

DECISION OF THE ANDOVER PLANNING BOARD  
AS A SPECIAL PERMIT GRANTING AUTHORITY

ON THE APPLICATION OF

Greenwood-Andover Development, LLC

For a Special Permit for Earth Movement under Section 6.3 of the Zoning By-Law.

Decision: SP10-04

YES (with conditions)

A public meeting of the Planning Board was held on September 28, 2010, in the Third floor conference Room of the Town Office Building. Present and voting in the affirmative on the matter were members Joan Duff, Vincent Chiozzi, Linn Anderson, John McDonnell and Mark Yanowitz.

Pursuant to public notice in the Andover Townsman, a newspaper of general circulation in the Town of Andover, published on July 22, 2010 and July 29, 2010, and notice sent by mail, postage prepaid, to all interested parties pursuant to the provisions of Massachusetts General Laws, Chapter 40A, a public hearing was convened on August 10, 2010 on the application of Greenwood-Andover Development, LLC for a Special Permit for Earth Movement associated with a Definitive Subdivision development of a residential subdivision. The hearing was continued and closed on September 21, 2010, with the aforementioned members of the Board present throughout.

11

TOWN OF ANDOVER, MASS

2010 OCT - 1 A 10:30

RECEIVED  
PLANNING OFFICE

Premises affected is property owned by O. Michael & M. Frances Bellia, Trustees of 212 Greenwood Rd Realty Trust located at intersection of Greenwood and Chandler Road and shown on Assessors Map 129 and Lot 14A & 14B, comprising of 10.4-acres, hereinafter referred to as the "site", on which a definitive subdivision plan entitled Weeping Willow Estates would take place.

In consideration of the Special Permit for Earth Movement, the applicant had submitted an earth quantities plan and an erosion and sedimentation control plan for review. In the analysis, as prepared by DK Engineering Associates the site cut volume is approximately 8,450 cubic yards and the site fill volume is approximately 8,400 cubic yards. It has been the past practice of the Planning Board to regulate the hours and days of the earth movement activities. In this instance, the Planning Board has conditioned their approval by restricting earth movement activities to the time period between the last morning pick-up of school children, and the first afternoon drop off.

In considering a special permit for earth removal and regrading the Planning Board must find that the subdivision plan with which it is associated, as a whole, makes the best feasible use of existing topography. The Board must also find that the proposed use will not be unreasonably detrimental to the established or future character of the neighborhood or the town, and further that there are adequate public roadways and municipal utilities. In considering a special permit the Board can, and will, impose such conditions or safeguards, as it deems reasonably necessary.

In the opinion of the Board, the subdivision plan as a whole, makes the best feasible use of the existing topography; the areas of the building lots themselves; and the roadway profiles which will not involve major cuts or removal of earth materials from the site. Although the development is being constructed in an established neighborhood, any adverse effects to those abutters can be mitigated through the regulation of hours of operation.

In consideration of the abutting residences, the anticipated hauling operations associated with the Weeping Willow Estates development, the existing vegetation, and the preservation and protection of significant natural features, the Planning Board has conditioned their approval to help mitigate any adverse effects that may be associated with this development. In the opinion of the Board the issuance of the special permit (with appropriate conditions) will not result in unreasonable detriment to the neighborhood or the Town.

In consideration of all of the foregoing, including the plans, documents, and testimony given during the public hearing, the Planning Board hereby approves and issues a Special Permit for Earth Movement to Greenwood-Andover Development LLC, applicable to the property earlier described, and subject to the following conditions which are the same as those imposed on the aforementioned definitive subdivision plan:

Conditions of Approval:

General Conditions

1. For purposes of this approval the subdivision shall be defined as all features depicted on

the plans described under condition number 2; the developer shall be defined as the applicant, Greenwood-Andover Development LLC, and its assigns or successors in title to the development, and all contractors and subcontractors under control of or in service to the developer;

