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Preliminary Subdivision Decision - #16-17
Spring Hill Lane
October 18, 2016



Planning Board

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 929-6631
Fax (978) 264-9630
pb@acton-ma.gov
www.acton-ma.gov

DECISION

#16-17

Spring Hill Lane
Preliminary Subdivision Residential Compound
October 18 2016

APPROVED with Guidance

Decision of the Acton Planning Board (hereinafter the Board) on the application of James G. & Maria O. Crowley (hereinafter the Applicant) for property in Acton, Massachusetts owned by the Applicant. The property is located at 19 Spring Hill Road and shown on the Acton Town Atlas as parcel E6-6 (hereinafter the Site).

This Decision is in response to an Application for Approval of a Preliminary Subdivision Plan entitled "Spring Hill Lane, a Residential Compound", received by the Acton Planning Department on September 22, 2016, pursuant to Massachusetts General Laws, Chapter 41, Section 81-K through 81-GG, and the Acton Subdivision Rules and Regulations (hereinafter the Rules).

The Applicant presented the subdivision proposal at an advertised public meeting of the Board on October 18, 2016. Rich Harrington of Stamski and McNary, Inc. assisted the Applicant with the presentation. Board members Mr. Ray Yacoubi (Chairman), Mr. Derrick Chin (Vice Chair), Mr. Mike Dube, Mr. Mike Mai, Mr. Bharat Shah, and Mr. Jeff Clymer attended. The minutes of the meeting 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 "Preliminary Subdivision Plan for Spring Hill Lane, a Residential Compound at 19 Spring Hill Road, Acton, Massachusetts"; dated May 6, 2016, last revised September 15, 2016 drawn by Stamski and McNary, Inc. consisting of three sheets.
- 1.2 Supplemental items and documentation required by the Rules consisting of:
 - An Application for Approval of a Preliminary Plan, form PP, dated September 22, 2016.
 - Filing fee.
 - A completed Development Impact Report, form DIR.
 - Abutters list.
- 1.3 Additional information submitted by the Applicant:
 - Application cover letters to Town Clerk and Boards, dated September 22, 2016.
 - Record deeds and plans.
 - Waiver request letter, dated September 15, 2016.
 - Information regarding Self Contained Recycling Composting Toilet Buildings.
 - Lot Division Sketches.
 - GIS map of the proposed subdivision in relations to the Spring Hill Conservation Area and Camp Acton.
 - Transmittal Forms Example from Mass DEP.
 - Disposal System Construction Permit for State or Federal Facilities Example from Mass DEP.
- 1.4 Interdepartmental communication received from:
 - Engineering Department, dated 9/23/16.
 - Acton Water District, dated 9/26/16.
 - Fire Department, dated 10/5/16.
 - Natural Resource Department, dated 10/5/16.
 - Planning Department, dated 10/6/16.
 - Health Department, dated 10/7/16.
- 1.5 Supplemental Communication from Abutters
 - Letter from David Hardt of 328 Pope Road.

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 Applicant proposes the subdivision as a Residential Compound under Section 10 of the Rules. It provides for broad waivers to permit small-scale residential subdivisions in a manner that minimizes Town maintenance responsibility and cost. It is less intrusive to the neighborhood and preserves more of the natural environment of the Site, and helps preserve the present character of the neighborhood. It refers to the common driveway standards of the Bylaw as a guideline for laying out and constructing residential compound subdivisions.
- 2.2 The proposed subdivision is located within the Residence 8 (R-8) zoning district, and the Groundwater Protection District (GPD) Zone 4.

- 2.3 The Plan shows the division of approximately 6.92 acres into three residential lots.
- 2.4 The proposed uses, single family dwellings, are allowed on the Site in accordance with the zoning bylaw (hereinafter the Bylaw), including all overlay district requirements.
- 2.5 The proposed lots appear to comply with the area and frontage requirements of the Bylaw, including all overlay district requirements; and that the proposed siting of the homes on each lot would comply with the minimum setback dimensions of the Bylaw.
- 2.6 The Site is located at the end of Spring Hill Road running easterly. It abuts Town owned Conservation land to the north and west. There are moderate wetland constraints on the site.
- 2.7 The application includes a proof plan showing the layout for a +/-160' long road off the end of Spring Hill Road indicating, upon evaluation only within the Site confines, the feasibility for on-site construction of a 3-lot subdivision without the benefit of Section 10 of the Rules and in compliance with the Bylaw, subject to relocating or razing the existing house.
- 2.8 The Plan for the Residential Compound shows a subdivision street that is 115 feet long, Spring Hill Lane.
- 2.9 The existing layout of Spring Hill Road is more than +/- 1700 feet long from the intersection of the proposed new subdivision street (Spring Hill Lane) to Pope Road. Spring Hill Road is a single access street. The roadway length is pre-existing non-conforming to the Rules. Section 8.1.17 of the Rules limits the lengths of single access streets as follows:

