



# PLANNING BOARD • Town of Acton

472 MAIN STREET ACTON, MASSACHUSETTS 01720 TELEPHONE (508) 264-9636

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DATE November 30, 1994

*Barbara Brown*  
for TOWN CLERK, ACTON

DECISION  
(94-12)

Marshall Crossing

**Planned Conservation Residential Community Special Permit  
&  
Definitive Subdivision Approval**

November 28, 1994

DECISION of the Acton Planning Board (hereinafter the Board) on the petition of Bowen Estate I Realty Trust c/o Ronald P. Peabody, Trustee, 411 Massachusetts Ave., Acton, MA 01720, (hereinafter the Applicant) for property located on Carlisle Road in Acton, MA, owned by Bowen Estate I Realty Trust of 411 Massachusetts Ave., Acton, MA 01720 and Gladys Pannell of 570 West Street, Carlisle, MA 01741. The property is shown on the 1994 Acton Town Atlas Map C-6, parcel 9 & Map B-6, parcel 20 (hereinafter the Site).

This DECISION is in response to an application for a Planned Conservation Residential Community (PCRC) Special Permit and Approval of a Definitive Subdivision Plan for Marshall Crossing dated 8/24/94 and received by the Acton Planning Department on 8/26/94, filed pursuant to Section 9 of the Acton Zoning Bylaw (hereinafter the Bylaw), and the Acton Subdivision Rules and Regulations and PCRC Special Permit Rules and Regulations (hereinafter the Rules).

A duly advertised public hearing was opened on 10/3/94 at 8:00 PM in Room 204 of the Acton Town Hall and continued until 8:00 PM on 11/14/94 due to a lack of quorum for a special permit. The Applicant presented the application to the Board at the continued public hearing. Board members David Hill, William Shupert, James Lee, Gregory Niemyski, Joshua Chernin, Richard Crosswell and associate member Pat Halm were present throughout the proceedings. The Applicant was represented by Ronald Peabody of Bowen Estate I Realty Trust, Trustee, who was accompanied by Bruce Stamski of Stamski & McNary, Inc. of 80 Harris St., Acton, MA 01720 and Attorney Stephen Graham of Graham & Harsip. The record of the proceeding and submissions upon which this Decision is based may be referred to in the Office of the Town Clerk or in the Planning Department.

## EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

EXHIBIT 1 A plan entitled "Marshall Crossing, A Planned Conservation Residential Community Definitive Subdivision", dated 8/10/94, prepared by Stamski & McNary, Inc. of 80 Harris St., Acton, MA 01720 and consisting of the

following:

Sheet 1 Title Sheet  
Sheet 2 Master Plan  
Sheet 3 Natural Features & Existing Conditions Plan  
Sheets 4-7 Lot Layout Plan  
Sheets 8-11 Site Development and Erosion & Sedimentation Control Plans  
Sheet 11 Landscape Plan  
Sheets 12-13 Plan & Profiles  
Sheet 14 Detail Plan  
Representative House Plans by J. G. Danielsson Inc.

EXHIBIT 2 Supplementary Documentation required by the PCRC Rules consisting of the following:

- a) An application for a PCRC Special Permit,
- b) An application for approval of a Definitive Subdivision
- c) An application for approval of work on a Scenic Road
- d) A completed development impact report.
- e) A certified abutters list.
- f) Recorded plans and deeds for the Site.
- g) A copy of other permits and variance on record, and a list of other permits required.
- h) A letter authorizing Town representatives to enter onto the Site to complete any work if developer fails to do so.
- i) A list of mortgage holders.
- j) Drainage calculations.
- k) Earth Removal Calculations
- l) Water Balance Calculations.
- m) A draft legal advertisement.
- n) A list of requested waivers from the PCRC Rules.
- o) A designer's certificate.
- p) An application fee of \$11,640

EXHIBIT 3 Comments received from Town staff and other boards and committees:

Acton Conservation Administrator, dated 9/28/94;  
Acton Engineering Department, dated 9/28/94;  
Acton Tree Warden and Municipal Properties Director, dated 9/1/94 and 9/26/94;  
Acton Building Department, dated 8/31/94;  
Acton Fire Department, dated 9/28/94;  
Acton Health Department, dated 9/14/94;  
Acton Historical Commission, dated 9/14/94 and 11/1/94;  
Acton Treasurer, dated 8/31/94;  
Acton Assistant Assessor, dated 9/27/94;  
Acton Planning Department, dated 9/30/94;  
Acton Water District, dated 9/29/94.

