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Planning Board

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DECISION
08-05

Micmac Lane
Definitive Subdivision (Residential Compound)

November 18, 2008

APPROVED with CONDITIONS

Decision of the Acton Planning Board (hereinafter the Board) on the application of James Kotanchik (hereinafter the Applicant) for property in Acton, Massachusetts, owned by Judith Kotanchik of 48 Nashoba Road, Acton, MA and Ruth Porter of 6 Wampanoag Drive, Acton, MA. The property is located at 48 Nashoba Road and of 6 Wampanoag Drive and shown on the 2007 Acton Town Atlas map D-2 as parcels 15 and 15-1 (hereinafter the Site).

This Decision is in response to an Application for Approval of a Definitive Subdivision Plan entitled "Definitive Subdivision Plan for Micmac Lane a Residential Compound Acton, Massachusetts", received by the Acton Planning Department on August 29, 2008, 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 October 14, 2008. Mr. David Haslett and Mr. George Dimakarakos of Stamski and McNary, Inc. assisted the Applicant with the presentation. Board members Gregory E. Niemyski (Chairman), Bruce Reichlen, Alan R. Mertz, Ruth M. Martin, Roland A. Bourdon III, and Ryan J. Bettez 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 Micmac Lane a Residential Compound Acton, Massachusetts" dated December 31, 2007, drawn by Stamski and McNary, Inc. of 80 Harris Street, Acton, MA consisting of eight sheets.
- A plan entitled "Proof Plan in Acton, Massachusetts" dated 2/16/07, and revised on 10/14/08, drawn by Stamski and McNary, Inc., consisting of one sheet.
- A plan entitled "Pre-Development Drainage Map" dated 10/9/07, drawn by Stamski and McNary, Inc., consisting of one sheet.
- A plan entitled "Post-Development Drainage Map" dated 12/18/07, 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 February 11, 2008.
- Filing fee.
- A completed Development Impact Report, form DIR.
- Designer's Certificate.
- Certified abutters list.
- 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 Private Way Covenant and Maintenance Agreement.
- Drainage and water balance calculations.

1.3 Additional information submitted by the Applicant:

- Draft Micmac Lane – Declaration of Protective Covenants.

1.4 Interdepartmental communication received from:

- Acton Building Commissioner, dated 9/16/08.
- Acton Community Housing Corporation, dated 9/15/08.
- Acton Engineering Department, dated 10/8/08.
- Acton Fire Chief, dated 10/14/08.
- Acton Health Department, dated 9/12/08.
- Acton Natural Resources Director, dated 9/8/08.
- Acton Planning Department, dated 10/10/08.
- Acton Sidewalk Committee, dated 9/26/08.

- Acton Treasurer's Office, dated 9/5/08.
- Acton Tree Warden & Municipal Properties Dir., dated 9/25/08.
- Acton Water Supply District, dated 9/25/08.

1.5 Other:

- Decision 07-06, Micmac Lane Preliminary Subdivision approval, dated 4/24/07.

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 8/4 zoning district and Affordable Housing Overlay District Sub-District A.

2.2 Significant portions of lot 1, lot 2 and lot 3 near Central Street; the southwest tip of lot 4; and the southwest portion of the Porter lot are located in Groundwater Protection District Zone 3. The remaining areas of the proposed subdivision are located in Groundwater Protection District Zone 4.

2.3 The Plan shows the proposed division of approximately 14.77 acres (provided that the Approval Not Required Plan signed by Roland Bartl for the Acton Planning Board on 12/28/07 is recorded at the Middlesex County Registry of Deeds) into five residential lots, and a +/- 678-foot long subdivision street, Micmac Lane, which intersects with Nashoba Road. Lot 5 has an existing residence on it. Lot 2, lot 3 and the Porter lot also have frontage on Central Street.

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 Applicant proposed to maintain the existing vegetation along the stone wall abutting 11 Wachusett Drive and 12 Wachusett Drive and retain the existing trees near 44 Nashoba Road from within the site to provide screening benefits for the established residential neighborhood to the south.

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

2.7 The Plan shows the proposed subdivision street located between two 24 inch trees. According to the Tree Warden's memo dated 9/25/08, the two 24 inch trees could be negatively impacted by the proposed subdivision street and eventually die; creating safety hazards and expenses to the Town. The two trees are public shade trees under Mass. General Law Chapter 87.

2.8 The Plan shows typical house and driveway locations on lots. They are shown for illustrative purposes only, except as specifically required herein.

2.9 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 submitted a "proof plan" to try to demonstrate 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.

2.10 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.

2.11 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 voted (five in favor, zero opposed, one absent) on November 18, 2008 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 3.3.2.

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 On the Proof Plan, increase the size of lot 1 to comply with the Bylaw lot area requirement for the Residence 8/4 zoning district.

3.2.2 Modify the Record Plan (Sheets 2 and 3), as follows:

(a) insert "November 18, 2008" as the Decision date in Note 1;

(b) in the second sentence of Note 2, remove the comma between "plan" and "profiles";

(c) change Note 7 to state "The Private Way shall only serve Lots 1 through 5 on the Plan".

