



Planning Board

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TOWN OF ACTON
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DECISION
05-02

Gagliano – 17 Washington Drive
Definitive Subdivision (*Residential Compound*)
May 10, 2005

APPROVED with CONDITIONS

Decision of the Acton Planning Board (hereinafter the Board) on the application of Guido and Henele Gagliano of 17 Washington Drive, Acton, MA (hereinafter the Applicant) for their property at the same address. The property is shown on the 2004 Acton Town Atlas map E-3 as parcel 88 (hereinafter the Site).

On February 28, 2005 the Applicant filed in the Acton Planning Department an application for Approval of a Definitive Subdivision Plan entitled "Permit Plan, Residential Compound, Washington Drive, Acton, MA", pursuant to Massachusetts General Laws, Chapter 41, Section 81-K through 81-GG, and the Acton Subdivision Rules and Regulations (hereinafter the Rules).

The Applicant, assisted by Mr. Bruce D. Ringwall, of Goldsmith, Prest & Ringwall, Inc., presented the subdivision proposal to the Board at a public hearing on April 26, 2005. Board members Gregory E. Niemyski (Chairman), William F. King, Ruth M. Martin, Stacy S. Rogers, Lauren S. Rosenzweig, Christopher R. Schaffner, Gary R. Sullivan, and associate member Edmund R. Starzec 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 "Permit Plan, Residential Compound, Washington Drive, Acton, MA" dated February (28), 2004 drawn by Goldsmith, Prest & Ringwall, Inc. of 39 Main Street, Ste. 301, Ayer, MA consisting of five sheets (C1-C5).
- 1.2 Supplemental items and documentation required by the Rules consisting of:
 - A properly executed Application for Approval of a Definitive Plan, form DP, dated 2/28/05.
 - Filing fee.
 - A completed Development Impact Report, form DIR.
 - Designer's Certificate.
 - Certified abutters list.
 - Draft legal notice of public hearing.

- Copy of the deed.
 - A list of mortgage holders.
 - A draft restrictive covenant.
 - Drainage and water balance calculations.
- 1.3 Additional information submitted by the Applicant:
- Application cover letter from Mr. Brian Conner of Goldsmith, Prest & Ringwall, Inc. dated 2/28/05 with list of requested waivers.
 - Soil evaluation and percolation test report sheets.
- 1.4 Interdepartmental communication received from:
- Acton Building Commissioner, dated 3/7/05.
 - Acton Engineering Department, dated 4/4/05.
 - Acton Fire Chief, dated 4/22/05.
 - Acton Health Department, dated 3/4/05.
 - Acton Natural Resources Director, dated 3/7/05.
 - Acton Planning Department, dated 4/21/05.
 - Acton Finance Director, dated 3/15/05.
 - Acton Tree Warden & Municipal Properties Dir., dated 3/8/05.
 - Acton Water Supply District, dated 3/11/05.
- 1.5 Other:
- IDC from the Town Planner, dated 5/21/04, regarding a 5/25/04 appointment of the Board with the Applicant's engineer.
 - Related to the 5/25/04 appointment: plans entitled "Site Layout Proof Plan, Loop Cul-De-Sac"; "Site Layout Proof Plan, T-Legged Cul-De-Sac"; and "Site Layout Concept Plan", all dated May 2004.
 - A plan, dated ___/___/___ showing the extent of cutting and tree removal necessary to achieve compliance with the grading requirements of the Rules.

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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 proposed subdivision is located within the Residence 2 zoning district, and Zone 4 of the Groundwater Protection District.
- 2.2 The Plan shows the proposed division of approximately 2.71 acres into two single-family residential lots, one with an existing house on it, and a 590-foot long unnamed subdivision street which intersects with Washington Drive.
- 2.3 The proposed residential uses are allowed on the Site in accordance with the Acton Zoning Bylaw (hereinafter 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.
- 2.4 Any limits of clearing or house locations on lots shown on the Plan or at the public hearing are presented for illustrative purposes only. Actual limits of clearing may vary. House locations may shift within the parameters of setbacks required under the Bylaw.
- 2.5 The design of the proposed subdivision street is intended for approval under Section 10 of the Rules - Optional Residential Compound, which implies waivers from the Rules. The subdivision is eligible for consideration as a Residential Compound.
- 2.6 Ways in Residential Compound subdivisions can be built to lesser design and construction standards than other streets in Acton. They are intended to remain private ways. This

requires a legal framework for the maintenance and ownership of the private way. Furthermore, the Board needs assurances that the Town will not be asked to plow, maintain, or accept the private way in the future.

