

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

ON THE APPLICATION AT
173 Greenwood Road
Trinity Court

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

Decision: SP13-02

YES (with conditions)

A public meeting of the Planning Board was held on June 11, 2013, 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, Lelani Loder, James Doherty and Eric Macaux.

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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 April 25, 2013 and May 2, 2013, 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 May 14, 2013 on the application of Andover Greenwood LLC for a Modification of Special Permit for Earth Movement associated with a Modification of Definitive Subdivision development of a residential subdivision. The hearing was continued and closed on June 11, 2013, with the aforementioned members of the Board present throughout.

Premises affected is property owned by Andover Greenwood LLC located at 173 Greenwood Road and shown on Assessors Map 130 and Lots 24, 24E, 24F, 24G, 24H and 24J, comprising of 6.28-acres, hereinafter referred to as the "site", on which a definitive subdivision plan entitled Trinity Court would take place.

In consideration of the Modification of Special Permit for Earth Movement, the Board made the finding that the Trinity Court Modification of Definitive Subdivision Plan, Modification of Earth Movement Special Permit, Modification of Watershed Protection Overlay District and Modification of Special Permit for Disturbance of Slopes in Excess of 35% are in conformance with the Subdivision Control Law, the Rules and Regulations Governing the Subdivision of Land in the Town of Andover, the recommendations of the Board of Health and also complies with the applicable provisions of the Andover Zoning By-law.

In the opinion of the Board, the modification of 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 Trinity Court 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 modification of 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 Modification of Special Permit for Earth Movement to Andover Greenwood LLC, applicable to the property earlier described, and subject to the following conditions which are the same as those imposed on the aforementioned modification of definitive subdivision plan:

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, Andover Greenwood 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 modified plans, drawings and documents prepared by W.C. Cammatt Engineering, Inc and originally approved plan prepared by Dana F. Perkins, Inc;

- a. Sheet 1 of 12, Title Sheet, dated March 4, 2013 revised through May 24, 2013;
 - b. Sheet 2 of 12, Existing Conditions Plan, dated January 10, 2006 revised through March 19, 2007;
 - c. Sheet 3 of 12, Definitive Plan, dated March 11, 2013 revised through May 24, 2013;
 - d. Sheet 4 of 12, Proposed Grading Plan, dated March 4, 2013 revised through May 24, 2013;
 - e. Sheet 5 of 12, Road Construction Grading Plan, dated March 4, 2013 revised through May 24, 2013.
 - f. Sheet 6 of 12, Proposed Utility Plan, dated March 4, 2013 revised through May 24, 2013.
 - g. Sheet 7 of 12, Site Plan & Profile, dated March 4, 2013 revised through May 24, 2013.
 - h. Sheet 8 of 12, Sewer Forcemain Plan & Profile, dated March 4, 2013 revised through May 24, 2013.
 - i. Sheet 9 of 12, Site Distance Plan & Profile, dated March 4, 2013 revised through May 24, 2013.
 - j. Sheet 10 of 12, Detail Sheet, dated January 10, 2006 revised through March 19, 2007.
 - k. Sheet 11 of 12, Detail Sheet, dated January 10, 2006 revised through March 19, 2007.
 - l. Sheet 12 of 12, Material Specifications, dated January 10, 2006 revised through March 19, 2007.
 - m. Sheet A, Detail Sheet, dated March 4, 2013 revised through May 15, 2013.
3. Sheet 3 of said plan entitled "Definitive Plan", dated March 11, 2013 revised through May 24, 2013, as prepared by W.C. Cammett Engineering Inc; and an instrument containing these conditions, shall be recorded at the North Essex County Registry of Deeds pursuant to the requirements of the Subdivision Rules and Regulations of the Andover Planning Board;
 4. 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;

5. This subdivision approval is limited to four (4) building lots as shown on the plan referenced above;
6. 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;
7. Within five (5) days of the 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;
8. 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;
9. Any blasting operations shall require proper permits, and may not be undertaken on any weekend or holiday;
10. 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 and Special Permit for Disturbance of Slopes as issued under the Planning Board Decision SP13-02 and SP13-03;
11. 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 SP13-02, or as otherwise allowed under the applicable provisions of the Zoning Bylaw;
12. 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;

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;

Prior to Construction

16. 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 in a form provided by the Department, 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;
17. 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. Hauling of earth materials and heavy equipment 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;
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 detailed schedule of the anticipated earth operations;
19. 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 Conservation Department, and Department of Public Works for the purpose of reviewing these conditions and the construction sequence schedule;

20. Once paved, the roadway Trinity Court 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

21. 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 the cul-de-sac. 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;
22. 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;
23. 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;
24. Locations of stockpiles of earth materials on site shall be designated on a plan, which shall be submitted by the developer to the Planning Department for approval. Stockpiles shall be prohibited within fifty (50') feet of any wetland boundary, drainage channel or water course, and prohibited in any area which necessitates removal of trees for such purpose. Only locations approved by the Planning Department may be used for stockpiles of earth materials;
25. 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;
26. 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;
27. 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;

