

DEPARTMENT OF PLANNING & LAND MANAGEMENT

Definitive Subdivision Plan #247
48Y Fitchburg Turnpike

Report Date: November 9, 2020
Prepared by: Elizabeth Hughes, Town Planner

GENERAL INFORMATION

Owner: Town of Sudbury
278 Old Sudbury Road
Sudbury, MA 01776

Applicant: Quarry North Road, LLC
2134 Sevilla Way
Naples, FL 34109

Requested Action: **Render a decision on Definitive Subdivision Plan pursuant to MGL Ch. 41, Section 81 and the Planning Board Subdivision Rules & Regulations.**

The application was submitted on September 11, 2020 and a Decision is required to be filed with the Town Clerk on or before January 22, 2021

Location/Zoning/Existing Conditions & Land Use/Utilities: The Project Site (Site) within the Town of Concord is approximately 16.42 acres. The Site is located on the north side of Fitchburg Turnpike (Rt. 117), but has no frontage on Fitchburg Turnpike, and is in the Residence AA Zoning District with the north and east side of the Site within the Wetland Conservancy District. The entire Site is located within the Groundwater Conservancy District. There are no Town utility services available.

The Site is has a significant variation in topography from a flatter area on the south side due to it being an abandoned earth quarry to very steep wooded slopes on the west, north and east down to wetlands (See Existing Conditions Plan).

Surrounding Land Uses/Zoning: Surrounding the Site to the north, west and east is undeveloped land and wetlands. (Res. AA). To the south, the land is in Sudbury and was part of the abandoned earth quarry (Formerly Melone Gravel Pit).

I. Proposed Project

The application states the plan is a conventional subdivision plan to create 1 lot to preserve frontage in Concord and that there will be no traffic generated, no anticipated effect on public services and costs to the Town.

The Plan shows a new 50-foot road right-of-way with a 22-foot road that is accessed from a proposed private road in the Town of Sudbury. Stormwater drainage will be handled through the use of catch basins and a subsurface infiltration system that ties into a drainage system in Sudbury.

II. Zoning Bylaw Lot Requirements

The property is located within the Residence AA Zoning District, which requires:

1. Minimum Lot Area = 80,000 SF – **The lot is over 80,000 s.f. of area.**
2. Minimum Lot Frontage = 200 LF – **The lot has over 200 feet of frontage.**
3. Minimum Lot Frontage Exception = 160 LF – **not being utilized**

4. Minimum Lot Width = 160 LF – **The lot has over 160 feet of lot width.**
5. Minimum Front Yard Setback = 40 feet – **The Plan does not show building envelopes, but given the size of the lot, development outside of the required setbacks can be achieved.**
6. Minimum Side Yard Setback = 15 feet – **The Plan does not show building envelopes, but given the size of the lot, development outside of the required setbacks can be achieved**
7. Minimum Rear Yard Setback = 30 feet – **The Plan does not show building envelopes, but given the size of the lot, development outside of the required setbacks can be achieved.**
8. Minimum Corner Clearance = 10 feet – **Not applicable.**
9. Maximum Height = 35 feet – **Insufficient information to make a determination.**

III. Subdivision Rules & Regulations Section 6 Design Standards

Section 6.2.3 Subdivision Straddling Municipal Boundaries - The Board will not approve a subdivision of land where access to the subdivision tract in Concord is through land in another Town, unless the access is an accepted public way at the time the subdivision application is submitted. In general, lot lines should be laid out so as not to cross municipal boundaries.

Access to the subdivision is through the Town of Sudbury from an approved roadway that has not been built. The Town of Sudbury's Definitive Plan approval for this roadway has a condition of approval stating that the roadway show on the plan shall remain private and will not be accepted by the Town of Sudbury as a public way.

Section 6.7.1 Frontage - No subdivision shall be approved unless the land to be subdivided shall have frontage on an existing public street or on an existing private way in the Town of Concord, which way shall be improved by the subdivider to meet the minimum design and construction requirements set forth in this section.

The tract of land has no frontage on a public or private way within the Town of Concord. Access to the subdivision is through the Town of Sudbury from an approved roadway that has not been built. The Town of Sudbury's Definitive Plan approval for this roadway has a condition of approval stating that the roadway show on the plan shall remain private and will not be accepted as a public way.

Section 6.20 Reservation of Land for Public Purposes

The Planning Board may require the designation of a portion of the subdivision tract for reservation for a period of three years for municipal purposes. Reservation of land shall not be unreasonable in relation to the size of the tract being subdivided and to the prospective uses of the reserved land.

The Plans do not show any land dedicated for public purposes. The Town Planner does not believe that a subdivision of one lot requires reservation of land for public purposes.