- 2.7 Proposed lot 2 on the Plan has frontage on Monroe Drive, which is an approved subdivision street under construction. Its acceptance by the Town of Acton is expected within a year or two. At present Monroe Drive is privately owned. Access to it is controlled by its owner. The Applicant indicated at the hearing that they would like to access lot 2 from Monroe Drive.
- 2.8 The Bylaw defines a street for purposes of providing frontage. The part that is relevant to this application and Site states that a street is "a public or private way improved in accordance with a plan approved and endorsed by the Planning Board under the Acton subdivision rules and regulations and the subdivision control law". It follows that the way approved hereunder must remain in an improved condition to function as access to the lots. However, this does not preclude alternate access to lot 2 from Monroe Drive.
- 2.9 The Board solicited comments from various Town departments. Any such comments received are listed in Exhibit 1.4 above. The Board considered these 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.
- 2.10 The Applicant has requested certain waivers from the Rules. See paragraph '3.1 Waivers'.
- 2.11 The Board usually does not grant a waiver from the sidewalk requirements of the Rules (section 9.6), but it does allow, and in the case of Residential Compounds it encourages sidewalks in alternative locations more useful to the applicant and the general public. In determining an equivalent value for off-site sidewalks, the Board has consistently applied construction cost equivalents of \$15.00 per foot for new sidewalks within the subdivision, and \$30.00 per foot for sidewalk additions along a subdivision's existing street frontage. Under the particular configuration of the Site this would result in a \$13,500 value, which appears out of proportion with a two-lot subdivision development.

3 BOARD ACTION

The Board voted on May 10, 2005 (*insert vote results*) to APPROVE the definitive subdivision subject to and with the benefit of the following waivers, conditions, plan modifications, and limitations.

3.1 WAIVERS

- 3.1.1 Waivers from the Rules are granted to allow the recording and construction of the subdivision as shown on the Plan and as further modified in this Decision.

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.

- 3.2.1 Submit an authorization for town entry as required in section 5.2.10 of the Rules.
- 3.2.2 Submit a construction plan for a sidewalk on the east side of Musket Drive between Revolutionary Road (northwest end) and the entrance to the neighborhood club house/pool at 21 Musket Drive, or on the south side of Washington Drive from the current sidewalk end at Coolidge Drive to Musket Drive. See also paragraph 3.3.1 below.

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- 3.2.3 Reconfigure the driveway intersection at the end of the street to allow a 3-point turn of an SU-30 design vehicle.
- 3.2.4 Show the newest configuration of the abutting Sheldon/Morrison lots with accurate ownership notation.
- 3.2.5 Add the curve radii information for the street layout.
- 3.2.6 Add street number 17A Washington Drive for the house on proposed lot 1.
- 3.2.7 Show a street number sign at Washington Drive for both houses.
- 3.2.8 Add permanent property markers between lots 1 and 2, on the property boundary to and between the abutting Link and McShane lots, and where currently stakes demark property corners (STK (F) in two locations).
- 3.2.9 Modify the proposed water line drawings to specify a meter pit and to show any other changes that the Acton Water Supply District (AWD) may require. AWD approval of the Plan shall be submitted in writing prior to Plan endorsement.
- 3.2.10 Submit a private way maintenance agreement and covenant that will assign the responsibility for snow and ice removal and for general maintenance between the owners of the subdivision lots 1 and 2.
- 3.2.11 Submit a private way covenant, enforceable by the Town of Acton, declaring that street approved hereunder shall remain a private way and serve not more than two single family homes, that the owners of lots 1 and 2 shall be responsible for the removal of snow and ice in the street, that the owners of lots 1 and 2 shall be responsible for any general maintenance and upkeep of the street and any associated drainage structures and other utilities; that the owners of lots 1 and 2 shall not petition the Town to accept the street as a public way; and that the owners of lots 1 and 2 shall not petition the Town to provide snow and ice removal services or any other maintenance of the street.
- 3.2.12 Add a Plan note stating that house locations are shown for illustrative purposes only and may vary from what is shown on the Plan.
- 3.2.13 Unless directed otherwise by this decision, the definitive plan shall be modified to comply with all requirements of the Rules, and shall address all departmental comments received by the Board in a manner that resolves any concerns raised therein to the satisfaction of the Board.

