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

ON THE APPLICATION OF  
James & Tasia Katsikis

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

Decision: SP12-08

YES (with conditions)

A public meeting of the Planning Board was held on February 12, 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 Zach Bergeron.

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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 November 8, 2012 and November 15, 2012, 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 27, 2012 on the application of James and Tasia Katsikis for a Special Permit for Earth Movement associated with a Definitive Subdivision development of a residential subdivision. The hearing was continued and closed on January 22, 2013, with the aforementioned members of the Board present throughout.

Premises affected is property owned by James and Tasia Katsikis located at 11 Ballardvale Road

and shown on Assessors Map 80 and Lot 14, comprising of 2.02-acres, hereinafter referred to as the "site", on which a definitive subdivision plan entitled Katsikis 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, Inc there will be approximately 1,525 cubic yards of material will be imported to 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 Katsikis 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 James and Tasia Katsikis, 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 applicants, James and Tasia Katsikis 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 DK Engineering Associates, Inc.;
  - a. Sheet 1 of 5, Title Sheet, dated October 23, 2012 revised through January 10, 2013;
  - b. Sheet 2 of 5, Definitive Subdivision Plan, dated October 23, 2012 revised through January 10, 2013;
  - c. Sheet 3 of 5, Existing Conditions Plan, dated October 23, 2012 revised through January 10, 2013;
  - d. Sheet 4 of 5, Grading & Erosion Control Plan, dated October 23, 2012 revised through January 10, 2013;
  - e. Sheet 5 of 5, Plan & Profile Sheet, dated October 23, 2012 revised through January 10, 2013.
3. Sheet 2 of said plan entitled "Definitive Subdivision Plan", dated October 23, 2012 revised through January 10, 2013, as prepared by DK Engineering Associates, 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 two (2) building lots (one existing and one new lot) 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 as issued under the Planning Board Decision SP12-08;
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 SP12-08, 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;
16. The owner of Lot 1 shall be responsible in perpetuity for all maintenance of the drainage systems and pavement within the Katsikis Estates right of way as shown on the plans referenced in Condition # 2;

Prior to Construction

17. 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;
18. Construction traffic associated with this subdivision shall be regulated by the Inspector of Buildings. Prior to commencing hauling operations, a hauling route to South Main Street 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 on Ballardvale 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;
19. 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;
20. 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;
21. Once paved, the roadway Katsikis 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

22. 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;

23. 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;
24. 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;
25. 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.
26. 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;
27. 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;
28. 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;
29. 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;
30. 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

31. No Clearance Certificate shall be issued for any lots until such time as a deed restriction defining the ownership of Lot 1 and the Right of Way and maintenance of the drainage

system and Right of Way is reviewed by Town Counsel, approved by the Planning Staff and recorded at the North Essex Registry of Deeds. Said deed restriction must reference the Operation and Maintenance Plan and must restrict the alteration of the infiltration trench and infiltration features;

32. A Clearance Certificate to allow for the issuance of the building permit will not be issued until the sewer stubs and water stubs to the lots to be served are installed in Ballardvale Road;

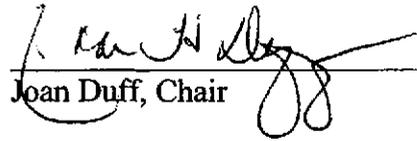
#### Specific Conditions

33. Following construction of the infiltration trench and feature the developer's engineer will submit a certification that the areas have been constructed in accordance with the approved plan;
34. Prior to the conveyance of Lot 1 or Lot 2 and prior to the any construction on Lot 1 the existing garage on Lot 2 (11 Ballardvale Road) must be razed so a non-conforming lot is not created;
35. Prior to the conveyance of Lot 1 or Lot 2 and prior to any construction on Lot 1 the existing dug well on Lot 1 shall be properly abandoned by filling it in. Proof of abandonment must be submitted to the Planning Staff;
36. 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;
37. Prior to the occupancy of Lot 1, 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 occupancy the developer shall provide the Planning Department with a surveyor's certification that lot corners have been established on the ground. Once established, maintenance of these temporary corners shall be the responsibility of the lot owner;
39. Should other driveways access this right of way the pavement will need to be upgraded to 18 feet.

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 February 12, 2013, at a regularly scheduled public meeting, the Andover Planning Board voted (5-0) to issue the foregoing Special Permit for Earth Movement.

Date: 2-14-13

  
Joan Duff, Chair

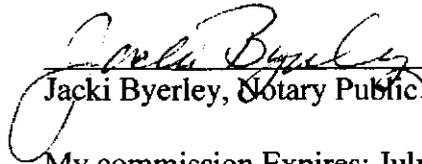
Essex, ss

COMMONWEALTH OF MASSACHUSETTS

Date: 2-14-13

On this 14<sup>th</sup> day of February, 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, Notary Public

My commission Expires: July 4, 2014  
JACKI A. BYERLEY  
NOTARY PUBLIC  
My commission expires July 4, 2014

CERTIFICATION

I, LAWRENCE MURPHY, 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 FEBRUARY 14 and no appeal against said decision has been filed.

Date: 3-12-2013

  
Lawrence Murphy, Town Clerk