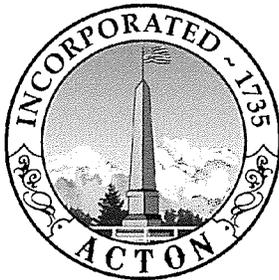


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TOWN CLERK, ACTON

PCRC Special Permit – 13-01
Central Street
January 15, 2013



Planning Board

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 929-6631
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DECISION
13-01

Central Street PCRC
Planned Conservation Residential Community (PCRC) Special Permit
January 15, 2013

GRANTED WITH CONDITIONS

Decision of the Acton Planning Board (hereinafter the Board) on the application of Mt. Laurel Realty by Steve Marsh, 304 Goodrich Road, Lunenburg, MA 01462 (hereinafter the Applicant) for property in Acton, Massachusetts, owned William D. Chisholm. The property is located behind 12 Summer Street and is on a portion of Parcel 106 on Map F-2B on the 2007 Acton Town Atlas and shown as Lot 2 on a plan recorded at the Middlesex Registry of Deeds, Southern District as Plan No. 36 of 2012 (hereinafter the Site).

This Decision is in response to an application for a PCRC special permit application received by the Acton Planning Department on March 1, 2012, pursuant to Section 9 of the Acton Zoning Bylaw (hereinafter the Bylaw) and the PCRC Rules and Regulations (hereinafter the PCRC Rules).

The Applicant presented the subject matter of the special permit application to the Board at a duly noticed public hearing of the Board on April 17, 2012. The hearing was continued to June 5, 2012, June 19, 2012, August 7, 2012, September 18, 2012, October 16, 2012, November 20, 2012, and closed on December 4, 2012. Board members Mr. Ryan Bettez (Chairman), Mr. Roland Bourdon, Ms. Kimberly Montella, Mr. Derrick Chin, Mr. Jeff Clymer, and Associate Member Rob Bukowski were present throughout the hearing. The minutes of the hearing and submissions on which this decision is based upon may be referred to in the Planning Department or the Town Clerk's office at the Acton Town Hall.

1 EXHIBITS

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

- 1.1 A plan entitled "P.C.R.C for Central Street in Acton, Massachusetts" dated 2/23/2012 last revised on 11/26/2012, drawn by R. Wilson & Associates, Inc. Land Surveyors and Civil Engineers, of 676 Great Road P.O. Box 236 Littleton, MA consisting of three sheets.
- 1.2 Supplemental items and documentation required by the PCRC consisting of:
 - A properly executed application for a PCRC Special Permit, dated 2/27/12;
 - Filing fee;
 - A completed Development Impact Report, form DIR;
 - Drainage calculations and site description; revised 09/25/12;
 - A letter regarding the intention of Parcel X and the common land, dated 11/30/12;
 - Certified abutters list;
 - Legal Notice of Public Hearing;
 - Copy of the deed.
- 1.3 Additional information submitted by the Applicant:
 - A letter regarding the project's applicability to the PCRC regulations, dated 11/30/12;
 - Revised landscape plan, dated 11/19/12.
- 1.4 Interdepartmental communication received from:
 - Acton Water District, dated 03/21/12;
 - Acton Finance Department, dated 3/15/12;
 - Acton Natural Resources Department, dated 04/06/12;
 - Acton Planning Department, dated 04/09/12;
 - Acton Cemetery Commissioners, dated 4/09/12 and 12/4/12;
 - Acton Fire Department, 4/11/12;
 - Acton Historical Commission, dated 04/13/12;
 - Acton Sidewalk Committee, dated 05/19/12;
 - Acton Tree Warden & Municipal Properties Dir., dated 7/3/06;
 - Acton Conservation Commission, revised 10/12/12;
 - Acton Planning Department Secretary, revised 10/12/12;
 - Acton Health Director, dated 10/18/12;
 - Acton Engineering Department, revised 10/16/12.
- 1.5 Other:
 - Hearing extension agreements, dated 04/17/12, 05/05/12, 6/19/12, 08/07/12, 09/18/12, 10/16/12, and 11/19/12;
 - Email from Gary Banks, dated 03/29/12;

- Email from Eleanor Mathews, dated 04/11/12;
- Email from Bruce Metzger, dated 05/25/12;
- Letter from Pamela and David Cochrane, dated 04/03/12;
- Email from Jim Snyder-Grant, dated 04/05/12.

