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Preliminary Subdivision - #17-01
64-68 Robbins Street
March 7, 2017



Planning Board

TOWN OF ACTON
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DECISION
#17-01

64-68 Robbins Street (Garden Lane)
Preliminary Subdivision
March 7, 2017

DISAPPROVED

Decision of the Acton Planning Board (hereinafter the Board) on the application of Jianhua “Rick” Jian, 64 Robbins Street, Acton, MA 01720 (hereinafter the Applicant) for property currently owned by the Applicant, 64 Robbins Street, Acton, MA and located at 64-68 Robbins Street, Acton, Massachusetts 01720. The property is shown on the Acton Town Atlas map as parcels H2-23 and H2-19 (hereinafter the Site).

This Decision is in response to an Application for Approval of a Preliminary Subdivision Plan entitled “Preliminary Plan, Garden Lane, Acton, MA”, received by the Acton Planning Department on January 30, 2017, 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 an advertised public meeting of the Board on March 7, 2017. Bruce Ringwall, of Goldsmith, Prest & Ringwall, Inc. (hereinafter GPR), presented the application on behalf of the Applicant. Board members Ray Yacouby (Chairman), Derrick Chin (Vice Chair), Jeff Clymer, Bharat Shah, and Emilie Ying were present throughout the meeting. The minutes of the public meeting and submissions upon which this Decision is based upon may be found and 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 An application package consisting of the following items and documentation as required by the Rules and Regulations or additionally provided:
 - A properly executed Application for Approval of Preliminary Plan, Form PP, received January 30, 2017;
 - Development Impact Report, Form DIR;
 - A Letter from GPR expanding on section D of Form DIR;
 - A Letter from the applicant authorizing GPR to act as their agent;
 - Filing Fee; and
 - Certified Abutters List.
- 1.2 A set of engineering plans entitled "Preliminary Plan, Garden Lane, Acton, MA", prepared by Goldsmith, Prest, and Ringwall, Inc., 39 Main Street, Suite 301, Ayer, MA 01432 and consisting of the following two (2) sheets:
 - Title Sheet, dated January 2017,
 - Plan of Lots, dated January 2017.
- 1.3 Interdepartmental communication received from:
 - Acton Natural Resources Department, dated February 1, 2017;
 - Acton Fire Department, dated February 1, 2017;
 - Acton Planning Department, dated February 6, 2017; and
 - Acton Water District dated February 24, 2017.

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 Site is located within the R-2 (Residence 2) Zoning District, within the Groundwater Protection District Zones 3 and 4, and partially in the Floodplain Overlay District.
- 2.2 The Plan proposes the creation of a new subdivision street, Garden Lane, approximately 190 feet long.
- 2.3 The Plan shows the division of approximately 3.38 acres into four lots for single family residential uses. Two of the lots would be for the existing houses on the Site. Two lots would be for new homes.
- 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.
- 2.6 The proposed siting of the new homes appears to comply with the minimum setback dimensions of the Bylaw. The garage wing of one of the existing homes would have to be removed; this is indicated on the Plan.

- 2.7 The preliminary layout and street design appears to comply with the standards of the Rules.
- 2.8 In the absence of other concerns as set forth below, the plan as presented could more or less serve as proof plan for a residential compound subdivision under Section 10 of the Rules.
- 2.9 The existing layout of Robbins Street is more than 1300 feet long from the intersection of the proposed new subdivision street (Garden Lane) to Stow Street. Robbins Street is a single access street. The length of Robbins Street is pre-existing non-conforming to Section 8.1.17 of the Rules, which limits the lengths of single access streets to 500 feet 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 The Plan for Garden Lane does not cure the already excessive length of Robbins Street. Rather, it would increase the non-compliance by adding 190 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). Moreover, 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.
- 2.12 Robbins Street as a single access street serves 70-75 homes. This pre-existing condition does not conform to the standards of the Rules. The proposed subdivision would add two more homes. Section 8.1.19 of the Rules limits single access streets to 40 dwelling units as follows:
- 8.1.19 There shall be no more than 40 residential dwelling units on a SINGLE ACCESS STREET or series of STREETS having only one terminus onto a THROUGH STREET. To construct more than 40 dwelling units a secondary STREET access shall be provided.*
- 8.1.19.1. Where a proposed residential SUBDIVISION would increase any number of existing dwelling units on an existing SINGLE ACCESS STREET to more than 40 a secondary STREET access shall be provided. If in such cases secondary STREET access is impossible or impractical, the BOARD may require alternate means of access to a THROUGH STREET, improvements on the existing SINGLE ACCESS STREET, improvements within the adjacent STREET network, or combinations of these measures in order to ensure adequate safety and access*

to all dwellings in the proposed SUBDIVISION. In determining the number of dwelling units in a residential SUBDIVISION, the maximum potential build-out shall be assumed.

