



TOWN OF LEXINGTON PLANNING BOARD

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CERTIFICATE OF ACTION 36, 42, & 48 Cary Avenue

Application Date: November 18, 2014
Hearing Date(s): January 21, 2015
February 11, 2015
Decision Date: February 11, 2015
Decision Filed: February 13, 2015

APPLICATION & PLAN INFORMATION

The application and plan depict a subdivision of 36, 42, & 48 Cary Avenue, comprised of Lots 34A, 34B, 35, 36A, and 36B of Assessors' Map 34. Entitled "36, 42, & 48 Cary Avenue Definitive Subdivision Plan Set," and prepared by Michael Novak and Jeffery A. Thoma of Meridian Associates, Inc. Originally dated November 17, 2014, the latest plan revision was made February 4, 2015.

The applicant, Todd Cataldo, of Sheldon Corp., proposes a subdivision of the site that will create seven new lots in the RS district. One lot will front on Cary Ave, essentially replacing 48 Cary but on a reconfigured lot. The other six lots will front on a proposed cul-de-sac extending from Cary Ave into the interior of the site. At this time, the principle structures on both 36 and 42 Cary Avenue are to remain.

DECISION

This is to certify that after closing a duly called and properly posted hearing held on January 21, 2015, and February 11, 2015, the Lexington Planning Board voted to **APPROVE WITH CONDITIONS** the above referenced plan.

FINDINGS

In reviewing and evaluating the application materials, the Board finds that:

- a. The plan complies with the Town's Zoning Bylaw and its *Regulations* specifically:
 - i. The plan complies with the definitive plan submittal requirements of § 175-6.0; and
 - ii. The plan is designed in manner that meets the design objectives of § 175-7.0; and
- b. The Board of Health approved the plan (by a favorable decision or by constructive approval).

An explanation of each of these elements is discussed in more detail below.

Evaluation of the Zoning Bylaw

Under the Subdivision Control Law, the Board has the right to ensure that subdivisions create lots conforming to the zoning bylaw. In this case, the applicant is creating seven lots, each of which meets the dimensional requirements for the RO District (150 feet of frontage and 30,000 square feet of area). The existing structures on proposed lots B and G conform to the setback requirements of the RO District, although some accessory structures may need to be relocated or removed to satisfy these requirements.

Evaluation of the *Subdivision Regulations*' Submittal Requirements

The application and accompanying plan satisfied the submittal requirements of the Board's *Regulations*.

Evaluation of the Required Improvements and Design Objectives

The Board's *Subdivision Regulations*, at § 175-7.0, express the design standards and criteria necessary for approval of a definitive plan. Where the proposed plan falls short of these, the Board has placed conditions upon its approval to ensure that the plans will be modified or granted waivers, as appropriate.

Board of Health Approval

As forty-five (45) days has elapsed from the date of filing with the Board of Health without receiving any written report from them, the plan is deemed constructively approved, per G.L. c. 41, § 81U. This was expected given that the site is served by municipal sewer and not by septic systems.

WAIVERS

In accordance with § 175-3.5 of the *Subdivision Regulations*, the Board waives strict compliance with the specific provisions of the Regulations, listed below, finding that the waivers are in the public's interest and consistent with the intent and purpose of the Board's Regulations. The waivers granted are:

- § 175-7.2.E.(7)(c)[2]-[3] Turnaround Standards. Reduced the outside turning radius of the cul-de-sac from 50 to 49 feet and the inside turning radius from 25 to 24 feet. This was approved by both the Fire Department and Engineering Department.
- § 175-7.2.E.(8) Centerline of Street. On the stem of the proposed cul-de-sac, the Board waives this requirement so that the paved portion of the way is offset rather than lose a foot of the planting strip behind the sidewalk.
- § 175-7.4.B.(2) Looped Water Main. As the proposed main cannot be looped to Phinney Road, which is nearby but not adjacent to the proposed subdivision, the Town Engineer approves of the proposed dead end main as looping it back to Cary Avenue would be of no benefit to the system.

TERMS & CONDITIONS OF APPROVAL

General Conditions

- 1) 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.
- 2) The land shown on the Definitive Plan referenced above may be used, sold, transferred, or leased only as granted by this Decision or in accordance with later amendments or field changes to it.
- 3) The applicant must obtain the endorsement of the Board within 180 days of the date of approval. Failure to do so may result in the rescission of the approval.
- 4) The applicant must complete the construction of all ways and services within two years of the date of endorsement of the Definitive Plan, unless the Board extends this period, for good cause shown, after the written request of the applicant not less than 30 days before the expiration of this period. Failure to do so may result in the rescission of the approval of the plan.
- 5) The applicant must construct the street(s), complete all other work specified on the Plan or required under the Board's *Regulations*, meet all relevant provisions of the Zoning Bylaw and other bylaws, including installation of required utilities in the subdivision, and all work incidental to them, such as grading of lots to provide drainage, construction of retaining walls, and other details, or as specifically required by the Board.

- 6) Unless accepted by Town Meeting, the roadway, driveways, drainage facilities, and other utilities shown on the plan are to remain private; the repair, maintenance, and any other associated costs of them, are the responsibility of the parcel owner(s). Although it is not obligated to, it is presumed that upon completion of the project, the Town will plow the street even if it is not accepted.

Actions Required Before Plan Endorsement

- 1) Endorsement of the plan is conditioned upon the provision of a performance guarantee as described in MGL Chapter 41, Section 81-U. The form of guarantee may be varied from time to time by the applicant, subject to agreement on the adequacy and amount by the board.
- 2) The endorsed plans should include the proposed street name "Willard Circle."

Actions Required Before Beginning Construction

- 1) The applicant must record the decision, the Property Rights & Dimensional Standards Plan, and the Supplemental Covenant. The supplemental covenant may include reference to a homeowners association, or similar, describing the owners' operation and maintenance responsibilities of the way and private utilities, including the stormwater infrastructure.
- 2) No site preparation work or construction may begin until the Planning Department has confirmed in writing that the property corners are staked and the project's limit of work line is established and approved by the Planning Department, clearly marked with construction fencing, hay bales and silt fencing, or approved substitute, as appropriate.
- 3) Construction activity outside the LOW is prohibited, except when approved by the Planning Department in advance. The LOW must remain in place and in good condition throughout the construction phase and may only be removed with the prior consent of the Planning Department.
- 4) If applicable, the site must be fully stabilized according to a Stormwater Pollution Plan required by the National Discharge Elimination System Construction General Permit Program.

Actions Required Before Building Permits

- 1) Sump pumps, foundation and/or perimeter drains, if proposed, may not run to daylight, but to a proposed infiltration system, or an approved equivalent.
- 2) Town Counsel has approved of the final form of all legal documents, and the documents have been recorded, including but not limited to the following:
 - a) Easements required by 6.3.D.1-2
 - b) Parking Restriction Agreement, per 6.3.D.3

Actions Required Before Occupancy Permits

- 1) No certificate of occupancy may be issued until the Planning Department indicates that the proposed improvements to the way and municipal utilities providing frontage to the lot(s) have been made.

Special Conditions

- 1) The Planning Board does not waive the applicability of Chapter 120 of the Code of Lexington (the Tree Bylaw), and expects Ch. 120 to apply to the newly created lots but not the proposed way.

RECORD OF VOTE

The following members of the Planning Board vote to grant the certificate of action, 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