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

ON THE APPLICATION OF  
NEW BRICKSTONE OFFICE, LLC  
0 FLEMING AVE

For a Special Permit for Disturbance of Slopes under Section 4.1.4.5 of the Zoning By-Law.

Decision: SP16-07

YES (with conditions)

A public meeting of the Planning Board was held on July 11, 2017, 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, and Ann Knowles.

Pursuant to public notice in the Andover Townsman, a newspaper of general circulation in the Town of Andover, published on October 20 and October 27, 2016, 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 November 9, 2016 on the applications by New Brickstone Office LLC for a Definitive Subdivision, Special Permit for Earth Movement and Special Permit for Disturbance of Slopes for a residential subdivision. The hearing was continued and closed on June 27, 2017, with the aforementioned members of the Board present

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with a certification pursuant to G.L. c. 39 Section 23D received.

Premises affected is property owned by New Brickstone Office LLC located at 0 Fleming Ave shown on Assessors Map 35 Lots 4A, comprising of 13.79-acres, hereinafter referred to as the "site", on which the subdivision plan entitled "Fleming Ave " would take place.

**Findings of Section 9.4 Special Permits:**

Social, economic, or community needs which are served by the proposal.

The proposal will provide a social and community need by creating open space accessible to the public.

Traffic flow and safety, including parking and loading.

The proposal provides for traffic flow with the new roadway meeting the regulation for the turning movements and safety. An improvement plan of the existing Fleming Ave has been submitted which includes the construction of a steel guardrail, painted stopbar, a stop sign, relocation of utility guy wire, solid white edge line at the entrance of Fleming Ave and Haverhill Street, solid white edge line and striping at the corner of Fleming Ave and additional pavement to create a 26 foot wide paved surface where possible on Fleming Ave along with loaming and seeding of disturbed areas to satisfy concerns of the Board, DPW, Fire and Police. The applicant has also agreed to construct residential sprinklers in the new homes as requested by Fire Rescue.

Adequacy of utilities and public services.

The proposal provides for water, sewer, electrical, cable, hydrants and stormwater which has all been reviewed and approved by the appropriate departments.

Neighborhood Character and social structure.

The subdivision will be in keeping with the character of the neighborhood and social structure of the existing neighborhood.

Impacts on the natural environment, including but not limited to, air and water pollution, noise, stormwater runoff, aesthetics.

The stormwater runoff has been peer reviewed and meets the standards set forth by the Massachusetts Department of Environmental Protection Stormwater Management Standards, the Town's Subdivision Regulations, Andover Stormwater Management & Erosion Control Bylaw and Regulations, and the Town of Andover Wetlands Protection Bylaw. The creation of this subdivision creates open space that will be accessible by the public and provides for protection of the wetlands and slopes.

**Findings of Section 6.3 Earth Movement**

The subdivision as a whole makes the best feasible design of existing topography

The proposal will meet the grades of the existing roadway. There will be cuts made to make the road grade a 2.5% grade increase and 3.5% in some areas. The grading of the subdivision property is consistent with other developments in Town.

The applicant has provided 6.069 acres of open space which will provide protection to the wetlands and slopes located along the eastern and northern side of the property and will be donated to the Town's Conservation Commission for use by the public. The applicant has provided a plan showing the limit of clearing.

Based on this information and the review of the subdivision as a whole, the subdivision makes the best feasible design of the existing topography. The applicant has submitted the quantity and composition of materials to be regraded, the estimated number of truck loads, the purpose for which the materials are to be moved and the location the earth movement will be conducted. In considering the magnitude of the change in topography, the extent of cuts and fills, the amounts of earth materials involved, the removal of existing vegetation, the preservation of features and the type and size of the plan. Although the development is being constructed in an established neighborhood, any adverse effects to those abutters can be mitigated through the regulating of hours of construction operation.

It has been the past practice of the Planning Board to regulate the hours and days of the earth movement activities. In this instance, staff recommends the Planning Board condition 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.