2. Except as otherwise provided for in these conditions the construction of the subdivision and all activities associated therewith shall be in conformance and compliance with the information, details, notations, grading and features shown on the following plans and drawings prepared by DK Engineering Associates, Inc:
  - a. Sheet 1 of 8, Title Sheet, dated 7/15/10 last revised 9/17/10, as prepared by DK Engineering Associates, Inc;
  - b. Sheet 2 of 8, Existing Conditions Plan, dated 7/15/10 last revised 9/17/10, as prepared by DK Engineering Associates, Inc;
  - c. Sheet 3 of 8, Definitive Subdivision Plan, dated 7/15/10 last revised 9/17/10, as prepared by DK Engineering Associates, Inc;
  - d. Sheet 4 of 8, Grading Plan, dated 7/15/10 last revised 9/17/10, as prepared by DK Engineering Associates, Inc;
  - e. Sheet 5 of 8, Grading Plan, dated 7/15/10 last revised 9/17/10, as prepared by DK Engineering Associates, Inc;
  - f. Sheet 6 of 8, Plan & Profile, dated 7/15/10 last revised 9/17/10, as prepared by DK Engineering Associates, Inc;
  - g. Sheet 7 of 8, Detail Sheet, dated 7/15/10 last revised 9/17/10, as prepared by DK Engineering Associates, Inc;
  - h. Sheet 8 of 8, Detail Sheet, dated 7/15/10 last revised 9/17/10, as prepared by DK Engineering Associates, Inc;
  - i. Sheet 1 of 1, Landscape & Screening Plan, dated 8/23/10, as prepared by DK Engineering Associates, Inc;
3. Original mylar prints of the above mentioned plans must be submitted for endorsement to the Planning Division within 30-days following the statutory 20-day appeal period.
4. Sheet 3 of the plan set entitled "Definitive Subdivision Plan" dated 7/15/10 last revised 9/17/10 as prepared by DK Engineering Associates, Inc; and an instrument containing these conditions, shall be recorded at the North Essex Registry of Deeds pursuant to the requirements of the Subdivision Rules and Regulations of the Andover Planning Board;

5. Prior to the recording of the definitive plan, the applicant shall provide to the Planning Department a digital file containing the plan if produced using computer aided drafting and design (CADD) software. The file format shall be in AutoCAD DWG (or ASCII DXF) version 2004 or earlier and Adobe PDF, delivered on CD-ROM or DVD-R media. AutoCAD file delivery shall be in full model view and individual sheet views. The digital file shall include property boundaries, dimensions, easements, rights-of-way, edge of pavement, edge of sidewalk, edge of water bodies, wetland boundaries, topographic contours, spot elevations, parking areas, road centerline and associated text. Said digital data shall be delivered in the Massachusetts Coordinate System, North American Datum 1983 and North American Vertical Datum 1988, in U.S. Survey Feet. A review of the digital file shall be made by the Department of Public Works prior to the recording of the definitive plan.
6. This subdivision approval is limited to nine (9) building lots as shown on the plan referenced above;
7. The owner and applicant shall, pursuant to statute, have twenty (20) days following the approval action of the Andover Planning Board to file an appeal of said action, and in the absence of an appeal shall be deemed to have accepted said action and these conditions;
8. Within five (5) days of any transfer of ownership of this subdivision, in whole or in part, the developer shall notify the Andover Planning Department of the name and address of the new owner(s). The developer shall provide the new owner(s) with a copy of these conditions;
9. No permits for building may be issued by the Inspector of Buildings for any lot within this subdivision unless and until the provisions of Section V.E. of the Rules and Regulations of the Board have been satisfied. Once a building permit has been issued for any particular lot this condition will be deemed to have been complied with and considered released for that lot;
10. Any blasting operations shall require proper permits, and may not be undertaken on any weekend or holiday;
11. All grading and earth disturbance within the subdivision shall be governed by Sections VI.F.6., and VI.F.7. of the Rules and Regulations of the Board, as well as the Special Permit for Earth Movement SP10-04;
12. Import or export of earth materials from within the subdivision is prohibited except as may be provided for under special permit issued under Planning Board Decision SP10-04, or as otherwise allowed under the applicable provisions of the Zoning Bylaw;
13. Yard sprinklers or other privately owned underground devices shall not be installed within the roadway or utility easements, nor shall private recreational features be allowed within the roadway. Landscaping within the roadway in the form of grass, flowers, and

small shrubbery is permitted at the risk of the lot owner, provided that such landscaping does not interfere with the use or safety of the roadway;

14. Except as herein waived, the subdivision shall be constructed in accordance with and subject to all applicable provisions of the Rules and Regulations of the Board. The approval and these conditions shall be enforced under the provisions of Section V.H. of the Rules and Regulations of the Board;
15. Prior to the recording of the definitive plan at the Registry of Deeds the developer shall provide the Planning Department with a municipal lien certificate indicating that all taxes, assessments and charges have been paid in full as required by MGL, Chapter 60, Section 23;
16. Deeds for all building lots, as shown on the plan shall reserve the fee and/or interest in the streets and/or easements, said fee and/or interest to be conveyed to the Town at the time of street acceptance;

