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Definitive Subdivision Decision – 16-10
Mohegan Lane
June 7, 2016



Planning Board

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DECISION

16-10

Mohegan Lane

Definitive Subdivision (Residential Compound)

June 7, 2016

APPROVED (with Conditions)

Decision of the Acton Planning Board (hereinafter the Board) on the application of Aaron and Kaarin Jeanson (hereinafter the Applicant) for property in Acton, Massachusetts, owned by the Applicant. The property is located at 37 Mohegan Road and shown on the Acton Town Atlas as parcel D2-133 (hereinafter the Site).

This Decision is in response to an Application for Approval of a Definitive Subdivision Plan entitled “Mohegan Lane”, filed with the Acton Planning Department on April 14, 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 to the Board at a public hearing on May 17, 2016. Richard Harrington of Stamski and McNary, Inc. assisted the Applicant with the presentation. Board members Mr. Jeff Clymer (Chairman), Mr. Mike Dube (Vice Chair), Mr. Derrick Chin, Mr. Mike Mai, and Mr. Ray Yacoubi 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 Subdivision Plan for Mohegan Lane, a Residential Compound at 37 Mohegan Road, Acton, Massachusetts", dated March 25, 2016, drawn by Stamski and McNary, Inc. of 1000 Main Street, Acton, consisting of 8 sheets.
- 1.2 Supplemental items and documentation required by the Rules consisting of:
 - An "Application for Approval of a Definitive Plan", form DP, dated March 22, 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 entry into the Site to complete the street.
 - Copy of the deed.
 - List of mortgage holders.
 - Draft restrictive covenant.
 - Preliminary Subdivision Decision 16-02, dated 3/2/16.
 - Earth removal calculations.
 - Draft access easement.
 - Proof plan dated 10/28/15.
 - Stormwater management report
- 1.3 Comments received from:
 - Acton Fire Department, dated 5/10/16.
 - Acton Water Supply District, dated 1/15/16.
 - Acton Engineering Department, dated 5/11/16.
 - Acton Planning Department, dated 5/12/16.
 - Acton Tree Warden, dated 4/21/16.
 - Acton Health Department, undated.
 - Acton Town Counsel on proposed easement language, dated 5/13/16.
 - Acton Sidewalk Committee, dated 5/15/16.

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 subdivision is located within the Residence 2 (R-2) zoning district, Flood Plain Overlay District and the Groundwater Protection District Zone 3.
- 2.2 The Site is located at the end of Mohegan Road to the south and abuts Town owned (General Municipal) land to the north. Wetlands cover a good majority of the westerly half of the property. The existing dwelling unit and proposed dwelling unit are outside the 75-foot wetlands buffer zone.

2.3 The Applicant proposes a Residential Compound Subdivision under section 10 of the Rules. It provides for broad waivers from design standards set forth in section 8 and 9 of the Rules. It refers to the common driveway standards of the Zoning Bylaw (the Bylaw) as a guide for designing and constructing Residential Compounds. The subdivision is eligible for consideration as a Residential Compound. 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.

2.4 Section 10.1.2 of the Rules requires a Proof Plan for Residential Compound Subdivisions that demonstrates the ability to comply with the standard design and improvement requirements in Sections 8 and 9 of the Rules, including their subsections, and the dimensional requirements applicable to the zoning district in which the land is located. This requirement ensures that waivers granted for Residential Compound Subdivisions under Section 10 of the Rules do not result in the creation of more lots than would be possible when observing the standard requirements of the Rules under Sections 8 and 9.

2.5 The Proof Plan demonstrates a standard subdivision road that meets the requirements under section 8.1.18, the Typical Roadway Section, and zoning compliance for two lots.

2.6 The Plan shows the division of +/- 3.88 acres into two lots for single family residential use. The land currently has one single family dwelling in the easterly portion served by a +/- 400-foot long paved driveway extending from the end of Mohegan Road.

2.7 The proposed single-family residential uses are allowed on the Site in accordance with the Acton Zoning Bylaw (hereinafter the Bylaw).

2.8 As proposed, the lots comply with the dimensional requirements of the Bylaw, Section 5.

2.9 Proposed lot 2 comprises +/- 2 acres of undeveloped and undevelopable open land / wetlands. This is more than 50% of the land area of the subdivision site.

2.10 The existing layout of Mohegan Road is +/- 560 feet from the property line of 37 Mohegan Road to the intersection of Freedom Farme Road; this portion of the road is a single access street. The roadway length is pre-existing non-conforming. Section 8.1.17 of the Rules and Regulations limits single access streets to be no longer than 500 feet.

