

Definitive Subdivision Approval – 10-01  
Michele Circle  
July 20, 2010

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**Planning Board**

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**TOWN OF ACTON**  
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**DECISION**  
10-01

**Michele Circle**  
Definitive Subdivision  
July 20, 2010

APPROVED with Conditions

Decision of the Acton Planning Board (hereinafter the Board) on the application of Walker Realty, LLC, of Lan Drive, Westford, MA (hereinafter the Applicant) for property in Acton, Massachusetts, owned by the Applicant. The property is located at 348-352 Main Street and shown on the 2009 Acton Town Atlas map F-3 as parcels 54, 61, and 61-1 (hereinafter the Site).

This Decision is in response to an Application for Approval of a Definitive Subdivision Plan entitled "Michele Circle", received by the Acton Planning Department on December 18, 2009, pursuant to Massachusetts General Laws, Chapter 41, Section 81-K through 81-GG, and the Acton Subdivision Rules and Regulations (hereinafter the Rules).

The hearing was originally scheduled to begin on February 16, 2010. It was twice continued without discussion due to inclement weather conditions, Board member scheduling conflicts, and Applicant readiness. The Applicant presented the subdivision proposal to the Board at a public

hearing session on May 18, 2010, which was continued once to July 6, 2010. Katie Enright, P.E. of Hancock Associates and Elisabeth A. Ahearn Counsel for Walker Realty, LLC represented the Applicant. At the beginning of the May 18, 2010 hearing session, the Vice Chairman appointed Mr. Chin (associate member) and Ms. Montella (associate member at that time) to sit as full Board members for purposes of hearing and deciding on this application. Board members Mr. Jeff Clymer (Vice Chair), Ms. Kim Montella (full member as of July 1, 2010), and Associate Derrick Chin were present throughout the hearing. Members Mr. Ray Yacouby (Clerk) and Mr. Roland Bourdon III missed the July 6, 2010 hearing session. Both certified pursuant to Ch. 79 of the Acts of 2006 that they viewed and examined a video tape of the missed session. 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 "Definitive Subdivision, Plan Michele Circle, 348, 350, 352 Main Street, Acton, MA 01720, for Walker Realty LLC" dated May 16, 2009 and last revised June 15, 2010 drawn by Hancock Associates of 315 Elm Street, Marlborough, MA 01752, consisting of six sheets.
- 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 12/15/09.
  - Filing fee.
  - A completed Development Impact Report, form DIR.
  - Designer's Certificate.
  - Certified abutters list.
  - Applicant's statement to retain the fee in the street.
  - A list of requested waivers.
  - A letter authorizing Town entry into the Site to complete the street.
  - An authorizing vote of trust, corporation or company.
  - Copy of the deeds.
  - A list of mortgage holders.
  - A locus map.
  - Drainage report and calculations.
- 1.3 Additional information submitted by the Applicant:
  - Letter from Katie Enright, Hancock Associates, dated 04/26/10 documenting plan revisions in response to Town departmental comments with attached Revised Waiver Requests.
  - Letter from Elisabeth A. Ahearn, Walker Realty, LLC, dated 06/18/10 concerning the relocation of an existing easement.
  - Letter from Katie Enright, Hancock Associates, dated 06/23/10 documenting further plan revisions in response to additional Town departmental comments with attached percolation test reports.
  - Letter from Katie Enright, Hancock Associates, dated 07/06/10 regarding the water balance calculation.
- 1.4 Interdepartmental communication received from:
  - Acton Building Commissioner, dated 12/28/09.
  - Acton Engineering Department, dated 01/15/10 and 05/18/10.

