Planning Board

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DECISION
02-09

Robbins Mill Estates

Definitive Subdivision
and
Planned Conservation Residential Community (PCRC) Special Permit
August 26, 2002

APPROVED WITH CONDITIONS

Decision of the Acton Planning Board (hereinafter the Board) on the application of Liberty Trust, c/o Charles R. and Charlotte Dexter, Trustees, 1501 Main Street, Concord, MA (hereinafter the Applicant) for property in Acton, Massachusetts, owned by the Applicant. The property is located off Carlisle Road and shown on the 2002 Acton Town Atlas as parcels C-5/104; C-6/11, 12, 13, 14; D-5/12; and D-6/1, 2, 2-1 (hereinafter the Site).

This Decision is in response to an application for a PCRC special permit and approval of a definitive subdivision plan entitled "Robbins Mill Estates", received by the Acton Planning Department on March 28, 2002, pursuant to Section 9 of the Acton Zoning Bylaw (hereinafter the Bylaw), the PCRC Rules and Regulations (hereinafter the PCRC Rules), Massachusetts General Laws - ch. 41, s. 81-K through 81-GG, and the Acton Subdivision Rules and Regulations (hereinafter the Subdivision Rules).

The public hearing opened on May 20, 2002 and was continued immediately without discussion or deliberation to June 10, 2002. The Applicant presented his proposal and the Board heard public comments on June 10, 2002. The hearing was again continued to July 22, 2002 and then closed. Richard Harrington, P.E. of Stamski & McNary, Inc., Attorney Stewart Vantine, and Attorney Julie Taylor Moran of Barron & Stadfeld, P.C. consultants to the Applicant, assisted the Applicant in the presentation. Board members Ken Sghia-Hughes (Chairman), Hartley E. Millett, Gregory E. Niemyski, Edwin F. Pearson, Christopher R. Schaffner, and Associate Member Mobina F. Mohsin were present on June 10 and July 22. Ms. Mohsin was designated to sit on the Board to act on the special permit application pursuant to section 10.3.9 of the Bylaw. The minutes of the hearing and submissions on which this decision is based upon may be viewed 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 A plan entitled "Definitive Subdivision, Robbins Mill Estates, a Planned Conservation Residential Community, Acton, Massachusetts" dated March 25, 2002, revised on June 28, 2002 drawn by Stamski and McNary, Inc. of 80 Harris Street, Acton consisting of 53 sheets.

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

- A properly executed Application for Approval of a Definitive Plan, form DP, dated March 25, 2002.
- A properly executed Application for a PCRC Special Permit, dated March 25, 2002.
- Filing fee.
- A completed Development Impact Report, form DIR.
- Designer's Certificate.
- Certified lists of parties in interest.
- Applicant's statement to retain the fee in the street.
- Legal Notice of Public Hearing.
- A waiver request letter from Stamski & McNary, dated 6/28/02.
- A letter authorizing Town entry into the Site to complete the street.
- An authorizing vote of trust (trustee's certificate).
- Record plans and deeds.
- A list of mortgage holders.
- A use description.
- A draft restrictive covenant as proposed performance guarantee.
- Draft documents relative to the ownership, maintenance, and restrictions of the common land, last revised under cover letter from Barron & Stadfeld, P.C., dated 7/18/02.
- A list of other permits and variances.
- A list of mortgage holders.
- Drainage Calculations, dated 3/25/02; addendum, dated 6/28/02.
- Earth Removal Calculations, dated 3/25/02.
- Water Balance Calculations, dated 3/25/02.
- Traffic Study, dated March 2000.
- Soil observation logs and percolation test data.

1.3 Additional information submitted by the Applicant:

- A draft declaration of restrictive covenant for lots.
- An application cover letter from Stamski & McNary, Inc., dated 3/28/02.
- A cover letter on plan revisions from Stamski & McNary, Inc., dated 6/28/02.
- A letter from Stamski & McNary, Inc. to the Acton Fire Chief regarding a Fire Flow Analysis, dated 6/12/02.
- A water impact analysis (WO #9180014) by Dufresne-Henry for the Acton Water District, dated 1/7/01.
- A nitrate loading analysis by Stamski & McNary, Inc., dated 6/28/02.
- A list of suggested street names, received 7/9/02.

1.4 Interdepartmental communication received from:

- Acton Building Commissioner, dated 4/8/02;
- Acton Community Housing Corporation, dated 4/16/02, 6/7/02 and 7/18/02;
- Acton Engineering Administrator, dated 5/3/02 and 7/19/02;
- Acton Finance Director, dated 5/3/02;
- Acton Fire Chief, dated 5/10/02, 7/2/02 and 7/17/02;
- Acton Health Director, dated 4/12/02 and 7/22/02;
- Acton Historical Commission, dated 4/10/02;
- Acton Planning Department, dated 5/17/02 and 7/16/02;
- Acton Recreation Department, dated 4/8/02, 7/16/02 and 7/17/02;

- Acton Transportation Advisory Committee, dated 7/11/02;
- Acton Tree Warden & Municipal Properties Dir., dated 5/2/02, 5/24/02 and 7/18/02; and
- Acton Water District, dated 4/25/02, 7/11/02 and 7/15/02.

1.5 Correspondence received from:
- Karen O'Neill et.al., dated 5/17/02;
- Edward H. Sonn, 57 Woodland Road, Carlisle, dated 5/22/02;
- Andrew Rowdin, 23 Marshall Path, Acton, dated 6/14/02;
- Mary Rechenbach, 123 West Street, Carlisle, received 7/17/02;
- Dian and Tarik Pekin, 20 Carlisle Road, Acton, dated 6/10/02 and 7/22/02; and
- Literature regarding nitrate loading and alternative septic systems, received from Acton Citizens for Environmental Safety (ACES).

