Planning Board

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DECISION
06-03

Dunn – 68 Willow Street
Definitive Subdivision (Residential Compound)

March 14, 2006

APPROVED with CONDITIONS

Decision of the Acton Planning Board (hereinafter the Board) on the application of William J. and Ann B. Dunn of 68 Willow Street, Acton MA (hereinafter the Applicant) for their property at the same address. The property is shown on the 2004 Acton Town Atlas map F-2B, as parcel 112 (hereinafter the Site).

This Decision is in response to an Application for Approval of a Definitive Subdivision Plan entitled "Definitive Subdivision Plan for 68 Willow Street, A Residential Compound, Acton, Massachusetts", received by the Acton Planning Department on December 29, 2005, 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 February 14, 2006. Mr. Richard Harrington of Stamski and McNary, Inc. represented the Applicant. Board members Gregory E. Niemyski (Chairman), William F. King, Gary R. Sullivan, Edmund R. Starzec, Michael C. Densen, and associate member Alan R. Mertz 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 Plans:

- A plan entitled "Definitive Subdivision Plan for 68 Willow Street, A Residential Compound, Acton, Massachusetts" dated December 20, 2005, drawn by Stamski and McNary, Inc. of 80 Harris Street, Acton, MA consisting of five sheets.
- A "Conventional Subdivision Proof Plan" dated 6/23/05 by Stamski and McNary, Inc.

1.2 Supplemental items and documentation required by the Rules consisting of:

- A completed Application for Approval of a Definitive Plan, form DP, dated 12/20/05.
- Filing fee.
- A completed Development Impact Report, form DIR.
- Designer's Certificate.

- Certified abutters list.
- 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.
- Drainage and water balance calculations.

1.3 Additional information submitted by the Applicant:

- Cost estimate from M.R. Restoration for dwelling relocation dated 9/16/05.

1.4 Interdepartmental communication received from:

- Acton Building Commissioner, dated 1/5/06.
- Acton Engineering Administrator, dated 1/30/06.
- Acton Fire Chief, dated 2/13/06.
- Acton Health Director, dated 1/4/06.
- Acton Natural Resources Director, dated 1/4/06.
- Acton Planning Department, dated 2/10/06 and 2/14/06.
- Acton Treasurer's Office, dated 1/9/06.
- Acton Tree Warden & Municipal Properties Dir., dated 7/6/05, revised 1/6/06.
- Acton Water Supply District, dated 2/13/06.

1.5 Correspondence received from:

- Stephanie Cahoon and David Wallace, 20 Summer Street, Acton, MA dated 2/10/06.

Exhibits 1.1 through 1.3 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 proposed subdivision is located within the Residence 2 (R-2) zoning district and Groundwater Protection District Zone 3.

2.2 The Plan shows the proposed division of approximately 1.8 acres into two residential lots, a 250-foot long subdivision street, ROW A, which intersects with Willow Street. Lot 1 has an existing residence on it.

2.3 The proposed uses are allowed on the Site in accordance with the Acton Zoning Bylaw (hereinafter the Bylaw), including all overlay district requirements. The proposed lots comply with the area and frontage requirements of the Bylaw, including all overlay district requirements.

2.4 The Plan shows limits of clearing on lots. They are shown for illustrative purposes only. Actual limits of clearing may vary.

2.5 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" and a house relocation cost estimate that he could build a subdivision street 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.

2.6 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.

2.7 The Board solicited comments from various Town departments and has received such comments, which are listed in Exhibit 1.4 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.

3 BOARD ACTION

Therefore, subject to and with the benefit of the following waivers, conditions, plan modifications, and limitations, the Board **APPROVED** the definitive subdivision on March 14, 2006 by a vote of 5 to 0.

3.1 WAIVERS

3.1.1 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.

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 Verify the owners of the surrounding properties and correct the record owner information on the Plan.

3.2.2 Add a plan or Plan sheet for a sidewalk along the west side of Willow Street from Summer Street extending south for 260 feet, subject to design approval by the Board or its designee; and –

(1st option to pursue): Receipt of sidewalk easements from abutters if needed to avoid the removals of public shade trees; or

(2nd option to pursue): Authorization for the removal of any public shade trees, if needed by the Acton Tree Warden.

Should the Applicant after reasonable efforts fail to obtain sidewalk easements and fail to obtain approval for the tree removals, he shall make a sidewalk fund donation to the Town of Acton in accordance with the Condition 3.3.1 below.

3.2.3 Modify the design of the driveway turnaround near the house on Lot 2 to better accommodate an ambulance. The design shall be subject to approval by the Board or its designee.

3.2.4 On the Plan, show the approximate locations of existing underground structures for the Wallace and Cahoon, Madden, and Bajwa properties if they are within 150 feet of the perimeter of the subdivision.

3.2.5 Include the following notes on the Record Plan (Sheet 2):

- "there shall be no further division of the tract or lots contained therein so as to create additional lots;
- development and use of the land is permitted only for two single-family dwellings including accessory uses allowed under the Bylaw."