3.2.3 Provide a north arrow on the Record Plan (Sheet 3).

3.2.4 On the Plan and Profile (Sheet 6), add the following note near the intersection of Micmac Lane and Nashoba Road: "Proposed Street Name Sign: Micmac Lane".

3.2.5 On the Construction Details sheet (Sheet 8), add Acton Planning Board signature lines.

3.2.6 Revise the Private Way Covenant and Maintenance Agreement acceptable to the Board or its designee (here the Acton Planning Department) including, but not limited to the following changes and additions:

(a) insert a "last revised" date for the Plan, and the phrase "prepared by" before "Stamski and McNary, Inc.", in paragraph one;

(b) remove all the extra quotation marks around the easement letters in paragraph two;

(c) change paragraph (1) to state: "the Owners of the Lots shall have the perpetual, non-exclusive right to use Micmac Lane for all purposes for which private ways are commonly used for in the Town of Acton, and for the installation and maintenance of any and all utilities";

(d) modify paragraph (3), section (b), to state: "(b) the maintenance and repairs of the utility lines located or to be located within the Utility Easements, and (c) the maintenance and repairs of the drainage facilities located or to be located within the Drainage Easements";

(e) insert "08-05" as the Decision number in paragraph (9).

3.2.7 Amend the Declaration Of Protective Covenants (Declaration) acceptable to the Board or its designee (here the Acton Planning Department) including, but not limited to the following changes and additions:

(a) insert a "last revised" date for the Plan, the phrase "prepared by" before "Stamski and McNary, Inc.", and the phrase "which lots are subject of Acton Planning Board Decision 08-05 approved by on 11/18/08" in paragraph one;

(b) include street address signs as an exception to section 5. SIGNS;

(c) add a reference to the Private Way Covenant and Maintenance Agreement including the recording information with the Middlesex County Registry of Deeds at the end of section 9. EASEMENTS;

(d) clarify in the language of section 12. SUBDIVISION OF LOTS what is meant by the phrase "nor shall any of the lots be changed or altered in any way";

(e) rewrite section 3. TRAILERS, CLOTHESLINES, ETC. and section 14. GARAGES ATTACHED TO DWELLINGS so the requirements are consistent regarding campers and recreational vehicles.

3.2.8 Assign, and label on the Plan, Micmac Lane street addresses to all five lots. Submit the addressing plan to the Acton Engineering Department for approval.

3.2.9 Amend General Note #32 on Sheet 7 to require the street name sign and post to be the same type as used by the Acton Highway Department.

3.2.10 On the Plan, modify the drainage system and design by:

(a) extending a drain line from the existing Nashoba Road drainage system to Micmac Lane;

(b) showing a subdrain on Micmac Lane in the proposed cut section by Nashoba Road;

(c) adjusting the proposed elevations in the infiltration basin so that the inlet on top of the outlet structure is set below the bottom elevation of the emergency overflow swale.

3.2.11 Label at least one (1) temporary benchmark on the Plan.

3.2.12 The Plan shall be modified to address any remaining concerns raised by the Acton Water Supply District (AWD) and AWD approval of the Plan shall be submitted in writing prior to Plan endorsement.

3.2.13 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.

3.2.14 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 Prior to endorsement of the Plan, provide proof that:

(a) the Approval Not Required Plan signed by Roland Bartl for the Acton Planning Board on 12/28/07 is recorded at the Middlesex County Registry of Deeds;

(b) easements have been granted or other land has been obtained from 6 Wampanoag Drive (the Porter property) for drainage.

3.3.2 In lieu of constructing a sidewalk on site, donate to the Town $19,920.00 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.

3.3.3 Prior to the issuance of a building permit, contact the Tree Warden and follow the proper procedure for holding a legal hearing on the removal of the two 24 inch public shade trees located at the entrance of Micmac Lane (refer to the Town of Acton Policy on the Removal of Non-Hazardous Public Shade Trees).

3.3.4 Micmac Lane shall remain a private way. It shall not be accepted as a public way, nor shall the Applicant or the owners of lots 1-5 file a petition with the Town to accept it as a public way.

3.3.5 Micmac Lane in its entirety shall be maintained by the owners of lots 1-5 in accordance with the private way maintenance agreement. This shall include the removal of snow and ice. The Applicant and the owners of lots 1-5 shall not petition the Town to provide snow and ice removal services in Micmac Lane or to provide any other maintenance and upkeep of Micmac Lane.

3.3.6 Micmac Lane shall not serve more than five residential lots.

3.3.7 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.

3.3.8 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.

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

3.3.10 No work on the Site shall begin prior to the endorsement and recording of the Plan, except for renovations of the existing house, buildings, or driveway on lot 5, if necessary.

3.3.11 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.

3.3.12 The installation of water service lines shall be made in compliance with requirements of the Acton Water Supply District.

3.3.13 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.

3.3.14 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, 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 Taylor, 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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