1.6 Other:
- Hearing extension agreement, dated 5/20/02.
- Hearing and decision extension agreement, dated 6/10/02.
- Application for public shade tree and stone wall removal, dated 3/25/02.
- Memorandum (Review Comments - Proposed Robbins Estate Development Traffic Impact & Access Study, David Friend and Associates, Inc.) from Shelley Boydston and Robert Nagi of Vanasse Hangen Brustlin, Inc. (VHB), consultant to the Board, dated 6/6/02.
- David Abbt, Acton Engineering Department to Robert Nagi, VHB, dated 6/7/02, and response dated 6/7/02.
- Decisions 00-04, 00-05, 01-02 and 01-03 of the Board relative to several preliminary plans for the Site.

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 Site is located within the Residence 10/8 zoning district, the Affordable Housing Sub-District A, and Zone 4 of the Groundwater Protection District. The banks of Nashoba Brook and Robbins Mill Pond are within the Flood Plain District.

2.2 The Plan shows the division of approximately 233 acres into 90 lots and +/-157 acres (+/-67%) of common land.

2.3 The proposed single family residential uses are allowed on the Site in accordance with 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 and subject to a PCRC Special Permit under section 9 of the Bylaw.

2.4 The proposed new streets measure +/-8,066 feet (+/-1.53 miles). One Street would extend Blueberry Path. The other street (Road A on the Plan) intersects with Carlisle Road and Blueberry Path and describes a loop through the Site. The Applicant has proposed to name Road A "Canterbury Hill Road", which the Fire Chief found acceptable.

2.5 At full build-out, the average weekday daily traffic from the proposed subdivision will number about 900 trips from the new homes plus traffic associated with the expected recreational activities on the common land. This will more than double the existing weekday daily traffic on Carlisle Road, which is estimated between 600 and 700 trips. As required under the Subdivision Rules, the Plan shows a sidewalk along the Site's Carlisle Road

frontage. The proposed sidewalk extends out to Main Street with a planned crosswalk on Main Street south of its intersection with Carlisle Road. In addition, the applicant has proposed an upgrade to the Main Street - Carlisle Road intersection replacing the sweeping right turn into Carlisle Road with a perpendicular intersection to reduce vehicle speeds. These safety improvements make adequate and appropriate accommodations for the increased traffic. Carlisle Road is a low-volume Scenic Road. Capacity improvements would ruin its character and will not be necessary. The proposed improvements need further refining. It appears that the removal of a few additional trees and some brush along Carlisle Road could improve pedestrian safety and stopping sight distance. The conceptual intersection plan for Carlisle Road and Main Street needs to be advanced to a construction plan.

2.6 The boundaries between lots and the common land are very convoluted. Without a clear visible demarcation of the common land, encroachments onto the common land will be likely.

2.7 Except for common land parcel 4, the Applicant's proposed division and disposition of the common land is acceptable: parcels 1, 2, 5, 6, and 8 in private conservation trust ownership, parcels 3, 7, and 9 in public Town ownership, whereby parcel 9 would be divided into a parcel for active recreation and one for passive recreation only. Parcel 4 is currently proposed for private ownership. With its location between a proposed public way and public land, it will function like public access. It should be public ownership. The Applicant has submitted proposed deeds with restrictions for both groups of common land parcels, which need further revisions to adequately suit their purpose and future owners.

2.8 The proposed distribution of active and passive recreation seems reasonable and appropriate. Large contiguous portions of the Site will be preserved in their natural state, protecting natural resources and wildlife habitat. They abut extensive Town conservation land, give access to the banks of Nashoba Brook, form a corridor for the regional Bay Circuit Trail, which passes through the area, and create a buffer between the proposed new homes and scenic Carlisle Road. The proposed active recreation area - a junior soccer field, a basketball court, a playground, and a shelter - will accommodate the recreational needs in the new neighborhood and limited sports activities, in which youth from all over the Town can participate. Common land parcel 3 will provide suitable access to an abutting parcel of Town-owned land, which can be developed into one or two larger sports fields when needed.

2.9 It is the Board's experience over the years that homebuyers are not sufficiently educated about their purchase. Omissions of critical information seem notorious regarding the future uses on abutting public lands, or lands slated for public ownership. Therefore, it is necessary to create a physical presence early on these lands and to delay the issuance of building permits on surrounding lots until after such presence is established.

2.10 The Applicant owns a parcel off Log Hill Road in Carlisle that provides access from there to the common land on the Site. The parcel is too small for a building lot. The Applicant has maintained a logging road on it. This parcel is vital for emergency and maintenance access to the rear of the proposed common land on the Site, and it is a suitable and desirable public access point to the common land, the adjacent Town conservation land, and the regional Bay Circuit Trail.

2.11 In addition to the name "Canterbury Hill Road" for Road A, the Applicant has proposed names for the private common driveways. Following a previous experience (Bellows Farm) it is now clear that the United States Postal Service would strongly prefer that all homes

with access off Canterbury Hill Road have Canterbury Hill Road street addresses. This may also enhance emergency services.

2.12 The proposed private common driveways appear to meet the construction standards of the Bylaw. They are part of the Plan and approved under this decision. They do not require separate special permits. As is usual with common driveways, they remain in private ownership. This requires proper documentation determining ownership and maintenance responsibilities.

2.13 The Applicant proposes a Declaration of Restrictive Covenants that would regulate the design of structures and activities on the lots. The proposed covenants would discourage energy conservation, alternative energy installations, and children's play equipment.

2.14 The proposed drainage system is subject to the Massachusetts Storm Water Policy guidelines.

2.15 The Water Supply District of Acton has confirmed adequate water to serve the needs of the proposed development. However, there is some doubt whether that includes outdoor watering. Currently, the District has implemented Town-wide outdoor watering restrictions.

2.16 The District has requested a reconsideration of the planned water main crossing at Nashoba Brook. Whatever the final design, aesthetic considerations demand that the water main should remain concealed under Carlisle Road or underneath the Brook.

