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Definitive Subdivision Decision – 16-19  
Kelley's Corner Southeast Lots  
November 8, 2016



Planning Board

**TOWN OF ACTON**

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**DECISION**

16-19

**Kelley's Corner Southeast Lots**

Definitive Subdivision

November 8, 2016

APPROVED (with Conditions)

Decision of the Acton Planning Board (hereinafter the Board) on the application of 394 Massachusetts Avenue, LLC (Vincent Cuttome, Manager) (hereinafter the Applicant) for property in Acton, Massachusetts, owned by the Applicant. The property is located at 394-408 Massachusetts Avenue and shown on the Acton Town Atlas as parcels F3-118-2, F3-127, and F3-134 (hereinafter the Site).

This Decision is in response to an Application for Approval of a Definitive Subdivision Plan entitled "Southeast Lane," filed with the Acton Planning Department on September 12, 2016, pursuant to Massachusetts General Laws, Chapter 41, Section 81-K through 81-GG, and the Acton Subdivision Rules and Regulations (hereinafter the Rules).

Mr. Randy Miron of Bohler Engineering presented the subdivision proposal on behalf of the Applicant to the Board at a public hearing on November 1, 2016. Board members Mr. Ray Yacoubi (Chairman), Mr. Derrick Chin (Vice Chair), Mr. Jeff Clymer, 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 plan entitled "Definitive Plan of Southeast Kelley's Corner Lots for 394 Massachusetts Avenue, LLC", dated September 6, 2016, drawn by Bohler Engineering, Inc. of 352 Turnpike Road, Southborough, MA 01772, consisting of 13 sheets.
- 1.2    Supplemental items and documentation required by the Rules consisting of:
  - An "Application for Approval of a Definitive Plan", form DP, received September 12, 2016.
  - A completed Development Impact Report, form DIR.
  - Filing fee.
  - Designer's Certificate.
  - Certified abutters list.
  - Request for certain waivers from the Rules.
  - Letter authorizing Town staff's entry into the Site.
  - Copy of the property deed.
  - List of mortgage holders.
  - Draft restrictive covenant.
  - Preliminary Subdivision Decision 16-06, dated May 3, 2016.
  - Metes and Bounds descriptions for the two proposed lots.
- 1.3    Comments received from:
  - Acton Planning Department, dated September 22, 2016.
  - Design Review Board, dated October 19, 2016.
  - Acton Engineering Department, dated October 21, 2016.
  - Acton Health Department, dated October 31, 2016.

Exhibits 1.1 and 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 Site of the proposed subdivision is located within the Kelley's Corner (KC) zoning district and partially within the Flood Plain Overlay District and the Groundwater Protection District Zone 4.
- 2.2    The Site is located at the current address of 394-408 Massachusetts Avenue/Route 111. The property abuts ARC zoning and contains some wetlands on the easterly side. An existing pharmacy, bank, and vacant child care facility currently exist on the site; no additional buildings are proposed at this time.
- 2.3    The Plan shows the division of +/-6.26 acres of land into two lots. Lot 1 is identified as 404 Massachusetts Avenue (Parcel F2-127) and Lot 2 is identified as 1 Southeast Lane or 394 Massachusetts Avenue (Parcel F2-118-2). According to Sections 5 and 6 of the Zoning Bylaw, the proposed lots meet the dimensional standards of the underlying zoning district with regards to square footage, frontage, and setbacks of existing buildings and parking lots.

- 2.4 The Plan proposes a +/-180 foot private drive with a T-shaped turnaround in compliance with Section 8 of the Rules. The Applicant has not proposed to align Southeast Lane so that it joins the existing Francine Road, which does not comply with Section 9.6 of the Rules.
- 2.5 A proposed 20 foot wide easement extends from the end of Southeast Lane to Francine Road for use as a bike trail and/or pedestrian way. It does not extend for the entire length of Southeast Lane to Massachusetts Avenue. A gate is shown to provide access through the existing fence.
- 2.6 The Plan does not show a 10 foot wide “Utility, Construction and Slope Easement” along each side of the street, as required under Section 8.7.5 of the Rules.
- 2.7 In accordance with Section 9.6.2 of the Rules, sidewalk extensions are shown bordering the portion of Massachusetts Avenue along which the property has frontage, connecting to existing sidewalks.
- 2.8 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 at its meeting on November 1, 2016 to unanimously (four in favor, none opposed) APPROVE the definitive subdivision.

#### **3.1 PLAN MODIFICATIONS**

No further work shall be conducted on the Site and the Building Commissioner shall not issue any further Building Permits or Certificates of Occupancy, until and unless the Zoning Enforcement Officer has confirmed that the Plan has been revised in compliance with this Decision. The Plan as submitted in the application shall be further amended to include the following additions, corrections, and modifications. Except where otherwise provided, all such additions, corrections, and modifications shall be subject to the approval of the Zoning Enforcement Officer. Where approvals are required from persons or agencies other than the Zoning Enforcement Officer, the Applicant shall be responsible for providing evidence of such approvals to the Zoning Enforcement Officer.

##### **3.1.1 Amend the Plan as follows:**

- In compliance with Section 9.6 of the Rules, extend the proposed bike lane and/or pedestrian way easement so that it connects Francine Road to Massachusetts Avenue (beyond its current terminus at the end of Southeast Lane); and
- Show a 10 foot wide “Utility, Construction, and Slope” easement along each side of Southeast Lane in compliance with Section 8.7.5.

##### **3.1.2 Modify the Plan to address the comments and concerns identified by the Acton Engineering Department in a memo dated October 21, 2016.**

### **3.2 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.

- 3.2.1 The Applicant shall meet and continue to adhere to all requirements of the Town Bylaw.
- 3.2.2 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 Building Commissioner may order the immediate cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.
- 3.2.3 All street signs shall be MUTCD compliant and explicitly state that the road is a private way.
- 3.2.4 Prior to issuance of a building permit, the Applicant must show that the proposed drainage system, which will connect to the public drainage system, has sufficient capacity for a 10-year storm. In addition, the Applicant must also provide MassDEP documentation that demonstrates compliance with Standard #4.
- 3.2.5 The Applicant shall provide an as-built plan, certified by a Professional Engineer or Professional Land Surveyor, stating that the subdivision has been constructed as designed. Any differences shall be noted in the statement.
- 3.2.6 All requirements of the Health Director shall be met.
- 3.2.7 All construction activity on the property relating to this Site Plan Special Permit shall be limited to the hours of: Monday – Friday: 7:00am – 5:00pm; Saturday 8:00am – 5:00pm; Sundays & Holidays: No work permitted.
- 3.2.8 This Decision shall be recorded at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of any building permit or certificate of occupancy.
- 3.2.9 Pay in full all taxes, penalties and back charges resulting from the non-payment of taxes, if any.
- 3.2.10 The Board solicited comments from various Town departments. They are listed in Exhibit 1.3 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.
- 3.2.11 All work on the Site shall be conducted in accordance with the terms of these special permits as amended herein and shall conform with and be limited to the improvement shown on the Plan as conditioned, modified, and approved herein.

### **3.3 LIMITATIONS**

The authority granted to the Applicant under this approval is limited as follows

- 3.3.1 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.
- 3.3.2 This subdivision approval applies only to the Site identified in this decision and to the activity as shown on the Plan.
- 3.3.3 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.
- 3.3.4 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. 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.
- 3.3.5 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, § 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, §. 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  
Owner

Building Department  
Engineering Department  
Natural Resources Dept.  
Police Chief  
Historical Commission

Health Department  
Town Manager  
Acton Water District  
Assistant Assessor