



Town of Lexington PLANNING BOARD

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GRANT OF SPECIAL PERMIT 71-79 EAST STREET

Date of Application: August 23, 2011
Dates of Hearing: September 21, 2011
October 19, 2011
Date of Decision: October 19, 2011
Date Filed: October 21, 2011

APPLICATION INFORMATION

The site, containing approximately 4.2± acres, is located at 71-79 East Street (Lots 6 and 7 of Assessor's Map 62), Lexington, Massachusetts. The application and plan depict the two existing parcels to be divided into 11 parcels; nine of which will be buildable lots under the provisions of a Public Benefit Development section of the Zoning Bylaw. One unbuildable parcel, Parcel 1, is to be a private way for access to the residential dwelling units. The other unbuildable parcel, Parcel 2, is to be common open space for the use by the development's residents, and consists of approximately 1.45 acres. The existing single-family house and barn at 71 East Street will occupy two of the nine buildable lots, while seven new single-family detached homes will occupy the remaining lots (the existing ranch at 79 East Street is to be demolished); the barn, which is presently part of the 71 East Street property, will be renovated and transformed into an affordable housing unit and located on proposed Lot H. In accordance with the Public Benefit Development Standards all units are subject to gross floor area and impervious surface coverage limitations.

DECISION

The Planning Board hereby determines that the subject property is a proper parcel to be developed as a Public Benefit Development, as described under §135-45D of the Lexington Zoning By-Law and that it meets all requisite criteria for such approval. It therefore **GRANTS** a Special Permit with Site Plan Review for the subdivision and development in accordance with the plans, terms, and conditions stated below.

FINDINGS & DETERMINATIONS

The plans and other submission material were reviewed by the Planning Board, and the Engineering and Planning staff. Throughout its deliberations, the Planning Board has been mindful of the statements of the

applicants and their representatives, and the comments of the public, all as submitted or made at the public hearing.

The Planning Board finds and determines that the proposed development meets the criteria, objectives, and standards set forth in §135-12B. Beyond those standards, the Planning Board must also determine that the proposed development is consistent with standards and criteria specific to those for a special permit residential development, enumerated in §135-48C of the Zoning By-Law. The Planning Board has considered all of these criteria and will impose conditions on its approval.

Specific Findings & Determinations, per §135-48C

The Planning Board grants the special permit with site plan review for a Public Benefit Development because it has determined that the proposed development is consistent with the standards expressed in §135-48C that are applicable to this project, specifically:

1. **Open Space.** The proposed development includes 63,543± SF of open space, which exceeds the Zoning Bylaw's open space requirement of 33% of the development tract. It contains several mature trees, increases the visual appearance of the development, and is readily accessible and usable to the future residents.
2. **Building Disposition.** The proposed dwelling envelopes have been sited in such a manner to create complementary relationships with each other as well as the abutting homes. The proposed elevation of the dwelling on Lot A facing East Street will be similar to that presented to the Planning Board at the public hearing, in order to preserve the existing rhythm along East Street, but accessed via the private way. The setbacks for the other structures were decreased in order to facilitate a more pedestrian-scaled streetscape experience within the subdivision.
3. **Visual Impacts.** The proposed development is designed to screen and minimize the impacts associated with the development using the existing vegetative screening around the perimeter of the site.
4. **Connectivity.** This site does not afford the Town an opportunity to enhance its system of foot or bicycle paths.
5. **Multi-Family Building Design.** There are no proposed multi-family homes proposed within this development.
6. **Common Facilities.** The Applicant has acknowledged its responsibility to create a Home Owner's Association, or a series of legal restrictions and responsibilities imposed on the owners of the subdivision's dwelling units, which will make the lot unit owners responsible for the operation and maintenance of the open space, the private way and its related infrastructure, notably the drainage system. The decision is conditioned to ensure this.
7. **Multi-modal Access.** The Board determined that this project was not of sufficient size to require the common drive design to accommodate local transportation services.
8. **Sustainability.** As a Public Benefit Development the project generally reduces its development impact within the tract when compared to a conventional subdivision of an equal number of units. In particular this project retains two existing structures (the farmhouse and barn) as opposed to the conventional alternative which would have removed and replaced them. Land disturbance

and tree removal are similarly less intensive than a conventional alternative, with siting that avoids trees and utilizes existing natural drainage features of the site.