- Acton Fire Chief, dated 05/14/10.
- Acton Health Department, dated 01/25/10, 05/10/10, and 06/29/10.
- Acton Historical Commission, dated 01/13/10.
- Acton Natural Resources Director, dated 07/02/10 with attachment.
- Acton Planning Director, dated 02/08/10, revised 05/18/10, and 6/30/10.
- Acton Treasurer's Office, dated 01/06/10 and 02/11/10.
- Acton Tree Warden & Municipal Properties Dir., dated 12/28/09, 05/18/10 and 07/01/10.
- Acton Water Supply District, dated 12/30/09 (2), and 06/28/10.
- Acton Sidewalk Committee, dated 01/15/10.

1.5 Hearing continuation and decision extension agreements dated February 15, 2010, April 13, 2010, and July 6, 2010.

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 apparent purpose of the proposed subdivision, as the Applicant confirmed during the public hearing, is to obtain definitive subdivision plan exemption pursuant to M.G.L. Chapter 40A, Section 6 from zoning changes that occurred after the preliminary plan filing on May 22, 2009, or that might occur in the future for a period of eight years following the endorsement on the Plan of this approval. The application for approval of the definitive plan followed the preliminary plan application within seven months as required by Chapter 40A, Section 6 to maintain the exemption.
- 2.2 The proposed subdivision is located within the Residence 2 (R-2) zoning district and Zone 4 of the Groundwater Protection District.
- 2.3 The Plan shows the proposed division of approximately 2.43 acres into two single-family residential lots, a 120-foot long subdivision street (plus turn-around), proposed Michele Circle, which intersects with Main Street.
- 2.4 At its intersection with Main Street, propose Michele Circle intersects and incorporates the Isaac Davis Way easement. The result is a slight relocation of the easement.
- 2.5 The proposed use, two single-family homes, is 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.
- 2.6 The Plan shows a +/-265 feet long sidewalk within the proposed subdivision street in accordance with the requirements of the Rules. The Board determines the value of the proposed sidewalk within Michele Circle to be \$6,625.00 (\$25.00 per foot). However, the sidewalk will provide little public benefit. The Board has previously accepted and approved alternative sidewalk locations and donations to the Town's sidewalk fund.
- 2.7 The Plan shows typical house and driveway locations. They are shown for illustrative purposes only. Actual driveway locations may vary, except for specific requirements of this Decision and where compliance with section 8.1.18 of the Rules is required. House locations may shift within the parameters of setbacks required under the Bylaw.
- 2.8 As of the date of this decision the applicant is in arrears on property taxes owed to the Town.

- 2.9 The Board solicited comments from various Town departments and. 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. These are discussed in section '3.1 Waivers' below.

### **3 BOARD ACTION**

Therefore, subject to and with the benefit of the following waivers, conditions, plan modifications, and limitations, the Board voted on July 20, 2010 to APPROVE the definitive subdivision.

#### **3.1 WAIVERS**

- 3.1.1 The Applicant has requested several waivers from the Rules. Some of requested waivers have been rendered mute during the hearing process; the applicant submitted revised plans and documents that show compliance with the relevant sections of the Rules. The following addresses the remaining requested waivers:
- 3.1.1.1 Waiver from Section 5.3.9 (street address numbers for the houses). The waiver is NOT GRANTED. Lot 1 shall be identified as #2 Michele Circle, and lot 2 shall be identified as #6 Michele Circle.
- 3.1.1.2 Waiver from Section 5.3.18 (elevations referenced to benchmarks based on NGVD of 1929). The waiver is NOT GRANTED. The Plan shall be revised to comply with this requirement of the Rules.
- 3.1.1.3 Waiver from Section 8.1.13 Table II (vertical design standards). The waiver is GRANTED to allow the vertical curves as shown on the Plan: crest vertical curve K=5 (15 minimum per Rule Table II); sag vertical curve K=10 (15 minimum per Rule Table II). The proposed street is proposed to serve two single-family homes and is +/-120 feet long between its intersection with Main Street and the cul-de-sac turnaround. Traffic volumes and speed will be very low. Therefore, no public interest is served by insisting on compliance with this section of the Rules so long as the assumptions for low traffic volume and speed remain. This waiver is granted subject the limitation that Michele Circle shall not serve more that two single-family homes, including accessory uses that the Bylaw allows.
- 3.1.2 The Plan does not comply with section 8.1.18.2 (e) of the Rules (60-foot minimum straight approach into cul-de-sac turnaround). It shows +/-30 feet. Although no waiver was requested, the Board hereby GRANTS a waiver from this requirement to allow the configuration as shown on the Plan. The reasons and conditions for this waiver are the same as stated in 3.1.1.3 above.
- 3.1.3 The strip of lot 2 that reaches around the north side of Michele Circle technically constitutes a reserve strip, which is not allowed under section 8.1.5 of the Rules. The Board hereby GRANTS a waiver from this section. The strip of land does not negate or eliminate the existing Isaac Davis Way easement to the adjoining property, which is sufficient for access.
- 3.1.4 The Board requests that the Applicant, in lieu of constructing the sidewalk within the proposed subdivision street, consider constructing more sidewalk along the north side of Main Street towards Hayward Road for a value approximately equal to \$6,625.00; or donating \$6,625.00 to the Town's sidewalk fund.  
A waiver of section 9.6.1 of the Rules shall be considered GRANTED following receipt of either (1) a requisite sidewalk plan for Main Street at the time of and for Plan endorsement, or