EXHIBIT 4 Other correspondence as follows:

Letter to Conservation Commission from Mark Strohmeyer, dated 8/25/94;  
Letter from Acton Historical Society to Mass. Historical Commission, dated 10/31/94; Letter from Isabella V. Choate to Mass. Historical Commission, dated 11/2/94.

EXHIBIT 5 Certified mail return receipts for notices sent to parties in interest.

EXHIBIT 6 All records of the proceedings for the approval of the Preliminary Subdivision Plan.

EXHIBITS 1 and 2 are referred to herein as the Plan.

## 1 FINDINGS AND CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings the Board finds and concludes that:

- 1.1 The Plan shows a Subdivision and PCRC for the 40.78 acre Site located off of Carlisle Road. The total proposed street length is 1800± feet, consisting of two branches. The total area in streets will be 3.02 acres.
- 1.2 The Site is located in the Residence 10/8 zoning district.
- 1.3 The Applicant proposes 16 single family detached dwelling units, to be situated on Exclusive Use Areas (E.U.A.s) and organized in a Homeowners Trust.
- 1.4 The plan shows 5 parcels of common land A, B, C, D and E on 25.32 acres, representing 62.1±% of the Site area.
- 1.5 Common land parcel A is to contain the common septic system for the dwelling units.
- 1.6 The Applicant proposes to convey the ownership of the other common land parcels B, C, D, and E to the Town of Acton. Common Land parcel C contains 14 +/- acres of land and is adjacent to a 3 acre parcel owned by the Town of Acton. Common Land parcels B, D and E are a smaller portion of land best described as buffer areas for the proposed dwelling units. The application also contains a draft homeowners trust for common land parcels A, B, D and E.
- 1.7 The Director of Municipal Properties has expressed interest in accepting Town ownership of common land parcel C, but has concerns about acceptance of the smaller parcels that could be perceived to be "backyards" and may present maintenance and liability costs for the Town.
- 1.8 The Applicant has requested one waiver from the PCRC Rules.
- 1.9 The turnaround at the end of Marshall Path is shown within a proposed access and utility easement rather than within the street layout. Since it is unlikely that this turnaround will be abandoned due to a continuation of Marshall Path, it should be included in the street layout.
- 1.10 In general, reviews of the Plan by various Town departments and the Acton Water District (AWD) have resulted in numerous questions and requests for Plan changes, improvements, corrections and supplemental information and documentation. As found necessary by the Board in order to achieve compliance with the Bylaw and the Rules, and in order to protect the public safety, health and welfare, they are incorporated in this decision as required plan modifications and

conditions.