9. **Public Benefit.** The Board also believes that the inclusion of the affordable unit justifies the density bonus as described in §135-45D for a public benefit development. This unit must be included on the Commonwealth's Subsidized Housing Inventory, which ensures that this development does not adversely affect the community's percentage vis-à-vis MGL Chapter 40B.

WAIVERS

It is implicit and understood that in a Public Benefit Development many of the requirements contained in the Planning Board's *Development Regulations* for a conventional subdivision layout and design of ways and lot platting do not apply. Therefore, in accordance with §175-30 of its *Development Regulations*, the Board waives strict compliance with the specific provisions, listed below, that pertain to conventional subdivisions, as strict compliance does not serve the public interest and would be inconsistent with the creation of a Public Benefit Development and the intent and purpose of the Board's rules.

Citation(s)	Required standard	Explanation
175-11A.(3)(a)[7]	The proposed distance, in feet, between buildings;	Only proposed building envelopes are shown on the plan. Proposed building envelopes will be separated by a minimum of twenty (20') feet from one another.
175-11A.(3)(a)[9] 175-32F.(1)(c)	If applicable, a metes and bounds description;	Not applicable, as the metes and bounds description for each lot and parcel is shown on the Property Rights Plan.
175-11A.(4)(a) 175-11A.(7)(b)	The location of existing and proposed new buildings;	Proposed building footprints are omitted to provide a reasonable amount of flexibility in the design of the proposed buildings.
175-11A.(5)(a)[1] 175-11A.(5)(a)[2]	Street layout and profile plans.	The bearings and length of the boundary of the private way (Parcel 1) are noted on the Property Rights Plan and are to a level of detail of common engineering practice, but not to the degree of accuracy as required by the Regulations.
175-11A.(5)(a)[6]	Sight lines for entering and merging traffic at street intersections and driveway intersections and other necessary data pertaining to traffic study.	Because the private way is relatively straight and does not contain excessive topographic relief and the anticipated travel speed is less than 25 mph, no sight line or safety issues with the proposed driveways are anticipated.
175-44C.(4)(a)	Easements for utilities shall be at least 20 feet wide.	A 10-foot wide easement has been proposed for the water main loop back to East Street. Ten (10') feet is adequate for access and repair of the water line if needed.

Citation(s)	Required standard	Explanation
175-44C.(7)(a)[1] 175-44C.(8)	Bounds. Along each right-of-way line at all intersections, angle points, points of change in direction or curvature of streets, and at the two corners of each lot that abuts the right-of-way;	Bounds have been proposed to be installed where the boundary of the private way (Parcel 1) intersects with a boundary line associated with a proposed lot. This will enable homeowners to establish side boundary lines with reference to the private way.
175-45E.(1)	Right-of-Way width (50-feet) Pavement width (24-feet)	Given the very low average daily traffic volume anticipated on the private way, minimizing its footprint is integral to the project.
175-45E.(1)	Sidewalk width (5-feet)	The Project proposes a 4-foot wide porous footpath on one side of the Private Driveway, not a sidewalk.
175-45E.(4)	Circular turnaround	The proposed private way is a "tear drop" shaped one-way turnaround that has been adequately designed for two-way emergency vehicle movement.
175-47D.(2)	Street lighting	The Project will not produce enough vehicular or pedestrian traffic to warrant street lighting.
175-55D(6)(b)	Issuance of Certificate of Occupancies	As some dwellings will be complete prior to the completion of the entire development, the Board waives, when provided surety, the need to complete development before a Certificate of Occupancy may issue

TERMS & CONDITIONS OF APPROVAL

General Terms

1. The entire tract of land and buildings to be constructed shall not be used, sold, transferred, or leased except:
 - a. As granted by this Decision;
 - b. As shown on the Definitive Site Development Plan, referenced above; and
 - c. In accordance with subsequent approved plans or amendments to this Decision.
2. If any amendment is sought to this Decision all relevant plans and information must be submitted as required by the applicable rules.
3. Each residential deed shall contain the following provision: "The construction and operation of the development is governed by a Special Permit issued by the Lexington Planning Board on October 19, 2011, a copy of which is available for inspection at the Town Clerk's Office, Town Office Building, Lexington."