28. As field conditions warrant, berms of type and design specified by the Department of Public Works shall be installed in locations determined by the written decision of the Director of Public Works;
29. 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

30. The developer shall be responsible for all maintenance of the drainage system on Parcel A until such time as the last lot of the subdivision is conveyed to a new owner, whereupon the system shall be maintained by a homeowners' association established by the developer to which each lot in the subdivision is subject and whereby all lot owners will be responsible to pay for the maintenance, repair and replacement of the said system. The Town shall be provided with an easement to maintain and repair said system if necessary but all financial responsibility for any such repairs and maintenance shall be solely on the homeowners' association and all lot owners by virtue of their interest in said association. No Clearance Certificate shall be issued for any lot until such time as the documents for the homeowners' association has been approved by the Planning Board and recorded, and the account referred to in condition number 31 be established in a manner prescribed by the Town;
31. No Clearance Certificate shall be issued for any lots until such time as the documents establishing the homeowners' association has been approved by Town Counsel and the Planning Board and recorded, and the account referred to in section 31B has been established and funded in a manner prescribed by the Town;

The Homeowners' Association document shall provide for:

- A. The maintenance and upkeep of the detention basin and for the private maintenance and upkeep of the storm water drainage facility; the maintenance and upkeep of the cul-de-sac island; the maintenance and upkeep of the Sound Barrier Fence; and the maintenance and upkeep of the sewer force main;
- B. The establishment of an account in an amount recommend by the Town Engineer and approved by the Planning Board and secured in a manner and form approved by the Board. The account once established shall be kept for the sole purpose of maintenance, repair and/or restoration of said detention basin and sediment forebay;
- C. 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 the detention basin in the order to ensure its proper operation and functioning, and in the latter event the Town shall have the right to employ and enforce any procedure allowed to it under law in order to secure such reimbursement;

32. Immediately following the installation of water lines the developer shall prepare a plan pursuant to Sections VII.W.3., and VII.W.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;
33. Prior to issuance of any Clearance Certificates for the site, the developer shall have established a segregated account, which shall be used to secure proper stabilization and removal of all erosion controls prior to completion of the subdivision. Said account shall be established in an amount recommend by the Town Engineer and approved by the Planning Board and secured in a manner and form approved by the Board. This account once established shall be used as a mechanism to assure all unnecessary erosion controls are promptly removed upon receipt of Certificate of Compliance from the Conservation Commission. The Planning Department, in a cooperative effort with the Conservation Commission, will coordinate times and dates in which the erosion controls can be removed. Upon removal of all erosion controls as depicted on sheet 5 of the approved plan, the segregated account may be released in full;
34. Prior to the issuance of a Clearance Certificate for Lots 1 through 4 , all utilities, 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;
35. Prior to the issuance of any Clearance Certificates for the site, the developer shall have deposited an amount as determined by the Town Engineer and approved by the Planning Board equal to the construction cost of the sidewalk as herein waived in accordance with Section VI.D.5;
36. Prior to release of any Clearance Certificates for building purposes, a sign depicting "Trinity Court" shall have been erected at a location determined by the Department of Public Works;
37. Prior to 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;
38. Prior to issuance of Clearance Certificates for Lots 3 & 4 the Sound Barrier Fence as shown on plans described in #2 shall have been constructed;

Prior to Conveyance of Lot

39. 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 Selectmen's layout meeting, 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;
40. The drainage areas, inlets, outlets and all associated piping shown on the plans shall be fully constructed, cleaned, stabilized and operational prior to pavement of the streets and development of any house lot;

Specific Conditions

41. Prior to installation of utilities within the private way known as June Street, the applicant shall give written notice to N/F Wright (189 Greenwood Road). Said notice shall include the commencement date and time of duration of the installation, as well as any restoration work to yard areas. The developer shall provide the Director of Public Works a copy of said letter from the affected property owner acknowledging receipt of the developer's notice and signifying agreement with the installation and restoration schedule.

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 North Essex County Registry of Deeds. The applicant is responsible for the costs associated with the Registry filings.

On June 11, 2013, at a regularly scheduled public meeting, the Andover Planning Board voted (5-0) to issue the foregoing Modification of Special Permit for Earth Movement.

Date: June 12, 2013

Joan Duff
Joan Duff, Chair

Essex, ss

COMMONWEALTH OF MASSACHUSETTS

Date: June 12, 2013

On this 12th day of June, 2013, 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
Jacki Byerley, Notary Public

My commission Expires: July 4, 2014

CERTIFICATION

I, _____, 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 _____ and no appeal against said decision has been filed.

Date: _____

Lawrence Murphy, Town Clerk

Applicant: Andover Greenwood, LLC
Locus: Trinity Court Subdivision
Decision No. SP13-02

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 as Special Permit Granting Authority was filed in the office of the Town Clerk on June 12, 2013, that a notice of appeal to the Essex Division, Superior Court Department of the Trial Court, Docket Number CA 13-1060-C, was filed in the Town Clerk's Office on July 2, 2013, and that said appeal has been dismissed.

September 30, 2013
Date

L. J. Murphy
Lawrence J. Murphy
Town Clerk
Andover, Massachusetts