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 4 (R-4) zoning district; the Flood Plain overlay district, and Zone 3 of the Groundwater Protection District.
- 2.2 The proposed two single-family detached dwellings are allowed on the Site in accordance with the Bylaw, including all overlay district requirements, and subject to this special permit.
- 2.3 The Plan shows the proposed division of approximately 11.94 acres into two areas with 1.496± acres for residential use (Lot A and Lot B) and 10.44± acres of common land (Parcel X and Parcel 2) (87.47%).
- 2.4 The Plan shows approximately 8.14 acres of wetlands on the site and a raised level knoll towards the southerly part of the property. The proposed common driveway has wetlands impacts that will be subject to review and approval by the Acton Conservation Commission.
- 2.5 The Plan shows an existing foot path, located along the westerly side of the proposed driveway shoulder, extending from Central Street to a privately owned lot shown on Acton Town Atlas as Map G1 Parcel 44-1. Neighbors have testified in the hearing that the public traverses the land on this path. There is no formal legal public access onto the land.
- 2.6 PCRC does not require lot frontage on a street, but under the special permit the Board is obligated to ensure safe and adequate access to residences and buildings.
- 2.7 The Plan shows a ±1,307 foot long common driveway that merges into the existing driveway opening of Mt. Hope Cemetery at Central Street. The proposed common driveway is 12 feet wide with 3-foot grassed shoulders on both sides. It has a turn-around between ±STA 10+00 and ±STA 11+00 that is separate from the individual house driveway intersections. The Plan shows the driveway with bituminous concrete and the shoulders with seeded loam over a base of washed stone. The alignment, the intersection roundings, and the turn-around accommodate emergency vehicles (up to SU-30 design vehicles).
- 2.8 The Site abuts the Town's Mt. Hope Cemetery. There is disagreement between the Town and the Applicant about the exact location of the Site's south-easterly property line abutting the Mount Hope Cemetery. The area in question is represented on the Plan as Parcel X. A definitive determination could only be reached in court. Neither the Applicant nor the Town have chosen to further dispute the property line inconsistency. Instead, this special permit offers a resolution without litigation. The Board and Applicant have agreed that Parcel X may be counted as part of the minimum required Common Land under the standards for PCRC, and that the Applicant will, subject to acceptance by Town Meeting, convey Parcel X to the Town.
- 2.9 The Applicant has also offered to grant the Town a 20' x 60' maintenance easement shown on the Plan adjacent to and in addition to Parcel X around the existing cemetery shed and "GAR" marker.

- 2.10 The Board has received comments from various Town departments, which are listed in Exhibit 1.4 above. The Board considered these comments in its deliberations, made them available to the Applicant, and incorporated into this decision those comments that it deemed appropriate.
- 2.11 Under Massachusetts Law, property taxes must be paid prior to plan recording. Under the Town of Acton Bylaws, no permit or special permit shall be issued to any party “that has neglected or refused to pay any local taxes ...” (Chapter O).
- 2.12 In lieu of constructing sidewalks as required by the Bylaw, the applicant has offered a \$10,000.00 donation to the Town’s sidewalk fund.
- 2.13 The Applicant proposes to place Common Land Parcel 2 under a conservation restriction to be held by the Town of Acton or The Sudbury Valley Trustees and to preserve and legally formalize the foot path as a trail for public use. In concept these proposed uses of the common land comply with the Bylaw, provided the common land meets the criteria for private ownership set forth in the Bylaw.
- 2.14 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, the Board voted on January 15, 2013, 6 in favor, 0 opposed, to GRANT the requested special permit, subject to and with the benefit of the following waivers, conditions, plan modifications, and limitations.

3.1 WAIVERS

The Applicant has requested the following waivers:

- 3.1.1 A waiver from Section 3.14.10 (Architectural Floor and Elevation Plans) of the PCRC Rules. The proposed development consists of two single family lots and is setback significantly from the public view. The waiver is GRANTED as no public purpose would be served by showing the Architectural Floor and Elevation Plans.
- 3.1.2 A waiver from the sidewalk requirements of the Rules. The waiver is GRANTED subject to further conditions as stated below.

3.2 PLAN MODIFICATIONS

The Zoning Enforcement Officer (ZEO) shall not sign off on a building permit, no building permit shall be issued on the Site, nor shall any construction activity begin on the Site, until and unless the ZEO finds that the Plan is revised to include the following additional, corrected, or modified information. Except where otherwise provided, all such information shall be subject to the approval of the ZEO.

- 3.2.1 On the record plan sheet (1):
 - Amend the PCRC common land calculations so that the Common Land provided shows as 454,530 SF± Total.
 - Extend the common access easement across Lot A for Lot B.

