to APPROVE the Definitive Subdivision.

#### **3.1      WAIVERS**

Waivers from the Rules are granted to allow the recording and construction of the subdivision as shown on the Plan and as further modified in this Decision. The Applicant has requested the following waiver from the applicable Rules.

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.

3.1.2 With the exception of the sidewalk requirements, the requested waivers are 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 Show the installation of a sidewalk along the proposed subdivision street and the Site's frontage on Summer Street. As an alternative, the Applicant has the options to make a \$13,400 contribution to the Town of Acton sidewalk fund or build a 430-foot of sidewalk along the Willow Street.

3.2.2 All Plan sheets submitted for endorsement shall have the requisite professional designer stamps (P.E., R.L.S. and R.L.A.).

3.2.3 The turning radii at the intersection of Summer Street and the proposed Summer Place shall comply with Massachusetts fire code as approved by the Acton Fire Department prior to plan endorsement.

3.2.4 All comments of Engineering Department's 8/31/2016's memo shall be approved by the Engineering Department prior to plan endorsement.

3.2.5 Submit a private way maintenance agreement that will assign the responsibility for snow and ice removal and for general maintenance to the owners of the subdivision lots 1-2. The maintenance agreement shall include the approved Stormwater Operation and Maintenance Manual

3.2.6 Submit a private way covenant, enforceable by the Town of Acton, declaring that Summer Place shall remain a private way and serve not more than 2 single family homes, that the owners of lots 1 and 2 of Summer Place shall be jointly responsible for the removal of snow and ice in Summer Place that the owners of lots 1 and 2 of Summer Place shall be jointly responsible for any general maintenance and upkeep of Summer Place and any associated drainage structures and other utilities; that the owners of lots 1 and 2 of Summer Place shall not petition the Town to accept Summer

Place as a public way; and that the owners of lots 1 and 2 of Summer Place shall not petition the Town to provide snow and ice removal services or any other maintenance of Summer Place.

- 3.2.7 All fire hydrants and fire alarm call boxes shall be installed in accordance with the specifications of the Acton Fire Department (AFD) and AFD approval of the Plan shall be submitted in writing prior to Plan endorsement.
- 3.2.8 Add a Plan note stating that any limits of clearing shown on the Plan are not required under the subdivision approval, and that any tree plantings or landscaping shown on the plan are not required under the subdivision approval except to the extent that such planting and landscaping is required under the Rules. If such limits of clearing and landscaping are required by another entity having jurisdiction the note shall clarify that fact.
- 3.2.9 Show a "Private Way" sign at the entrance of Summer Place.
- 3.2.10 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 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 Summer Place shall remain a private way. It shall not be accepted as a public way, nor shall the Applicant or the owners of lots 1 and 2 file a petition with the Town to accept it as a public way.
- 3.3.2 Summer Place in its entirety shall be maintained by the owners of lots 1 and 2 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 and 2 of Summer Place shall not petition the Town to provide snow and ice removal services in Summer Place or to provide any other maintenance and upkeep of Summer Place.
- 3.3.3 Summer Place shall not serve more than 2 residential lots.
- 3.3.4 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.
- 3.3.5 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.

- 3.3.6 Prior to endorsement of the Plan, the Applicant shall provide the Board with a performance guarantee in accordance with Section 6 of the Rules.
- 3.3.7 No work on the Site shall begin prior to the endorsement and recording of the Plan.
- 3.3.8 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.
- 3.3.9 The installation of water service lines shall be made in compliance with requirements of the Acton Water Supply District.
- 3.3.10 The site is in the Groundwater Protection District Zones 2 and 3. Both lots must comply with Bylaw Table 4.3.7.2, line 23 requirements for subsurface disposal of tertiary treated wastewater effluent. Otherwise each house would be restricted to one or two bedrooms (per calculation of line 17 in Table 4.3.7.2). The applicant must submit septic system design plans to the Health Department for review prior to plan endorsement.
- 3.3.11 The applicant shall address the sidewalk requirement by either making a donation to the sidewalk fund prior to the plan endorsement or build the recommended 430 feet of sidewalk on Willow Street prior to the issuance of the Certificate of Occupancy.
- 3.3.12 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.
- 3.3.13 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.
- 3.3.14 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 according to the approved Plan.
- 3.3.15 All construction activity on the property relating to these Special Permits shall be limited to the hours of: Monday – Friday: 7:00am – 5:00pm; Saturday 8:00am – 5:00pm; Sundays & Holidays: No work permitted.
- 3.3.16 This Decision, the endorsed Record Plan, 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 1 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 8 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 MGL, 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.

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Eva Szkaradek, Town Clerk

Date

#### **Copies furnished:**

Applicant -  
certified mail #  
Town Clerk  
Fire Chief

Building Department  
Engineering Department  
Natural Resources Dept.  
Acton Water District

Health Department  
Owner  
Town Manager  
Historical Commission