

PLANNING BOARD DECISION

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Application Type: a) **SPECIAL PERMIT; and**
b) **DEFINITIVE SUBDIVISION APPROVAL**

AMESBURY TOWN CLERK

Project: **SIX (6) LOT SUBDIVISION,
MIDDLE ROAD, AMESBURY, MA**

Date: **May 02, 2007**

The Planning Board of Amesbury ("Board") received an application for **Definitive Subdivision Approval** as per the Subdivision Rules and Regulations for a **six (6) lot subdivision** on property located off Middle Road in Amesbury, MA. The completed application with the necessary application fees was received from Lot G Middle Road Realty Trust and Thomas Anderson of 37 Middle Road, Amesbury MA with plans drawn on April 28, 2006 by Merrimack Engineering Services, 66 Park Street, Andover MA and last revised on March 26, 2007 and submitted by Stephen Stapinski, R.L.S., and Robert C. Daley, P.E., on behalf of **Thomas Anderson (the "Applicant")**. The set of plans include ten (10) sheets.

The first public hearing for the application was held on July 18, 2006 at 7:00 p.m. The hearing was continued and the project was subsequently heard at the following planning board meetings:

11-13-2006, 3-19-2007, 04-02-2007 and 05-02-2007

The public hearing was closed on May 02, 2007. This is the Decision of the Board ("Decision").

FINDINGS

1. The application has been remanded back to the Planning Board by Order to Remand in regards to Essex Superior Court C.A. No. 00-1242. The Applicant was required to meet the following conditions: a) Flood elevation; b) new public hearing; c) only six (6) lots; and d) wetlands and floodplain special permit filing;
2. The applicant is requesting a Definitive Subdivision Plan to allow a six (6) lot subdivision under the provisions of the Amesbury Subdivision Rules and Regulations and a Cluster Residential Special Permit under Section XI.D of the Amesbury Zoning Bylaws;
3. The project site comprises of the following parcels: Map 84, Parcels #9 and #11 and are owned by Lot G Middle Road Realty Trust and Thomas Anderson;
4. The proposed layout of roadway and parking shall not create undue traffic congestion or impact pedestrian safety on Middle Road. The design of the roadway shall allow for access to emergency and fire response vehicles for public safety purposes;
5. Drainage shall be collected through catch basins and mitigated on-site. The development proposes to tie into public sewer and water services that already exist in the area and evidence presented show that it would not overburden the public utility system as long as the utility infrastructure is constructed as per approved plans;
6. Portion of the site shown as Lot X, shall be deeded as permanently deeded open space and shall be donated to the Town of Amesbury;
7. There is a general scheme of trees and shrubs along the proposed driveway and along the parking areas. A typical landscaping scheme has also been developed for areas around the proposed structure. The planning board's consultant has recommended some revisions that have been incorporated into the site landscaping schedule;
8. Off-site improvements: The Applicant is proposing to reconstruct the culvert on Middle Road as approved by the Board and Conservation Commission. This will allow the flood waters to be better directed and address some of the flooding issues at this location of Middle Road;
9. The proposed construction has sufficient structural safety to counteract any water import, if any there is;
10. All major portions of the interior access roadway are above the base flood elevation;
11. The proposal adequately provides for the control of erosion and sedimentation;
12. Wetlands and Floodplain special permit filing: Any special regulations for the use, set forth in Section XII of this Bylaw, are fulfilled. The Board finds that the subdivision

plan and road layout as revised would not derogate from the purposes of this section of the Bylaw and that the Special Permit application filing under this section as required by the Order to Remand is no longer necessary;

13. The applicant proposes to redesign the culvert on Middle Road to address the flooding problems at Middle Road. The proposed construction and/or change in grade do not obstruct or divert flood flow, reduce natural flood storage, increase storm water runoff, or raise the base flood elevation of any other land as per proposed engineering plans;
14. The proposed construction of roadway and utilities and the proposed changes in grade will not derogate from the purposes of this district;
15. The Board reviewed all aspects of the development plan and compared the development plan with the various criteria contained in the Bylaw. Among the criteria thus reviewed were: certification by an engineer, certification by a surveyor, accuracy of locations, setbacks and other dimensions, utilities and drainage, location of existing or proposed buildings, location of existing wetlands, and other natural features;
16. The uses proposed on the Site Plan are all "allowable uses" within the explicit criteria of the Bylaw;

With the findings as noted in this decision from 1 through 16 under "Findings", and with the conditions of approval as noted below, the board finds that the project satisfies the provisions of the Subdivision Rules and Regulations of the Amesbury Zoning Bylaws.