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. The Town of Acton may elect to enforce compliance with this decision using any and all powers available to it under the law.

- 3.3.1 The Applicant shall construct a sidewalk on the east side of Musket Drive between Revolutionary Road (northwest end) and the entrance to the neighborhood club house/pool at 21 Musket Drive, or on the south side of Washington Drive from the current sidewalk end at Coolidge Drive to Musket Drive in accordance with a plan approved under paragraph 3.2.2 above. The location shall be decided on where the longest sidewalk segment can be installed for \$8,000, up to the length of the specified segments. Preferably the sidewalk should extend over the entire distance of the selected location. The applicant may exceed the stated cost limit to achieve this. Cost estimates and lengths of sidewalk construction shall be approved by the Board or its designee.

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- 3.3.2 The street approved hereunder shall remain a private way. It shall not be accepted as a public way, nor shall the Applicant or the owners of lots 1-4 file a petition with the Town to accept it as a public way.
- 3.3.3 The street approved hereunder in its entirety shall be maintained by the owners of lots 1 and 2 in accordance with the private way maintenance agreement. This shall include the removal of snow and ice. The Applicant and the owners of lots 1 and 2 shall not petition the Town to provide snow and ice removal services in the street or to provide any other maintenance and upkeep of the street.
- 3.3.4 The street approved hereunder shall not serve more than two residential lots.
- 3.3.5 The street approved hereunder shall at all times be used as primary access to at least one of the lots and shall be maintained in adequate improved condition for such purpose.
- 3.3.6 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 may order the immediate cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.
- 3.3.7 As required under Massachusetts General Laws, 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.
- 3.3.8 Prior to endorsement of the Plan, the Applicant shall provide the Board with a performance guarantee in accordance with Section 6 of the Rules.
- 3.3.9 No work on the Site shall begin prior to the endorsement and recording of the Plan.
- 3.3.10 All work on the Site shall be conducted in accordance with the Rules, except as waived, and the terms of this approval, and shall conform with and be limited to the improvements shown on the endorsed Plan.
- 3.3.11 The installation of water service lines shall be made in compliance with requirements of the Acton Water Supply District.
- 3.3.12 Upon completion of all work as shown on the Plan, and before the final release of any performance guarantee, the Applicant shall submit an as-built plan showing the pavement, drainage, utilities, and other improvements within or related to the street; survey monuments for the entire Subdivision; a surveyor's bound certificate; and certification from a registered engineer that the work has been completed according to the approved Plan.
- 3.3.13 This Decision, the endorsed Record Plan, and the Restrictive Covenant if any, 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.

3.4 LIMITATIONS

The authority granted to the Applicant under this approval 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 Rules and other applicable laws and regulations.
- 3.4.2 This subdivision approval applies only to the Site identified in this decision and to the activity as shown on the Plan.

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- 3.4.3 Other approvals or permits required by law and 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 eight years from the date that this decision has been filed with the Town Clerk. A request to extend said time limits shall be made in writing to the Board at least 30 days prior to said expiration date. The Board reserves its rights 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 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. 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 MGL, Ch. 41, S. 81-U.

Signed on behalf of the Acton Planning Board

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

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 Bowen, Town Clerk	Date
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Copies furnished:

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|---------------------------------------|----------------------------|-------------------------------|
| Applicant/Owner -
certified mail # | Building Commissioner | Health Director |
| Town Clerk | Engineering Administrator | Municipal Properties Director |
| Fire Chief | Conservation Administrator | Town Manager |
| Historical Commission | Police Chief | Acton Water District |
| | Assistant Assessor | |

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