



Town of Lexington

PLANNING BOARD

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Michael Schanbacher, Vice Chair
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Robert Creech, Member
Charles Hornig, Member
Michael Leon, Associate Member

**DECISION OF THE LEXINGTON PLANNING BOARD
DEFINITIVE SUBDIVISION (17 Hartwell Ave.)**

**CERTIFICATE OF VOTE
17 HARTWELL AVENUE
(Assessor's Map 84, Lot 80A)**

Date of Application: May 6, 2022

Date of Public Hearing: June 29, 2022

Date of Vote: June 29, 2022

DECISION

This is to certify that the Lexington Planning Board, acting within the provisions of M.G.L., Chapter 41, § 81U, at a meeting on June 29, 2022, by a vote of five (5) members in favor and none (0) opposed, voted to approve the Definitive Subdivision plan for a three (3) lot subdivision at 17 Hartwell Avenue as shown on the plans entitled "Definitive Subdivision Plans, 17 Hartwell Ave, Lexington, MA", dated April 29, 2022, prepared by VHB, consisting of 10 sheets including the cover page, filed with the Planning Office on May 6, 2022; subject to the terms and conditions of approval and the covenant to be given in said Section 81U and subject to the following terms and conditions imposed by the Lexington Planning Board.

PROJECT SUMMARY AND BACKGROUND

Application proposes three (3) lots on a subdivision cul-de-sac with a 24-25 ft. wide drive, landscaped center island, sidewalk, street trees, one new fire hydrant, and a subsurface infiltration stormwater management system. Presently, the 5.25-acre property contains a single-story brick building, and off-street surface parking.

A preliminary subdivision application was approved by the Planning Board on October 20, 2021.

STATEMENT OF FINDINGS

After having reviewed all the plans and reports filed by the Applicant and its representatives, and having considered the technical analysis, supplemental information provided during the course of the public hearing, correspondence and testimony from representatives from various boards, commissions, departments within Lexington, members of the public, and from all other interested parties, the Lexington Planning Board makes the following procedural findings and project findings:

Procedural Findings:

Certificate of Action
Definitive Subdivision 17 Hartwell Avenue Street
June 29, 2022
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1. On May 6, 2022, an application was filed by or on behalf of BP 17 Hartwell, LLC. (hereinafter referred to as the "Applicant") with the Lexington Planning Board through the View Point Cloud Permit system PLAN-22-5 (hereinafter "Application") pursuant to M.G.L. Chapter 41, Section 81, and the Rules and Regulations Governing the Subdivision of Land in Lexington, Chapter 175, last revised on August 30, 2017.
2. Pursuant to M.G.L. Chapter 41, Sections 81K through 81G (hereinafter "Subdivision Control Law"), and the applicable provisions of the Rules and Regulations, the Planning Board caused notice of the public hearing to be published in the Lexington Minuteman, a newspaper of general circulation in Lexington, on June 9, 2022 and again on June 16, 2022. Notice of the public hearing was posted in the Lexington office of the Town Clerk on May 31, 2022 and continuing through the opening of the public hearing on June 29, 2022. Said notice of the public hearing was mailed postage prepaid to the applicant, property owner, and all abutters as prescribed in the Subdivision Control Law on May 31, 2022.
3. The Planning Board provided copies of the Application to other Lexington departments and officials, including, but not limited to, the Health Director/Assistant Director, Building Commissioner, Conservation Director, Assistant Town Engineer, Police Chief, Assistant Fire Chief, and Zoning Administrator.
4. The Board of Health filed their report to approve with no concerns on the Definitive Subdivision on June 14, 2022, pursuant to M.G.L. Chapter 41, Section 81U.
5. After notice and publication was provided pursuant to the applicable provisions of the Subdivision Control Law and the Board's Rules and Regulations, the public hearing on the Application commenced on June 29, 2022, on which date the Planning Board closed the public hearing. All Planning Board meetings and the public hearings were held remotely via Zoom, pursuant to c. 20 of the Acts of 2021 and c. 22 of the Acts of 2022 further extending the remote provisions until July 15, 2022. The Planning Board accepted public comments via Zoom.
6. Lexington Planning Board members Robert Peters, Michael Schanbacher, Melanie Thompson, Robert Creech, and Charles Hornig were present for all public hearings at which testimony was taken.

