



COMMONWEALTH OF MASSACHUSETTS
TOWN OF MILTON
PLANNING AND COMMUNITY DEVELOPMENT
525 CANTON AVENUE
MILTON, MASSACHUSETTS 02186

William B. Clark, Jr.
Director
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April 21, 2017

This is to certify that twenty days have elapsed since the filing of the Planning Board approved Special Permit for Cluster Development and Scenic Road Permit for Marine Estates, a private road with seven building lots (Lots 1-7) and one unbuildable open space lot (Lot 8) on a parcel of land which contains 340,529 square feet, more or less. The property is currently numbered **245 Highland Street, Milton, MA**. The development application is by Dennis W. Burke and Martha C. Burke, Owners.

There are no outstanding appeals.

Susan M. Galvin
Susan M. Galvin
Town Clerk

Date Decision Filed: March 23, 2017.

Application Type: Special Permit for Cluster Development and Scenic Road Permit

Sincerely,

William B. Clark Jr.

William B. Clark Jr.
Planning Director

TOWN OF MILTON PLANNING BOARD
SPECIAL PERMIT FOR CLUSTER DEVELOPMENT
AND SCENIC ROAD PERMIT

MARINE ESTATES
245 HIGHLAND STREET
MILTON, MASSACHUSETTS

DENNIS W. BURKE and MARTHA C. BURKE
OWNERS and APPLICANTS

RECEIVED
OFFICE OF TOWN CLERK
MILTON, MA
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I. Approval of Cluster Development and Scenic Road Permit

Upon application of Dennis W. Burke and Martha C. Burke ("Owners and Applicants"), the Town of Milton Planning Board, duly constituted as special permit granting authority, subject to the terms and conditions hereinafter listed, grants a Special Permit for Cluster Development to Dennis W. Burke and Martha C. Burke and their successors and/or assigns for a lot of land containing approximately 340,529 square feet known and numbered as 245 Highland Street (the "Property"). Concurrent with the grant of a Special Permit, the Planning Board grants a Scenic Road Permit for the removal of a portion of the stone wall to enable widening of the driveway opening at the main site entrance. The requirements of this Special Permit and Scenic Road Permit are hereafter set out.

In particular, the Special Permit authorizes the creation of a Cluster Development with a road, seven building lots and Open Land (the "Cluster Development"), subject to: (1) all designs, specifications, terms, conditions and restrictions on the hereinafter described Cluster Development Plan; (2) the terms, conditions, covenants, obligations and restrictions contained in a document entitled "Declaration of Trust of the Marine Estates Trust and Declaration of Easements, Covenants and Restrictions" (the "Homeowners Association Trust") which shall be executed and recorded with the Registry of Deeds by the Owners and Applicants contemporaneously with the recording of the Cluster Development Plan; (3) the terms, conditions and obligations of a document entitled "Stormwater Operation & Site Maintenance Plan for a Proposed Cluster Development at 245 Highland Street in Milton, Massachusetts" dated January 26, 2017; and (4) the specifications, terms, conditions and restrictions in this Special Permit which shall be recorded with the Registry of Deeds contemporaneously with the Cluster Development Plan and the Homeowners Association Trust and the Stormwater Operation and Site Maintenance Plan.

II. Applicable Standards for Granting Permits and Grant of Permits and Grant of Permits

Standards for granting special permits are set out in Section IX.C which provides that, in addition to other requirements set out in the Zoning Bylaws, the special permit may be granted provided that there is no substantial detriment to the public good and no substantial derogation from the intent and purpose of the Zoning Bylaws under the circumstances including conditions

and limitations which the Board finds necessary to safeguard other property in the neighborhood and the health and safety of the public. Section VI.J.18 provides that the Planning Board may grant a special permit for Cluster Development if it finds that an application satisfies the requirements set out in Paragraph 1-17 of Subsection J and that the proposed development is financially practical and will likely be completed. In granting a special permit for Cluster Development the Planning Board shall impose conditions and restrictions which are required by reports from the Board of Health and Conservation Commission or which the Planning Board finds are reasonably necessary to accomplish the purpose or satisfy the requirements of Subsection J.