2.17 Without resorting to any density bonus as provided in section 4.4 of the Bylaw, the Applicant has proposed an affordable housing contribution of two off-site dwelling units or moneys sufficient to produce two affordable units elsewhere. A commitment of $400,000 can accomplish this. Two affordable dwelling units will maintain Acton's current affordable housing percentage after completion of the Plan.

2.18 The Board has received comments from various Town departments and abutters, which are listed in the Exhibits above. The Board considered these comments in its deliberations, made them available to the Applicant, and incorporated them into this decision as deemed appropriate.

2.19 Chapter J of the Bylaws of the Town of Acton identifies Carlisle Road as a Scenic Road. The Board and the Acton Tree Warden held a joint scenic road public hearing relative to the removal of one public shade tree and a section of stone wall. During the hearing, the Board received evidence that additional tree removals along Carlisle Road should be considered.

2.20 The Applicant has requested one waiver from the PCRC Rules, which is discussed in section '3.1 Waivers' below.

2.21 Several methods of wastewater treatment have been considered for the Site. The Plan indicates individual septic systems for each of the proposed ninety lots. The Applicant has submitted a nitrate loading analysis using MADEP's (Massachusetts Department of Environmental Protection) 'Nutrient Loading Approach to Wastewater Permitting and Disposal', Bureau of Resource Protection Interim Policy, 8/20/99. The analysis assumes three persons per dwelling unit and calculates a full build-out nitrate concentration of 2.73 mg/l of groundwater entering Nashoba Brook and Robbins Mill Pond, well below the 10 mg/l determined as the limit for safe drinking water. The 2000 U.S. Census shows 2.69 persons per household in Acton overall. The proposed homes would feature five bedrooms. The Town has evidence that new large single-family homes in Acton, as proposed here, house on average slightly more than three but significantly less than four persons.

2.22 The proposed density on the Site is 90 dwelling units on approximately 233 acres or one unit per 2.59 acres. Standard zoning allows up to 1 unit per 2.26 acres. By special permit

for a PCRC, as proposed here, or an Open Space Development, the density may be increased to one unit per 1.84 acres. The 90 lots are clustered on +/-61.4 acres with an average lot size of +/- 0.68 acres. Existing neighborhoods near the proposed new homes on the Site are as follows:

- North -, South -, and Cross Streets, and Carlisle Road: lot sizes range from 0.41 acres to 2.33 acres (0.75 acres average lot size). This older neighborhood features mostly single family homes. All have individual wastewater disposal systems. A few lots are vacant. There is no protected open space or common land.
- Marshall Crossing: This '90s PCRC development has 16 dwelling units on +/-40.8 acres or one unit per 2.55 acres. Lot sizes average 0.72 acres. A common septic system serves the lots.

In addition, there are six large lots (two or more acres) on Carlisle Road with single-family homes on them.

2.23 The proposed PCRC as shown on the Plan and as amended herein complies with the applicable requirements of the Bylaw; is in harmony with and enhances the purpose and intent of the Bylaw, specifically section 9; is in harmony with the existing and probable future uses of the area and with the character of the surrounding area and neighborhood; is consistent with the Master Plan; will not be detrimental or injurious to the neighborhood; and is appropriate for the Site.

3 BOARD ACTION

Therefore, subject to and with the benefit of the following waivers, conditions, plan modifications, and limitations, the Board voted to GRANT the requested special permit and to APPROVE the definitive subdivision Plan.

3.1 WAIVERS

The Applicant has requested a waiver from section 3.14.8.7 of the PCRC Rules, specifically that "the location, size, and proposed fate of any existing trees larger than 16 inches in diameter shall be shown". The waiver is GRANTED because the site is so large and no public purpose is served by showing every such tree. As indicated in the waiver request, the plan shows perimeters of existing wooded areas, limits of clearing, and individual large trees along the Carlisle Road frontage.

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.

Traffic Safety and Traffic Impact Mitigation

3.2.1 *Main Street and Carlisle Road Intersection*: Add a plan sheet with detailed engineering drawings and specifications for the modification of this intersection. The detailed plan shall be prepared by a Massachusetts Registered Professional Engineer in accordance with typical AASHTO[1] and Town of Acton design standards and shall develop further the conceptual design included in the Plan as submitted. The redesign shall flatten the Carlisle

[1] American Association of State and Highway Transportation Officials: "A Policy on Geometric Design of Highways and Streets", 2001 (The "Green Book").

Road approach and move the Carlisle Road centerline at the intersection as far north as possible while keeping the new pavement edge and curb within the street layout. This will require the relocation of utility pole No. 31/291. The centerline of Carlisle Road leaving Main Street shall remain perpendicular to Main Street for the longest possible distance while leaving enough room within the right of way for a 5-foot wide sidewalk on the southerly side. If possible without obstructing B-40 truck turning movements or widening Carlisle Road at the intersection to defeat the modification's purpose, show a center island on the Carlisle Road approach (alternatively consider scored pavement as an island substitute) with suitable traffic signage or other devices to prevent vehicles entering Carlisle Road from Main Street northbound from crossing into the on-coming traffic lane. No utility pole or other fixed object unrelated to traffic control and vehicle safety shall be placed on the center island. Traffic data needed to support the intersection design shall be updated, to the extent necessary. The Plan shall be submitted for peer review by a qualified traffic engineer of the Board's choosing and paid for by the Applicant, and then be finalized before Plan endorsement.

3.2.2 *Sight Distance*: At Road A and at the trailhead parking lot, provide a minimum stopping sight distance per AASHTO 2001 standards for 40 mph travel speeds (or the 85th percentile speed if different) on Carlisle Road, or such lesser distance as may be indicated by the curvature of Carlisle Road or the location of the intersection with Main Street, and where the clearing of brush and the removal of trees on the Site or within Carlisle Road are insufficient remedies. In any case, stopping sight distance shall not be less than 275 feet, except approaching the trailhead parking lot from Main Street, where speeds will be lower after the intersection reconstruction required in the previous paragraph. Certify sight distances on the Plan and specify actions that will be necessary to achieve them. Relocation of the Road A intersection or the trailhead need not be considered due to wetland constraints and house locations on Carlisle Road.