Project Findings:

1. The subject property consists of one 5.25-acre parcel of land shown on the Lexington Assessors' Map as 84, Lot 80A and located in the CM (Commercial Manufacturing) zoning district.
2. The Applicant proposes to divide the existing lot into three lots on a subdivision cul-de-sac with a 24-25 ft. wide drive, landscaped center island, sidewalks, street trees, one new fire hydrant, and a subsurface infiltration stormwater management system. The existing buildings and parking areas are to be removed.
3. On October 15, 2021, the Applicant filed a Preliminary Subdivision application as amended with the Town Clerk. The Lexington Planning Board voted to approve the Preliminary Subdivision with conditions on October 20, 2021, and issued a Preliminary approval on October 22, 2021. If Definitive Plan is approved and endorsed by the Planning Board, the land shown on this definitive subdivision

plan will be governed by the zoning bylaw in effect on October 15, 2021 for eight years from the date of endorsement of this definitive plan.

4. The Development, as modified by the conditions of this decision, will not present a public safety hazard to the town, or the surrounding properties.

WAIVERS

The Planning Board may waive any of its Rules and Regulations if the Board finds the waiver is in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law. No waivers are needed with the submitted plans and the Board did not grant any waivers with this application.

CONDITIONS

After the public hearing, the Lexington Planning Board by a vote of five (5) in favor and none (0) opposed, voted to approve the Definitive Subdivision for 17 Hartwell Avenue as described above, subject to the following conditions:

Prior to Plan Endorsement:

1. Prior to endorsement of the Definitive Plan, the Applicant shall provide a Performance Guarantee, in a manner acceptable to the Planning Board, and prior to the release of any lot or the issuance of any building permits for the construction of any buildings, to insure the required improvements related to the construction of the road and services will be constructed and installed in accordance with the approved Definitive Plan.
2. After notice from the Town Clerk of "No Appeal", the Applicant shall submit the final revised Definitive Subdivision Plan set including the Property Rights and Dimensional Standards Plan and the Street Layout and Profile Plan sheets, for endorsement by the Planning Board within 180 days of this approval in accordance with this Certificate of Vote. The Applicant shall record with the Registry and notify the Board in writing of the date, book, and page or document of the recording information. Failure to do so may result in rescission of this Decision.
3. Following endorsement and prior to commencing any site work or construction related to this approval, the certificate of vote and any easements (including utility easements) and covenants must be recorded at the Registry with proof of recording the Definitive Subdivision Plan at the South Middlesex Country Registry of Deeds shall be submitted to the Lexington Planning Department.
4. All easement documents shall be provided to the Planning Board, staff, and Town Counsel for review and approval prior to recording at the Registry.

General Provisions Prior to Any Site Work and Construction:

5. If the Project, or any condition imposed by this decision, requires a permit, license, or other approval from any other board, committee or agency of Lexington or other regulatory agency of the

Commonwealth or the Federal government, the Applicant is responsible for filing the appropriate application. As proposed, Applicant is responsible for filing a Request for Determination of Applicability with the Conservation Commission and Stormwater Permit under the Stormwater Management Bylaw. If any condition of such permit is inconsistent with or modifies the approved Project Plans the Applicant shall make application to the Planning Board for amendment of this Decision, and the Planning Board shall consider such application in accordance with the requirements of M.G.L. Chapter 41, §81T & §81W and all applicable Planning Board Subdivision Regulations.

6. Applicant shall provide final revised and approved stormwater analysis report and Operation & Maintenance Plan to the Planning Department, Engineering, and Conservation Divisions prior to the start of any construction.

During Construction:

7. Project related construction shall comply with the current Lexington's General Bylaws Chapter 80 [Noise Control], for construction related activities with hours limited to 7:00 a.m. and 5:00 p.m. Monday through Friday and between 9:00 am and 5:00 pm on Saturdays. Operation is not permitted on Sundays and legal holidays.
8. The Department of Public Works shall be notified at least forty-eight hours in advance of any roadway, municipal service, and backfill of any underground utilities for inspections or utility connections.
9. Applicant shall perform daily clean up of construction debris, including soil on municipal streets within two-hundred yards from the entrance of the site drive caused by construction related to the project.
10. Construction and land disturbance activities, soil erosion and sedimentation to wetlands or resources areas shall be minimized by an active program meeting the requirements of the Lexington Conservation Commission, Department of Environmental Protection Best Management Practices, and the Stormwater Management Permit.
11. Applicant shall provide appropriate erosion control methods such as silt fences and straw wattles and organic hessian fabric burlap filled with compost and the stockpiles in case of a storm event, in addition to dust control requirements.
12. The Applicant is responsible for promptly repairing any damage caused to street pavement, signs, or other fixtures or features within the public right-of-way, after obtaining permission from the Department of Public Works. Such repairs shall be performed to Lexington Standards.
13. A copy of this Decision and the Project Plans shall be kept on the Project Site in a highly visible location at all times during construction.

Continuing Conditions:

14. Except as modified by the conditions and findings hereof, the Project shall comply with the final revised approved Definitive Plan Set, in all respects, and the Applicant shall pursue completion of the project with reasonable diligence and continuity. The subdivision and its construction shall comply in

all respects to the Subdivision Rules and Regulations unless specifically waived by a vote of the Planning Board and recorded in writing.

15. This approval is limited to a total of three (3) lots, regardless of the number of lots which could otherwise be developed and the road may not be extended without returning to the Planning Board for an amendment or modification pursuant to M.G.L. Chapter 41, § 81W. Further division of any lot created hereon, whether by ANR or any other method, is expressly prohibited, except that lots may be reconfigured, such that the total number of lots does not exceed three (3) lots. Any change in roadway or increase in number of lots requires a new subdivision filing, pursuant to §81T & §81W.
16. The Town is not responsible for non-emergency municipal services provided along the new road, including snow removal and recycling/trash service, unless street acceptance by Town Meeting.
17. Planning staff and members of the Planning Board and its agents shall be permitted access to the Project Site during construction with proper notification to the Applicant (and subject to any construction safety requirements), and shall have the right to gather all information, measurements, photographs or other materials needed to ensure compliance with the terms of this Decision, subject to applicable safety requirements.
18. A final as-built plan shall be submitted to the Planning Office, Engineering, and Building Commissioner prior to issuance of the Completion Certificate or release of the Performance Guarantee. The as-built plan shall be prepared and certified by a professional engineer and submitted as a PDF and CAD file. The "As Built" Plan shall indicate the stormwater system, parking, driveways, sidewalks and walkways, utilities, any lighting, storm drains, water mains and their appurtenances, etc. in material compliance with the approved project plans.
19. Any future change, modification or amendment to the final Definitive Plan as may be approved by the Planning Board shall be in accordance with the requirements of M.G.L. Chapter 41, § 81T & §81W and § 6.7 of the Board's Subdivision Regulations. No material alterations, or any changes shall be made in any plans, proposals or supporting documents, or site work without prior written approval from the Planning Board or their designee. Any request for a modification of this approval shall be made in writing the Planning Department for review and approval by the Planning Board and shall include a description of the proposed modification, reasons the modification is necessary, and any supporting documentation. Upon receipt of a request, the Planning Department may, in the first instance, authorize a minor modification to the site plans, or Planning staff may refer the matter to the Planning Board, which may consider and approve minor modifications at a regularly scheduled Planning Board meeting duly noticed. In the event the Board determines the change is major in nature (resulting in material changes such as newly impacted parcels), the Board shall consider the modification at a properly noticed public hearing.
20. The Applicant must complete construction of all ways and services within two (2) years of the date of Planning Board 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 20 days before the expiration of said period.
21. Construct Streets and All Required Utilities. 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.

22. Applicant/owner is responsible for maintaining 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. Any trees and landscaping that does not survive must be replaced in-kind within the first available growing season.

23. Perpetual Rights and Easements.

- a. 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.
- b. 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 and 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.
- c. 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.

APPLICATION AND PLANS

The Planning Board evaluated the Application filed by or on behalf of the Applicants in the Planning Department on May 4, 2022 and through the close of the public hearing and the following material associated with this application.