In granting the special permit, subject to the requirements, terms and conditions set out herein, the Planning Board finds compliance with the requisite standards for decision in Section IX.C. and Section V.I.J. The Cluster Development is demonstrably superior to a standard subdivision. The applicable standards will be met by strict compliance with all requirements, terms and conditions set out herein and in the Cluster Development Plan and there may be no deviation without breach of the Special Permit.

Standards for granting scenic road permits are set out in Section 13.9 of the Rules and Regulations of the Planning Board of the Town of Milton Governing the Subdivision of Land and the Laying Out of Ways; the Planning Board's decision on an application for tearing down more than eighteen linear feet of stone wall shall be based on consideration of the following: preservation of natural resources; environmental values; historical values; scenic and aesthetic characteristics; public safety; compensatory actions proposed, such as replacement of trees or walls; and other sound planning considerations.

In granting the scenic road permit the Board finds that the removal of stone wall and its relocation as shown on Sheet 7 of the Cluster Development Plan is reasonably necessary for access to the Cluster Development which will preserve more natural resources than a standard subdivision and better protect environmental, historical, scenic and aesthetic values. The relocated wall constructed with reuse of stones in the same type of wall terminating in the existing stone pillars will provide a stone wall very similar to what exists.

III. The Cluster Development Plan

The Cluster Development Plan is dated July 11, 2016, revised October, 10, 2016, further revised January 26, 2017 and further revised February 14, 2017 and is entitled "Proposed Cluster Development, Marine Estates, 245 Highland Street, Milton, Massachusetts" and was prepared by DeCelle-Burke & Associates, Inc. The Cluster Development Plan contains 11 sheets, which are entitled:

1. Cover Sheet, Sheet 1 of 11
2. Cluster Existing Conditions, Sheet 2 of 11
3. Construction Management, Sheet 3 of 11
4. Cluster Layout Proof, Sheet 4 of 11
5. Cluster Layout, Sheet 5 of 11
6. Cluster Grading, Sheet 6 of 11
7. Cluster Proposed Utilities, Sheet 7 of 11
8. Cluster Utilities and Profile, Sheet 8 of 11
9. Details, Sheet 9 of 11
10. Details, Sheet 10 of 11
11. Details, Sheet 11 of 11

The Cluster Development shall be constructed in all respects as shown on the Cluster Development Plan, including the notations thereon and as specified herein. All buildings, utilities, sewer, drainage, other infrastructure, roadways, walkways, earth moving and the features of the Open Land shall be constructed and maintained as shown in the Cluster Development Plan. No construction shall deviate without the approval of the Planning Board.

IV. Roadway

The roadway shall be constructed so as to meet the specifications for construction set out in the Rules and Regulations of the Planning Board Governing the Subdivision of Land and the Laying out of Ways, provided that the following requirements are modified:

1. Section 7.4.1: Roadway Cross Section: the roadway shall be 23 feet wide and, with 18 feet of pavement and 5 feet for a sidewalk.
2. Section 7.4.5.1: Sidewalks: sidewalk shall be provided on southerly side only.

V. The Homeowners Trust

Homeowners Trust documents establishing a homeowners' trust and setting out its rights and responsibilities are attached as Exhibit A. The trust shall be executed by Owners and Applicants prior to Commencement of construction. The homeowners' trust imposes an unconditional legal obligation for each lot owner within the Cluster Development to pay a proportionate share of the expenses of the trust, including the costs of meeting applicable terms, conditions and requirements and performing the obligations imposed on the Applicants, the trust and/or the homeowners by the Special Permit. The Town shall be entitled to enforce any such requirement or obligation in the Special Permit not only against the trustees but also against the lot owners if the trust is not reasonably able to meet the requirement or satisfy the obligation. In the event that the Town is obliged to bring suit to secure compliance by the trust with the requirements and obligations of these Permits, the trust shall reimburse all costs of suit, including the Town's attorney's fees. The lot owners shall be obliged to provide such reimbursement if the trust shall fail to do so. The homeowners' association trust documents shall not be changed without prior approval by the Planning Board.

VI. Open Land

Section VI, J of the Bylaw provides that at least thirty-five percent (35%) of the total land area, exclusive of land that is set aside for streets, be Open Land. The Owners and Applicants have designed the site to provide approximately 35.2% of the property for Open Land (~119,973 sf or ~2.75 acres) as shown as Lot 8 on Sheet 5. The Open Land will be maintained in its existing condition and will offer vegetated buffers between the site and abutting properties. It will also continue to provide a wooded presence along the frontage of Highland Street and will include the stone wall that runs along such frontage.

