

Preliminary Subdivision Decision – 16-06  
Southeast Lane  
May 3, 2016

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**Planning Board**

**TOWN OF ACTON**  
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**DECISION**

16-06

**Southeast Lane**

Preliminary Subdivision

May 3, 2016

APPROVED (**with Conditions**)

Decision of the Acton Planning Board (hereinafter the Board) on the application of 394 Massachusetts Avenue, LLC (Vincent Cuttone, Manager) for property located in Acton, MA at 394-408 Massachusetts Avenue, owned by the Applicant, NOTCA LLC (V. Cuttone, Manager), and Parker Lane Investment Trust (Anna Ludwig, Trustee) of Waltham, MA. The property is shown on the Acton Town Atlas as parcels F3-118-2, F3-127, and F3-134 (hereinafter the Site).

This Decision is in response to an Application for Approval of a Preliminary Subdivision on the Site, filed with the Acton Planning Department on March 10, 2016, pursuant to Massachusetts General Laws, Chapter 41, Section 81-K through 81-GG, and the Acton Subdivision Rules and Regulations (hereinafter the Rules). The General Law provides for certain time lines within which the Board must take action. The applicant has granted the Board an extension to May 18, 2016.

The Applicant presented the subdivision proposal at an advertised public meeting of the Board on May 3, 2016. **Joshua G. Swerling, P.E.** of Bohler Engineering presented the application on behalf of the applicant. Board members **Mr. Jeff Clymer (Chair), Mr. Derrick Chin, Mr. Michael Dube, Mr. Mike Mai, Ray Yacouby, and Mr. Bharat Shah** were present throughout the meeting.

The minutes of the meeting 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 An application consisting of the following items and documentation as required by the Rules and Regulations or additionally provided:
  - A properly executed Application for Approval of Preliminary Plan, Form PP with cover letter dated March 9, 2016;
  - Development Impact Form, Form DIR;
  - Certified Abutters List;
  - Property deeds.
  - Grant of decision time extension, Louise N. Levine, Esq., dated March 14, 2016.
- 1.2 A preliminary subdivision plans entitled "Preliminary Plan of Southeast Kelley's Corner Lots for 394 Massachusetts Avenue, LLC" consisting of 13 sheets, last revised on 03/08/2016 (date on sheet 13 is 1/26/16).
- 1.3 Interdepartmental communication received from:
  - Acton Tree Warden, dated 3/25/16;
  - Engineering Department, dated 4/12/16;
  - Acton Water District, dated 4/14/16;
  - Planning Department, dated 4/26/16.

Exhibits 1.1 through 1.2 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 Applicant states that he filed the application for preliminary subdivision approval to pursue zoning freeze protection pursuant to M.G.L. Ch. 40A, §6. If ultimately approved as a definitive plan, the land in the subdivision would be immune for eight years to any zoning changes adopted after the application filing date of March 9, 2016. The protection applies to Site in general whether or not the specific subdivision plan is built or implemented. Therefore, the application for preliminary subdivision approval might be a mere legal exercise to obtain a zoning freeze (likely), or it might be the applicant's signal of intent to build the subdivision as shown on the Plan (less likely). In any case, it is the Board's assigned statutory role to assume the latter and act accordingly.
- 2.2 The Site is located within the Kelley's Corner (KC) zoning district and the Groundwater Protection District Zone 4; small parts at the easterly Site boundary are in the Flood Plain Overlay District and have wetlands.
- 2.3 The Site contains buildings and site improvements for a bank, a pharmacy, and a vacant child care facility.

- 2.4 The Plan shows the division of approximately 6.46 acres into two lots for commercial and other uses allowed in the KC zoning district pursuant to the Acton Zoning Bylaw (hereinafter the Bylaw).
- 2.5 Each lot shown on the Plan exceeds the minimum frontage and area requirements of the Bylaw.
- 2.6 The Rules in sections 8.1.1 through 8.1.6 require, in summary, that proposed streets must be connected with the existing street network in Acton in order to improve connectivity and ease of circulation for all modes of movements and transportation, or for selected modes in some in some cases. See also section 9.6 of the Rules. The Plan shows a +/- 155-foot long cul-de-sac street entering the site from Mass. Avenue plus a turn-around at its end. Its location and orientation is closely aligned with Francine Road, a public way. It dead-ends at the rear property line of the Site, which is also the boundary between the KC zoning district and the adjacent R-2 residential zoning district. The gap between Francine Road and the street shown on the plan is less than 200 feet.
- 2.7 The Board solicited comments from various Town departments. They are listed in Exhibit 1.3 above. The Board considered all comments in its deliberations and made them available to the Applicant. They are restated herein as required plan modifications or conditions as deemed appropriate by the Board.

### **3 BOARD ACTION**

The Board voted its decision at its meeting on May 3, 2016 in favor, opposed approving the preliminary subdivision with the Waivers and Other Guidance set forth below.

#### **3.1 WAIVERS**

- 3.1.1 None.

### **4 OTHER GUIDANCE FOR SUBMISSION OF A DEFINITIVE PLAN**

Unless stated or implied otherwise, the following shall be fulfilled and any necessary modifications to the Plan shall be made before filing an application for approval of a Definitive Plan:

- 4.1.1 Realign and reconfigure the right-of-way and construction layout as necessary to join the proposed street directly with Francine Road sufficient for accommodation of pedestrian and bicycle use and consistent with section 9.6 of the Rules.
- 4.1.2 If waivers are requested, the Applicant shall submit a complete list of any and all requested waivers.
- 4.1.3 The Applicant shall declare whether he intends the proposed street to become a public way or remain private, and submit the appropriate documentation according to the Rules.
- 4.1.4 The Applicant shall identify on the Definitive Plan new lots as:  
Lot 1, 404 Massachusetts Avenue, Map/Parcel F2-127; and  
Lot 2, 1 Southeast Lane or 394 Massachusetts Avenue, Map/Parcel F2-118-2.
- 4.1.5 Unless directed otherwise by this Decision, the Definitive Plan and application shall comply with all the detailed requirements of the Rules whether specifically listed in this Decision or not, including but not limited to drainage details and calculations, profiles, cross sections, documentation on sight distances, sidewalks, and planting plans.

- 4.1.6 In preparing the definitive plan, the Applicant shall be responsive to review comments received from the Acton Engineering Department, the Tree Warden and other departments and committees of the Town and shall address them in a manner that resolves any concerns expressed therein to the satisfaction of the Board. These comments are listed in Exhibit 1.3 above. Any conflicts between the departmental recommendations and the Rules shall be highlighted.
- 4.1.7 If applicable, the Applicant shall pay in full all property taxes and other municipal charges due, and penalties and back charges resulting from the non-payment of taxes prior to the application for approval of a Definitive Plan.

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

Copies furnished:

Applicant - certified mail #	Building Commissioner	Health Director
Town Clerk	Town Engineer	Tree Warden
Fire Chief	Natural Resource Director	Town Manager
Owners	Police Chief	Acton Water District
	Historical Commission	Assistant Assessor