1. Form B Application, dated May 3, 2022
2. Notice of Filing of a Definitive Subdivision Plan, from Frederick J. DeAngelis, submitted to the Planning Board, Board of Health, and Town Clerk, dated May 3, 2022

3. Subdivision Request Letter to the Planning Board from Frederick J. DeAngelis, dated May 3, 2022
4. Definite Subdivision Plans titled "Definitive Subdivision, 17 Hartwell Ave", dated April 29, 2022
 - a. Sheet 1 or Cover Page, prepared by VHB, 101 Walnut Street, Watertown, Massachusetts, prepared for BP 17 Hartwell, LLC. signed and stamped by Civil Engineer, Nicholas J. Skoly, No.52677, dated April 29, 2022
 - b. Sheet 2 or C1.01 titled "Legend and General Notes", prepared by VHB, 101 Walnut Street, Watertown, Massachusetts, prepared for BP 17 Hartwell, LLC. signed and stamped by Civil Engineer, Nicholas J. Skoly, No.52677, dated April 29, 2022
 - c. Sheet 3 or C2.01 titled "Site Analysis Map", prepared by VHB, 101 Walnut Street, Watertown, Massachusetts, prepared for BP 17 Hartwell, LLC. signed and stamped by Civil Engineer, Nicholas J. Skoly, No.52677, dated April 29, 2022
 - d. Sheet 4 or C3.01 titled "Abutters Plan", prepared by VHB, 101 Walnut Street, Watertown, Massachusetts, prepared for BP 17 Hartwell, LLC. signed and stamped by Civil Engineer, Nicholas J. Skoly, No.52677, dated April 29, 2022
 - e. Sheet 5 or C4.01 titled "Property Rights", prepared by VHB, 101 Walnut Street, Watertown, Massachusetts, prepared for BP 17 Hartwell, LLC. signed and stamped by Civil Engineer, Nicholas J. Skoly, No.52677, dated April 29, 2022
 - f. Sheet 6 or C5.01 titled "Key Plan", prepared by VHB, 101 Walnut Street, Watertown, Massachusetts, prepared for BP 17 Hartwell, LLC. signed and stamped by Civil Engineer, Nicholas J. Skoly, No.52677, dated April 29, 2022
 - g. Sheet 7 or C5.02 titled "Plan Sheet", prepared by VHB, 101 Walnut Street, Watertown, Massachusetts, prepared for BP 17 Hartwell, LLC. signed and stamped by Civil Engineer, Nicholas J. Skoly, No.52677, dated April 29, 2022
 - h. Sheet 8 or C6.01, titled "Street Layout and Profiles", prepared by VHB, 101 Walnut Street, Watertown, Massachusetts, prepared for BP 17 Hartwell, LLC. signed and stamped by Civil Engineer, Nicholas J. Skoly, No.52677, dated April 29, 2022.
 - i. Sheet 9 or C7.01 titled "Landscape Plan", prepared by VHB, 101 Walnut Street, Watertown, Massachusetts, prepared for BP 17 Hartwell, LLC. signed and stamped by Landscape Architect, Michael D. Kluchman, No.1513, dated April 29, 2022
 - j. Sheet 10 or C8.01 titled "Construction Details", prepared by VHB, 101 Walnut Street, Watertown, Massachusetts, prepared for BP 17 Hartwell, LLC., signed and stamped by Civil Engineer, Nicholas J. Skoly, No.52677, dated April 29, 2022
5. Drainage and Stormwater Management Plan, prepared by VHB, dated April 29, 2022
6. Draft Covenant, submitted May 4, 2022
7. Applicant's response letter to Preliminary Decision comments from Nicholas Skoly, dated April 29, 2022
8. Geotechnical Engineering Data Report from Amy Blomeke and Clayton Patterson, dated April 21, 2022
9. Memo from Molly Belanger, Planner to BP Hartwell LLC, re: Project review for 17 Hartwell Avenue, dated June 24, 2022.

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10. Memo from Marissa Liggiero to Planning Director, subject: 17 Hartwell Avenue Comments, dated June 22, 2022.

11. Applicant response to comment letter, to Robert Peters, dated June 28, 2022.

RECORD OF VOTE

The following members of the Planning Board voted on June 29, 2022 to grant the certificate of action, subject to above stated terms and conditions: Robert Peters, Michael Schanbacher, Melanie Thompson, Robert Creech, and Charles Hornig.

The following members of the Planning Board voted to disapprove the certificate of action: none.



July 11, 2022

Robert D. Peters, Chair

Date