2.11 The proposed Residential Compound, Mohegan Lane, would extend Mohegan Road by an additional 97 feet.

2.12 The existing Lot is non-conforming due to insufficient frontage: 40 feet where 150 feet is required. The proposed plan would bring the property into compliance with the R-2 Zoning District requirements by providing adequate frontage along Mohegan Lane.

2.13 The proposed turn-around in Mohegan Lane accommodates the dimensions of an SU-30 vehicle. It provides a better turn-around for snow removal and emergency vehicles than currently exists at the terminus of Mohegan Road. During the preliminary plan review the Planning Department recommend that the Applicant discuss with the Engineering Department the possibility of accepting the proposed street as a public way. The Engineering Department in its definitive plan review memo agrees, citing among other considerations the geometric inadequacy and uncertain legal status of the existing turn-around bubble at the Mohegan Road terminus. The locations of driveways in the proposed Mohegan Lane turn-around are problematic for Town snow plowing operations.

At the hearing, the applicant cited the difficulty of relocating the driveways, but offered the Town an easement over private Mohegan Lane to better accommodate turn-around maneuvers for emergency and other Town vehicles and equipment.

- 2.14 The proposed layout of Mohegan Lane does not increase the overall distance of +/-400 from Mohegan Road to the existing dwelling for emergency personnel.
- 2.15 The Fire Department notes that, based on new fire code standards, access ways to new homes must be at least 20 feet wide to within 50 feet of a dwelling or the home must be outfitted with a sprinkler system. At the hearing, the Applicant remarked that they will adjust the width of the access ways as required.
- 2.16 A 40-foot wide existing access easement (from Plan No. 997 of 1962) is shown on the Plan extending from Mohegan Road across the Lot to the Town owned property. The validity of the Town's rights to use the access easement is unclear. At the preliminary plan meeting the Board asked the Applicant to consider granting an access easement to the Town to clarify the rights of the easement shown on the Plan. The definitive plan application includes a proposed easement deed that the Board finds acceptable as to its intent. Town Counsel has reviewed the proposed easement language and provided comments and suggested edits.
- 2.17 The Plan shows the street addresses for the existing and proposed dwelling units in reverse to the normally be expected order. This is not acceptable to the Fire Department.
- 2.18 The Engineering Department in its review points out that the Applicant's engineer may have assumed soils on the Site that differ from the information shown in authoritative soil classification publications. Drainage systems must meet certain performance standards. Their designs vary based on soils' capacity to absorb and conduct water. At the hearing, the Applicant's engineer noted that their test pits revealed different soils than the classification maps.
- 2.19 A Residential Compound subdivision contemplates waivers from sections 8 and 9 of the Rules, which include the requirement for sidewalks (section 9.6). Typically the Board does not waive the sidewalk requirement for Residential Compounds, but has in the past accepted sidewalk construction in other locations or contributions to the Town's sidewalk fund. At the hearing the applicant offered a contribution to the Town's sidewalk fund according to the Town's established calculation. Based on the Board's standard contribution rate of \$20/foot of sidewalk in proposed new subdivision streets and \$50/foot of sidewalk along existing street frontages, the appropriate contribution amount for Mohegan Lane would be $(\$20.00 \times 97) + (\$50.00 \times 0) = \$1940.00$.
- 2.20 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 and assurances that the Town will not be asked to plow, maintain, or accept the private way in the future.
- 2.21 The Plan shows typical house locations on lots. House locations may shift within the parameters of setbacks required under the Bylaw.
- 2.22 Under Massachusetts Law property taxes on the land must be paid prior to recording of a definitive plan. Chapter O of the Town General Bylaws stipulates that no permits can be

issued to entities that neglected payment of any local taxes, fees, assessments, betterments or other municipal charges.

- 2.23 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.
- 2.24 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, conditions, plan modifications, and limitations, the Board voted unanimously to APPROVE the definitive subdivision.

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 as shown on the Plan. This waiver is granted pursuant to Section 10 (Residential Compound) of the Rules and subject to the requirements of this Decision.
- 3.1.2 The Applicant also requested a specific waiver from Section 10.1.2 of the Rules (Proof Plan) and Section 8.1.17 of the Rules (Length of Single-Access Street) to allow for the extension of Mohegan Lane, a +/- 560 foot single access street, for an additional +/-170 feet on the proof plan and an additional 97 feet on the Residential Compound Plan. The Rules in Section 8.1.17 limit the length of a single access street to 500 feet. This waiver is granted based on the Board's findings and the proceedings of the public meeting, including the following unique circumstances:
 - a) Improved turn-around accommodations for emergency vehicles and snow plowing equipment at the end of Mohegan Road.
 - b) Elimination of the lot's zoning nonconformity.
 - c) Retention of effective open space of more than half of the Site.
 - d) The proposed layout of Mohegan Lane does not increase the +/- 400-foot distance from Mohegan Road to the existing dwelling; and
 - e) The proposed new dwelling's location will be less than half that distance from Mohegan Road, about 150 feet.

