



Town of Lexington

PLANNING BOARD RECEIVED

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2019 OCT 29 PM 2:04

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Bob Creech, Chair
Charles Hornig, Vice-Chair
Robert D. Peters, Clerk
Ginna Johnson
Richard L. Canale
Michael Leon, Associate

CERTIFICATE OF ACTION RANGEWAY EXTENSION

Date of Application: March 7, 2019

Date(s) of Hearing: May 22, 2019

June 26, 2019

July 24, 2019

August 14, 2019

September 11, 2019

September 25, 2019

October 16, 2019

Date of Decision: October 16, 2019

Date of Filing with Town Clerk: October 29, 2019

The application for approval of definitive subdivision plan is accompanied and augmented by a definitive subdivision plan entitled "Rangeway Extension in Lexington, Mass." The date of the plan is December 3, 2018 (revised through October 3, 2019), prepared and variously stamped by Frederick W. Russell, PE, and James R. Keenan, PLS and Laurie P. Tarr, RLA. The owner of the parcel is Doris L. Duff, of Laconia, NH; the applicant is Suzanne Raymond of Framingham, MA.

The applicant proposes to extend Rangeway, an incomplete private way (i.e. a paper street) laid out by plan in 1919, in order to provide frontage for a parcel of land on which one single-family home might be built. This plan is the evolution of one that was originally denied by the Board in 2003, subsequently appealed and remanded from the Land Court. A revised plan was approved by the Planning Board in 2013, but the approval lapsed when construction was not started before the deadline (due to an appeal from an abutter of the Conservation Commission's Order of Conditions that was not resolved until February 15, 2017).

DECISION

In light of the following findings, the Planning Board, at its meeting of October 16, 2019, voted to **APPROVE** the above-referenced definitive subdivision plan with conditions. The Planning Board approves the definitive subdivision plan because it meets the approval criteria set forth in §175-6.2, requiring the plan to comply with the Board's Subdivision Regulations, the Town of Lexington Zoning Bylaw, and the site design objectives and criteria outlined in §175-7.1 through 7.6, unless otherwise waived. Further, a subdivision plan for this location was constructively approved by the Board of Health in 2013 as required by M.G.L. c.41. §81U. Nothing has changed on these plans that requires further Board of Health approval.

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FINDINGS

In reviewing and evaluating the application materials against the requirements in the *Subdivision Regulations*, at §175-6.2 (Definitive Subdivisions Plan Approval Criteria), the Board must ensure that:

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1. The submittal complies with its *Regulations*, unless otherwise waived, and with applicable provisions of the Zoning Bylaw;
2. The application follows the procedural requirements of its *Regulations*
3. The plan meets the standards for site design set forth in Section 175-7.0 of these *Regulations*; and
4. The Board of Health has approved the plan, and a favorable recommendation sent to the Board, or 45 days from the date of filing with the Board of Health has elapsed without a recommendation sent to the Board.

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

Evaluation of the *Subdivision Regulations* and the Zoning Bylaw

Where the plans fail to conform to the Board's *Subdivision Regulations*, the Board granted the following waivers:

Section	Standard/Request	Explanation for Approval
§175-7.2-E.1 (b)	Allow maximum grade of 10% instead of 8%.	Existing maximum grade is 14%. This will be reduced to 10%.
§175-7.2-E.1 (b)	Waive requirement for 5' wide sidewalk.	No sidewalks exist in the area to connect with a new one in this location so we would be building "a sidewalk to nowhere."
§175-7.2-E.7(c) (1, 2, 3)	Provide a "T" turnaround instead of a full 120' diameter cul-de-sac.	There is not enough room within the ROW to provide a full cul-de-sac. A "T" turnaround will be provided on the single lot created by this subdivision. As a condition of this waiver, the property owner will provide the Town with an easement to use the private property as a turnaround and for snow storage.
§175-7.2-E.3	Cross slopes of the travel lanes must be 3/8 of an inch per foot.	This is not possible because a portion of the road will be superelevated.
§175-7.4-B.2	Water system must form a continuous loop.	There is no existing water main within the area to create a loop.
§175-7.4-D.2	Installation of a street light.	In the past, abutters have stated that they do not want street lighting in this area.
§175-7.6-B *	Waiver requirement for street trees to be planted in the road right-of-way.	Fifteen trees will be planted on the perimeter of the single lot created by this subdivision to enhance screening for the project.

*The applicant did not request these waivers. They were identified during the Planning Board's review of the plan.

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In the submitted package, the Applicant requested three additional waivers from §175-7.2-E.1 (b) relative to the width of the road right-of-way (ROW), travel lanes and pavement. The Board found that these three waivers were unnecessary since Rangeway Extension is classified as a minor street per §175-7.2-D.2 (d) and the project, as designed, meets the width requirements for such a road.

The Applicant also requested a waiver from §175-7-2-E.11 (b) which limits the height of a retaining wall to be no more than 5' above the finished grade. The original plans included a 9' high retaining wall at the end of the roadway extension. After discussion with the Planning Board and the public during the subdivision process, the Applicant agreed to reduce the height of the retaining wall to 5' above the finished grade and added a 4' high guardrail to the plan for safety purposes instead. Therefore, this waiver is no longer necessary.

Finally, the Applicant requested waivers regarding the size of the lot and the length of the street frontage as required by §175-7.1-B(1). The Board finds that it does not have enough information regarding whether the proposed single lot created by this subdivision plan complies, or does not comply, with the Lexington Zoning Bylaw. While it is clear that the subject lot will not strictly comply with the current dimensional standards outlined in §135-4.1.1, Table 2, the Board has been provided evidence from the applicant that the lot is "grandfathered" under §135-8.0 of the bylaw. Therefore, this waiver is no longer necessary.

