



Town of Lexington

PLANNING BOARD

Richard L. Canale, Chair
Gregory Zurlo, Vice Chair
Michelle Ciccolo, Clerk
Charles Hornig
Nancy Corcoran-Ronchetti

1625 Massachusetts Avenue
Lexington, MA 02420
Tel (781) 862-0500 Ext. 245
Facsimile (781) 861-2748
planning@lexingtonma.gov

GRANT OF SPECIAL PERMIT 376 Lincoln Street & 73 Middle Street

Date of Application:	April 1, 2013
Dates of Hearing:	May 8, 2013 June 5, 2013
Date of Decision:	June 19, 2013
Date Filed:	June 21, 2013

APPLICATION INFORMATION

This decision is accompanied and supplemented by a definitive site development plan, entitled "Proposed Balanced Housing Development," dated March 25, 2013 (revised through June 7, 2013), concerning the properties identified as Lots 123C and 124G on Assessors' Map 34. DeCelle-Burke & Associates prepared the plan for the applicant, Barons Custom Homes. The site contains approximately 99,648 square feet, or 2.2± acres.

The plan proposes the demolition of the structure at 73 Middle Street, the relocation of the structure at 376 Lincoln Street and its conversion into two units, and the construction of six new homes, for an overall development of eight units, all served by a proposed right-of-way off Middle Street. In accordance with the Balanced Housing 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 Balanced Housing Development, as described under §135-6.9.2 of the Lexington Zoning By-Law and that it meets all requisite criteria for such approval. It therefore **GRANTS** a Special Permit for the proposed development in accordance with the plans, terms, and conditions stated below.

FINDINGS & DETERMINATIONS

The Planning Board, assisted by the Engineering and Planning Departments, carefully reviewed the plans and other submission material. 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.

General Findings and Determinations, per §135-9.4.2

The Planning Board finds and determines that given the particular characteristics of the site the adverse impacts of the proposed development do not outweigh its beneficial impacts to the Town and neighborhood.

The Planning Board generally prefers special permit residential development proposals to their corresponding by-right conventional subdivisions because of their reduced earth disturbance and increased flexibility for siting structures to better respect a site's natural features. This proposal includes over 30,000 square feet of open space, preserving several specimen trees along the site's Lincoln Street frontage, includes a pedestrian connection to adjacent conservation land, and will infiltrate virtually of its stormwater runoff on site. By including a duplex and six first-floor master bedroom detached dwellings, this proposal increases the diversity of the Town's housing stock.

Initially conceived as a slightly larger project, constructive discussion among the Board, the neighbors, and applicant led to consensus around the proposed development. The proposed development's anticipated trip generation is comparable to that of the as-of-right five lot conventional subdivision on which this plan is based, which should not burden the neighborhoods streets. Each unit exceeds the minimum parking requirements of the Bylaw, while the common driveway includes an overflow parking area. The Board received no comments from municipal utility providers that the proposed development would endanger the adequacy of their delivery to the site or neighborhood.

Specific Findings and Determinations, per §135-6.9.19

The Planning Board must also determine that the proposed development is consistent with criteria specific to a special permit residential development, enumerated in §135-6.9.19 of the Zoning By-Law. The Planning Board grants the special permit for a Balanced Housing Development because it has determined that the proposed development is consistent with the applicable standards, specifically:

1. **Open Space.** The proposed development includes 34,195± SF of open space, which satisfies the Bylaw's open space requirement of 33% of the development tract. It contains several mature trees, enhances the visual appearance of the development, and is readily accessible and usable to its 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. Decreased setbacks will facilitate a more pedestrian-scaled streetscape experience within the subdivision.
3. **Visual Impacts.** Preserving the Lincoln Street lawn, with its specimen trees adds significantly to the application. Designed to screen and minimize the visual impacts associated with the development, the proposal uses the existing vegetative screening around the perimeter of the site.

4. **Connectivity.** The plan shows a footpath to the adjacent conservation area and a second pathway to the development's open space. This second pathway's easement will extend to Lincoln Street.
5. **Multi-Family Building Design.** There are no proposed multi-family homes proposed within this development, but the inclusion of a duplex adds to the character of the development and improves the Town's overall mix of unit types.
6. **Common Facilities.** The Applicant has acknowledged its responsibility to create a Home Owner's Association, requiring the lot unit owners be perpetually responsible for the operation and maintenance of the open space, the private way, and its related infrastructure, notably the drainage system.
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 Balanced Housing Development, the project generally reduces its development impact within the tract when compared to the conventional subdivision detailed in the Proof Plan. In particular, this project retains one existing structure as opposed to the conventional alternative, which would have removed and replaced it. Land disturbance and tree removal are similarly less intensive than the conventional alternative, with siting that avoids existing trees and utilizes existing natural drainage features of the site.