#### Prior to Construction

17. The developer must apply for a tree hearing to remove any trees located within Greenwood Road and/or Chandler Road right of way. Should the determination by the Tree Warden necessitate a modification of the entrance or drain lines the applicant is required to apply for a modification from the Planning Board;
18. Prior to any construction activity of any kind within the subdivision the developer shall submit for review and approval to the Planning Department a proposed construction sequence schedule, said schedule to be used as a guide to activities within the development including construction of roadways, utilities, drainage systems, stabilization, and stockpiling. This schedule once established shall not be deviated from, but may for good and demonstrated reason, be modified by agreement between the developer and the Planning Department;
19. Construction traffic associated with this subdivision shall be regulated by the Inspector of Buildings. Prior to commencing hauling operations, a hauling route shall have been reviewed and approved by the Inspector of Buildings. Any deviation from the approved route and/or scheduling once established shall require proper notification and approval from the Inspector of Buildings. Construction traffic shall be defined as large trucks hauling earth moving equipment, dump trucks, trucks hauling building materials, cement trucks, and contractors' vehicles larger than panel trucks.
20. Hauling of earth materials and heavy equipment on the Greenwood or Chandler Road is restricted to the time period between the last morning pick-up of school children, and the first afternoon drop off. It shall be the developer's responsibility to inform all contractors, subcontractors, vendors, and workmen of this restriction, which shall be enforced under the provisions of Section V.H. of the Board's Rules and Regulations;

21. Prior to any construction activity of any kind within the subdivision the developer shall submit for review and approval to the Planning Department a detailed schedule of the anticipated earth operations;
22. Prior to introduction of construction equipment onto the site a meeting shall be conducted between the developer, the developer's contractors, and the Planning Department, as well as the Department of Public Works for the purpose of reviewing these conditions and the construction sequence schedule;
23. Prior to any construction activities, the documents establishing the Homeowners' Association must be reviewed by Town Counsel, approved by the Planning Board and recorded at the Essex North Registry of Deed. The account referred to in section 23c shall have been established and funded in a manner prescribed by the town. The Homeowners' Association documentation shall provide for:
  - a. The maintenance, inspections and upkeep of the stormwater facilities on site and off site;
  - b. Compliance with the latest Operation and Maintenance Plan;
  - c. The establishment of an account in an amount recommended by the Town Engineer and approved by the Planning Board and secured in a manner and form approved by the Board. Following establishment, the developer shall provide the Planning Department with written proof that said account has been established running to the benefit of the Homeowners' Association. The account established shall be kept for the purpose of maintenance, repair and/or restoration of said items with a minimum balance as recommended by the Town Engineer to be maintained at all times.
  - d. The terms and method of assessments; the method of drawing on such funds; shall restrict any alteration of those facilities; shall indemnify the Town from any responsibility or liability for maintenance and operation of those facilities; and shall further provide that the Town will be reimbursed for any expenses incurred in the event the Town is required to perform any work in or on any of the facilities;
  - e. The Town to have the right to make necessary repairs and lien the property owners, or use any other remedy available under the law to effect the same, in the event that any of the facilities are damaged to such an extent that they no longer perform their intended function, and such damage is not repaired by the Homeowners' Association within 90 days of such damage, The Town to be granted an easement to maintain and repair said facilities if necessary, but all financial responsibility for any such repairs, inspections and maintenance shall be solely that of the Homeowners' Association and all lot owners by virtue of their interest in said association;
24. Once paved, the roadway Weeping Willow Drive shall be kept clear and passable at all times. No equipment shall be parked in such a manner as to render the roadway

impassable, and no refuse containers, trailers, or construction materials of any kind shall be placed or stored upon the street nor within the cul-de-sac island;