Carlisle Road Sidewalk and Curb

3.2.3 *Pavement Width*: Specify that the existing pavement width of Carlisle Road shall not be reduced in the course of the proposed sidewalk construction.

3.2.4 *Curb Line*: Add a plan note specifying that the curb line for Carlisle Road shall be marked in the field and that the Town Engineering Department must approve the line before curb installation.

3.2.5 *Trees*: In consultation with the Tree Warden, identify for removal other trees along the Site frontage on Carlisle Road and adjust the sidewalk accordingly.

3.2.6 *At Road A Intersection*: Continue the sloped granite curbs at both sides of the intersection to connect with the nearby sloped granite curbs on Carlisle Road, where the sidewalk directly abuts the travel lane.

3.2.7 *Drainage Swales*: Interrupt the sloped granite curb symbol at the drainage swale closest to the Nashoba Brook culvert. Also, add riprap behind the sidewalk at the drainage swales.

Common Land

3.2.8 *Demarcation*: All boundaries between common land parcels and lots shall be marked in the field by placing permanent monuments at all points of beginning, end, and change in boundary direction. Monuments shall be made of stone or concrete, firmly anchored, and reach to a minimum height of 3 feet above ground. Show and identify all such monuments on the record plan. In addition, boundaries between lots and common land parcels that are slated for Town ownership shall be delineated with hedgerows and using split rail fences corners at the lot corners.

3.2.9 *Common Land Parcel 9*: Divide parcel 9 into two parcels: 9, encompassing the active recreation improvements shown on the Plan, and 10 for the remainder of the parcel. The division shall be drawn approximately along the first wetland finger as seen from Road A.

3.2.10 *Disposition*: On the record plan sheets, specify the proposed future ownership and, in general terms, the proposed future use of the various common land parcels as follows:

Common Land Parcel	Future Ownership	Future Use
1	Homeowners' Conservation Trust	conservation, passive recreation
2	Homeowners' Conservation Trust	conservation, passive recreation
3	Town of Acton	active recreation, access to adjacent land
4	Town of Acton	active recreation, access to adjacent land
5	Homeowners' Conservation Trust	conservation, passive recreation
6	Homeowners' Conservation Trust	conservation, passive recreation
7	Town of Acton	conservation, passive recreation
8	Homeowners' Conservation Trust	conservation, passive recreation
9	Town of Acton	active recreation
10	Town of Acton	conservation, passive recreation

3.2.11 *Common Land Deed to Trust*: The deed for common land parcels 1, 2, 5, 6, and 8 (draft document 227650, Barron & Stadfeld, P.C.) shall be further modified as follows:

- Delete common land parcel 4 from the conveyance.

Part B - prohibited activities:

- Change par 1. to read: Construction or placing of buildings, roads, parking areas, signs, billboards, other advertising devices, or construction or placing of any structure above, in, or under the ground.
- Change par 2. to read: Dumping or placing of soil or other substance or materials as landfill, or dumping or placing of trash, waste, yard waste, or other unsightly or offensive materials.
- Change par. 4. by adding at the end: except in connection with activities permitted herein.
- In the notwithstanding clause, change paragraph to paragraphs.

Part B - allowed activities:

- Change par. 2. to read: The right to grant easements to the Town of Acton for construction, installation, and maintenance of utilities and drainage facilities as shown on the Plan or as further modified by the Acton Planning Board.
- Change par. 3., by adding: walking trails and foot trails.
- Change part C, par. 1., by replacing the last clause with: but always subject to the restrictions set forth herein and the rules and regulations promulgated from time to time by the Trust.
- Consider acknowledgement in the deed of the Tenneco gas line easement, which traverses a small portion of common land parcel 8.
- Change part D., by changing the 'provided'-clause as follows: provided such does not create more building lots than is allowed by the Special Permit, does not reduce the

common land below the acreage shown on the Plan, and is otherwise done in compliance with the Zoning Bylaws of the Town of Acton.

- Add a new paragraph stating that the restrictions on the common land parcels shall be enforceable by the Lot owners jointly through the Conservation Trust, by each Lot owner individually, and by the Town of Acton.
- Submit for approval a draft copy of the Declaration of Trust for the Robbins Mill Estates Conservation Trust to which common land parcels would be conveyed, or such other documents that explain the establishment, structure, authority, and procedures of the Trust.

3.2.12 *Common Land Deed to Town*: The deed for common land parcels 3, 7, and 9 (draft document 227603, Barron & Stadfeld, P.C.) shall be modified as follows:

- Add common land parcel 4 to the conveyance.
- Split common land parcel 9 into two - 9 for the active recreation portion near Road A, and 10 for the remainder of the parcel.

Without changing the draft's intent, and with the exception of matters that apply uniformly to all parcels, restructure the deed to itemize restrictions and permitted activities, uses, and structures on a parcel-by-parcel basis, as follows:

- Common land parcels 3 shall be restricted to all forms of active and passive recreation, and to activities, structures, and improvements associated with such uses.
- Common land parcel 9 shall be restricted to all forms of active and passive recreation, and to activities, structures, and improvements associated with such uses. In addition, the active recreation facilities on common land parcel 9 shall not be used for any organized league or other scheduled athletic, recreation, or other such activity before 8:00 a.m. nor shall any inning, quarter, set, etc. of any game, match, scrimmage, etc. be commenced after 7:30 p.m. on any day. Upon the completion of the recreational facility on common land parcel 9 as shown on the Plan, any subsequent alteration, replacement, or other modification of the same shall be of similar character such that the diversity of recreational activities provided by the amenities, as originally constructed, is maintained.
- Common land parcels 4 and 10 shall be restricted to all forms of passive recreation, and to the installation, maintenance, and public use of walking and bicycle trails, which are shown on the Plan or which the Grantee may install.
- Common land parcel 7 shall be restricted to all forms of passive recreation; to the installation, maintenance, and public use of walking and bicycle trails, which are shown on the Plan or which the Grantee may install; to the installation, maintenance and public use of the trail head parking lot near Carlisle Road shown on the Plan; and to any facilities, structures, and other improvements that the Grantee may place within 100 feet of the trail head parking lot for the benefit of the public using parcel 7, such as a kiosk, trail shelter, restrooms, or similar installations.