The Open Land shall be owned by the Homeowners Trust which shall be responsible for its proper care and maintenance in its natural state as provided in the Marine Estates Open Land Management Plan recorded in the Registry of Deeds as an exhibit to the Homeowners' Trust. A perpetual conservation restriction pursuant to G.L.c184 §§ 31-33 for the Open Land shall be granted to the Town's Conservation Commission and recorded with the Norfolk County Registry of Deeds by deed approved by Town Counsel. The recording of the conservation restriction shall be completed prior to the issuance of the last certificate of occupancy. The Homeowners

Trust shall have the right of access by designated employees or contractors to the Open Land for maintenance purposes, and may access the Open Land across one or more lots as may be reasonably necessary for this purpose after reasonable notice to the lot owner and with responsibility for prompt repair of any damage which may result. Any maintenance activities within the Open Land, including any removal, pruning or other maintenance of trees within the Open Land, shall be done in accordance with the approval of a certified arborist and the Conservation Commission.

VII. Stormwater Maintenance Responsibilities

A Stormwater Operation and Site Maintenance Plan (O&M Plan) is attached as Exhibit B. The O&M Plan describes the stormwater management system. The Homeowners Trust shall maintain the catch basins and water quality units. All detention/infiltration/bio retention basins shall be maintained in good condition and working order by the Trust. Individual rooftop recharge infiltration systems shall be maintained by the lot owner on which the individual rooftop recharge system is located. The O&M Plan is enforceable in accordance with its terms as part of this Special Permit.

VIII. Affordable Housing

Section VI.J.6 provides that in a Cluster Development containing less than 10 lots, in lieu of providing an additional lot restricted to use for low or moderate income housing, the application may provide for a monetary contribution to the Town's Affordable Housing Trust Fund in an amount which is reasonable as determined by the Planning Board under the relevant circumstances. The Applicant has proposed paying \$50,000 to the Fund in lieu of providing an additional lot for development at some future time when funding is available. The Planning Board has considered a plan providing for an eighth lot and has determined that it would not be demonstrably superior to a standard subdivision and would be unlikely to receive approval. A standard subdivision would yield no payment to the Fund and would be a significantly less good design from the Cluster Development herein approved. The Cluster Development is not likely to yield profits significantly in excess of profits from a standard subdivision. Under all the relevant circumstances the Board determines that the proposed \$50,000 payment to the Fund is reasonable and it is approved. Owners and Applicants may make payment in equal installments upon the sale of each lot provided that payment in full shall be required prior to an occupancy permit being issued for the final lot to be sold.

IX. Commencement and Completion of Construction

Construction shall be commenced within two (2) years from the date when these Permits become final and buildout shall be substantially completed within five (5) years from that commencement date, unless the date is extended by the Planning Board.

X. Construction Notice

Ten (10) days advance written notice shall be provided to the Planning Board prior to commencing construction.

XI. Deed Reference

Every deed conveying any lot authorized by this Special Permit shall make specific reference to this Special Permit and shall state that the lot is subject to the relevant terms and conditions of the Special Permit.

XII. Assignment

These Permits shall not be assigned by the Applicant to an assignee without the written consent of the Planning Board, which shall not withhold consent to assignment without good cause.

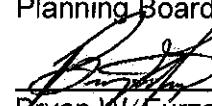
XIII. Bond

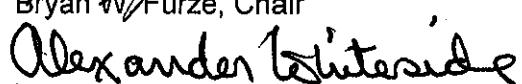
A bond shall be posted prior to construction to ensure that the street and infrastructure, including water, sewer, utilities, drainage, sidewalk, and landscaping, are completed as shown on the plan. The amount of the bond shall be determined by the Planning Board and its terms shall be approved by Town Counsel. In lieu of a bond the Applicant may ask to post one or more lots which shall not be saleable until the street and infrastructure have been completed.

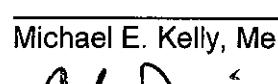
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Attest:

Planning Board of Milton


Bryan W. Furze, Chair


Alexander Whiteside
Alexander Whiteside, Member


Michael E. Kelly, Member


Cheryl Tougias, Member


April Lamoureux, Member

Dated: March 9, 2017