



Planning Department

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MEMORANDUM

To: Planning Board **Date:** March 11, 2015
From: Roland Bartl, AICP, Planning Director *R. B.*
Subject: **Jaime's Way –**
Application for Definitive Subdivision Plan Approval (Residential Compound)

Location: 456 Massachusetts Avenue
Owner: Keenan & Son, LLP
Applicant: Keenan & Son, LLP
Engineer: Markey & Rubin, Inc.
Proposed Lots: 3
Proposed Units: 2 new dwelling units, 1 existing dwelling unit to be relocated
Proposed Streets: Jaime's Way
Street length: +/- 150' to turnaround (213' to end)
Land area: 1.76 acres
Common Land: none
Map/Parcel: F2-117
Zoning: Residence 2 (R-2); Affordable Housing Overlay District B;
Groundwater Protection District (GPD) Zone 4
Filing Date: **February 6, 2015**
Hearing: **March 17, 2015**
Decision vote: **May 7, 2015**

Attached for your review are the plan and application for the proposed "Jaime's Way" definitive subdivision, and comments from other Town departments, committees, and agencies. Please review the other departmental comments. They are not necessarily repeated here.

This definitive plan application was made following a preliminary plan review step as is customary for subdivisions. With that, the statutory maximum review period, including the public hearing, to the decision due date is 90 days from the application filing date. The Department is prepared to handle the matter as expeditiously as possible within the 90-day time frame as is reflected in the dates above, unless extended through hearing continuations.

The application is filed under Section 10 of the Subdivision Rules and Regulations (Rules) – Residential Compounds. Section 10 applies to small subdivisions and provides for many waivers from the normal design and construction standards of the Rules (sections 8 and 9) in order to minimize unnecessary site impacts. The Residential Compound design must comply with Bylaw Section 3.8.1.5. for Common Drives. A “proof plan” is required to demonstrate in general that the “STREET and LOTS can be designed in compliance with the requirements of Section 8 and 9 of these RULES, the dimensional requirements applicable to the zoning district in which the land is located, and other applicable laws”. A residential compound subdivision must remain a private way.

Waiver Requests

1. The design engineer on behalf of the applicant has requested general waivers from the Rules required of Section 8 and 9 seeking approval instead for a Residential Compound in accordance with Section 10 of the Rules. Section 10 contemplates such waivers in general and refers to and applies the Town’s common driveway design standards instead.

Proof Plan (plan sheet 3)

2. The proof plan does not meet the requirement of the Rules, section 10.1.2, which states: “Every application for a Residential Compound shall contain a proof plan at the same scale as the proposed Residential Compound plan that demonstrates that a STREET and LOTS can be designed in compliance with the requirements of Section 8 and 9 of these RULES, the dimensional requirements applicable to the zoning district in which the land is located, and other applicable laws.”
3. Section 8 of the Rules, when read in its entirety, requires a 140’ diameter for the portion of the street layout that forms the cul-de-sac turn-around area:
 - room for a loop turn-around with a 100’ centerline diameter (8.1.18.1.a);
 - 20’ pavement width plus 10’ shoulder (8. - Table I. & Appendix B, Design and Construction Standards for Subdivisions - R-1, Typical Roadway Structural Section.The proof plan shows a layout with only a 125’ diameter for the cul-de-sac turnaround area¹. This matter was also discussed during the preliminary plan review stage.
4. The lots on the proposed proof plan have together 15 square feet in excess of minimum zoning requirement for lot area. It follows that proof plan compliance with the Rules would result in the deletion of one of the three proposed lots.
5. The purpose of Section 10 of the Rules is “to permit small-scale residential SUBDIVISIONS (hereinafter called a Residential Compound) in a manner which minimizes Town maintenance responsibility and cost, while simultaneously preserving the rural character of the Town”; it is not its purpose to allow more lots than would fit under the regularly applicable Subdivision and Zoning standards.
6. Section 10.1.2 guards against attempts to use section 10 as a vehicle to achieve more lots than would otherwise be possible.
7. The applicant has requested a waiver from the proof plan requirement to allow the smaller diameter and thereby facilitate the creation of one additional lot. Waivers can be appropriate tools in the reasonable application of the Town’s subdivision Rules and Regulations. The Statute provides the following standard for waivers:

¹ The applicant’s engineer suggests that the 125’ diameter meets zoning. This is irrelevant in this context. The Zoning Bylaw in section 5.3.3.3 allows a frontage reduction to a minimum of 100’ for lots that front “entirely on a cul-de-sac with a sideline radius of 62.5’ (*diameter 125’*) or greater ...” This does not set a standard for new subdivisions; it accommodates lots on older cul-de-sacs that may not meet current Subdivision Rules standards.

“A planning board may in any particular case, where such action is in the public interest and not inconsistent with the intent and purpose of the subdivision control law, waive strict compliance with its rules and regulations ...” (M.G.L. Ch. 41 S. 81R).

Planning staff is unable to construct or defend a rationale for granting the requested waiver pursuant to the statutory standard, and recommends that this waiver **NOT** be granted.