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4. The Town of Lexington shall not be responsible for the operation or maintenance of the proposed private way. The developer's or the successors' obligations resulting from the legal restrictions and requirements imposed on each homeowner, at its expense, shall be responsible for the maintenance and the associated infrastructure in the private way.
5. The terms and conditions of this decision must be enforced by the residential homeowners to the extent necessary to comply, including if necessary any proceeding at law or in equity against any person or persons violating or attempting to violate any such condition or restriction, either to restrain the violation or to recover damages. If the residential homeowners, or any association established by them, fail to enforce said conditions and/or restrictions, any one owner, or the Town of Lexington, may bring a proceeding at law or in equity against any person, persons, or association in violation thereof to enforce compliance with said conditions and/or restrictions. Each deed or any association instrument, as applicable, shall contain a provision with the foregoing language therein.
6. No site preparation work or construction shall commence until the Planning Department has confirmed in writing that the following conditions have been satisfied:
 - a. The approved perimeter Limit of Work (LOW) line is clearly marked with construction fencing, hay bales, silt fencing, or approved substitute, as appropriate. Construction activity outside the LOW is strictly prohibited, except to allow for minor landscaping activities when approved by the Planning Department in advance. All protective fencing and LOW lines shall be maintained until all construction is complete.
 - b. Trees slated for preservation are protected from damage or loss by construction activities by the use of construction fencing or protective barricades. Such controls shall be located according to one of the following methods:
 - i. At the drip line of the tree; or
 - ii. From the trunk at a distance of one foot for each inch of trunk diameter; or
 - iii. From the trunk at a distance of five times the diameter of the trunk.
7. No work, including site preparation, land disturbance, construction, and redevelopment, shall commence unless and until pollution prevention, erosion and sediment controls are in place. If and when applicable, the Stormwater Pollution Plan required by the National Discharge Elimination System Construction General Permit Program, shall be implemented until the site is fully stabilized.
8. Hours of construction. No construction activity on the property which causes noise, vibrations, glare, dust, debris or other detrimental impact, and is perceptible on, or affects, any adjacent lots, shall take place prior to 7:00 a.m. or after 7:30 p.m.
9. This Decision is not intended to interfere with, abrogate or annul any other local bylaw, rule or regulation, statute, or other provision of law.

Special Conditions

1. The following sheets of the Plan shall be recorded with the decision (and when required, registered with the Land Court):
 - a. The Property Rights and Dimensional Standards Plan; and
 - b. The Site Construction Plan.
2. Tree Removal Mitigation. In order to satisfy the provisions of the Town's Tree Bylaw the Board imposes the following to mitigate the anticipated removal of protected trees from the site:
 - a. The replanting of 50% of the caliper inches of removed, protected trees; or
 - b. A contribution to the Tree Fund, such contribution shall be \$50 per DBH inch of protected tree removed not already mitigated as per Special Condition 2a above; or
 - c. Some combination of the above.
3. All conveyances of deeds must include the maximum gross floor area and impervious surface limits associated with each lot, subject to the prior approval of the Planning Department staff.
4. The applicant, at its own expense, shall be responsible for ensuring that the affordable unit gets included on the state's Subsidized Housing Inventory.
5. No building permit shall be issued for new construction until the Planning Department indicates that Town counsel has approved the final form of the following documents:
 - a. The various utility maintenance easements; and
 - b. The homeowner's association (or similar entity as described above), including the operation and maintenance responsibilities requirements for the private stormwater facilities.
6. No certificate of occupancy permit shall be issued for any new dwelling until the Planning Department indicates that:
 - a. The final grading and landscaping of the parcel is completed, as demonstrated by an as-built plan. Provided, the Planning Department may accept security sufficient to ensure the performance of this condition, in accordance with §175-56B(9); and
 - b. The DPW has received the appropriate sewer and water tie-in information on the unit for which a CO is sought; and
 - c. The record drawings (as-builts) of the sewer and water mains have been provided to the Department of Public Works (DPW), unless waived, in writing, by the DPW Director.

RECORD OF VOTE

The following members of the Planning Board vote to grant a special permit, subject to the above-stated terms and conditions:

_____	_____
_____	_____

Copy of Decision to:

Applicant (by Certified Mail)
Board of Health
Conservation Commission
Police Chief
Director of Public Works

Town Clerk
Building Commissioner
Fire Chief
Town Assessor
Revenue Officer