- 1.11 Section 9.1 of the Bylaw states that one of the purposes for the use of PCRC is the preservation of significant historic or archaeological resources and areas.
- 1.12 The location of certain rock formations, possibly of historical significance, is not shown on the Plan as required in the Rules.
- 1.13 The Applicant submitted a letter from his consultant historical expert, Frederick Brown, dated June 29, 1994, in which he recommends that the rock formations be left undisturbed. His letter states: "My suggestion is to leave the site undisturbed and study as much as possible the surface features. Search the area for any related features. If anything of significance is found then a formal dig would be in order."
- 1.14 The Acton Historical Commission has advised that the site of the rock formations (cairn fields) should be left undisturbed until further study is made.
- 1.15 The Plan shows a street projection to the adjacent 3± acre parcel owned by the Town of Acton as required in the Rules. The access and utility of the parcel would be greatly enhanced if the projection is slightly modified to provide legal street frontage for the parcel on the cul-de-sac turn around of Marshall Path.
- 1.16 The proposed sidewalk along Carlisle Road is not within the layout of the road; therefore, the sidewalk is not subject to review under the Scenic Road Bylaw. However, removal of public shade trees along Carlisle Road near the proposed new intersection is subject to the Scenic Road Bylaw.
- 1.17 The Conservation Commission has issued an Order of Conditions for the subdivision roadway and associated drainage structures.
- 1.18 The Health Director has reported that disposal works permits have been issued and there are no outstanding health department issues.
- 1.19 The Acton Finance Director has advised that there are taxes in the amount of \$4,942 plus interest due on parcel 20 of Map B-6.
- 1.20 The Acton Fire Chief has advised that the response time to homes in the proposed development will exceed acceptable standards; therefore, he recommends that each dwelling unit be required to have a residential sprinkler system.
- 1.21 The application does not contain a land use plan for the common land as required in the Bylaw.
- 1.22 The Board understands the architectural renderings of proposed houses shown on the Plan to be representative in nature. Changes may be made to respond to requests of individual buyers.
- 1.23 The Marshall Crossing PCRC, as modified herein, complies in all respects with the applicable requirements of the Bylaw and enhances the purpose and intent of a Planned Conservation Residential Community.
- 1.24 The Marshall Crossing PCRC, as modified herein, is in harmony with the existing and probable future uses of the area and with the character of the surrounding

area and neighborhood.

- 1.25 The Marshall Crossing PCRC, as modified herein, is consistent with the Master Plan, in harmony with the purpose and intent of the Bylaw and appropriate for the site in question. It complies with all applicable requirements of the Bylaw and will not be detrimental or injurious to the neighborhood in which it is to be located.

## **BOARD ACTION**

Therefore, subject to and with the benefit of the following waivers, plan modification, conditions and limitations, the Board voted to **GRANT the requested PCRC Special Permit and to APPROVE the Definitive Subdivision Plan** for Marshall Crossing.

## **2 WAIVERS**

The following action is taken with regards to waivers from the Rules:

- 2.1 The Applicant has requested a waiver of the typical utility section to allow a 3' 6" cover over sewer lines to avoid groundwater infiltration. This waiver is GRANTED.
- 2.2 Although no waiver has been requested, the Board hereby grants a partial waiver of the requirement for construction of sidewalks along the frontage. The Applicant shall provide a sidewalk along the subdivision frontage as shown on the Plan. In addition, the Applicant shall provide an equivalent length of sidewalk (approximately 330') along Pope Road from Stoney Meade way in a north east direction.

## **3 PLAN MODIFICATIONS**

Prior to endorsement of the Plan, the issuance of a building permit or any work on the Site, the Plan shall be modified as follows. All modifications shall be subject to approval by the Board or its designee. Where approvals for modifications are required or implied from persons or entities other than the Board, the Applicant shall be responsible for providing written copies of such approvals to the Board:

- 3.1 Modify the Plan to show Deer Wood Lane renamed as Marshall Path in accordance with the Fire Chief's request.
- 3.2 Include the cul-de-sac turnaround at the end of Marshall Path in the street layout. Provide the minimum legal frontage on the cul-de-sac for the Town of Acton parcel.
- 3.3 Show the accurate location of the rock formations believed to be of possible historic significance, as required in the Preliminary Plan approval and the Rules.
- 3.4 In order to better ensure preservation of the rock formations the Applicant shall comply with the following:
  - a) Rearrange the layout of parcels and E.U.A.s so as to include a minimum of 50% of the undisturbed rock formations within a common land parcel, and show a

- split rail fence or equivalent surrounding the rock formations.
- b) Prior to disturbance of the other 50% of the rock formations, allow access to the site for qualified historians or archaeologists who wish to investigate those rock formations that will be disturbed by excavation, regrading or other work on the site. If such investigation is conducted and the rock formations are determined to be worthy of preservation as determined by the Massachusetts Historical Commission, they shall be so preserved and the Plan shall be modified accordingly. Unless the Massachusetts Historical Commission makes this determination, the requirement of this section (b) shall not impede the Applicant's ability to continue with the normal course of construction.
- c) Add a note on the Plan stating that construction work shall stop immediately and the Acton Historical Commission shall be notified in the event that any unusual features, artifacts or remains are discovered during the work.

