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Definitive Subdivision Approval – 11-03
Duggan Farm
December 6, 2011



Planning Board

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DECISION

11-03

Duggan Farm

Definitive Subdivision (*Residential Compound*)
December 6, 2011

APPROVED with CONDITIONS

Decision of the Acton Planning Board (hereinafter the Board) on the application of Comfort Homes Inc. (hereinafter the Applicant) for property in Acton, Massachusetts, owned by Hobbyhorse LLC, located at 314 Arlington Street and shown on the Acton Town Atlas map F-2A as parcel 123 (hereinafter the Site).

The Application is for Approval of a Definitive Subdivision Plan entitled "Duggan Farm", received by the Acton Planning Department on September 2, 2011, pursuant to Massachusetts General Laws, Chapter 41, Section 81-K through 81-GG, and the Acton Subdivision Rules and Regulations (hereinafter the Rules).

The public hearing took place on October 18, 2011. Mr. John E. Boardman, P.E. of Hancock Associates and Attorney Douglas C. Deschenes of Deschenes & Farrell, P.C. represented the Applicant at the hearing. Board members Ryan Bettez (Chairman), Jeff Clymer (Vice Chair),

Roland Bourdon, Kim Montella, Ray Yacouby, and Derrick Chin 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 "Definitive Subdivision Plan, Duggan Farm, Residential Compound" dated 8/22/11, drawn by Hancock Assoc. and consisting of 9 sheets.
- 1.2 Supplemental items and documentation required by the Rules or otherwise provided, consisting of:
 - A properly executed Application for Approval of a Definitive Plan, form DP, dated 9/1/11.
 - Filing fee.
 - A completed Development Impact Report, form DIR.
 - Aerial Photograph.
 - Designer's Certificate.
 - Certified abutters list.
 - A statement 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 deed.
 - A list of mortgage holders.
 - Stormwater report and calculations.
 - Application cover letter from Mr. Deschenes, dated 9/1/11.
- 1.3 Interdepartmental communication received from:
 - Acton Building Commissioner, dated 09/14/11.
 - Acton Engineering Department, dated 10/14/11.
 - Acton Fire Chief, dated 10/07/11.
 - Acton Health Department, dated 10/07/11.
 - Acton Planning Director, dated 10/07/11.
 - Acton Finance Department, dated 09/09/11.
 - Acton Tree Warden & Municipal Properties Director, dated 09/23/11.
 - Acton Water Supply District, dated 10/07/11.
 - Acton Sidewalk Committee, dated 09/15/11.

Exhibits 1.1 and 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 Site is located within the Residence 2 (R-2) zoning district and the Affordable Housing Overlay District (Sub-District B). The northerly half, or so, is located in Zone 4 of the Groundwater Protection District, the southerly half in Zone 3.
- 2.2 A drainage ditch along the easterly Site boundary generates various wetlands buffers and setbacks under State and local law.

- 2.3 The Site is mostly open grassland with a few isolated trees scattered throughout. A line of trees and shrubs delineates most of the Site's perimeter.
- 2.4 The Plan shows the proposed division of the approximately 2.17 acre Site into 3 residential lots and a 210-foot long subdivision street, proposed Duggan Way, which intersects with Arlington Street.
- 2.5 There is already a Duggan Road in Acton.
- 2.6 The existing house is to be demolished.
- 2.7 The proposed uses, three single-family dwellings, 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.
- 2.8 The Plan shows limits of clearing on lots. They are shown for illustrative purposes only. Actual limits of clearing may vary, except for specific requirements of this Decision.
- 2.9 The Plan shows typical house and driveway locations on lots. They are shown for illustrative purposes only. Actual driveway locations may vary, except for specific requirements of this Decision. House locations may shift within the parameters of setbacks required under the Bylaw.
- 2.10 The applicant proposes on the Plan the extension of the Arlington Street sidewalk to the proposed subdivision street from its present end easterly at the driveway for 300 Arlington Street, a distance of approximately 270 feet. This satisfies the sidewalk requirement of the Rules.
- 2.11 The design of the proposed subdivision street is intended for approval under Section 10 of the Rules - Optional Residential Compound, which implies waivers from Sections 8 and 9 of the Rules. The Applicant has requested such waivers. 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.
- 2.12 Granting the requisite waivers from Sections 8 and 9 of the Rules is in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law for the following reasons:
 - a) A Residential Compound as proposed for the proposed three new residences is less intrusive to the neighborhood;
 - b) It helps preserve the present character of the neighborhood, especially as viewed along Arlington Street;
 - c) It preserves more of the natural environment of the Site.
- 2.13 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 ways. Furthermore, the Board needs assurances that the Town will not be asked to plow, maintain, or accept the private way in the future.
- 2.14 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.

