



Planning Board

**TOWN OF ACTON**  
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**DECISION**  
07-03

**Spring Farm Circle**  
Definitive Subdivision (Residential Compound)

January 23, 2007

**APPROVED with CONDITIONS**

Decision of the Acton Planning Board (hereinafter the Board) on the application of Jane A. Gruber (hereinafter the Applicant) for property in Acton, Massachusetts, owned by Benjamin A. and Jane A. Gruber of 105 Summer Street, Acton, MA and Nancy L. Meehan of 107 Summer Street, Acton, MA. The property is located at 105 and 107 Summer Street and shown on the 2004 Acton Town Atlas map F-1 as parcels 110 and 110-1 (hereinafter the Site).

This Decision is in response to an Application for Approval of a Definitive Subdivision Plan entitled "Definitive Subdivision Plan for Spring Farm Circle a Residential Compound Acton, Massachusetts", received by the Acton Planning Department on October 3, 2006, 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 presented the subdivision proposal to the Board at a public hearing on December 12, 2006. Mr. Richard Harrington of Stamski and McNary, Inc. assisted the Applicant with the presentation. The hearing was continued to January 9, 2007 and then closed. Board members Gregory E. Niemyski (Chairman), Christopher R. Schaffner, Ruth M. Martin, Michael C. Densen, and Alan Mertz 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 Plans:

- A plan entitled "Definitive Subdivision Plan for Spring Farm Circle a Residential Compound Acton, Massachusetts" dated October 2, 2006, and revised on January 4, 2007, drawn by Stamski and McNary, Inc. of 80 Harris Street, Acton, MA consisting of five sheets.
- A plan entitled "Conceptual Proof Plan in Acton, Massachusetts", dated 5/2/06, drawn by Stamski and McNary, Inc., consisting of one sheet.

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 August 25, 2006.
- Filing fee.
- A completed Development Impact Report, form DIR.
- Designer's Certificate.
- Certified abutters list.
- Legal Notice of Public Hearing.
- A list of requested waivers.
- A letter authorizing Town entry into the Site to complete the street.
- Copy of the deeds.
- A list of mortgage holders.
- A draft restrictive covenant.
- Drainage and water balance calculations.

1.3 Interdepartmental communication received from:

- Acton Building Commissioner, dated 10/10/06.
- Acton Engineering Administrator, dated 11/6/06.
- Acton Fire Chief, dated 1/9/07.
- Acton Health Director, dated 10/10/06.
- Acton Natural Resources Director, dated 10/30/06 and 12/1/06.
- Acton Planning Department, dated 12/7/06 and 1/5/07.
- Acton Treasurer's Office, dated 10/11/06.
- Acton Tree Warden & Municipal Properties Dir., dated 10/12/06.
- Acton Water Supply District, dated 10/11/06.

1.4 Other:

- Memos received from Geoffrey Hughes, 95 Summer Street, Acton, MA dated 11/22/06 and 12/18/06.
- Decision 06-04, Spring Farm Circle preliminary subdivision approval, dated 6/13/06.

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 proposed subdivision is located within the Residence 2 zoning district.
- 2.2 The northwest corner of lot 1 and a significant portion of lot 2 are located in Groundwater Protection District Zone 2. The remaining areas of the proposed subdivision are located in Groundwater Protection District Zone 3.
- 2.3 The Plan shows the proposed division of approximately 2.85 acres into four residential lots, and a 220-foot long subdivision street, Spring Farm Circle, which intersects with Summer Street. Lot 1 and lot 4 have existing residences on them.
- 2.4 The proposed uses are allowed on the Site in accordance with the Acton Zoning Bylaw (hereinafter the Bylaw), including all overlay district requirements. The proposed lots do comply with the area and frontage requirements of the Bylaw, including all overlay district requirements.
- 2.5 The Applicant proposed to plant trees and shrubs from within the site to provide screening benefits for the abutter Geoffrey Hughes.

- 2.6 The Plan shows limits of clearing on lots. They are shown for illustrative purposes only. Actual limits of clearing may vary.
- 2.7 The Plan shows typical house and driveway locations on lots. They are shown for illustrative purposes only, except as specifically required herein.
- 2.8 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. The Applicant has demonstrated with a "proof plan" that he could build a subdivision street under the otherwise applicable requirements of the Rules. A Residential Compound is less intrusive to the neighborhood, preserves more of the natural environment of the Site, and helps preserve the present character of the neighborhood. The Plan, as modified herein, accomplishes these purposes of the Rules' Residential Compounds option.
- 2.9 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.
- 2.10 The Board solicited comments from various Town departments and has received such comments, which are listed in Exhibit 1.3 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.

### **3 BOARD ACTION**

Therefore, subject to and with the benefit of the following waivers, conditions, plan modifications, and limitations, the Board voted on January 23, 2007 to **APPROVE** the definitive subdivision.