3.2.6 On the Record Plan (Sheet 2), label the concrete pad and shed in the Drainage Easement "to be razed."

3.2.7 Place a note on the Record Plan (Sheet 2) stating that the private way shall only serve the lots shown on the Plan.

3.2.8 Make the location of the street address sign consistent on the Site Development and Grading Plan (Sheet 3) and the Plan and Profile (Sheet 4).

3.2.9 On the Plan, correct the typos on the Record Plan in Note 1 (Sheet 2) and on the Plan and Profile in the Common Driveway Cross-Section Detail (Sheet 4).

3.2.10 On the Plan, show water service lines and associated connections that comply with Acton Water District specifications.

3.2.11 On the Plan, show the existing iron rebar at the front property corner adjacent to 60 Willow Street. Add notes to the Plan, (1) requiring the existing iron rebar to be marked in the field prior to construction, and (2) stating that if the existing iron rebar is damaged or destroyed during construction that the applicant shall hire a registered land surveyor to reset the monument and certify the location.

3.2.12 Add the following language to General Note 20 on the Plan and Profile (Sheet 4):

- The bounds shall be a six (6) inch square by a four (4) foot long piece of granite set flush with the finished grade.
- No permanent monuments shall be installed until all construction that would destroy or disturb the monuments is completed.
- After all bounds are set, submit a Form CB to the Town per Section 9.3.2 of the Rules.

3.2.13 On the Plan, clearly label the swale that is intended to channel overflow runoff from the infiltration basin to the wetlands at the rear of the Site as shown on the drainage (calculations) plan.

3.2.14 In the water balance calculations, the land area for post-development conditions increased by 0.15 acres from the pre-development conditions. Re-evaluate the calculations and provide the Town Engineering Department with documentation demonstrating that based on the same land area post-development infiltration is the same or greater than pre-development infiltration.

3.2.15 If the 100-year flood zone (Zone A) is located on the Site, show the flood zone on the Record Plan (Sheet 2).

3.2.16 Add a Plan note stating that any limits of clearing, tree plantings or landscaping shown on the Plan are not required under the subdivision approval. If such limits of clearing and landscaping are required by another entity having jurisdiction the note shall clarify that fact.

3.2.17 Change the title of the Draft Private Way and Maintenance Agreement to "Private Way Covenant and Maintenance Agreement" (Agreement) and make the following modifications to the Agreement:

- Add language stating that ROW A shall remain a private way and serve not more than two single-family homes;"

- Change the witness and signature dates from 2005 to 2006;
- In parts (3), (4), (5), and (7)(b)(3), include language that states "and the drainage facilities appurtenant thereto," or something similar, to clarify that the lot(s) are also responsible for the maintenance of the facilities in the drainage easement (not just the private way);
- Refer to the Drainage System Operation and Maintenance Plan (Sheet 5 of 5 of the Plan) and attach a copy of the Maintenance Plan to the Maintenance Agreement;
- Include language specifying the methods of enforcing the use and maintenance of the way and appurtenant structures;
- Make such other corrections and changes as directed by the Board or its designee.

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 If the sidewalk required under Plan Modification 3.2.2 is not feasible without easements from abutters or the removal of public shade trees, and if the Applicant after reasonable efforts fails to obtain said easements or said permission for tree removals, he shall donate to the Town $7,800.00 for the purpose of designing and constructing sidewalks or bikeways within the Town of Acton, and for acquiring easements and land for the aforesaid purpose. The Applicant shall make the donation before the endorsement of the Plan, or, if he provides a restrictive covenant as performance guarantee, before the release of Lot 2 from the restrictive covenant.

3.3.2 ROW A 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.

3.3.3 ROW A in its entirety and all appurtenances thereto shall be maintained by the owner of Lot 2, and Lot 1, if included, in accordance with the private way maintenance agreement. This shall include the removal of snow and ice. The Applicant and the owner of Lot 2, and Lot 1, if included, shall not petition the Town to provide snow and ice removal services in ROW A or to provide any other maintenance and upkeep of ROW A.

3.3.4 ROW A shall not serve more than two residential lots.

3.3.5 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 results 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.

3.3.6 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.

3.3.7 Prior to endorsement of the Plan, the Applicant shall provide the Board with a performance guarantee in accordance with Section 6 of the Rules.

3.3.8 No work on the Site shall begin prior to the endorsement and recording of the Plan.

3.3.9 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.

3.3.10 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.

3.3.11 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 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, 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.

Signed on behalf of the Acton Planning Board

Roland Bartl, AICP, Town Planner
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 Bowen, Town Clerk Date

Copies furnished:

Applicant -
certified mail #
Town Clerk
Fire Chief
Owner

Building Commissioner
Engineering Administrator
Conservation Administrator
Police Chief
Assistant Assessor

Health Director
Municipal Properties Director
Town Manager
Acton Water District

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