- 2.15 Under Massachusetts Law property taxes on the land must be paid prior to recording of a definitive plan.

3 BOARD ACTION

Therefore, subject to and with the benefit of the following waivers, conditions, plan modifications, and limitations, the Board voted unanimously on December 6, 2011 to APPROVE the definitive subdivision.

3.1 WAIVERS

- 3.1.1 Waivers from the Rules are granted, including those specifically requested, to allow the recording and construction of the subdivision as shown on the Plan and as further required to be 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 by 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 On the record plan sheet (3):
- label the existing house as "to be removed";
 - denote the minimum lot width as defined in the zoning bylaw for proposed lot 3;
 - remove the "Chairman" notation from the Planning Board signature block;
 - add note per SRR, section 5.3.13 (supplemental information/data part of approval); and
 - add easements for all the drainage components (rain gardens, swales, etc.).
- 3.2.2 On all plan sheets (as applicable):
- change the street name to one that is dissimilar to an existing street name in Acton (name subject to approval by the Fire and Police Departments);
 - add street addresses for each lot.
- 3.2.3 Specify a "private way" street sign, affixed to or combined with the street name sign that is MUTCD (Manual of Uniform Traffic Control Devices) compliant.
- 3.2.4 Smooth the sidewalk bends in front of #'s 300 and 306 Arlington Street to ease sidewalk snow removal, and indicate on the plan the preservation or relocation of landscaping, mailboxes, stonewall, and other features in the front of #'s 306 and 310 Arlington Street in coordination with the owners of these two homes.
- 3.2.5 Add plan notes stating that:
- the binder shall be exposed to one winter season before the application of the wearing course;
 - the centerline of the street shall be monumented at all points of curvature and tangency using magnetized masonry nails in the final course of pavement;
 - no permanent monuments shall be installed until all construction is completed;

