

**SPECIAL PERMIT DECISION
AND
CERTIFICATE OF APPROVAL OF A DEFINITIVE SUBDIVISION PLAN**

Date: May 18, 2004

File Number: SP2003-01

Applicant: William Wright
752 Stafford Street
Rochdale, MA 01542

Owner: Same as Applicant

Location: Stafford Street
Map 36, Parcel B3

Deed Ref.: Book 21454, Page 25

Zoning: Business-Residential-1 (BR-1)

Subject: Application for a Special Permit under §5.7 of the Leicester Zoning Bylaw to allow construction of a Senior Village Development consisting of 34 units (16 single-family structures and 9 two-family structures)

The decision of the Planning Board on the above-referenced application is as follows:

I. Procedural History:

1. On August 22, 2003, an application for a Special Permit in accordance with §5.7 of the Leicester Zoning Bylaw was submitted to the Leicester Planning Board (the Special Permit Granting Authority). This application was supplemented with additional materials submitted throughout the review process, including submission of Definitive plan on March 3, 2004. All application materials are on file with the Planning Board. The Board's decision is based on all application materials and the following plan:

Briarcliff Estates Senior Village Definitive Site Plan in Rochdale, Massachusetts,
prepared by Coyle Engineering, Inc., dated March 3, 2004, revised April 14,
2004, and Definitive Plan of Briarcliff Estates, Stafford Street, Leicester,
Massachusetts, prepared by Jarvis Land Survey, Inc., dated April 30, 2004..

2. The Planning Board held a public hearing on the application on April 6, 2004, at which time opportunity was given to all those interested to be heard in favor or opposition to said application. The hearing was continued to May 4, 2004, to provide the Applicant opportunity to respond to comments by the Board, the public, and various Town Departments. On May 4, 2004, the public hearing was closed.

II. Findings:

1. The proposed project is located in the Business-Residential-1 (BR-1) zoning district, which allows Senior Village Developments.
2. The proposed project is comprised of 34 units (16 single-family structures and 9 two-family structures) and complies with the density requirements of Section 5.7.04.2.
3. The proposed project includes the required 25% open land to be used for passive open space and a community center for residents of the proposed Senior Village Development.
4. The project provides parking spaces in compliance with the bylaw.
5. The application meets the requirements of §5.7.05.2, Special Permit Review Criteria, as described below:
 - a. The proposed project provides for the convenience and safety of vehicular and pedestrian traffic within the site and in relation to adjacent streets and property;
 - b. The Applicant has provided adequate measures to address stormwater management and drainage associated with the project;
 - c. The proposed residential structures will be served by private wells and septic systems. Refuse will be removed by private contract;
 - d. The proposed development is in an appropriate location and does not significantly alter the character of the neighborhood in comparison to a single-family development;
 - e. The Applicant has substantially addressed the concerns of Town Boards and Departments.
 - f. The project complies with Section 5.7 of the Leicester Zoning Bylaw.

III. Decision:

In view of the foregoing, the Planning Board voted at its meeting on March 3, 2004 to grant approval of the Special Permit and the Definitive Subdivision Plan. The Planning Board's decision is subject to the following conditions and modifications:

1. Final design and construction shall be in substantial conformance to the plans approved by the Planning Board (referenced above), except where such plan(s) are specifically modified under the conditions included as part of this Decision.
2. The Planning Board granted the following waivers from Leicester's Subdivision Rules and Regulations, after finding that such waivers are in the public interest and not inconsistent with the Subdivision Control Law:
 - a. Section V.K., to allow use of culvert of High Density Polyethylene (HDPE) pipe.
 - b. Section V.G.1, to allow sidewalk on one (1) side of roadway rather than two (2) sides. This waiver was allowed because the project is a gated community.
 - c. Section V.A.2., to allow pavement width of 24 feet, exclusive of curbing, in lieu of 28 feet conditioned upon Victoria Drive remaining a private way.
3. Open Land not developed as walking trails shall remain in its natural state, except where the Board has required landscaping or other improvements specifically shown on the approved plans.