8.1.17 Residential SINGLE ACCESS STREETS other than DEAD-END STREETS, whether temporary or permanent, shall not be longer than 500 feet. No waiver will be granted unless the following conditions are met, in which case SINGLE ACCESS STREETS can be as long as 1500 feet:

- 8.1.17.1 Condition 1: The SUBDIVISION is an Open Space Development, a Planned Conservation Residential Community, or a Planned Unit Development as defined in the Acton Zoning Bylaw. In such case, the 500 foot SINGLE ACCESS STREET limit shall not apply to a conceptual plan drawn for the purpose of determining the maximum number of building LOTS as required in the Acton Zoning Bylaw.*
- 8.1.17.2 Condition 2: An open space buffer is provided along that portion of any existing public STREET upon which the proposed SUBDIVISION had frontage as of February 6, 1990. The open space buffer shall have a minimum depth of 300 feet. There shall be no buildings or structures within the open space buffer.*
- 2.10 Neither the Proof Plan nor the proposed Residential Compound Plan for Spring Hill Lane cure the already excessive length of Spring Hill Road. Rather, both would increase the non-compliance by adding linear feet of roadway to a single access street.
- 2.11 The Board has authority to grant waivers from the requirements of the Rules: "Strict compliance with the requirements of these RULES may be waived when, in the judgment of the BOARD, such action is in the public interest and not inconsistent with the intent and purpose of the SUBDIVISION CONTROL LAW" (Rules, s. 11.1).
- 2.12 However, Section 8.1.17 of the Rules specifically states that "No waiver will be granted (from the 500-foot length limitation) unless the following conditions (8.1.17.1 and 8.1.17.2) are met ..." The proposed subdivision is not part of an Open Space Development, Planned Conservation Residential Community or Planned Unit Development, nor does it propose to preserve the requisite open space buffer.

- 2.13 In addition, Spring Hill Road by itself already exceeds the extended single access street length limit for the exceptions provided in sections 8.1.17.1 and 8.1.17.2 of the Rules.
- 2.14 The Planning Board, agreeing with the Planning Department's comment memo, is concerned with the proposal to extend the length of a single access street that itself already does not conform to the Rules; especially where the Rules in section 8.1.17 enshrine the Planning Board's resolve not to grant waivers on the topic of street length.
- 2.15 The applicant on the other hand argues that the proposed 115-foot long subdivision street should not be considered an extension of length of a single access street because the subdivision does not extend the length of Spring Hill Road itself; and because the ends of proposed Spring Hill Lane and existing Spring Hill Road are equidistant from the point where the two intersect.
- 2.16 The waiver request letter offers mitigating factors for consideration, and suggests additional mitigation measures: three parking spaces at the existing Spring Hill Road turnaround, trail easement on Lot 1 for existing trail encroachment to Spring Hill Area, increasing the minimum setback to Town conservation land where the Bylaw only requires 20 feet, 34 feet Wide Emergency/ Utility Easement that connects to Camp Acton, and installing a Clivus New England C-11 Self-Contained Recycling Composting Toilet next to the parking lot of Camp Acton.
- 2.17 The proposed restricted area would create setback on the proposed subdivision lots ranging from 60 feet to 160 feet, and the restricted area comprises of about 78,000 sq. ft. between the three proposed lots.
- 2.18 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. Typically this is not waived even for Residential Compounds. In lieu of building sidewalks, the Board can accept offers for off-site sidewalks construction in places where needed, or a donation to the Town's sidewalk fund using the established calculation of \$50/foot site frontage plus \$20/foot of subdivision street. In this case the donation would total $(218 \times \$50) + (115 \times \$20) = \$13,200$. At the public meeting, the Applicant offered a donation based on the established calculation.
- 2.19 The Residential Compound Plan, as proposed, shows that all three lots would comply with the minimum area and frontage requirements of the Bylaw and that the proposed siting of the homes on each lot would comply with the minimum setback dimensions of the Bylaw.
- 2.20 The application did not include a draft common driveway maintenance agreement and covenant as required under section 10 of the Rules.
- 2.21 The Board received comments from various Town departments, which are listed as Exhibit 1.4 above. The Board has considered these comments in its deliberations and made them available to the Applicant.
- 2.22 Under Massachusetts Law property taxes on the land must be paid prior to recording of a definitive plan. In addition, under Chapter O of the Bylaws of the Town of Acton, the Board must deny a special permit if property taxes are outstanding.
- 2.23 The Applicant has requested waivers from sections 8 and 9 of the Rules to allow the Residential Compound subdivision design pursuant to Section 10. The Board, in its discretion, may grant waivers to any or all, or to none of the portions of these sections.

