



*Town of Lexington*  
PLANNING BOARD

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**GRANT OF SPECIAL PERMIT**  
**1377 MASSACHUSETTS AVENUE**

Date of Application:	April 5, 2011
Dates of Hearing:	June 8, 2011 July 13, 2011
Date of Decision:	July 13, 2011

**APPLICATION INFORMATION**

The site, containing approximately 2.8 acres, is located at 1377 Massachusetts Avenue (Lots 64 and 65 of Assessor's Map 39), Lexington, Massachusetts. This Decision is accompanied and augmented by a Definitive Site Development Plan entitled "1377 Massachusetts Avenue Definitive Subdivision Plan Set," dated April 5, 2011, revised through July 13, 2011. The plan was prepared by Meridian Associates, Incorporated, on behalf of the applicant, the Sheldon Corporation. The application and plan depict the two existing parcels to be divided into five; four of which will be built upon. The existing single-family house and carriage house will occupy two of these lots, while two new single-family detached homes will occupy the other two lots. The fifth parcel to be created, an open space parcel, abuts both the Minuteman Commuter Bikeway and the Munroe Cemetery. Access to the development will be via the existing curb cut and a proposed common driveway.

**DECISION**

The Planning Board hereby determines that the subject property is a proper parcel to be developed as a Site Sensitive Development, as described under §135-45B of the Lexington Zoning By-Law and that it meets all the requisite criteria for such approval. It therefore **GRANTS** a Certificate of Action and 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 subdivision approval, detailed in §175-32F, and 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 Site Sensitive 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.** While there is no requirement for common open space within a Site Sensitive Development, the proposed development proposes to deed over to the Town a portion of land that is currently used as an informal access from the Minuteman Commuter Bikeway to the Munroe Cemetery. The delineation of building envelopes and a limit of work line also contribute to the preservation of open space within the tract.
2. **Building Disposition.** The proposed dwellings are generally sited in such a manner to create complementary relationships with each other as well as the abutting homes, while ensuring that the new homes will not overpower the two existing dwellings in the Historic District. The proposed homes must be similar in massing and form to the example presented to the Board by the Applicant during the public hearing on June 8, 2011.
3. **Visual Impacts.** The proposed development has made an appropriate effort to screen and minimize the impacts associated with the development using vegetative screening around the perimeter of the site, with particular attention to the southeastern edge. The Board also imposed a condition to limit the height of the new structures to ensure that new structures will not be higher than, and hence screened by, the existing structures on site.
4. **Connectivity.** While the site abuts the Minuteman Commuter Bikeway, the presence of wetlands and excessively steep grades between the buildable portion of the tract and the path make access very difficult. Nonetheless, as mentioned above, the proposed development will enhance the Town's ability to access the Minuteman Commuter Bikeway via a gift of land. The planning and development of this connection will be a matter for the Town to determine. Special Conditions #10 and 11 address this matter in more detail.
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 that will be responsible for the operation and maintenance of the common driveway and its related infrastructure, notably drainage and snow management.
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 Site Sensitive Development the project greatly reduces its development impact within the development tract versus a conventional subdivision with an equal number of units. In particular this project retains two existing structures 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.

## **WAIVERS**

In accordance with §175-30 of the Planning Board Development Regulations, the Board waives strict compliance with the specific provisions of the Regulations, listed below, as strict compliance does not serve the public interest and would be inconsistent with the intent and purpose of the Board's rules. These waivers are granted in order to facilitate the creation of a high quality development and minimize the disruption to the area caused by the construction of the proposed street and lots. The waivers granted are:

1. §175-11A(3)(a)[7] – to allow the submission of the plan without specifying the distance between buildings. In this case, the Board has required development envelopes shown on each lot that must contain the proposed structures, rather than proposed footprints. This method provides the Applicant some flexibility in the design and final siting of the structure, while providing the Board and public a reasonable understanding of the structures final location.
2. §175-44C(7) & (8) – The Applicant has requested that only the newly created lot lines and easements be required to comply with the Bounds and Markers requirements.
3. §175-55D(6)(b). To allow the issuance of any Certificate of Occupancies *before* the installation of the finish course of pavement (see also Special Condition #9 for more on this).