#### **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 Plan sheets shall be certified by a Registered Land Surveyor and Registered Professional Engineer where applicable.
- 3.2.2 Show additional monuments on the Record Plan for Spring Farm Circle and submit the revised Plan to the Acton Engineering Department for approval.
- 3.2.3 Revise the Plan to show screening to be planted as soon as practical during initial construction within the Site between 99 Summer Street and 95 Summer Street (the Hughes property). The screening shall include three trees and three shrubs, type and size to be determined by the Acton Tree Warden. Add a note to the Plan stating that the screening location may be changed by agreement between the Applicant and Mr. Hughes,

and that replacements will be planted if any of the three trees and three shrubs do not survive the first year. Amend General Note 25 on the Plan and Profile Sheet to reference the screening. It shall be understood that the Planning Board or the Town will not enforce this requirement beyond the time of the final release of any performance guarantee.

- 3.2.4 Add a plan or Plan sheet for a sidewalk located along the west side of Willow Street between Kingman Road and Summer Street for a distance of 445 feet, subject to design approval by the Board or its designee; and –
- (1<sup>st</sup> option to pursue): Receipt of sidewalk easements from abutters if needed to avoid the removals of public shade trees; or
- (2<sup>nd</sup> option to pursue): Authorization for the removal of any public shade trees, if needed by the Acton Tree Warden.

Should the Applicant after reasonable efforts fail to obtain sidewalk easements and fail to obtain approval for the tree removals, he shall make a sidewalk fund donation to the Town of Acton in accordance with the Condition 3.3.1 below.

- 3.2.5 The deed for lot 2 shall reference the lot's location in Groundwater Protection Zone 2 and contain a restriction that prohibits the application of lawn pesticides and fertilizers, except for lime and dry lawn fertilizers derived from manure or other organic waste.
- 3.2.6 Revise the Private Way and Maintenance Agreement (Agreement) acceptable to the Board or its designee (here the Acton Planning Department) including, but not limited to the following changes and additions:
- Change the name of the Agreement to "Private Way Covenant and Maintenance Agreement."
  - Update the Plan date in the first paragraph, the Decision number in (9), and the signature dates at the end of the Agreement.
  - In (9)c. of the Agreement, delete the word "other" and add the phrase "or repair" after "maintenance."
  - Attach the operation and maintenance plan for the drainage system to the Agreement and make reference to the Plan in the Agreement.
  - In (2) of the Agreement, restrict the use of Spring Farm Circle to three single-family homes (four single-family homes if lot 4 is included) plus allowed accessory uses.

3.2.7 The Plan shall be modified to address any remaining concerns raised by the Acton Water Supply District (AWD) and AWD approval of the Plan shall be submitted in writing prior to Plan endorsement.

3.2.8 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 If the sidewalk required under Plan Modification 3.2.4 is not feasible without easements from abutters or the removal of public shade trees, and if the Applicant after reasonable efforts fails to obtain said easements or said permission for tree removals, he shall donate to the Town \$13,290.00 for the purpose of designing and constructing sidewalks or bikeways within the Town of Acton, and for acquiring easements and land for the aforesaid purpose. The amount shall be carried in any performance guarantee.
- 3.3.2 Spring Farm Circle shall remain a private way. It shall not be accepted as a public way, nor shall the Applicant or the owners of lots 1-3, and lot 4, if included, file a petition with the Town to accept it as a public way.
- 3.3.3 Spring Farm Circle in its entirety shall be maintained by the owners of lots 1-3, and lot 4, if included, in accordance with the private way maintenance agreement. This shall include the removal of snow and ice. The Applicant and the owners of lots 1-3, and lot 4, if included, shall not petition the Town to provide snow and ice removal services in Spring Farm Circle or to provide any other maintenance and upkeep of Spring Farm Circle.
- 3.3.4 Spring Farm Circle shall not serve more than three residential lots, plus lot 4, if included.
- 3.3.5 Lot 1 shall have its driveway access from Spring Farm Circle not Summer Street.
- 3.3.6 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 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, except for renovations of the house or pool on lot 1, and renovations of the house or septic system on lot 4, if necessary.
- 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 road pavement, drainage, utilities, and other improvements within or related to the street, and survey monuments for the entire Subdivision; a surveyor's bound certification; and a 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, the Private Way Covenant and Maintenance Agreement, 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.
- 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 must be made in writing to the Board at least 30 days prior to 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 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

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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.

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Eva Taylor, Town Clerk

Date

Copies furnished:

Applicant -  
certified mail #  
Town Clerk  
Fire Chief  
Owner  
Historic District Commission

Building Commissioner  
Engineering Administrator  
Conservation Administrator  
Police Chief  
Historical Commission

Health Director  
Municipal Properties Director  
Town Manager  
Acton Water District  
Assistant Assessor

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