- Designate and delineate the areas for two Common Access Easements: (1) the Common Access Easement over Parcel 2, and (2) the Common Access Easement over Lot A.
 - Re-label "Parcel 2" to be identified as "Common Land Parcel 2" with the adjusted area after Lots A and B, Parcel X, and the Common Access Easement over Common Land Parcel 2 have been deducted (440,539 SF±).
 - Re-label "Parcel X" to be identified as "Common Land Parcel X"
 - Modify the building envelope setback of Lot A to measure at least 30ft. from the common access drive.
 - Modify the building envelopes between Lot A and Lot B to have a separation of at least 40ft.
 - Modify the building envelope setback on the south-westerly side of Lot B to measure at least 30ft. from the Common Land Parcel X.
 - On the lot layout plan, add Central Street address numbers for Lot A and Lot B as approved by the Engineering Department.
 - Specify that the proposed private way sign shall be MUTCD complaint, not obstruct sight distance, mark that the road is a private way, and list the street numbers for Lots A and B.
- 3.2.2 To allow for turn-out areas, add additional drivable shoulder width for 50-foot distances between ±STA 2+00 and 3+00 and ±STA 8+00 and 9+00 of the common driveway to create an overall passable width of at least 18ft.
- 3.2.3 At Central Street, add a wheelchair ramp so that the sidewalk is connected to the street pavement where the relocated guardrail and sidewalk is shown.
- 3.2.4 Add a detail for the wheelchair ramp.
- 3.2.5 Add a guardrail between ±STA 6+00 and 7+00 where the wetland fill is located.
- 3.2.6 Provide verification that the proposed common driveway is in compliance with the Flood Zone regulations in Section 4.1 of the Zoning Bylaw for all areas of work within the Flood Plain.
- 3.2.7 Provide documentation of compliance with MA Storm Water Regulations in drainage report or narrative.
- 3.2.8 Submit for the Board's or its designee's approval a common driveway maintenance agreement and covenant for the private driveway and all its appurtenances that shall:
- (a) apportion the responsibility for snow and ice removal and for general maintenance among the owners of the homes;
 - (b) declare that the common driveway shall remain a private way and serve not more than two single family homes;
 - (c) declare that the owners of the residences shall be jointly responsible for the removal of snow and ice and for any general maintenance and upkeep of the common driveway and any associated drainage structures and utilities; that the owners shall not petition the Town to accept the common driveway as a public way and/or to provide snow and ice removal services or any other maintenance;
 - (d) include an operation and maintenance plan for the proposed drainage system to be approved by the Engineering Department; and

(e) acknowledge and accept that the forgoing declarations are enforceable by the Town in a court of law.

(f) reference the trail easement deed in the covenant for the private driveway.

Examples of such documents are available in the Acton Planning Department. If the proposed development is to become a condominium the foregoing provisions shall be incorporated in the condominium master deed.

3.2.9 Submit for the Board's or its designee's approval:

(a) The perpetual conservation restriction for Common Land Parcel 2, any other legal documents governing its ownership and use consistent with the requirements of the Bylaw for private ownership of common lands in PCRCs and with this decision, and a plan and description for the use of Common Land Parcel 2 as required in section 9.3 of the Bylaw and consistent with this decision.

b) The trail easement deed to the Town, and an accompanying easement plan that memorialize public rights to pass and re-pass on foot Common Land Parcel 2 and the common access easement area on a designated trail route between Central Street and Town of Acton land abutting the Site southwesterly.

c) The fee simple deed to the Town of Acton for Common Land Parcel X consistent with the requirements of the Bylaw for public ownership of common lands in PCRCs and consistent with this decision.

3.2.10 The Plan shall be modified to comply in all respects with the Bylaw and, unless directed otherwise by this decision, with all applicable requirements of the PCRC Rules.

3.3 CONDITIONS

The following conditions shall be binding upon the Applicant and its successors and assigns. 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.

3.3.1 No work on the Site shall begin prior to the endorsement and recording of the Plan.

3.3.2 All work on the Site shall be conducted in accordance with the terms of this special permit and shall conform with and be limited to the improvements shown on the endorsed Plan.

3.3.3 Prior to the issuance of a building permit on the Site, the Applicant shall provide the Board with a performance guarantee for the common driveway pursuant to Section 6 of the Acton Subdivision Rules and Regulations. The Board reserves the right to require additional performance guarantees for any and all items and improvements shown on the Plan.

3.3.4 All taxes, and penalties and back charges resulting from the non-payment of taxes, if any, shall be paid in full prior to issuance of any building permit on the Site.

3.3.5 The Applicant shall be diligent in complying with the erosion and sediment control plan. The Applicant shall not cause or permit the runoff of water or erosion that result 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.

3.3.6 Upon completion of all work on the driveways and associated drainage structures, the installation of utilities, and the adequate stabilization of all disturbed areas according the Plan and as may be further required by the Acton Conservation Commission, the Applicant shall submit an as-built plan.