3.5 As recommended by the Engineering Administrator:

- a) Show granite bounds at the corners of the common land parcels.
- b) Assign lot numbers to the subdivision street layout so the roads can be conveyed to the Town in accordance with Land Court requirements, or take land out of Land Court registration.
- c) Expand sub-drain system to include all portions of the roads that may experience groundwater break out.
- d) On the lot layout plan, show the delta angles for the curved sections of street.
- e) Address the Engineering Administrator's (and the Conservation Administrator's) concerns over the adequacy of the Erosion and Sedimentation Control Plan.
- f) Verify the correct location of the pair of catch basins at Carlisle Road by spot grades along the edge of Carlisle Road. Also address the Engineering Administrator's concern over the drainage facilities in the Marshall Path and Blueberry Path intersection.
- g) On all construction details on sheet 14 of 14, show 4-6" of crushed stone under the base section, a full depth mortar cap and pavement.
- h) Show MHD cascade type grates for all catch basins on a grades over 4%.
- i) Show ramps at the ends of the sidewalks.
- j) Address the Engineering Administrator's concern over the adequacy of the pipe size for the sub-drain systems
- k) Clarify the maintenance responsibilities for the sub-drain system on the plan.
- l) Show granite curb where required in the Rules.
- m) Change the sub-drain detail for the edge of road location to follow the Town standard.
- n) Show some "temporary" on-site bench marks.
- o) Address the Engineering Administrator's concern over adequacy of the trench along Carlisle Road in light of the possible increases in surface runoff from the proposed leaching trenches under normal operating conditions as well as in the event of failure or break out.

3.6 As recommended by the Director of Municipal Properties:

- a) Clear the extension of Marshall Path (toward the Town owned parcel) and show a gravel parking lot for at least 4 vehicles. Add a note that construction of said parking lot shall be subject to the acceptance of Parcel C by the Town.
- b) Add a Landscape Plan to show street tree plantings and planting details for the cul-de-sac island.
- c) Remove the "conservation land" designation from the Town owned parcel of land.
- d) Relocate the water main underneath the Carlisle Road pavement.

- 3.7 Add a land use plan for the common land, broken down by parcels.
- 3.8 Revise the land ownership documents, or trust or condominium documents, whichever apply, to reflect the Plan approved hereunder and to be in compliance with the Bylaw and the Rules.
- 3.9 As recommended by the Fire Chief:
  - a) Submit data to the satisfaction of the Fire Chief showing that there will be adequate water supply for fire protection.
  - b) Relocate the fire alarm call box to the intersection of Marshall Path and Blueberry Path and show the cable routing to the box.

#### 4 CONDITIONS

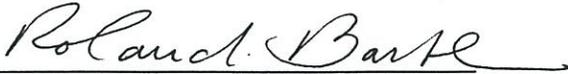
The following conditions of this approval and special permit shall be strictly adhered to. Failure to adhere to these conditions shall render the approval of this PCRC Special Permit null and void without force or effect.