Part A - prohibited activities:

- Change par. 1. to read: Construction or placing of buildings, roads, parking areas, signs, billboards, other advertising devices, or construction or placing of any structure above, in, or under the ground. Then, list the exemptions separately by parcel.
- Change par. 2. to read: Dumping or placing of soil or other substance or materials as landfill, or dumping or placing of trash, waste, yard waste, or other unsightly or offensive materials.
- Delete par. 5. It appears that surface uses are well enough iterated and defined in other parts of the deed.
- Change par. 7., to allow low level security lights on buildings and structures.
- In the notwithstanding clause, change paragraph to paragraphs.

Part A - allowed activities:

- Change par. 2. to read: The right to construct, install, and maintain utilities and drainage facilities as shown on the Plan or as further modified by the Acton Planning Board.
- Change par. 3., by adding: walking trails and foot trails.
- Consider acknowledgement in the deed of the Tenneco gas line easement, which traverses common land parcel 10.
- Delete part B as there is no need to specifically grant rights to lot owners in the subdivision that they will enjoy anyhow as residents of the Town of Acton.
- In the first paragraph of part C., replace the "provided"-clause with: provided such does not create more building lots than is allowed by the Special Permit, does not reduce the common land below the acreage shown on the Plan, and is otherwise done in compliance with the Zoning Bylaws of the Town of Acton.
- In the third paragraph of part C., delete everything including and after the words "and to require the Grantee..." beginning on the 2nd line. These clauses are unacceptable. Town Meeting cannot accept land that may be subject to unknown future stipulations by the Grantor.
- In the fourth paragraph of part C., delete the last phrase, which reads: " ... and shall procure and maintain adequate public liability insurance on such common land parcels". The Town maintains general umbrella insurance, not insurance policies for individual parcels. However, it is not acceptable for the deed to dictate the Town's insurance coverages, which is a decision that is based on cost and risk.
- The deed shall include a paragraph by which actions to enforce the restrictions on the land shall be limited to the grantee and the Lot owners at Robbins Mill Estates jointly through the Robbins Mill Estates Conservation Trust or individually.
- The Board assumes that minor technical modifications to this common land deed may be made as a result of Town Counsel review leading up to a Town Meeting vote on the matter. Such modifications are hereby authorized without further Board approval as long as they are not changing the objects of the deed or the substance of restrictions and allowed uses.

3.2.13 *Common Land Parcel 3*: In a suitable driveway location, show a parking lot access driveway from Blueberry Path towards the adjacent Town-owned land. The cut for this driveway shall match that shown for the parking lot on common land parcel 9. Pavement and curbs shall be installed for the depth of the driveway roundings. The driveway subsurface preparation shall extend about 5 feet beyond the pavement end, then covered with loam and seeded as required in the Subdivision Rules. At the driveway cut, specify the installation of a sign that indicates the future recreation use of the adjacent Town land. The sign shall be consistent in size and appearance with other signs that the Town maintains at recreation and conservation lands. The message on the sign shall be subject to approval by the Acton Recreation Director.

3.2.14 *Common Land Parcel 4*: Show stone bounds at all four corners consistent with bounds shown on the Plan that describe common land parcels 7 and 9, and specify fences or hedgerows to be placed on its borders with lots 22 and 23. Upgrade the 5' wide stone dust foot trail or walking path to an 8' wide stone dust walking and bicycle path.

3.2.15 *Log Hill Road Access*: Prepare a draft record covenant for the Applicant's parcel at Log Hill Road in Carlisle stating that it shall at all times and in its entirety be restricted for use as a corridor between Log Hill Road and common land parcel 10 for general public access by foot or bicycle, and for emergency and municipal maintenance vehicles, including the installation of trails, roads, and other facilities associated with these purposes. Said parcel is shown as Lot 27 on Land Court Plan 31020D, filed on June 13, 1975. It is also shown on

the Registry Plan 1192 of 1998 as lot 27 and identified thereon as parcel 34A on Assessors Sheet 5 (Carlisle Tax Atlas). The covenant shall be written to override and negate any previous commitments, whether on record or not, that Lot 27 would not be used as access from Log Hill Road to land in Acton, and the Applicant shall propose a mechanism by which this will be accomplished.

Streets, Addresses, and Common Driveways

3.2.16 *Names*: As proposed, use "Blueberry Path" for the street extending out Marshall Crossing and use "Canterbury Hill Road" for Road A. No other street names or names for private ways or common driveways shall be shown.

3.2.17 *Addresses*: All lots shall have either Blueberry Path or Canterbury Hill Road addresses. Renumber street addresses reserving additional numbers as follows:

- On Blueberry Path, two numbers between Cooney (Marshall Crossing) and lot 4; and one number between lots 6 and 7.
- On Canterbury Hill Road, one number between lots 44 and 45; five numbers between lots 42 and 43; one number between lots 84 and 85; and one number between lots 68 and 69.
- Reduce to one the reserve numbers between lots 64 and 65.

Additional changes to the street numbers may be made to arrive at customary numbering system, e.g. sequential numbers opposing each other.