#### Throughout Construction

25. Construction equipment or materials shall not be parked, stored, or placed in any area directly adjacent to or upgradient of any drainage channel or wetland area, nor in any cul-de-sac island. Repairs and maintenance to equipment shall be conducted in areas where no spills or leakage of fuels or other fluids could pose a pollution hazard;
26. Earth disturbed by construction activities associated with the roadway or easements, such as tree cutting, stump grubbing, cutting, filling, and regrading, shall be appropriately stabilized by methods determined by the Planning Department within sixty (60) days of such disturbance unless otherwise approved by the Planning Department;
27. No building lot shall remain in an open condition longer than sixty (60) days. "Open" shall be defined as that period of time between initial preparation of the lot for building (clearing of trees, stripping of topsoil), and the time that the foundation has been installed, backfilled, and the rough grading has been established and stabilized by use of temporary seeding, mulching, or netting. This restriction shall remain in force until the lot has been properly stabilized and shall survive changes in ownership of the lot;
28. Stockpiles of earth materials shall not be permitted in any area, which necessitates removal of trees for such purpose, nor within fifty (50') feet of any wetland boundary, drainage channel, or watercourse. Stockpiles shall be designated on a plan, which shall be submitted to the Planning Department, said locations to be determined by the developer and approved by the Planning Department. Stockpiles shall be prohibited in areas which have not been approved by the Planning Department;
29. Long term (more than sixty days) stockpiles of earth materials shall be shaped and secured by butted haybales around the perimeter, and shall be promptly stabilized by temporary seeding or netting;
30. Burial or burning of vegetation, stumps, or construction debris is strictly prohibited anywhere within the subdivision. Such materials shall be removed and properly disposed of off the site;
31. All construction activities within the subdivision shall be confined between the hours of 7:00 a.m., and 6:00 p.m., Monday through Friday, unless otherwise approved by the Planning Board. Once fully framed, interior construction related activities are allowed on Saturdays between 8:00 a.m. and 6:00 p.m. unless otherwise restricted or prohibited by the Inspector of Buildings in response to complaints. Construction activities include the transport of equipment, materials and supplies to and from the subdivision;

32. As field conditions warrant, berms of type and design and/or side under drains as specified by the Department of Public Works shall be installed in locations determined by the written decision of the Director of Public Works;
33. Construction activities on individual lots shall be conducted in a workmanlike manner at all times. Blowing dust or debris shall be controlled by the developer of lots through stabilization, wetting down, and proper storage and disposal methods;

Prior to Clearance Certificates

34. Prior to issuance of Clearance Certificates for any lot in the subdivision the 20' Wide Public Utility easement over Lots 5, 6, 7 and 9 shall be reviewed by Town Counsel to be granted to the Town and recorded at the Essex North Registry of Deeds;
35. Prior to issuance of Clearance Certificates for Lots 6 or 7 in the subdivision the 30' wide private utility easements shall be granted to the respective lots and recorded at the Essex North Registry of Deeds;
36. Prior to issuance of Clearance Certificates for Lots 3 and 4, a deed restriction which shall run with the land shall be placed on each of Lots 3 and 4. The restriction shall prohibit in perpetuity any and all disturbance within the 15 foot no cut zones on said lots as shown on Sheet 1 of 1 Landscape & Screening Plan. Said deed restriction will not prevent the planting of up to 10 spruce trees also depicted on Sheet 1 of 1 Landscape & Screening Plan dated 8/23/10. Prior to planting the final locations of these trees shall be determined in the field by staff. Said deed restriction shall have been reviewed by Town Counsel and recorded at the Essex North Registry of Deeds;
37. Immediately following the installation of water lines, the developer shall prepare a plan pursuant to Sections VII.W.3., and VIIW.4. of the Subdivision Rules and Regulations showing the location of all service connections to the building lots. No Clearance Certificate for any lot shall be issued until said plan has been submitted to the Department of Public Works;
38. Prior to the issuance of clearance certificates, the applicant shall submit to the Planning Department digital files of as-built plans of the features listed above, including utilities and approximate building location, following the format described in # 4 above;
39. Prior to the issuance of a Clearance Certificate for any lot, the limit of disturbance shown on sheet 4 of 8 of said plan shall have been clearly marked on the ground on the subject lot, and said marking shall consist of siltation fencing, surveyor's flagging, ribboned stakes at appropriate intervals, and/or a combination of such devices as determined suitable by the Planning Department. This condition may not be released until an occupancy permit has been issued at which time this condition will be deemed satisfied;