Section 6.21 Reservation of Land for Housing Purposes

In order to serve the public purposes of the Inclusionary Housing Bylaw adopted by the 1992 Town Meeting as Article 61 of addressing the Town's affordable housing needs and of encouraging the availability of housing in the Town for persons of all income levels, the Planning Board shall require, as a condition of approval of each new residential subdivision, the reservation of land within the subdivision for purchase by the Town or its designee, in accordance with the following specific requirements, procedures and exceptions:

6.21.1 Minimum Tract Size: The requirement for reservation of land shall apply to all tracts containing at least five (5) times the area required for a single family house lot in the underlying zoning district.

The Site is approximately 715,255 s.f. and located in the Residence AA Zoning District, which requires 80,000 s.f. per lot. Under Section 6.21.1, a subdivision containing more than 400,000 s.f. requires the reservation of land for affordable housing purposes, unless that reservation meets one of the exceptions noted in Section 6.21.2.

6.21.2 Minimum Area To Be Reserved: With the exceptions stated in this paragraph, no less than ten (10) percent of each residential subdivision to which the reservation requirements applies shall be reserved for purchase by the Town or its designee for housing purposes. The exceptions are as follows:

- (a) If reservation of ten (10) percent of the subdivision tract area would reduce by more than twenty (20) percent the number of lots that could otherwise be created by the subdivision, then the Planning Board may designate less than ten (10) percent of the area, but not less than one-half (1/2) acre of buildable land, for reservation. If reserving one-half (1/2) acre of buildable land would reduce by more than twenty (20) percent the number of lots that could otherwise be created, then no area shall be designated for reservation.*
- (b) The Planning Board may designate less than ten (10) percent of the subdivision tract area for reservation if it determines that reserving ten (10) percent of the area would result in a subdivision layout that would be deleterious to the Town.*

The reservation of 10% of the Site is approximately 71,525 s.f. The Plan proposes to create approximately 994 feet of frontage on a new road, which would allow a minimum of 5 lots given the size of the Site. The reservation of 71,525 s.f. is not more than 20% the number of lots that could otherwise be created by the subdivision.

6.21.3 Designation of Lots: After such consideration of comments from other Town boards and committees as the Planning Board deems appropriate, the Planning Board shall designate on the subdivision plan the specific portion of the tract to be reserved. Such land may be in one or more locations within the subdivision as the Board may determine.

In determining the areas to be designated for reservation, the Planning Board shall consider, at a minimum, the following characteristics of the land:

- (a) Suitability of soils for location of on-site sewage disposal systems;*
- (b) Availability of Town sewer;*
- (c) Availability of Town water;*
- (d) Relationship of the lots or area to be reserved to the location and type of vehicular and pedestrian circulation;*
- (e) Topography;*
- (f) Location of the area(s) to be reserved in relation to wetlands, floodplain, and other surface water and groundwater resources, and;*
- (g) Location of the area(s) to be reserved in relation to existing and proposed open space, active recreation areas, and trail networks.*

The area or areas designated by the Planning Board for reservation shall be shown as one (1) or more lots on the Definitive Subdivision Plan approved and endorsed by the Planning Board.

The Applicant has not requested a waiver to Section 6.21 to set aside land for affordable housing to be built by the Town and has not demonstrated any reasons to waive this provision.

Requested Waivers

Under MGL c. 41§ 81R, the Planning Board may grant waivers of its regulations that are “in the public interest and not inconsistent with the intent and purpose of the subdivision control law.” The Applicant has not requested any waivers to the Subdivision Rules & Regulations. In a memo dated September 29, 2020, the CPW Engineering Staff identified 12 issues and concerns with the proposed plans, as noted below.

V. Town Department Comments

A. Fire Department

In a October 21, 2020 memo, the Assistant Fire Chief raises the following issues and concerns:

- Due to the remote location of this subdivision, the average emergency response time for the Concord Fire Department to reach the residents and structures here would be extensive. Because of this response delay, reliance and dependence on our mutual aid partners (most likely the Sudbury Fire Department) would be necessary to ensure a reasonable expectation of prompt emergency service. This of course would depend on whether or not the Sudbury Fire Department or another mutual aid community has the available resources at any given time to provide for the needed assistance.
- The proposed plan calls to question adequate vehicular access by the Fire Department’s largest vehicle, Ladder 1, which is over 38 feet long. One of the turns coming into Rookery Lane appears to be less than 90 degrees, which may prove to be difficult to negotiate. The possibility of parked vehicles and snow accumulation on the road would factor in as well. The Applicant should provide a turning analysis for the Concord Ladder truck.
- Municipal water supply accessible for fire suppression appears not to be assured by the Town of Concord. The Plans state that water will be provided by the Sudbury Water District. As noted in the Concord Public Works memo dated October 1, 2020, it is not clear how a property in Concord is eligible to receive water from the Sudbury Water District. The Applicant should provide verification from the Sudbury Water District that water will be provided and that they will be responsible for hydrant maintenance.
- The lack of sidewalks along Rte. 117 along with the added potential foot and cycle traffic generated by new residents now in this area could be a potential safety hazard.
- The Applicant should provide information on who will be responsible for the maintenance of this new road.