#### Finding of Disturbance of Slopes Section 4.1.4.5

Disturbance of Slopes Section 4.1.4.5.f allows the Board to grant a special permit for disturbance of slopes if in the Board's opinion the proposal satisfies the following purposes:

Encouraging the maximum retention of natural topographic features to minimized the effects of grading, to minimize the water runoff and soil erosion problems and to encourage innovative architectural, landscaping, circulation and site design – although not all natural topographic features will be retained the development is working to meet the existing roadway grades of Fleming Ave and the water connection grade of Sutherland Street to retain consistency with the neighborhood. Preservation of some slopes and natural features is being made through the donation of the two open space parcels.

The Board finds that that the subdivision as a whole makes the best feasible design of existing topography, that the Special Permit for Disturbance of Slopes and the Special Permit for Earth Movement will not be unreasonably detrimental or substantially detrimental to the established or future character of the neighborhood and Town and that they are in harmony with the general purpose and intent of the Zoning Bylaw. In considering a special permit the Board has imposed conditions.

The Board finds that the subdivision as a whole makes the best feasible design of existing topography and complies with the requirements of Section 6.3, the findings of, Section 9.4 of the Andover Zoning Bylaw, is in conformance with the Subdivision Control Law, the Rules and

Regulations Governing the Subdivision of Land in the Town of Andover, and the recommendations of the Board of Health.

In consideration of all the reviews, presentations, discussions and testimony at the hearings, the Board grants approval of the Special Permit for Disturbance of Slopes as associated with the Definitive Subdivision and Special Permit for Earth Movement entitled "Fleming Ave" to be known as Fleming Ave subject to the following conditions:

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 New Brickstone Office LLS 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. The construction and grading 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 8, Cover Sheet, dated September 26, 2016, revised through May 11, 2017;
  - b. Sheet 2 of 8, Definitive Subdivision Plan, dated September 26, 2016, revised through November 3, 2016;
  - c. Sheet 3 of 8, Layout & Materials Plan, dated September 26, 2016, revised through May 11, 2017;
  - d. Sheet 4 of 8, Grading & Erosion Control Plan, dated September 26, 2016, revised through May 11, 2017;
  - e. Sheet 5 of 8, Utility & Profile Plan, dated September 26, 2016, revised through May 11, 2017;
  - f. Sheet 6 of 8, Stormwater Profile Plan, dated September 26, 2016, revised through March 22, 2017;
  - g. Sheet 7 of 8, Road & Stormwater Grading Plan, dated September 26, 2016, revised through May 11, 2017;
  - h. Sheet 8 of 8, Site Details, dated September 26, 2016, revised through March 22, 2017;
  - i. Existing Conditions Plan, dated September 26, 2016, revised through March 16, 2017;

- j. Fleming Avenue Improvement Plan, dated February 1, 2017, revised through May 11, 2017;
3. An instrument containing these conditions, shall be recorded at the Northern 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 SP16-06 and SP16-07, 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.

On July 11, 2017, at a regularly scheduled public meeting, the Andover Planning Board voted (4-0) to issue the foregoing Special Permit for Disturbance of Slopes.

Date: 7/11/17

*Zachary Bergeron*  
Zachary Bergeron, Vice Chair

Essex, ss

COMMONWEALTH OF MASSACHUSETTS

Date: July 11, 2017

On this 11<sup>th</sup> day of July, 2017, 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*

Kathryn L. Forina, Notary Public

My commission Expires May 8, 2020



Applicant: New Brickstone Office, LLC  
Locus: 0 Fleming Ave  
Decision: SP16-07 Special Permit for Disturbance of Slopes

CERTIFICATION

I, Lawrence J. Murphy, Town Clerk of the Town of Andover, Massachusetts, do hereby certify that the referenced decision of the Andover Planning Board was filed in the office of the Town Clerk on July 12, 2017 and that no appeal has been filed.

Dated: August 7, 2017

  
Lawrence J. Murphy  
Town Clerk  
Andover, Massachusetts

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