3.2.18 *Common Drives*: For each of the common driveways A, B, C, and D, submit private way maintenance agreements and covenants, enforceable by the Town of Acton, declaring:

- that they shall remain private ways;
- that the respective lot owners shall be jointly responsible for the removal of snow and ice on them;
- that the respective lot owners shall be jointly responsible for the general maintenance and upkeep of the common drives and any associated drainage structures and other utilities;
- that the respective lot owners shall not petition the Town to accept the common driveways as public ways; and
- that the respective lot owners shall not petition the Town to provide snow and ice removal services or any other maintenance of the common driveways.

Lot Restrictions

3.2.19 *Energy Conservation and Generation*: The Declaration of Restrictive Covenants affecting the lots (draft document 227782.2, Barron & Stadfeld, P.C.) shall be modified as follows:

- In paragraph 4., delete the reference to clothes yards. Clotheslines and clothes yards shall not be made subject to the scrutiny of adjoining lot owners. However, the covenants may be modified to restrict clotheslines and clothes yards to the back yards, and to side-yards on corner lots. Furthermore, the covenants may require visual screening of clotheslines in cases where the back yard of one lot directly abuts the front yard of another lot. For the purpose of this section, "back yard" shall be the full width and depth of the lot that extends behind the dwelling, "front yard" shall be the full width and depth of the lot that extends in front of the dwelling, in both as cases as seen from a street or a common driveway, and "side yard" shall be the area that is neither front nor back yard.
- Modify paragraph 13, or otherwise re-write the covenant, so that solar panels used by the homeowners for the purposes of generating heat, hot water, or electric power shall not be subjected to any neighborhood design review or otherwise to the scrutiny of abutting lot owners. However, such installations shall require a building permit from the Town of Acton; shall be covered by the owner's home insurance policy or through a separate or supplemental insurance policy; and may be subjected to a requirement that they must be removed if their use has discontinued for more than 12 months. In addition, the Applicant

may propose for Board approval specific certificates, ratings, or other performance criteria for incorporation in the lot restrictions, that would further define minimum acceptable standards for design, materials, appearance, installation, and safety. Such standards shall use generally accepted industry parameters and specifications and shall allow a reasonable range of acceptable products, and the Applicant shall provide evidence to that effect. The Board suggests consultations with an experienced installer of passive solar systems.

- Add a paragraph that requires any appliances such as washer, dryer, refrigerator, stove, oven, dishwasher, trash compactor, and the HVAC systems installed by any builder in connection with the initial construction of any home on the Site to be energy-star-rated, or equivalent.

3.2.20 *Child play equipment*: Modify paragraph 13 of said covenants, or otherwise re-write the covenant, so that child play equipment is not regulated or restricted in any manner, nor made subject to the scrutiny of abutting lot owners, except that such equipment may be restricted to back yards, and to side yards on corner lots (back and side yard as defined above).

3.2.21 *Trucks*: Modify paragraph 1. of said covenants to eliminate the reference to trucks, or make clear that the meaning of trucks as used in the covenant does not include pick-up trucks and other vehicles of similar size or design.

3.2.22 *Amendments*: Modify the first paragraph of part C. of said covenants by inserting "... or the Town of Acton Zoning Bylaw..." after "...Special Permit".

Drainage Design

3.2.23 *Massachusetts Storm Water Policy*: Submit a copy of the storm water management forms that show compliance with the policy.

3.2.24 *Basin #2*: Submit a construction detail for the wall between the retention and detention basins.

3.2.25 *Sub-drains*: Show the detail on sheet 43 without filter fabric on the sides and bottom of the trench.

Water Supply

3.2.26 *Water Main in Carlisle Road*: Modify the detail for the water main crossing of Nashoba Brook on Plan sheet 52 as shall be determined by the Acton Water District Manager. However, the water main and any of its insulation, encasement, or other related component shall not be exposed to view from Carlisle Road or Nashoba Brook.

Miscellaneous

3.2.27 *Typical Building Envelopes*: On each record plan sheet, add once the typical minimum dimensions for all setbacks. Mark the lots, if any, where the maximum building gross floor area is limited to 3000 square feet due to smaller setbacks.

3.2.28 *Marshall Crossing Easements*: Label the easements on the Marshall Crossing Condominium parcel as "existing sidewalk easement" along Carlisle Road and "existing grading easement" along Blueberry Path.

3.2.29 *DMH-A*: On sheet 25, correct the label for the existing 12" pipe in Carlisle Road to refer to sheet 42, note 40 (not 60).

3.2.30 *Errant note*: On sheet 30, lot 27, remove the "proposed culvert 12-inch ADS pipe" note, or explain it further.

3.2.31 *Duplicate notes*: On sheet 25, common land parcel 1, correct the duplications in the note for the proposed sidewalk.

3.2.32 *Pavement Detail*: On sheet 43, pavement detail for sidewalks and parking area, specify 2.5 inches bituminous pavement total applied in 2 courses (not 2 inches).

3.2.33 *Steps*: Show a construction detail for the proposed railroad tie steps on common land parcel 6 next to lot 60.

3.2.34 *Blueberry Path Crosswalk*: Relocate the crosswalk and the stop line and sign to run parallel to Road A between CB 23 and CB 25.

3.2.35 *Carlisle Road Layout*: On sheet 52, add the right-of-way line between Main Street and Nashoba Brook culvert.

3.2.36 *Stone Walls*: Specify replacement of approximately equal length for disturbed stone walls. Where appropriate and convenient, replacements shall be used for supplemental common land boundary demarcations.

3.2.37 *Compliance*: The Plan shall be modified to comply in all respects with the Bylaw. Unless directed otherwise by this decision, the Plan shall also be modified to comply with all requirements of the PCRC and Subdivision Rules.

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. Further, failure to adhere to these conditions shall render this special permit null and void, without force and effect, and shall constitute grounds for the revocation of this special permit, and of any building or occupancy permit issued hereunder. The Town of Acton may elect to enforce compliance with this special permit using any and all powers available to it under the law.