- all existing perimeter tree lines shall be preserved to the largest extent possible; only selective clean-up, pruning, trimming, and cutting shall be allowed that does not compromise the integrity of the tree line serving as vegetated buffer between the subdivision and abutting properties;
 - existing solitary trees in the open field area shall be preserved wherever possible;
 - the removal or relocation of any trees or shrubs within the Arlington Street layout shall require the approval of the Acton Tree Warden; a hearing may be required for any removals.
- 3.2.6 Add a detail for the proposed wheelchair ramps.
 - 3.2.7 In the Stormwater Report include on the post-development watershed plan the estimated watershed area for the culvert at +/-STA 100, and re-evaluate and adjust the design as needed to ensure that this culvert will avoid puddling on the adjacent property.
 - 3.2.8 Re-figure the calculations and adjust the design as needed for the rain gardens storage volumes to be consistent between plan and drainage report.
 - 3.2.9 The Site grading seems to contradict the proposed flow pattern from rain gardens via grass swales to the drainage ditch along the property line. Re-examine the surface drainage system approach and adjust as needed.
 - 3.2.10 Provide construction standards and details for the rain gardens, including planting specifications.
 - 3.2.11 Demonstrate that there is at least a 2' separation from the bottom of all drainage structures to the seasonal high groundwater level.
 - 3.2.12 Where the sidewalk must be located adjacent to the street specify in a detail a high profile style curb.
 - 3.2.13 Show spot grades along Arlington Street to ensure that no puddles will be created after the new street and sidewalks are installed. Add a plan note stating that any puddling that may occur shall be mitigated in consultation with the Acton Engineering Department.
 - 3.2.14 Specify on the plan a temporary construction entrance that creates a water barrier between Arlington Street and the Site.
 - 3.2.15 Show on the plan temporary sediment basins to control runoff during construction until the drainage system is installed.
 - 3.2.16 Reconfigure the driveway and access configuration as directed by the Fire Department to ensure fire and emergency vehicle accessibility to the house on proposed lot 2.
 - 3.2.17 Submit a private way maintenance agreement and covenant, enforceable by the Town of Acton, that (1) assigns the responsibility for snow and ice removal and for general maintenance to the owners of the subdivision lots 1 through 3; and declares and covenants that (2) the street as renamed shall remain a private way; (3) the street as renamed shall not serve more than three single family homes; (4) the owners of lots 1 through 3 in the subdivision shall be jointly responsible for the removal of snow and ice in street; (5) the owners of lots 1 through 3 in the subdivision shall be jointly responsible for any general maintenance and upkeep of the street and any associated and built-in drainage structures and other utilities; (6) the owners of lots 1 through 3 in the subdivision shall not petition the Town to accept the street as a public way; and (7) that the owners of lots 1 through 3 in the subdivision shall not petition the Town to provide snow and ice removal services or any other maintenance of the street.

- 3.2.18 The aforesaid private way maintenance agreement and covenant shall also include the Stormwater Operation & Maintenance Plan as presented in the Stormwater Report of the application and as may be modified as a result of this decision together with a sample page for an inspection/repair/maintenance log.
- 3.2.19 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 (see AWD 10/07/11 comment letter).
- 3.2.20 All fire hydrants, if any, shall be installed in accordance with the specifications of the Acton Fire Department (AFD) and AFD approval of the Plan shall be submitted in writing prior to Plan endorsement.
- 3.2.21 Add a Plan note stating that houses and driveways are shown for illustrative purposes only and that driveway locations and house locations may vary from what is shown on the Plan.
- 3.2.22 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 remain a private way. It shall not be accepted as a public way, nor shall the Applicant or the owners of lots 1 through 3 file a petition with the Town to accept it as a public way.
- 3.3.2 The street in its entirety, including all drainage facilities, shall be maintained by the owners of lots 1 through 3 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 through 3 in the subdivision 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.
- 3.3.3 The street shall not serve more that three single-family residential lots.
- 3.3.4 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 may order the immediate cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.
- 3.3.5 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.

- 3.3.6 Prior to endorsement of the Plan, the Applicant shall provide the Board with a performance guarantee in accordance with Section 6 of the Rules.
- 3.3.7 No work on the Site shall begin prior to the endorsement and recording of the Plan.
- 3.3.8 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.
- 3.3.9 The installation of water service lines shall be made in compliance with requirements of the Acton Water Supply District (see AWD 10/07/11 comment letter).
- 3.3.10 Upon completion of all work as shown on the Plan, and before the final release of any performance guarantee, the Applicant shall submit a certified as-built plan in accordance with Section 10.1.4 of the Rules.
- 3.3.11 This Decision, the endorsed Record Plan, the private way maintenance agreement and covenant, 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 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, § 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, § 81-U.

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 Szkaradek, Town Clerk

Date

Copies furnished:

Applicant/Owner -
certified mail #
Town Clerk
Fire Chief
Historical Commission

Building Commissioner
Engineering Administrator
Conservation Administrator
Police Chief
Assistant Assessor

Health Director
Municipal Properties Director
Town Manager
Acton Water District

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