(2) receipt by the Board of the requisite donation to the Town's sidewalk fund prior to the issuance of any building permit on any of the lots shown on the Plan.

### **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 Show all modifications required under section 3.1 Waivers above.
- 3.2.2 Smooth the transition from the existing to the proposed sidewalk along Main Street in order to accommodate a sidewalk plow.
- 3.2.3 Relocate the sidewalk ramp to pavement at Michele Circle to run parallel to Main Street.
- 3.2.4 Subject to approval by MassDOT Highway Division, relocate the existing crosswalk on Main Street from the Route 2 WB off-ramp to the intersection with proposed Michele Circle.
  - 3.2.4.1 The relocated crosswalk shall be painted with 1-foot wide lines running perpendicular to Main Street and white cross hatching in between; the minimum width of the crosswalk shall be 5 feet between the centers of the perpendicular lines.
  - 3.2.4.2 Add an additional ramp to pavement at Michele Circle perpendicular to Main Street for the relocated crosswalk, and add a ramp to pavement for the crosswalk on the opposite side of Main Street.
  - 3.2.4.3 Install crosswalk warning signs per MUTCD.
- 3.2.5 Show the existing gate at Isaac Davis Way.
- 3.2.6 Show a 10-foot wide utility construction and slope easement around the entire perimeter of proposed Michele Circle.
- 3.2.7 Add a construction plan note requiring that any fill used shall be free of hazardous materials and construction debris.
- 3.2.8 Remove the proposed fire call box from the Plan.
- 3.2.9 Show construction details and plan notes demonstrating compliance of the fire hydrant installation with the specifications of the Acton Fire Department (AFD). AFD approval of the Plan shall be submitted in writing prior to Plan endorsement
- 3.2.10 Show construction details and plan notes demonstrating compliance of the municipal water service installation with the specifications of the Acton Water District (AWD) (see 12/30/2009 five-paragraph memo from District Manager). AWD approval of the Plan shall be submitted in writing prior to Plan endorsement.
- 3.2.11 Provide a Conservation Commission Order of Conditions with evidence of approval for the proposed detention basin and drainage structures shown on the Plan within the 100-foot wetlands buffer. If the Conservation Commission previously approved a basin and drainage structures for another proposed use on the Site in the same general location, provide evidence from the Conservation Commission that the basin and drainage structures shown on the Plan conform to the prior Order of Conditions.