Affordable Housing

3.3.1 *Off-site Units*: The Applicant shall provide two 3-bedroom affordable housing units off-Site on the following schedule:

- The first affordable unit shall be ready for occupancy before the issuance of the 59th building permit for new dwelling units on the Site.
- The second affordable unit shall be ready for occupancy before the issuance of the 72nd building permit for new dwelling units on the Site.
- "Ready for occupancy" as used above shall mean that an Occupancy Permit has been issued or that the Building Inspector has otherwise certified the unit as ready for occupancy, and that the unit has been certified by the ACHC (Acton Community Housing Corporation) as a suitable LIP (Local Initiative Program) unit.
- The off site affordable units may be new construction or rehabilitation of existing units; they may be single family, duplex, or townhouse condominium units, and shall be located within residential neighborhoods, or as the Board may otherwise approve.
- In the case of rehabilitation, the units shall be refinished and renovated such that their systems and components will have a minimum useful life of ten years provided the units and their systems are properly cared for, operated, and maintained. The Applicant and the ACHC shall work cooperatively to establish a renovation plan for each unit within the available budget.
- In the case of new construction, at least one of the off-site affordable units shall be a single story ground floor unit that is fully adaptable to the needs of persons with

disabilities, and the lottery for the sale of such unit shall give preference to households with persons with disabilities.

- The off-site affordable units shall be offered to qualified low- or moderate-income first time homebuyers as defined by the Massachusetts Department of Housing and Community Development (DHCD) under the Local Initiative Program (LIP). Sales prices, deeds, deed restrictions, and all other documents and procedures shall comply with the LIP program.
- If permitted by DHCD, the off-site affordable units shall be marketed under ACHC's local preference guidelines. It would give priority to persons employed by the Town of Acton, the Acton-Boxborough Regional School District, the Acton Water District, and other employees working in Acton; to current Acton residents; and to children of current Acton residents.
- The Applicant shall bear the cost of marketing the off-site affordable units, including the cost of the lottery that may be necessary to select from a pool of qualified homebuyers.
- In providing off-site affordable units as described herein, the Applicant shall not be obligated to a contribution in excess of $400,000.00, which shall include but not necessarily be limited to acquisition, planning, design, permitting, site development, construction, rehabilitation, marketing, and legal expenses, minus receipts from the sales of the units. All costs shall be documented to be verifiable by the ACHC.

3.3.2 *Alternative Affordable Housing Donation*: As an alternative to providing off-site affordable units as set forth above, the Applicant may opt to donate $400,000 to the Town of Acton in support of all efforts to increase affordable housing stock in Acton. If the Applicant chooses this option, the donation shall be made before the issuance of the 10th building permit for new dwelling units on the Site.

Common Land

3.3.3 *Private Parcels*: Common land parcels 1, 2, 5, 6, and 8 as shown on the plan shall be conveyed to a Conservation Trust owned or to be owned by the lot owners on the Site. These parcels shall be restricted to conservation purposes and passive enjoyment as shall be described in the 'quitclaim community deed' approved hereunder.

3.3.4 *Public Parcels*: Common land parcels 3, 4, 7, 9, and 10 shall be offered to the Town for acceptance after completion of all improvements shown on the Plan and before or concurrently with the Town's acceptance of the streets on the Site as public ways. Any parcel not so accepted shall be added to the Conservation Trust property above.

3.3.5 *Preservation of Common Land*: All common land parcels shall remain in their natural state and remain undisturbed during and after construction except as shown on the Plan or as otherwise approved or required hereunder.

3.3.6 *Yard Waste*: No portion of the public or private common land parcels shall be used for dumping trash, refuse, or yard waste.

3.3.7 *Carlisle Parcel*: Regardless of any prior commitments to the contrary, the entire area of lot 27 that the Applicant owns between common land parcel 10 and Log Hill Road in Carlisle shall always remain available for suitable access by foot, bicycle, and emergency and municipal maintenance vehicles between Log Hill Road and common land parcel 10. The existing logging road on that parcel and on common land parcel 10 shall not be blocked in a manner that prevents such access. Ownership of this parcel could go to the proposed Robbins Mill Estates Conservation Trust.

3.3.8 *Playground*: The Applicant shall erect play structures and other suitable facilities in the active recreation area on parcel 9 as indicated on the Plan. All equipment and structures

shall be subject to approval by the Acton Recreation Director considering utility, durability, maintenance requirements, and safety.

Street Acceptance

3.3.9 *Subdivision Streets*: Following completion of all improvements in accordance with the endorsed Plan, Blueberry Path (Extension) and Canterbury Hill Road (Road A), including all related easements, shall be offered to the Town of Acton for acceptance as public ways.

3.3.10 *Street Projection*: The street projection to the adjacent Boy Scout land between common land parcels 7 and 9 shall be offered to the Town for street acceptance concurrently with Blueberry Path and Canterbury Hill Road.

Common Driveways

3.3.11 *Private Ownership*: All common driveways shall remain private ways. They shall not be accepted as public ways, nor shall the Applicant or the respective lot owners file petitions with the Town to accept them as public ways.

3.3.12 *Private Maintenance and Upkeep*: Owners of lots served by common driveways shall jointly maintain such driveways in accordance with the private way maintenance agreement. This shall include the removal of snow and ice. The Applicant and the owners of such lots shall not petition the Town to provide snow and ice removal services on the common driveways or to provide any other maintenance and upkeep of them.

Future Maintenance of Streets

3.3.13 *Before Acceptance as Public Ways*: Until such time as the streets may be accepted as public ways by the Town of Acton, the Applicant, not the new homeowners, shall be responsible for plowing and maintenance of all streets in the proposed subdivision.

3.3.14 *After Acceptance*: 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. The maintenance of all private utilities and services located within or outside the street layout or said easements and of any private drainage facilities feeding into drainage structures within the street layouts or easements shall not be the responsibility of the Town.