40. Prior to the issuance of a Clearance Certificate for any lot, all utilities as shown on sheet 4 of 8, including all off-site improvements shall have been fully constructed and approved by the Department of Public Works. Immediately following the installation of said utilities, the developer shall prepare as-built plans pursuant to Section VII.W. of the Rules and Regulations Governing the Subdivision of Land in Andover;
41. Prior to release of any Clearance Certificates for building purposes, a sign depicting "Weeping Willow Drive" shall have been erected at a location determined by the Department of Public Works;
42. Prior to the conveyance of individual lots and clearance certificates for any lot the grading as shown on Sheet 5 of 8 of the approved plans must be in place;
43. Prior to the conveyance of individual lots within the subdivision the developer shall provide the Planning Department with a surveyor's certification that temporary lot corners have been established on the ground for the lot to be conveyed. Once established, maintenance of these temporary corners shall be the responsibility of the lot owner. Upon completion of the street, and prior to the final release of any performance guarantee held, the developer shall provide the Planning Department with a surveyor's certification that all bounds and corners have been set in accordance with Section VII.U. of the Rules and Regulations of the Board;
44. The drainage areas, inlets, outlets and all associated piping shown on the plans shall be fully constructed, stabilized and operational prior to pavement of the streets and development of any house lot;

#### Specific Conditions

45. As agreed upon by the applicant, Greenwood-Andover Development LLC has offered to provide for the planting of up to 8 arborvitae and 3 spruce trees on the property of 207 Greenwood Road (Map 129 Lot 6) as shown on Sheet 1 of 1 Landscape & Screening Plan. Prior to final release of performance guarantees held, the applicant shall send via certified mail, with a copy being transmitted to the Planning Division, a proposed landscaping plan for the land area in question. The landscaping plan shall identify the number of arborvitae and spruce trees to be installed and their specific locations. Whereas the area in question is located on private property, if the current owner of 207 Greenwood Road (Map 129 Lot 6) elects not to accept the additional landscaping or does not respond to the developer's inquiry within 30-days of said communication, this condition shall be considered satisfied and the applicant shall not be required to provide additional screening. Any deviation of the offered landscaping scheme shall be mutually agreed upon between the applicant and present property owner of 207 Greenwood Road (Map 129 Lot 6);
46. As agreed upon by the applicant, Greenwood-Andover Development LLC has offered to reconstruct/relocate the driveway of 206 Greenwood Road (Map 129 Lot 14) to access off

of Weeping Willow Drive as shown on Sheet 1 of 1 Landscape & Screening Plan. Prior to final release of performance guarantees held, the applicant shall send via certified mail, with a copy being transmitted to the Planning Division, a proposed plan for the driveway construction and removal of existing driveway. Whereas the area in question is located on private property, if the current owner of 206 Greenwood Road (Map 129 Lot 14) elects not to accept the reconstruction of the driveway or does not respond to the developer's inquiry within 30-days of said communication, this condition shall be considered satisfied and the applicant will not be required to provide an alternate driveway access.

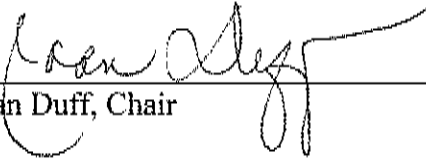
The Board further grants the following waiver as it is in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law:

The Board grants the waiver of Article XIII, Sec. III.E.3.c-Original Mylars. Approval of this waiver shall be contingent upon an original mylar plan being submitted for endorsement to the Planning Division within 30-days following the statutory 20-day appeal period. Deferring the submission of original mylars until after approval and appeal periods has become standard Board practice.

Following the statutory twenty-day appeal period, and in the absence of any appeal, the plan and an instrument containing the foregoing restrictions will be filed in the Registry of Deeds. The applicant is responsible for the costs associated with the Registry filings.

On September 28, 2010, at a regularly scheduled public meeting, the Andover Planning Board voted (5-0) to issue the foregoing Special Permit for Earth Movement.

Date: 10-1-10

  
Joan Duff, Chair

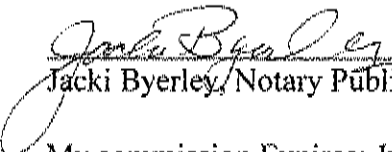
Essex, ss

COMMONWEALTH OF MASSACHUSETTS

Date: 10-1-10

On this 1st day of October, 2010, by Joan Duff, the authorized agent of the Andover Planning Board, proved to me through satisfactory evidence, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the documents are truthful and accurate to the best of her knowledge and belief and who acknowledged to me that she signed it voluntarily for its stated purpose and acknowledged the foregoing to be the free act and deed of the Andover Planning Board.

Before me,

  
Jacki Byerley, Notary Public

My commission Expires: July 4, 2014

CERTIFICATION

I, Lance Munnix, Town Clerk of the Town of Andover, Massachusetts, do hereby certify that twenty (20) days have elapsed since this decision of the Andover Planning Board was filed in my office on Oct 1, 2010 and no appeal against said decision has been filed.

Date: Oct 26, 2010

  
Town Clerk