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 Without changing the intent of the proposed deed of easement from Mohegan Road to the Town's land in the rear for purposes of non-vehicular Town of Acton access, including its

personnel and authorized agents but not for general public access, modify the document to be substantially in compliance with the changes recommended by Town Counsel, and subject to further considerations by Town Counsel in this matter.

- 3.2.2 In addition, provide an easement in Mohegan Lane to the Town of Acton, including its personnel and authorized agents but not for general public access, for purposes of turning around emergency, snow plowing, and other vehicles and equipment. As with the access easement under par. 3.2.1, this easement shall be subject to Town Counsel consideration and approval.
- 3.2.3 Fully execute both easements under paragraphs 3.2.1 and 3.2.2, to be held subsequently by Town Counsel for Town Meeting acceptance and Registry recording. The Board acknowledges that Town Meeting may opt not to accept either or both of these easements. Regardless, this subdivision approval shall not be contingent upon Town Meeting action or approvals, and it shall remain fully valid even in the absence of Town Meeting acceptance of the easements.
- 3.2.4 Change the street address designations for Lots 1 and 2 to numbers that are approved by the Fire Department.
- 3.2.5 Reconcile the assumptions for soil types with the information in the NRCS Middlesex Soil Survey Report and provided as attachment to the Engineering Department's IDC dated May 6, 2016 to the Planning Department. To the extent that there are soil test results, discuss them with the Engineering Department. The final drainage design for the Site development, whether changed or unchanged based on soil types, shall have received a favorable recommendation from the Engineering Department.
- 3.2.6 Redesign the ways and driveways in order to ensure a 20-foot width to within 50 feet of the proposed new dwelling.
- 3.2.7 Submit for Planning Department approval a private way maintenance agreement that will assign the responsibility for snow and ice removal and for general maintenance to the owners of lots 1 and 2. This agreement shall include as an appendix the Drainage System O & M Plan in substance as shown on Plan sheet 8.
- 3.2.8 Submit for Planning Department approval a private way covenant, enforceable by the Town of Acton, declaring that Mohegan Lane shall remain a private way and serve not more than two single family homes, that the owners of lots 1 and 2 in Mohegan Lane shall be jointly responsible for the removal of snow and ice in Mohegan Lane; that the owners of lots 1 and 2 in Mohegan Lane shall be jointly responsible for any general maintenance and upkeep of Mohegan Lane and any associated drainage structures and other utilities; that the owners of lots 1 and 2 in Mohegan Lane shall not petition the Town to accept Mohegan Lane as a public way; and that the owners of lots 1 and 2 in Mohegan Lane shall not petition the Town to provide snow and ice removal services or any other maintenance of Mohegan Lane.
- 3.2.9 Show a "Private Way" sign at the entrance of Mohegan Lane.
- 3.2.10 Show the installation of a sidewalk in Mohegan Lane. As an alternative, the Applicant may make a \$1,940.00 contribution to the Town Acton sidewalk fund.
- 3.2.11 All Plan sheets submitted for endorsement shall have the requisite professional designer stamps (P.E., R.L.S. and R.L.A.).

- 3.2.12 Adjust the roadway cross-section detail on Plan sheet 7 to match the dimensions as shown on the plan & profile Plan sheet 6 and as further modified to meet fire code requirements.
- 3.2.13 Revise General Note 2 on Plan sheet 7 to reference the Acton Subdivision Rules and Regulations.
- 3.2.14 Modify the Plan to address any remaining concerns raised by the Acton Water Supply District (AWD) in the District Manager's memo dated 1/15/16, and AWD approval of the Plan shall be submitted in writing prior to Plan endorsement.
- 3.2.15 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.
- 3.2.16 Add a Plan note stating that houses and driveways are shown for illustrative purposes only, and that house locations may vary from what is shown on the Plan.
- 3.2.17 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.
- 3.2.18 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 Mohegan Lane 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 Mohegan Lane 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 shall not petition the Town to provide snow and ice removal services in Mohegan Lane or to provide any other maintenance and upkeep of Mohegan Lane.
- 3.3.3 Mohegan Lane shall not serve more than two 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 All requirements of the Board of Health must be met.
- 3.3.11 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.
- 3.3.12 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.
- 3.3.13 In addition to General Note #7 on Plan sheet 7, all construction activity on the property relating to this subdivision approval shall be limited to the hours of: 7:00am – 5:00pm, Monday – Friday; 8:00am – 5:00pm on Saturday; Sundays & Holidays: No work permitted.
- 3.3.14 This Decision, the endorsed Record Plan, the private way maintenance agreement and covenant, 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 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.
- 3.4.5 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, § 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.

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