3.3.15 *Drainage Swales*: The swales, pipes, and pipe inlets alongside the proposed streets will not be maintained by the Town and shall remain private. Any easements that encompass these structures shall not be conveyed to the Town. However, this restriction shall not apply if the Engineering Department determines after street construction is completed that Town access to them is necessary to properly maintain and protect the integrity of the streets.

Restrictions on Further Development

3.3.16 *Lots*: The number of lots for dwelling unit purposes on the Site shall not be increased above ninety.

3.3.17 *Common Land*: The common land (the aggregate of all common land parcels) on the Site shall not be reduced in area below 157 acres.

Public Land Access

3.3.18 *Lots abutting public access points*: No building permits shall be issued and no releases from a restrictive covenant as performance guarantee shall be given for lots 3, 8, 9, 10, and 19, and for lots 22, 23, and 24, until the improvements on common land parcel 3 with

respect to the first group, and common land parcel 4 with respect to the second group, have been completed in accordance with the Plan and as further required herein. No building permits shall be issued and no releases from a restrictive covenant as performance guarantee shall be given for lots 43, 78, and 79 until the parking lot on common land parcel 9 is completed up to and including the first course of pavement.

Miscellaneous

3.3.19 *Erosion Control*: 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 or the Building Commissioner may order the immediate cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.

3.3.20 *Lot Planting Plan*: The typical lot planting scheme on Plan sheet 47 shall be used as a guide for all lots in terms of proportions of the various planting areas, maximum lawn size, and soil preparation for lawn areas. However, the Town or any of its departments, agencies, or staff shall at no time be held responsible for enforcement of the lot landscaping plan. The Water Supply District of Acton may enforce the lot landscaping plan as it sees necessary to limit outdoor water use.

3.3.21 *Construction Access*: Access to the Site for all construction vehicles shall be limited to the entrance of Canterbury Hill Road (Road A) at Carlisle Road, regardless of whether such traffic is related to the construction of the streets, lots, or any other improvements. No construction vehicles shall enter the Site via Blueberry Path. Temporary signs shall be erected to guide construction traffic accordingly. Exempt from this requirement shall be activities directly related to connecting water and utility lines at the present end of Blueberry Path, pavement application on Blueberry Path extension and on Canterbury Hill Road between Blueberry Path and Carlisle Road, and any other work at or near the present end of Blueberry Path that requires dual access.

3.3.22 *Sanitary Installations*: All requirements of the Health Director must be met.

3.3.23 *Water Supply*: All water service lines shall be installed in accordance with the specifications of the Water Supply District of Acton.

3.3.24 *Wetlands*: All work on the Site shall be performed in compliance with the applicable law and regulations protecting wetlands and wildlife habitat in the Town of Acton.

3.3.25 *Compliance of Work*: All work on the Site shall be conducted in accordance with the terms of this approval and special permit and shall conform with and be limited to the improvements shown on the endorsed Plan.

3.3.26 *Performance Guarantee:* Before the endorsement of the Plan, the Applicant shall provide the Board with a performance guarantee in accordance with Section 6 of the Subdivision Rules. The performance guarantee shall cover the usual and customary items under the Subdivision Rules, plus the following accessory items: the sidewalk along Carlisle Road; all other work related to Carlisle Road and its intersection with Main Street; the trail head parking lot on parcel 7; the recreation facilities on parcel 9, including playground equipment; and the common land boundary demarcations. If the performance guarantee is a restrictive covenant, no lot releases shall occur until the accessory items have been covered with another form of performance guarantee in conformance with Section 6 of the Subdivision Rules. The Board reserves the right to require additional performance guarantees for any and all items and improvements shown on the Plan to be posted as a passbook in a form acceptable to the Town of Acton Treasurer.

3.3.27 *Taxes*: As required under M.G.L., 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, and no building permit shall be issued on the Site until all taxes, and penalties and back charges resulting from the non-payment of taxes have been paid in full.

3.3.28 *Prohibition of Work before Plan Recording*: No work on the Site shall begin before the endorsement and recording of the Plan.

3.3.29 *Recording*: The following documents 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:

- This Decision.
- The endorsed Record Plan.
- The Restrictive Covenant as performance guarantee, if used.
- The approved Declaration of Trust of the Robbins Mill Estates Conservation Trust.
- The approved Declaration of Restrictive Covenants for the lots.
- The approved private way maintenance agreements and covenants for the common driveways.
- The approved covenant for lot 27 at Log Hill Road concerning access to common land parcel 10, including any documents necessary to override prior restrictions on access from Log Hill Road to land in Acton.

3.4 LIMITATIONS

The authority granted to the Applicant under this special permit 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 Bylaw, the PCRC Rules, the Subdivision Rules, and other applicable laws and regulations.

3.4.2 This special permit and subdivision approval applies only to the Site identified in this decision and to the proposed use and activity as shown on the Plan.

3.4.3 Other approvals or permits required by the Bylaw, 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 8 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 before 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 This special permit shall lapse if substantial use thereof has not commenced within two 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. For substantial use to have commenced, clearing and grading of at least one street as approved hereunder must be under way. For construction to continue towards completion as continuously and expeditiously as is reasonable, construction activity shall not rest for more than 1 year. 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, to issue any appropriate changes to the special permit and to require any appropriate modifications of the Plan.

3.4.6 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 M.G.L., ch. 40A, s. 17 or M.G.L., 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 M.G.L., ch. 41, s. 81-U.

The Town of Acton Planning Board

Ken Sghia-Hughes, Chairman	Hartley E. Millett
Gregory E. Niemyski	Edwin F. Pearson
Christopher R. Schaffner	Mobina F. Mohsin (Associate)

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.

Ed Ellis, Town Clerk Date

Copies furnished:

Applicant -	Building Commissioner	Health Director
certified mail #7099322000008 9837 8904	Engineering Administrator	Municipal Properties Director
Town Clerk	Conservation Administrator	Town Manager
Fire Chief	Police Chief	Acton Water District
Owner	Historical Commission	Assistant Assessor
MAGIC	Historic District Commission	ACHC

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