8. Where denial of the requested waiver results in a two-lot subdivision that is in compliance with R-2 zoning district and the Subdivision Rules’ standards, then this is an appropriate outcome. And, where denial of the requested waiver results alternatively in an affordable housing development for the site either under the Town’s Affordable Housing Overlay District B zoning rules (ZBL section 4.4.4) or under MGL Chapter 40B, then that, too, is an appropriate outcome. In both cases, the result would be one that followed standards, rules, and procedures established under governing law, not the result of a Rules waiver that is inappropriately applied and potentially damaging to the integrity of the Town’s subdivision control standards and procedures.
9. An affordable housing development has been mentioned² as a possible alternative to the proposed subdivision. This alternative would be very consistent with the overarching Town goals to support affordable housing at a higher density in this location:
 - a. The intent is shown on the Town’s zoning map since 1990 - the site is in the Affordable Housing Overlay District B.
 - b. The stated preferences in the Town’s Comprehensive Permit Policy emphasize locations for small and modestly sized affordable housing developments near centers such as Kelley’s Corner.
 - c. The need for more affordable housing in Acton is clearly articulated and plain to see in the numbers; Acton has achieved a little more than 6% affordable housing, i.e. housing eligible for listing on the State’s Subsidized Housing Inventory (SDI); the goal for every Massachusetts municipality is at least 10%.
 - d. The Acton 2020 Comprehensive Community Plan states specific strategies to address that need including the development of small and modestly sized affordable housing projects.
 - e. And, the overarching roadmap laid out in the Acton 2020 Comprehensive Community Plan seeks to bring more housing to and near the centers, especially at Kelley’s Corner.

Where additional density is requested it should not be allowed for an applicant’s convenience, or to appease abutters, but only in a manner that achieves results that are consistent with the Town’s overarching planning goals and thereby are in the public interest.

Proposed Plan (plan sheets 4-10)

The following comments on the proposed plan are provided in the event that the Board decides to grant the subdivision approval with or without the requested waiver from proof plan requirement. The proposed plan is for a Residential Compound. Under the Subdivision Rules, Residential Compounds refer to the Common Driveway, Zoning Bylaw Section 3.8.1.5, for design standards.

² An affordable housing development was introduced as a possible alternative at the preliminary review meeting. This could not have come as a surprise where Town’s stated overarching planning goals and its zoning designation for this site clearly and favorably point in this direction. Its mention as an alternative development option can hardly be considered a threat.

10. Based on my review the proposed design closely aligns with the Bylaw's standards. I refer to the comments from other departments, in particular engineering and fire, for their review comments. Concerns raised are, among others, related to hydrant location, street name, shoulder preparation, inconsistency in the elevations for certain drainage design elements, insufficient data for pre- and post development water balance and recharge volumes.
11. The proposed pavement width is 16 feet (12' minimum required), and the proposed turning radii accommodate SU -30 vehicles (as required) and the larger Acton ladder truck.
12. The proposed crest vertical curve may not provide the minimum required 125' stopping sight distance (Bylaw, s. 3.8.1.5.h). Where the proposed street is short, failure to meet this standard is not a concern.

Declaration of Private Way, Maintenance Agreement and Covenant

13. At a glance, the draft document in the application appears generally acceptable; except it needs insertions per Rules s. 10.1.1.5 (barring petition for street acceptance or for Town maintenance, repairs, or winter services) and s. 10.1.1.6 (no further subdivision).

Zoning

14. The sideline radius for lot 1 at the turnaround area needs a dimension for length to clearly establish that it has adequate frontage.
15. The plan states 151.42' frontage for lot 2. I can only add to 150.97'. This still meets zoning.
16. Groundwater Protection District Zone 4 imposes no special requirements on lots in single-family use.

Sidewalk

17. Plan note 7 on sheet 6 suggests that the Applicant is agreeable to a sidewalk fund contribution based on the established formula rather than to build a sidewalk on Site or somewhere else. The Rules require sidewalks along the new subdivision street and along the existing street frontage of the overall subdivision property. The established formula is \$20/foot for sidewalks waived along proposed new streets and \$50/foot for sidewalks waived along existing streets. There is an existing sidewalk along the subdivision property frontage on Mass. Avenue. The length of the proposed subdivision street is +/-213 feet. Therefore, a sidewalk fund contribution should be $(0 \text{ feet subdivision frontage on Mass. Ave.} \times \$50) + (213 \text{ feet in new subdivision street} \times \$20) = \$0 + \$4,260 = \$4,260.00$. This is different from the number suggested in the Engineering Department memo, which is based on the property frontage along Mass. Ave. and does not use the established formula.

Other

18. A standard performance guarantee will be required.
19. A certified as-built plan will be required.
20. The Finance Department notes that taxes on the property are in arrears. Under Town Bylaws no final permits or approvals can be granted unless tax payments, including penalties and fees, are paid and current.

Cc: Applicant
Manager Department
Engineering Department