Evaluation of the *Regulations*' Procedural Requirements

The application and the accompanying plans, generally satisfy the procedural requirements of the Board's *Regulations*. The applicant sought, and the Board approved, several extensions of the action deadline.

Evaluation of the Design Objectives

The Board's *Subdivision Regulations*, at §175-7.1, express the subdivision design criteria necessary for approval of an application. Where the proposed plan falls short of these, the Board has placed conditions upon its approval to ensure that the plans will be modified, as appropriate.

Board of Health Approval

A subdivision for the subject lot was submitted and approved by the Planning Board in 2013. At that time, the decision included a provision that proof of Board of Health approval or constructive approval be obtain prior to the Planning Board's endorsement of the plans. The Applicant has submitted a letter dated May 2, 2013 to the Town of Lexington Health Director to fulfill this condition. At that time, the Board of Health took no action on the plan within 45 days of the notice thereby constructively approving it. Since nothing has changed in this regard since 2013, the current subdivision does not need additional Board of Health approval

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CONDITIONS OF APPROVAL

General Conditions

1. 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.
2. The applicant must complete the construction of all ways and services within two years of the date of endorsement of the definitive plan. Failure to do so may result in the rescission of the approval of such plan, unless the Board extends said period, for good cause shown, after the written request of the applicant not less than 30 days before the expiration of said period.
3. As a condition of approval of a subdivision, the applicant agrees to construct streets and complete all other work specified on the definitive plan or required under these Regulations, meet all relevant provisions of the Zoning Bylaw and other bylaws, including installation of required utilities in such 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.
4. As a condition of approval of a subdivision, the owner must grant to the Town a right and easement to construct, repair, replace, extend, operate, use and forever maintain all water mains, sewer mains, and all surface and subsurface stormwater drains in, through or under the streets and easements as indicated on the definitive plan.
5. In consideration of being allowed to connect to the public street system and to enable the Town to protect public health and safety, the owner must grant the town the perpetual right or easement to pass and repass over the streets and easements in the subdivision, and to use, operate, inspect, repair, renew, replace and forever maintain the streets, street signs, and all appurtenances or components of them, in all of the subdivision outside it if installed to serve the subdivision. To accomplish this, the owner must retain and reserve the necessary rights and easements in any conveyances or mortgaging of land or lots and in the recording of plans and easements.
6. The owners must grant the Town the right to enforce on-street parking regulations within the subdivision and on any streets connecting the subdivision to the public street system. For projects that include minor streets, an instrument prohibiting parking and granting the Town enforcement rights will be required.
7. Notwithstanding conditions 4, 5 and 6, above, it is the responsibility of the owners and owners' successors in title to all or any portion of the subdivision to maintain the landscaping, streets, and utilities within the subdivision until formally accepted by the Town. The owner must provide a supplemental covenant agreeing to maintain the streets and utilities, including snow removal, and permitting the Town to maintain them if necessary at the expense of the owners.

Actions Required Prior to Plan Endorsement

1. A covenant, or other form of security, duly executed and recorded as required by and in compliance with G.L. c.41, s. 81U to secure completion of infrastructure improvements.

2. A supplemental covenant, or other instrument as appropriate, ensuring that applicant and guests will not be allowed to park in the right of way or turnaround area. The applicant shall take every measure possible to have the area designated by the Board of Selectman as a no parking area and have signage posted for no parking.
3. In consideration for waiving the dead-end turnaround standards of §175-7.2-E.7 (c) (1,2,3), the applicant shall submit a covenant, in a form acceptable to Town Counsel, to include language that ensures such covenant shall be perpetual and run with the land and be enforceable by the Town. The covenant shall authorize the Town to maintain the turnaround including snow clearance, at the owner's expense, if the owner does not comply with any performance criteria contained in the covenant.

Changes Required Prior to Plan Endorsement and Recording

1. The plans must be revised as follows:
 - a. Show a detail of the foundation of the retaining wall on the plans that includes the depth of the foundation into the ground below the frost level;
 - b. Specify the top of wall and bottom of wall elevations street layout plans;
 - c. Clarify the linear distance between the top of the retaining wall and bottom of the guardrail and how the guardrail will be affixed safely into the ground.
 - d. Planting on the retaining wall will be native Virginia Creeper and Spicebush (*Lindera Benzoin*).
 - e. Remove all invasive plants as identified by Massachusetts Invasive Plant Advisor Group (MIPAG) within the ROW within the limit of work and restore with species native to Middlesex County per *The Vascular Plants of Massachusetts: A County Checklist*, latest edition.
 - f. Show three additional native canopy trees on the south side of the driveway.
2. All plans, decisions, easements, and covenants must be acceptable to Town Counsel with respect to both form and substance.

Actions Required Prior to Construction

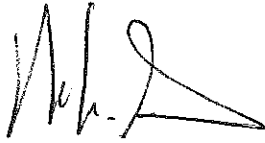
1. In consideration for waiving the requirement of §175-3.2-B, regarding the rights of others shown on the plan, the applicant must demonstrate, in a form acceptable to Town Counsel, that permission from the owner of the property where proposed work is to be done has been obtained.
2. The property corners must be staked and the project's limit of work must be established and approved by the Planning Department. These controls must remain in place and in good condition throughout the construction phase of the project and may only be removed with the prior consent of the Planning Department.

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RECORD OF VOTE

At its meeting of October 16, 2109, the Planning Board approved the application for a definitive subdivision by a vote of 4-0. Members in favor were Robert Creech, Charles Hornig, Ginna Johnson and Richard Canale. Robert Peters recused himself from the public hearing on this application and decision.

Signed on behalf of the Planning Board:



Robert Creech,
Planning Board Chair

Copy of Decision to:

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

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