WAIVERS

It is implicit and understood that in a Balanced Housing Development, many of the requirements contained in the Planning Board's *Development Regulations* regarding 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 Balanced Housing Development and the intent and purpose of the Board's rules.

Citation(s)	Required Standard
175-44C(4)	20 Foot Easements
175-44C(7)	Permanent Markers
175-45B(5)	Grade at Intersection
175-45E(1)	Standards for a Local Street
175-45E(2)	Reverse Curves
175-45E(4)	120 Ft Diameter Cul-De-Sac
175-45E(8)(a)	Curbs & Gutters
175-45E(9)	Shoulders
175-46A(1)	Sidewalk Location
175-46A(3)	Sidewalk Construction
175-46B(3)	Pathway Signage
175-47D(2)	Street Lighting
175-48H	Catch Basins
175-49D(1)	Planting Strip
175-49E	Landscape Island

TERMS & CONDITIONS OF APPROVAL

General Terms

1. The entire tract of land and buildings to be constructed may only be used, sold, transferred, or leased in accordance with the following:
 - 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 must contain the following provision: "The construction and operation of the development is governed by a Special Permit issued by the Lexington Planning Board on June 19, 2013, a copy of which is available at the office of the Lexington Town Clerk."
4. The Town of Lexington is not 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, is 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, must contain a provision with the foregoing language therein.
6. No site preparation work or construction may 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 must be maintained until all construction is complete.
 - b. Trees slated for preservation within the limit of work line must be protected from damage or loss during construction activities through by the use of construction fencing or protective barricades. Such controls are to be located at a distance from the trunk of at least five times the diameter of the trunk.

7. No work, including site preparation, land disturbance, construction, and redevelopment, may commence unless and until pollution prevention, erosion and sediment controls are in place. When applicable, the Stormwater Pollution Plan required by the National Discharge Elimination System Construction General Permit Program, must be implemented until the site is fully stabilized.
8. Hours of construction. No construction activity on the property that causes noise, vibrations, glare, dust, debris or other detrimental impact, and is perceptible on, or affects, any adjacent lots, may 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. Before the plan is endorsed by the Board, the following revisions must be incorporated:
 - a. The Plan will show the pathway easement from the proposed cul-de-sac to Lincoln Street, laid out such that any constructed pathway within the easement can comply with all Massachusetts Architectural Access Board (AAB) regulations (521 CMR). The easement area must remain free of obstructions, so that if ever built no mature vegetation will need to be removed.
 - b. The Plan must show pathways complying with AAB regulations being constructed from the proposed cul-de-sac into the open space, within the easement as described above, terminating approximately 30 feet from Lincoln Street, and from the proposed cul-de-sac to the conservation area to the east.
 - c. Construction of all pathways must be within two years from the grant of this permit.
2. In order for the grant of a waiver from strict compliance with impervious surface standards under the new Zoning Bylaw, the applicant must record the appropriate legal instrument waiving its right to the old Zoning Bylaw. Proof of this must be provided to the Planning Staff prior to the issuance of any building permit.
3. The following sheets of the Plan must 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.
4. Trees within the common open space serving as street trees must be treated as such, consistent with §175-49B.
5. Structures must be setback from one another at a distance of at least 20 feet.

6. 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 any *protected tree*, as defined in §120-3 of the Code of Lexington, from the boundaries of the development tract:
 - a. The replanting of 50% of the caliper inches of removed, protected trees; or
 - b. A contribution to the Tree Fund, in an amount equal to \$50 per DBH inch of protected tree removed that was not already mitigated as per Special Condition 6a above; or
 - c. Some combination of the above.
7. The façade facing Middle Street for the proposed structure on Lot 1 must be articulated as shown by the applicant at the public hearing.
8. 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.
9. No building permit may be issued for new construction until the Planning Department indicates that Town counsel has approved the final form of the following documents:
 - a. The public access and utility maintenance easements (including through the open space); and
 - b. The homeowner's association (or similar entity as described above), including the operation and maintenance responsibilities requirements for the private stormwater facilities, the porous pavers, and open space.
10. No certificate of occupancy permit may 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 Fire Department approves all fire hydrant flow tests for any new hydrants installed.
 - c. The DPW has received the appropriate sewer and water tie-in information on the unit for which a CO is sought; and
 - d. 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.
11. The preservation of the Franklin-Warren structure(s), to be relocated to proposed Lot 7, is of primary importance to the Board; it may not be altered, extended, expanded, or used, except in manner consistent with this decision and a Preservation Agreement acceptable to Town Counsel, crafted in consultation with the Historic Commission, and on file with the Planning Department.

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