B. CPW Engineering Division

In a September 29th memo, the CPW Engineering Staff raises the following issues and concerns with the application:

1. Please provide a Stormwater Pollution Prevention Plan (SWPPP) and make the appropriate filings with National Pollutant Discharge Elimination System (NPDES) for the site alterations that are to be performed.
2. Please provide traffic impact study on the development for the increase in traffic to Fitchburg Turnpike (Route 117) eastbound into the Town of Concord
3. Please state the roadway speed that is intended for this Subdivision Roadway.
4. The roadway layout at the east and west corner of the roadway does not provide the adequate radius of curvature required in the Town of Concord Subdivision Rules and Regulations Section 6.8. The applicant should either request a waiver or revise the roadway to provide the appropriate radius of curvature based on the roadway speed. Speed Signs should also be shown on the plans.
5. Locating the drainage/infiltration system under the roadway is not within the Concord Public Works Standards. As a result, this street will remain private and cannot be petitioned for street acceptance. Furthermore, the Applicant shall provide detailed information on their plan for maintenance of the roadway and all utilities.
6. The units/houses are not shown on any of the plans especially on the Town of Sudbury side of the development so it is difficult to determine if the proposed drainage areas are accurately drawn. Please show the units/houses on the plans including on the Town of Sudbury side of the development.
7. The Stormwater Report referenced rational “Using the rational method to determine peak runoff flows, the proposed conveyance system is designed for the 25-year storm event, but Concord Public Works Design & Construction Standards & Details, Section 2 - Drainage Standards Required “rational method for a 100 year frequency storm event and Manning’s equation for open channel flow. Please provide updated calculations using appropriate methods.
8. Concord Public Works Design & Construction Standards & Details, Section 2 - Drainage Standards Required calculations for the 2 year, 10 year, 25 year, and 100 year frequency. Please add calculations for the 25 year storm.
9. A revised stormwater report will need to be provided when/if the lot created by this roadway is developed with impervious features.
10. Concord Public Works Design & Construction Standards & Details, Section 2 - Drainage Standards Required catch basin spacing of 250 feet maximum. The plans show a spacing of 300 feet. Please revised the catch basin and drain manhole layout.
11. Soil testing on site was performed. Was a Town of Concord representative present to observe the testing?
12. Concord Public Works – Highway and Grounds Division will not provide snow removal or any other maintenance services to this road as it does not connect to any of the Town of Concord roadways (Rookery Lane on the plans).

C. CPW Water/Sewer Division

In a October 1, 2020 memo, the Water-Sewer Engineer raises the following issues and concerns:

1. Concord Public Works Rules and Regulations Governing Water Connections and Use, Section 2, Availability of Service, states that an approved water service to a property in Concord is

contingent on the existence of a water main in the public or private way in front of the property to be served. This property does not front a water main in the Town of Concord, as such, this parcel is not eligible for water service from the Town of Concord.

2. Utility Plan Sheet 8 shows a proposed water main in Rockery Lane to be “Connected to Sudbury Water District Distribution System” creating a system loop with a water main in Cold Brook Drive and Emery Lane. It is not clear how this water system connection will be achieved as it is Concord’s understanding that both the water main being shown, and Cold Brook Drive, and Emery Lane do not currently exist.
3. Further, it is not clear to the Town of Concord how a property in Concord is eligible to receive water from the Sudbury Water District.

D. Concord Municipal Light Plant

In a October 23rd memo, the CMLP Assistant Director states:

Providing electric power to this “landlocked” subdivision at 48Y Fitchburg Turnpike is a complicated issue. There are three scenarios, all of which have significant complications and unique difficulties. Below are the three scenarios, listed in no particular order:

- Extend the current circuit down Fitchburg Turnpike and into the proposed subdivision. This would require the developer to petition and obtain an easement, for the benefit of the Town, through the Town of Sudbury. The entire extension would need to be undergrounded (per Concord bylaws for new construction). This extension may also be subject to further bylaws of Sudbury. This will require the developer go through the petition process and the Town to have Town Counsel review all documents to determine if they are legal. Additionally, the cost for the installation of this extension is significant and the developer should document the financial ability to pay for this work. At this time, CMLP cannot state whether this option is feasible and that adequate electric service can be provided to this subdivision.
- Extend the primary conductors from the Concord Pump Station approximately 1000 feet across private property, a wetland and a stream to get to 48Y Fitchburg Turnpike. This extension would have to be undergrounded (per Concord bylaws for new construction) and require the developer get an easement for the benefit of the Town. At a minimum, this work would require a Notice of Intent be filed with the Natural Resources Commission, who will evaluate the project and whether there are other feasible alternatives that have less environmental impacts. As with the first option, this will require the developer go through a permitting process with the NRC that may or may not be granted, obtain an easement from a private property owner and the Town have Town Counsel review all documents to determine if they are legal. Additionally, the cost for the installation of this extension is significant and the developer should document the financial ability to pay for this work. At this time, CMLP cannot state whether this option is feasible and that adequate electric service can be provided to this subdivision.
- Obtain an agreement between Eversource (or the current electricity provider for Sudbury) and CMLP, that would allow them to provide electric power to customers in CMLP’s service area. An agreement currently exists between Massachusetts utilities in neighboring service areas, stemming from Deregulation Legislation from the 1990s. This agreement outlines the service territories and competition guidelines between utilities. The agreement prevents an outside utility from entering another utility’s service area. We do have a few services in Concord that are serviced by another utility.

Conversely, CMLP provides service to a few customers outside of our territory. These irregularities are part of a one-time agreement, associated with the deregulation legislation, and do not authorize any future service boundary crossing. This option would require a legal agreement that is amenable to both CMLP and the other utility.

Outside of the subdivision process with the Planning Board, the developer would have to present a plan to CMLP that is acceptable to the Town Manager, CMLP Director and possibly legal counsel for approval. Given all of the issues and concerns raised above, it is uncertain at this time whether that approval would be granted since CMLP has a fiduciary obligation to spend the ratepayer's money efficiently, and make the best decisions possible.

E. Building Inspections Division

The Building Commissioner did not provide any comments on the proposed plan.

F. Health Division

At the September 30, 2020 meeting, the Board of Health approved the Definitive Subdivision Plan subject to the following conditions:

1. The applicant has not performed soil testing (to date) to demonstrate on-site sewage disposal systems can be designed and installed on the lot. All future Individual sewage disposal systems shall be designed, permitted and constructed in accordance with:
 - (a) Title 5 of the State Environmental Code, 310 CMR 15.000, Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage, and
 - (b) Concord Board of Health regulation, Chapter 3.0 Wastewater Management.
 - (c) Sewage design flow will be restricted to 440 gallons per acre.
2. The applicant has not demonstrated that potable water is available on the lot (to date). The applicant must ensure that any future dwellings be connected to public water if it is made available. Any wells for domestic drinking water, irrigation purposes, or heat pump use, shall be designed, permitted and constructed in accordance with the Concord Board of Health regulation, Minimum Sanitation Standard for Private and Semi-Public Water Supply.
3. If any portion of this lot is deemed outside of the Groundwater Conservancy District, then site design shall to the extent feasible, locate any potential pollution sources, (such as onsite sewage disposal systems) outside of the District boundaries.
4. No underground fuel storage systems shall be installed without a variance granted by the Board of Health in accordance with Section 4 of the Underground Storage Tank Bylaw adopted by the April 1993 Town Meeting.
5. Tree stumps and wood wastes generated by land-clearing operations shall not be buried on site. (DEP's solid waste regulations 310 CMR 16.05(3)(d) and 310 CMR 19.013(1)(h) prohibit stump dumps on lots being developed for sale.)

These conditions would be included in the Definitive Subdivision Decision should the Planning Board move to approve the Plan.

G. Natural Resources Division

The Natural Resources Director did not provide any comments.

VI. Town Planner Recommendation

The Plan shows access from a private way in Sudbury and the Site has no frontage on a road in Concord and cannot gain access from a road in Concord. Section 6.2.3 expressly prohibits approval of a subdivision where access to the subdivision tract in Concord is through land in another Town, unless the access is an accepted public way at the time the subdivision application is submitted and Section 6.7.1 expressly prohibits approval of a subdivision unless the land to be subdivided shall have frontage on an existing public street or on an existing private way in the Town of Concord.

There does not appear to be any public interest for the Town of Concord for the Planning Board to grant a waiver to these Sections and significant issues and concerns have been raised by Town Staff regarding the ability and availability for the provision of water, electricity and emergency service. The Town Planner recommends that the Planning Board deny the requested Definitive Subdivision Plan for 48Y Fitchburg Turnpike.