- 4.1 All work on the Site shall comply with the Massachusetts Wetlands Protection Act, with applicable Acton bylaws and with the requirements of the Acton Conservation Commission.
- 4.2 The responsibility for plowing and maintenance of all street in the proposed Subdivision shall be that of the Applicant or his designee or assign until such time as the streets may be accepted by the Town of Acton as public ways. Following acceptance of the streets, the Town's maintenance responsibilities will follow standard procedures for Town streets and ways and shall be limited to the improvements located within the street layouts and associated with their function as a street, and to any improvements associated with street drainage located within designated utility easements. All private utilities and services located within or outside the street layout or said easements and any private drainage facilities feeding into drainage structures associated within the street layouts or easements shall not be the responsibility of the Town.
- 4.3 All activities and work on the common land conducted before, during or after construction, shall be consistent with the approved land use plan for the common land.
- 4.4 Common land parcels A, B, D and E shall remain in private ownership subject to the restrictions of the Bylaw on the use and ownership of common land.
- 4.5 The Applicant shall retain common land parcel C for possible acceptance by the Town for uses subject to the restrictions of the Bylaw. If not accepted by the Town, common land parcel C shall be turned over to the ownership of the trust, association or private entity which owns the other common land parcels, subject to the same use and ownership restrictions of the Bylaw.
- 4.6 All dwellings shall be equipped with residential sprinkler systems to be approved by the Fire Chief.
- 4.7 The Plan and all work and construction on the site shall be performed in accordance with the approved Plan, and comply with this Decision and the Bylaw and, except as waived in this Decision, with the requirements of Rules.

- 4.8 The houses on the Site shall be constructed more or less in keeping with the design shown in the representative architectural drawings contained in the Plan. There shall be no exact duplicates or mirror images of any one house.
- 4.9 This Decision, the Record Plan (Lot Layout Plan), the Restrictive Covenant, restrictions, reservation of easements, and other documents relating to ownership and use of the common land and other common facilities shall be recorded at the Middlesex South District Registry of Deeds (or the Land Court) prior to the issuance of a building permit.
- 4.10 No framing or other wood construction shall be permitted on any building on the Site until the first course of pavement is installed from Carlisle Road to the location of said building, and until adequate water supply for fire protection is certified by the Acton Water District.
- 4.11 Prior to the issuance of an occupancy permit for any dwelling unit, all site improvements related to said unit and providing access to said unit shall be fully completed in accordance with the Plan. Alternatively, the Board will require performance bonds in accordance with Section 6 of the Subdivision Rules to secure completion of construction after the issuance of an occupancy permit. Site improvements related to a unit shall include adequate plantings and other measures on the E.U.A. of the unit to control erosion and siltation of streams and drainage facilities, but not necessarily all trees and bushes shown on the typical unit landscaping plan.
- 4.12 Prior to endorsement of the Plan or the issuance of a building permit on the Site all outstanding property taxes shall be paid.
- 4.13 The Applicant shall submit an as built plan for the entire Site prior to acceptance of Marshall Path and Blueberry Path as public ways.
- 4.14 This special permit shall lapse if substantial use thereof has not commenced within 2 years of the filing date of this decision with the Town Clerk except for good cause, or if construction under this special permit is not continued through to completion as continuously and expeditiously as is reasonable. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration dates, and the Board herewith reserves its rights and powers to grant or deny such extension, and to require any appropriate changes to the Special Permit.
- 4.15 This Decision applies only to the requested PCRC Special Permit and to the lots, parcels and easements shown on the Plan approved hereunder. Other agreements, approvals, or permits required by the Bylaw, or other governmental board, agencies, or bodies having jurisdiction, shall not be assumed or implied by this decision.
- 4.16 The foregoing waivers, 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 Bylaw or of the PCRC Rules.
- 4.17 The Board hereby reserves its right and power to modify or amend the terms and conditions of this decision with or without a public hearing upon the application of the owner, lessee or mortgagee of the premises or upon its own motion.

5 APPEALS

Appeals, if any, shall be made pursuant to M.G.L., Ch.40A, S.17, and shall be filed within 20 days after the date of filing this Decision with the Town Clerk.

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

November 30, 1994

This is to certify that 20 days have passed since the filing of this decision and there have been no appeals filed with this office.

\_\_\_\_\_  
Catherine Belbin, Town Clerk

\_\_\_\_\_  
Date

Copies sent to:  
Applicant - Certified Mail#  
Health Director  
Municipal Properties  
Conservation Administrator  
Fire Chief  
Acton Water District

Building Commissioner  
Engineering Administrator  
Town Clerk  
Town Manager  
Historical Commission  
Parties in Interest

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