3 BOARD ACTION

Therefore, the Board voted four in favor, two opposed, to APPROVE the preliminary subdivision subject to the following conditions and guidance.

3.1 WAIVERS

3.1.1 The Applicant requested waivers from Section 8 (Design Standards) and Section 9 (Improvements) from the Rules to allow the construction of the street generally as shown on the Plan. This waiver is granted pursuant to Section 10 of the Rules, except for

- a) the requirement for sidewalks; and
- b) That the waiver on the limit of street length is hereby not granted, but rather subject to further review and consideration by the Board.

3.2 GUIDANCE FOR SUBMISSION OF A DEFINITIVE PLAN

Unless stated or implied otherwise, the following shall be fulfilled and any necessary modifications to the Plan shall be made before filing an application for approval of a Definitive Plan:

- 3.2.1. The Applicant shall demonstrate to the Board by means of a cogent legal argument that granting the requisite waiver from the Rule's limitation on the length of a single access street length would in this unique and particular case be in the public interest and consistent with the intent and purpose of the SUBDIVISION CONTROL LAW. In making preparing this legal argument, the Applicant shall also specifically address section 8.1.17 of the Rules, which sets the bar for granting any street length waivers even higher if not entirely out of reach.
- 3.2.2. In the alternative or in addition to the above, the Applicant may prepare a cogent legal argument that the waiver is not applicable or needed for the proposed subdivision in this particular case.
- 3.2.3. Setting aside section 8.1.17 of the Rules, the waiver request from sections 8 and 9 of the Rules can otherwise be considered for purposes of a Residential Compound under section 10. However, the definitive plan application shall include a financial, site, and infrastructure analysis under proof plan conditions to prove that the demolition of the existing dwelling on the Site is in fact financially and practically feasible.
- 3.2.4. Include a draft common driveway maintenance agreement and covenant as required under section 10 of the Rules
- 3.2.5. Unless directed otherwise by this decision, the definitive plan shall comply with all requirements of the Rules whether specifically listed in this Decision or not, including but not limited to drainage details and calculations, profiles, cross sections, documentation on sight distances, sidewalks, and planting plans.
- 3.2.6. In preparing the definitive plan, the Applicant shall be responsive to review comments received from the Acton Engineering Department, Acton Health Department, Acton Natural Resource Department, Acton Water District and other departments and committees of the Town and shall address them in a manner that resolves any concerns raised therein to the satisfaction of the Board. These comments are listed in Exhibit 1.4 above. Any conflicts between departmental recommendations and the Rules shall be highlighted.
- 3.2.7. As offered at the public meeting, in lieu of constructing a sidewalk within the subdivision and along its frontage the Applicant shall propose in writing a contribution offer to the Town's sidewalk fund using the established calculation method.
- 3.2.8. If applicable, the Applicant shall pay in full all property taxes and other municipal charges due, and penalties and back charges resulting from the non-payment of taxes prior to the application for approval of a Definitive Plan.

Roland Bartl

Roland Bartl, AICP, Planning Director
for the Acton Planning Board

10/26/16

Date

Copies to:

Applicant - certified mail #
Engineering Department
Natural Resources Department
Assessors Department

Building Commissioner
Acton Water District
Town Manager

Health Department
Town Clerk
Fire Chief