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Planning Board

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DECISION
07-04

Grassy Pond Place
Definitive Subdivision (Residential Compound)

March 13, 2007

APPROVED with CONDITIONS

Decision of the Acton Planning Board (hereinafter the Board) on the application of Gustavus J. and Catherine M. Esselen of 3900 Grapevine Mills Parkway #623, Grapevine, TX 76051 (hereinafter the Applicant) for their property located at 53 Fort Pond Road in Acton, Massachusetts. The property is shown on the 2006 Acton Town Atlas map C-3, as parcel 6-1 (hereinafter the Site).

This Decision is in response to an Application for Approval of a Definitive Subdivision Plan entitled "Definitive Subdivision Plan for Grassy Pond Place a Residential Compound Acton, Massachusetts", received by the Acton Planning Department on December 15, 2006, 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 January 23, 2007. Mr. Richard Harrington of Stamski and McNary, Inc. assisted the Applicant with the presentation. The hearing was continued to February 27, 2007 and then closed. Board members Gregory E. Niemyski (Chairman), Christopher R. Schaffner, Edmund R. Starzec, Ruth M. Martin, Bruce Reichlen, and 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 Grassy Pond Place a Residential Compound Acton, Massachusetts" dated December 15, 2006, and revised on February 20, 2007, drawn by Stamski and McNary, Inc. of 80 Harris Street, Acton, MA consisting of five sheets.
- A plan entitled "Plan of Land in Acton & Littleton Massachusetts", drawn by Stamski and McNary, Inc., dated 12/15/06 (Record Plan Sheet).
- A plan entitled "Proof Plan in Acton, Massachusetts", dated 12/15/06, drawn by Stamski and McNary, Inc., consisting of one sheet.

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

- A properly executed Application for Approval of a Definitive Plan, form DP, dated November 8, 2006.
- 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 deeds.
- A list of mortgage holders.
- Draft Declaration of Common Driveway and Utility Easement.
- Drainage and water balance calculations.

1.3 Interdepartmental communication received from:

- Acton Engineering Department, dated 1/16/07 and 1/23/07.
- Acton Fire Chief, dated 1/22/07 and 1/23/07.
- Acton Health Director, dated 12/20/06 and 2/26/07.
- Acton Planning Department, dated 1/20/07.
- Acton Treasurer's Office, dated 12/20/06.
- Acton Tree Warden & Municipal Properties Dir., dated 12/20/06.

1.4 Other:

- Letter received from Anne B. Fanton, 43 Fort Pond Road, Acton, MA, dated 1/16/07.

- E-mail received from Barbara and Jim Willis, 38 Fort Pond Road, Acton, MA, dated 1/17/07.
- E-mail received from Matthew Mostoller, Environmental Analyst, Town of Concord Water and Sewer Division, dated 1/23/07.
- Two photographs showing the Site's proposed private way location on Fort Pond Road, date unknown.
- Decision 06-07, Fort Pond Place preliminary subdivision approval, dated 9/12/06.

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 proposed subdivision is located within the Residence 8 zoning district, Groundwater Protection District Zone 4, and Flood Plain Districts.

2.2 The northeast portions of lot 17 and lot 18 are located in the Town of Concord Zone B Water Supply Protection Area (Nagog Pond).

2.3 The Plan shows the proposed division of approximately 9.3 acres into four residential lots, and a +/- 284-foot long subdivision street, Grassy Pond Place, which intersects with Fort Pond Road in Littleton. +/- 220 feet of the proposed street is located in Acton. Lot 20 has an existing residence on it.

2.4 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 do comply with the area and frontage requirements of the Bylaw, including all overlay district requirements.

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

2.6 The Plan shows typical house and driveway locations on lots. They are shown for illustrative purposes only except for the provisions for emergency vehicle turnaround.

2.7 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" 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.

2.8 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.

2.9 The Board solicited comments from various Town departments and has received such comments, which are listed in Exhibit 1.3 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 voted (four in favor, zero opposed, two absent) on March 13, 2007 to **APPROVE** the definitive subdivision.

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. This waiver includes a requirement for sidewalk construction. See Condition 3.3.1.

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 Plan sheets shall be certified by a Registered Land Surveyor and Registered Professional Engineer where applicable.

3.2.2 Remove label "Lot 16" from all Plan sheets and documents.

3.2.3 In Note 8 on the Record Plan Sheet, change "a common driveway covenant and a private driveway maintenance agreement" to "the Declaration of Common Driveway and Utility Easement".

3.2.4 Add a note to the Record Plan Sheet stating "Grassy Pond Place shall only serve the lots shown on the Plan."

3.2.5 Renumber the street addresses for the lots, and the proposed street/address sign, and submit the revised Plan to the Acton Engineering Department for approval.

3.2.6 Add a note to the Plan that a Registered Land Surveyor shall stake in the field:

a) the location of the private well and wastewater system on lot 17 to show they are completely within the Town of Acton;

b) the existing well on lot 20;

c) the wastewater system on lot 19 to ensure that a 100 foot setback is retained from the well on lot 20.

3.2.7 On the Plan, show the distances from the private well on lot 17 to the Acton/Littleton town line and wastewater system on lot 17 to the Acton/Littleton town line.

3.2.8 On Plan Sheet 5, at the end of General Note 28, add the phrase "except for the geometry of the lot 17 and lot 19 driveways for emergency vehicle turnaround."

3.2.9 On Plan Sheet 5, at the end of General Note 29, add the phrase "except for the limits of clearing as shown along Grassy Pond Place STA 0+00 to STA 2+00 and the three tree plantings proposed at the entrance to Grassy Pond Place as shown on Plan Sheets 3 and 4."

3.2.10 If blasting is required for any of the work shown on the approved Plan, the Applicant shall strictly follow the regulations and instructions of the Acton Fire Department.

3.2.11 The Applicant shall notify the Town of Concord Water and Sewer Division, Concord, MA at least three business days prior to any blasting on the Site.

3.2.12 Amend the Declaration of Common Driveway and Utility Easement document (Declaration) to:

a) state that Grassy Pond Place shall remain a private way and serve not more than four single family homes;

b) clarify that the drainage system shall also be maintained by the homeowners and reference the Drainage System Operation and Maintenance Plan (on Plan Sheet 5) either by attaching it to the Declaration or inserting the language directly into the Declaration.

3.2.13 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 In lieu of constructing a sidewalk on site, donate to the Town $3,300.00 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.

3.3.2 Grassy Pond Place shall remain a private way. It shall not be accepted as a public way, nor shall the Applicant or the owners of lots 17-20 file a petition with the Town to accept it as a public way.

3.3.3 Grassy Pond Place in its entirety shall be maintained by the owners of lots 17-20 in accordance with the Declaration. This shall include the removal of snow and ice. The Applicant and the owners of lots 17-20 shall not petition the Town to provide snow and ice removal services in Grassy Pond Place or to provide any other maintenance and upkeep of Grassy Pond Place.

3.3.4 Grassy Pond Place shall not serve more than four 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, except for renovations of the existing house, garage, or driveway on lot 20, if necessary.

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, the Declaration, 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

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 Taylor, Town Clerk Date

Copies furnished:

Applicant -	Building Commissioner	Health Director
certified mail #	Engineering Administrator	Municipal Properties Director
Town Clerk	Conservation Administrator	Town Manager
Fire Chief	Police Chief	Acton Water District
Owner	Assistant Assessor	

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