- 3.3.7 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.
- 3.3.8 All requirements of the Board of Health Regulations must be met.
- 3.3.9 All common land areas shall remain in their natural state and remain undisturbed during and after construction except as shown on the Plan and allowed under this decision.
- 3.3.10 The common land shown on the Plan and approved hereunder, including any portion that exceeds minimum zoning requirements, shall not be reduced in area.
- 3.3.11 No portion of the common land shown on the Plan and approved hereunder, including any portion that exceeds minimum zoning requirements, shall be used to meet area, setback, or any other zoning requirements for any other development or improvement that is not shown on the Plan, specifically, it shall not be used to support additional dwelling units or house lots.
- 3.3.12 The number of two dwelling units on the Site shall not be increased.
- 3.3.13 In lieu of granting the waiver above from the Rules, requiring that a sidewalk must be built in the proposed common driveway and along the frontage of the Site, the Applicant shall, prior to the issuance of the second building permit on the Site, submit a \$10,000.00 contribution to the Town. The Applicant may elect to dedicate the contribution to (1) the Town's sidewalk fund to be used for building new or improve existing sidewalks in the Town; or (2) to the improvement, construction and maintenance of the public pedestrian trail on the Site. Alternatively, (3) the Applicant may for an equivalent value of not less than \$10,000 construct and improve the pedestrian trail, excluding any portions on the shoulder or common drive, to standards specified by the Acton Engineering and Natural Resources Departments; or (4) a combination of the above.
- 3.3.14 Deeds, Easements, and Restrictions
- 3.3.14.1 Common Land Parcel 2 shall be used only for conservation and passive recreation purposes. It shall contain the existing foot trail, or portions of it, within a trail easement on which the general public shall be allowed to traverse the land on foot between Central Street and the Town owned property shown on Acton Town Atlas as Map G-1 Parcel 320. A perpetual conservation restriction, approved by the Board or its designee and by the Acton Conservation Commission, and signed by the Secretary of the Massachusetts Executive Office of Environmental Affairs shall be recorded at the Registry of Deeds prior to the issuance of the second Certificate of Occupancy on the Site.
- 3.3.14.2 The existing foot trail between Central Street and Town Atlas Parcel 320 on Map G-1 shall be formalized for public access with a 10-foot wide public pedestrian trail easement. The easement shall be laid out on portions of Common Land Parcel 2 and on portions of the Common drive Access Easement to follow more or less the existing foot trail extending to Parcel 320 on Map G-1. Final placement of the trail and easement shall be subject to the approval of the Acton Conservation Commission. The approved public trail easement plan and deed shall be offered to the Town for acceptance at Town Meeting prior to the issuance of a building permit, and if accepted shall be recorded at the Registry of Deeds before the issuance of the second Building Permit on the Site.
- 3.3.14.3 Common Land Parcel X and the proposed 20' X 60' access and maintenance easement shall be used only for conservation, passive recreation, and historic preservation purposes, and for access to and maintenance of Mt. Hope Cemetery assets and artifacts located within or adjacent to Parcel X. The approved Common Land Parcel X and maintenance easement plans and deeds shall be offered to the Town for acceptance by

Town Meeting prior to the issuance of a building permit, and if accepted shall be recorded at the Registry of Deeds before the issuance of the second Building Permit on the Site.

- 3.3.15 This Decision, the endorsed Record Plan, and the approved common driveway maintenance agreement and covenant shall be recorded by the Applicant at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit on the Site.

3.4 LIMITATIONS

The authority granted to the Applicant under this 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, and other applicable laws and regulations.
- 3.4.2 This special permit 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 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 on the Site 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.
- 3.4.5 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this decision with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

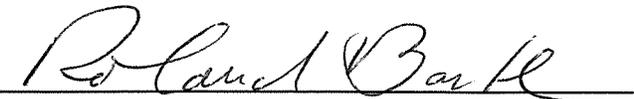
4 APPEALS

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

5 CERTIFICATE OF ACTION

This document stating the Decision of the Board shall serve as the Certificate of the Board's Action to be filed with the Town Clerk pursuant to MGL, Ch. 41, s. 81-U.

Signed on behalf of the Town of Acton Planning Board:


Roland Bartl, AICP, Planning Director

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

Eva Szkaradek, Town Clerk

Date

Copies furnished:

Applicant -
certified mail #
Town Clerk
Fire Chief
Owner

Building Commissioner
Engineering Department
Dir. Of Natural Resources
Police Chief
Historical Commission

Health Director
Municipal Properties Director
Town Manager
Assistant Assessor
Cemetery Commission