## **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. Any amendment sought to this Decision must submit all plans and information as required by the applicable rules.
3. The Town of Lexington shall not be responsible for the maintenance of the proposed way, including snow removal. The developer or the successor Homeowner's Association, at its expense, is responsible for the maintenance and the associated infrastructure in the common driveway.
4. The Homeowner's Association (HOA, or Association) instrument shall contain the following article: "The construction and operation of the development is governed by a Special Permit issued by the Lexington Planning Board on July 13, 2011, a copy of which is available for inspection at the Town Clerk's Office, Town Office Building, Lexington."
5. The terms and conditions of this decision must be enforced by the trustees of the Homeowner's Association 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 trustees fail to enforce said conditions and/or restrictions, any Owner, or the Town of Lexington may bring a proceeding at law or in equity against any person or persons or the Association in violation thereof to enforce compliance with said conditions and/or restrictions. The Association instrument shall contain an article 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. 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. A distance of one foot for each inch of tree trunk diameter; or
    - iii. A distance five times the diameter of the tree trunk.
  - b. 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.
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.

### **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. Drainage areas P100 and P400, as described in the application (specifically the Stormwater Report and shown on the Post-Development Drainage Plan), must be maintained and operated in manner consistent with the proposed drainage system and may not be altered without prior consent of the Planning Board or Planning Department in accordance with §175-55C. The HOA instrument must also contain a statement to this effect.

3. This Decision is not intended to interfere with, abrogate or annul any other local bylaw, rule or regulation, statute, or other provision of law. Of particular concern on this site is the potential involvement of both the Historic Districts Commission and the Conservation Commission.
4. Tree Removal Mitigation. In order to satisfy the provisions of the Town's Tree Bylaw the Board imposes the following conditions to mitigate the anticipated removal of up to 226 inches of protected trees from the site, in accordance with said Bylaw:
  - a. The replanting of 50% of the caliper inches of removed, protected trees; or
  - b. A contribution to the Tree Fund; or
  - c. Some combination of the above; and
  - d. That trees slated to be relocated on site, must have their final locations approved by the Planning Department in writing, prior to their move.
5. Before endorsement of its approval of the Plan, the Planning Board must receive a performance guarantee, in accordance with the provisions of Section 81-U of the Subdivision Control Law, that secures the construction of the common driveway and the installation of municipal services. Said form of guarantee may be varied from time to time by the applicant subject to agreement on the adequacy and amount of said guarantee by the Board.
6. All conveyances of deeds must include site coverage and impervious surface limits associated with that lot, subject to the prior approval of the Planning Department staff.
7. 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, including the Association's private stormwater facilities operation and maintenance responsibilities.
8. Height of New Structures. To ensure that the new structures do not overwhelm the existing structures to remain, the two proposed structures may not exceed a the typical limit on height of 40 feet, as defined by the Zoning Bylaw, or an elevation of 247.4 feet (the elevation of the existing farmhouse), as described on the plan, which ever is less.
9. No certificate of occupancy permit shall be issued for any new dwelling until the Planning Department indicates that the final grading and landscaping of the parcel is completed, as demonstrated by an as-built plan. In certain circumstances the Planning Department may accept security sufficient to ensure the performance of this condition, in accordance with §175-56B(9).
10. The Applicant has offered the Town a gift of land that will enable a potential pathway from the Minuteman Commuter Bike Path to the Munroe Cemetery. This parcel is noted on the Plan as Parcel 1. All documents necessary for the transfer shall be approved in form by Town Counsel before the final occupancy permit is sought.
11. When the HOA is transferred to the lot owners there must be a vote on whether to create private access to adjacent public land. This should require the consent of all lot owners. Any costs associated with complying with this condition shall be the responsibility of the Applicant.

12. Prior to the installation of the Subsurface Infiltration Systems, field tests establishing the infiltration rate (in accordance with ASTM D3385-09 and its related standards) must be performed in the location of each system to verify the infiltration rate applied in the drainage calculations submitted. If the infiltration rate is found to be less than that used in the approved design, the systems must be resized and approved by the Planning and Engineering staff.
13. Potential Tie-in to Common Drive. While not a part of this application, a project abutter, located at 1361 Massachusetts Avenue, has discussed the possibility of tying into the common driveway with the applicant. The Board reviewed several versions of how this could work and supports the concept, provided the abutter:
  - a. Secures the necessary permitting from the Board of Appeals,
  - b. Joins the Homeowners' Association to help operate and maintain the driveway; and
  - c. Properly files a request for a Field Change with the consent of the Applicant.

**RECORD OF VOTE**

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

_____	_____
_____	_____
_____	

Courtesy Copy of Decision to:

- Applicant (by Certified Mail)
- Town Clerk
- Board of Health
- Building Commissioner
- Conservation Commission
- Fire Chief
- Police Chief
- Town Assessor
- Director of Public Works
- Revenue Officer