- 2.13 As proposed, Garden Lane would further increase the preexisting non-conforming number of dwelling units. Under subsection 8.1.19.1 of the Rules the Board may consider certain alternative improvements to the creation of a second street access.
- 2.14 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).
- 2.15 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. The plan shows these sidewalks together with a proposed sidewalk easement. On previous occasions, the Board has considered favorably offers for off-site sidewalks to be constructed in places with more need, or donations to the Town's sidewalk fund (\$50/foot site frontage plus \$20/foot of subdivision street). In the latter case the donation for this subdivision would total approximately $(310 \times \$50) + (190 \times \$20) = \$19,300$.
- 2.16 The Board has received comments from various Town departments, which are listed as Exhibit 1.3 above. The Board has considered these comments in its deliberations and made them available to the Applicant.
- 2.17 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.

3 BOARD ACTION

Therefore, the Board voted to DISAPPROVE the preliminary subdivision.

3.1 REASONS FOR DISAPPROVAL

- 3.1.1 The existing layout of the new Robbins Street is more than +/- 1300 feet long from the intersection of the proposed new subdivision street (Garden Lane) to Stow Street. Robbins Street is a single access street. It is pre-existing non-conforming to the Rules. The proposed subdivision street would add about 190 linear feet of roadway length to the single access street.
- 3.1.2 Section 8.1.17 of the Rules limits the lengths of single access streets to 500 feet, and states that no waiver will be granted unless the subdivision meets conditions 8.1.17.1 and 8.1.17.2 in which case the length can be increased to 1500 feet.
- 3.1.3 The Board may grant, but has no obligation to grant, waivers from the requirements of the Rules "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".
- 3.1.4 The application does not provide an argument or reason for a waiver from Section 8.1.17 of the Rules. The Applicant has thus failed to demonstrate to the Board that granting the requisite waiver from the limitation on a single access street length would be in the public interest and consistent with the intent and purpose of the SUBDIVISION CONTROL LAW; and that granting

the waiver would therefore be a reasonable thing to consider. For section 8.1.17 of the Rules in particular, the bar for granting any waivers is set even higher if not entirely out of reach.


- 3.1.5 Robbins Street as a single access street serves 70-75 homes. This pre-existing condition does not conform to the standards of the Rules. The proposed Subdivision would add two more homes.
- 3.1.6 Section 8.1.19 of the Rules limits single access streets to 40 dwelling units. For a situation where a subdivision is proposed for a property on a single access street that has already more than 40 homes on it, as is the case here, the Rules provide certain alternative considerations to a second street access, specifically alternate (i.e. non-street) means of access to a through street, improvements on the existing single access street, or improvements within the adjacent STREET network. The Applicant did not provide any proposals for a second street access or alternative improvements for the Board's consideration.
- 3.1.7 The Board may grant, but has no obligation to grant, waivers from the requirements of the Rules "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".
- 3.1.8 The application does not provide an argument or reason for a waiver from Section 8.1.19 of the Rules. The Applicant has thus failed to demonstrate to the Board that granting the requisite waiver from the limit on the number of homes on a single access street would be in the public interest and consistent with the intent and purpose of the SUBDIVISION CONTROL LAW; and that granting the waiver would therefore be a reasonable thing to consider.

3.2 GUIDANCE FOR SUBMISSION OF A DEFINITIVE PLAN

The Applicant may file an application for approval of a definitive subdivision plan. The following provides guidance to the Applicant for such an application.

- 3.2.1 The reasons for this disapproval shall be addressed and rectified before filing the application for approval of a definitive plan.
- 3.2.2 Consider submitting a Residential Compound plan more or less as presented at the public meeting, including a draft common driveway maintenance agreement and covenant as required under section 10 of the Rules, and a proposal for an alternative to constructing a sidewalk on site taking into consideration the Board's established calculation method for contributions to the Town's sidewalk fund.
- 3.2.3 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.
- 3.2.4 In preparing the definitive plan, the Applicant shall be responsive to review comments received from the various Town agencies, departments and committees 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 1.3 above. Any conflicts between departmental recommendations and the Rules shall be highlighted.
- 3.2.5 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.

(Signature on following page)


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

Copies furnished to:

Applicant -
certified mail #
Town Clerk
Fire Chief
Owner

Land Use Department
Engineering Department
Town Manager
Police Chief
Assessor

Acton Water District