- 3.2.12 Specify on the Plan that the existing stonewalls shall be preserved – in their entirety where they are located within or along the Main Street layout, and where possible everywhere else within the Site.
- 3.2.13 Clearly delineate on the record plan sheet the existing MassDOT “no access” restriction across the southerly portion of the Site’s frontage on Main Street.
- 3.2.14 The Board invokes section 8.1.8 of the Rules prohibiting any curb cuts for driveways or other vehicular access to the Site from Main Street except for the proposed Michele Circle subdivision street. A conspicuous “No Access Restriction” to that effect shall be added to the record plan sheet.
- 3.2.15 Add a conspicuous note on the record plan sheet to the effect that Michele Circle shall not serve more than two single-family homes including accessory uses allowed under the Acton zoning bylaw.
- 3.2.16 All Plan sheets submitted for endorsement shall have the requisite professional designer stamps, P.E., R.L.S. and R.L.A. as applicable.
- 3.2.17 Add a Plan note stating that houses and driveways are shown for illustrative purposes only, and that (1) driveway locations may vary except where compliance with section 8.1.18 of the Rules is required, and (2) house locations may shift within the parameters of setbacks required under the Acton zoning bylaw.
- 3.2.18 Add a Plan note stating that any limits of clearing shown on the Plan are not required under the subdivision approval, and that any tree plantings or landscaping shown on the plan are not required under the subdivision approval except to the extent that such planting and landscaping is required under the Rules. If such limits of clearing and landscaping are required by another entity having jurisdiction the note shall clarify that fact.
- 3.2.19 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 street shall not serve more than two single-family homes, including accessory uses allowed under the Bylaw.
- 3.3.2 There shall be no curb cuts for driveway or other vehicular access from Main Street to lots 1 and 2. All property deeds to lots 1 and 2 shall contain this “No Access Restriction”.
- 3.3.3 Prior to the issuance of any building permits on any of the lots shown on the Plan, the Applicant shall obtain MassDOT – Highway Section approval for the proposed sidewalk within the State layout of Main Street.
- 3.3.4 The Board invites the Applicant to submit future Plan modifications for Michele Circle to become a private street with less extensive street improvements consistent with section 10 of the Rules (Optional Residential Compound).
- 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 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.
- 3.3.6 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.
- 3.3.7 Prior to endorsement of the Plan, the Applicant shall provide the Board with a performance guarantee in accordance with Section 6 of the Rules.
- 3.3.8 No work on the Site shall begin prior to the endorsement and recording of the Plan.
- 3.3.9 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.
- 3.3.10 The installation of water service lines shall be made in compliance with requirements of the Acton Water Supply District.
- 3.3.11 Until such time as the streets may be accepted as public ways by the Town of Acton, the responsibility for plowing and maintenance of all streets and appurtenances in the proposed subdivision shall be that of the Applicant, not the new homeowners.
- 3.3.12 Following acceptance of the streets, the Town's maintenance responsibilities will follow standard procedures for Town streets and ways and shall be limited to the improvements located within the street layouts and associated with their function as a street, and to any improvements associated with street drainage located within designated utility easements. The maintenance of all private utilities and services located within or outside the street layout or said easements and of any private drainage facilities feeding into drainage structures within the street layouts or easements shall not be the responsibility of the Town.
- 3.3.13 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.
- 3.3.14 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.
- 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 180 days 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 8 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.

DRAFT

**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.

The Town of Acton Planning Board

\_\_\_\_\_  
Jeff Clymer, Vice Chairman

\_\_\_\_\_  
Roland A. Bourdon, III

\_\_\_\_\_  
Kim Montella

\_\_\_\_\_  
Ray Yacouby

\_\_\_\_\_  
Derrick Chin (Associate)

(or)  
Signed on behalf of the Acton Planning Board

\_\_\_\_\_  
Roland Bartl, AICP, Planning Director  
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 Taylor, Town Clerk

\_\_\_\_\_  
Date

Copies furnished:

Applicant -  
certified mail #  
Town Clerk  
Fire Chief  
Owner  
MAGIC (DRI only)

Building Commissioner  
Engineering Administrator  
Conservation Administrator  
Police Chief  
Historical Commission  
Historic District Commission

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

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