4. The Activity Building shall be as shown on the plans and limited to the uses authorized in the Zoning Bylaw, Section 5.7.03.
5. The access gate to the site shall be installed and operational prior to issuance of any building permit for the site, unless such time is extended by majority vote of the Planning Board. The access gate shall be suitable to the Fire and Police Departments of the Town of Leicester to ensure timely emergency access and shall be designed to allow vehicles to turn around and exit the site without backing up.
6. In conformance with the Bylaw, Section 5.7.04.1.C, the Applicant shall record an open space restriction in the Registry of Deeds in favor of the Town of Leicester. Such restriction is subject to review and approval by the Town of Leicester through its Planning Board, and shall be prepared and recorded prior to issuance of any building permits. Minor site work including erosion control and loaming and seeding may occur in the open space area after recording of the open space restriction.
7. All dwelling units within the development shall be subject to an age restriction (age 55 and above) described in a deed/deed rider, restrictive covenant, or other document approved by the Planning Board that shall be recorded at the Registry of Deeds or the Land Court. Such restriction shall be in compliance with the specific requirements of the Zoning Bylaw, Section 5.7.04.1.A, and subject to review and approval by the Town of Leicester through its Planning Board. *Such restriction shall be prepared and recorded within 6 months of the date of endorsement unless such time is extended by the Board for good cause upon the written request by the Applicant. In no case shall building permits for any structure be issued until such restriction is in place.*
8. Approval by the Planning Board of this plan shall not be treated as, nor deemed to be, approval by the Board of Health for a permit for construction and use on any lot. No building or structure shall be placed on any lot without the consent of the Board of Health.
9. All property maintenance, including but not limited to trash removal, shall be the responsibility of the owner and provided by private contractor, not the Town of Leicester. Victoria Drive shall remain a private way and all maintenance responsibilities shall be the responsibility of the owner.
10. In accordance with Section 5.7.04.1.D. of the Leicester Zoning Bylaw, Senior Village Developments are exempt from Leicester's Phased Growth Zoning Bylaw, Section 6.2.01 of the Leicester Zoning Bylaw.
11. No building permits shall be issued until a base coat of pavement is in place for any building whose access is gained off the new roadway(s).
12. Streetlighting shall be installed at the applicant's expense. The applicant must submit a Massachusetts Electric streetlight plan to the Planning Board for approval within 3 months of endorsement of this Decision and prior to any lot releases. The applicant may submit a written request for extension of this deadline.
13. The applicant shall comply with the Planning Board's Minimum Construction Program Requirements for Approved Definitive Plans: Notice to Applicants, dated October, 2000.
14. Construction debris and trash generated during construction shall be removed from the site quickly. At no time shall debris be allowed to become wind blown throughout the site or

adjacent properties. Dumpsters or similar structures will be emptied and maintained appropriately and not show evidence of overflowing their capacity.

15. This approval shall not be treated as, nor deemed to be, assurance of compliance with wetland laws and other matters regulated by the Conservation Commission.

16. This approval shall lapse in two years from the date of endorsement unless construction has commenced by such date, unless for good cause shown a written request for an extension of time is made to the Planning Board. This two-year period does not include time as required to pursue or await the determination of an appeal from this approval. Such construction, once begun, shall be actively and continuously pursued to completion. Completion of all construction of all ways and installation of all municipal services shall be within five (5) years from the date of endorsement. Failure to comply will result in automatic rescission of the approval of the plan. *A notation indicating the deadline for construction shall be made on the Definitive Plan to be endorsed by the Planning Board.* The notation shall read as follows:

Approval of the Leicester Planning Board is for five (5) years only. In the event the ways and services shown on this Plan are not constructed and installed within five (5) years from the date of endorsement, the Board's approval is rescinded, and this Plan is and shall be null and void.

The time for such construction and/or installation may be extended upon the written request of the applicant, for good cause shown, prior to the expiration of the approval period, and upon a vote of the majority of the Planning Board. In all cases, failure by the applicant to commence construction of ways and services within five (5) years from the date of endorsement shall result in the automatic rescission of the approval (Subdivision Rules and Regulations, §III.B.8).

17. Any future expansion or modification of the project (including but not limited to changes in roadway location, type or number of dwelling units, location of dwelling units, and use of the proposed Open Land or Community Center) shall be subject to an amendment of the Special Permit, following the same procedure as for an original grant of a Special Permit.

18. The granting of this approval by the Planning Board shall not be construed as approval from any other Board, official or regulation that is needed regarding permitting for this project.

19. *This Decision shall be referenced on the plan to be endorsed by the Planning Board.*

20. Following the 20-day appeal period after this Decision is filed with the Town Clerk, the Applicant shall provide a set of plans with the modifications required herein shown on the plan for the Board's endorsement. Prior to endorsement of the Board's approval of the plan, the Applicant will be required to provide a performance guarantee to secure the construction of ways and installation of services (following the procedures as required for a Definitive Subdivision Plan under Leicester's Subdivision Rules and Regulations Section III.B.3 and MGL Ch. 41, Section 81-U). *The performance guarantee shall be referenced on the plan to be endorsed by the Planning Board.*

21. After the Plan has been endorsed by the Planning Board, the Applicant shall provide the Board with five (5) copies of the signed plan.

22. This Decision shall not take effect and no construction activity may commence at the site until the Decision and plan has been recorded at the Worcester District Registry of Deeds and evidence of such recording is delivered to the Planning Board.

23. Following recording of the plan, the Applicant shall provide the Board with a copy of the Plan (and this Decision) as recorded at the Registry of Deeds, indicating date of recording, book and page number.

IV. Record of Vote:

The following members of the Planning Board voted to grant a Special Permit subject to the above-stated terms and conditions:

Debra Friedman, Chair

Judith Roy

John McNaboe

Richard Antanavica

V. Appeals

Appeals, if any, shall be made pursuant to M.G.L., Ch. 40A, §17 and notice of appeal shall be filed within 20 days after the date of filing of this notice in the office of the Town Clerk.

Copy of Decision delivered to:

William Wright*
Coyle Engineering
Building Inspector
Zoning Board of Appeals
Quinn Engineering

* by certified mail

Notice of Decision mailed to:

“Parties in Interest” (abutters & Planning Boards of abutting Towns)