

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

ON THE APPLICATION OF
Dennis F. and Denise P. McCarthy
5 and 7 Lakeside Circle

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

Decision: SP15-05

YES (with conditions)

A public meeting of the Planning Board was held on October 27, 2015, in the third floor conference room of the Town Office Building. Present and voting in the affirmative on the matter were members Zachary Bergeron, Joan Duff, Vincent Chiozzi, James Doherty and Ann Knowles.

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TOWN OF ANDOVER, MASS

Pursuant to public notice in the Andover Townsman, a newspaper of general circulation in the Town of Andover, published on July 23, 2015 and July 30, 2015, 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 11, 2015 on the application of Dennis F. and Denise P. McCarthy for a Special Permit for Earth Movement associated with a Definitive Subdivision development of a residential subdivision. The hearing was continued and later closed on October 13, 2015, with the aforementioned members of the Board present throughout.

Premises affected is property owned by Dennis F. and Denise P. McCarthy located at 5 and 7 Lakeside Circle and shown on Assessors Map 196 Lot 17, comprising of 2.85-acres, hereinafter referred to as the "site", on which a definitive subdivision plan entitled 5 Lakeside Circle of Andover 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 Andover Consultants there will be approximately 900 cubic yards of material regraded on the site. 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 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 the reviews, presentations, discussions and testimony at the hearings, and based on the recommendation of the subdivision the Board approves the Earth Movement Special Permit for property located at 5-7 Lakeside Circle with the following 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, Dennis F. and Denise P. McCarthy 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,

drawings and documents prepared by Andover Consultants, Inc;

- a. Sheet 1 of 3, Definitive Subdivision Plan, dated June 18, 2015;
 - b. Sheet 2 of 3, Existing Conditions Plan, dated June 18, 2015;
 - c. Sheet 3 of 3, Site Layout Plan, dated June 18, 2015 revised through August 27, 2015;
 - d. Planting Plan, dated September 23, 2015;
3. An instrument containing these conditions, shall be recorded at the North Essex Registry of Deeds;
 4. Import or export of earth materials from within the subdivision is prohibited except as may be provided for under this special permit issued under Planning Board Decision SP15-05, or as otherwise allowed under the applicable provisions of the Zoning Bylaw;
 5. 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. 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;
 6. 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;
 7. 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;
 8. Hauling of earth materials and heavy equipment during morning pick up and drop off of school buses is not allowed. It shall be the developer's responsibility to communicate with the proper school departments to determine precise hours of pick up and drop off, and 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;

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.

Date: 10/28/15

Zachary Bergeron
Zachary Bergeron, Chair

Essex, ss

COMMONWEALTH OF MASSACHUSETTS

Date: 10/28/15

On this 28th day of October, 2015, by Zachary Bergeron, 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 his knowledge and belief and who acknowledged to me that he 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,

Kathryn L. Forina

My commission Expires:

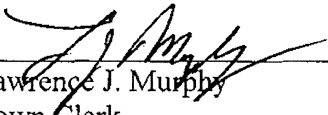


Applicant: McCarthy
Special Permit for Earth Movement
SP15-05

CERTIFICATION

I, Lawrence J. Murphy, Town Clerk of the Town of Andover, Massachusetts, do hereby certify that the above referenced decision of the Andover Planning Board was filed in the office of the Town Clerk on October 28, 2015, that a notice of appeal to the Superior Court Department of the Trial Court, Docket Number 1577CV01882 was filed in the Town Clerk's Office on November 17, 2015, and that said appeal has been dismissed.

September 13, 2016



Lawrence J. Murphy
Town Clerk
Andover, Massachusetts

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