WAIVERS

The following waivers have been granted only to the extent stated and any modifications to the subdivision plan that would require additional waivers shall be requested by the Applicant in writing for the Board's approval:

Subdivision Rules and Regulations:

1. **Section 7.09.D.6:** To allow the property line at Street Entrance to have no rounded or cutback radius (right side) and to have a truncated 30 foot radius (left side) in lieu of a 30 foot tangential radius;
2. **Section 7.09.E:** To allow a 20 feet wide pavement in order to improve slopes along the proposed roadway;
3. **Section 7.09.H.6:** To provide sidewalk on one side of the proposed roadway and the buffer strip between sidewalk and curb line of five (5) feet; and

4. **Section 7.09.I:** Street Trees shall be planted as required except between station 11 to station 13 of the roadway where it slopes to the detention basin;
5. **Section 8.07:** To allow roadway slope of 2.5:1 without retaining walls;
6. **Section 6.07.B:** Test pits, borings, soil surveys, or soundings at intervals of at least every 200 feet along the roadway except for the access way leading to the detention basin;

Amesbury Zoning Bylaw: Section XI.D

1. **Section:** Requirement for a yield plan for the proposed six lot cluster plan;
2. **Lot Frontages:** To allow frontages as follows: Lot 2 – 70.75’; Lot 3 – 58.18’; Lot 4 – 53.81; Lot 5 – 83.96’
3. **Reduce width of open land** (Non – disturbance buffer strip) from 50 feet to 30 feet;
4. **Reduce front yard setback:** From 25 feet to 15 feet on Lot 1;
5. **Allow more than 50% of the Common Open Space (lot X):** to be within the Wetlands and Floodplain Protection District;

VOTE AND ACTION BY THE BOARD

After public hearing, upon notice in accordance with the statute (General Laws, Chapter 40A, section 11) and the Amesbury Zoning Bylaw, and after full consideration of the evidence presented, and upon the findings made by the Board and hereinafter set forth, a Definitive Subdivision Plan and Special Permit for a six (6) lot subdivision is granted to the Applicant for the premises described in the application, further upon the special conditions that follow:

CONDITIONS OF APPROVAL

I. PRIOR TO ENDORSEMENT OF PLANS

1. All outstanding invoices for the Planning Board’s consultant, Beals and Thomas Inc., shall be paid in full by the applicant;
2. The stormwater operation and ongoing maintenance plan, shall be submitted for review and approval by the planning board;

3. Covenant shall be placed on the development disallowing ability to start construction until the performance bond and erosion control bond have been established with the Town;
4. The Applicant shall confirm with the City Engineer that adequate municipal service (i.e. sewer capacity, water pressure/flow) is available for the project. Letter shall be submitted documenting that the applicant has adequate sewer flow for the approved six (6) lot subdivision;
5. Draft legal documents including, but not limited to, drainage and access easements for individual lots, Home-owners' Association and conservation restrictions shall be provided to the Board for review and approval;
6. The Applicant shall submit a copy of the approval from the Amesbury Conservation Commission under the Local Wetlands Bylaw. Any modifications to the subdivision plan subsequent to Conservation Commission approval shall be submitted to the Board for their approval;
7. Copy of the Planning Board decision recorded at the Essex Registry of Deeds shall be submitted to the Board;
8. Three copies of all drawings and site plans as approved by Planning Board shall be provided as Computer Assisted Drawings (CAD) on Compact Disks to the Planning Board; and
9. All conditions of approval shall be noted on the final set of plans to be endorsed by the Board.

II. PRIOR TO START OF CONSTRUCTION

1. Copy of the set of approved Subdivision Plan, signed by the Town Clerk and recorded at the Essex Registry of Deeds shall be submitted to the Board;
2. Copy of the approved conservation restriction on the parcels to be donated to the Town shall be submitted to the Planning Board;
3. The stormwater operation and maintenance plan shall be endorsed by the Board. The Applicant shall submit a signed acknowledgment of their responsibilities outlined in the Stormwater operation and maintenance plan;
4. The applicant shall be required to post a surety for sedimentation and erosion control to ensure that all drainage and erosion control measures are carried out on site as per the approved subdivision plan and associated engineering drawings;

5. The applicant shall be required to post a performance guarantee in a form and amount acceptable to the Board to ensure that all site improvements including but not limited to driveway and utilities, are installed without any detriment to public health, nuisance or safety hazard and are installed and completed as per approved plans;
6. A preconstruction meeting shall be held with the Board's engineering consultant for the project, the Town Engineer, DPW Director and the applicant's engineer to coordinate site improvements and proposed infrastructure upgrades. All infrastructure work and construction should be coordinated per memo dated July 14, 2006;
7. Any changes in the materials and finishes for the typical retaining walls shall be reviewed and approved by the Board prior to submitting to the Building Inspector for construction. If the height of retaining walls exceeds six (6) feet, then design for all retaining walls at proposed locations on the approved plans shall require to be stamped by a structural engineer. Prior to construction, stamped drawings shall be provided to the Board and require the Board's approval;
8. Service stub locations and/or connection locations should be coordinated with and approved by the City Engineer; and
9. The Applicant shall confirm with the City Engineer that adequate municipal service (i.e. sewer, capacity, water pressure/flow) is available for the project. The applicant shall be responsible for applying for permits as may be required from other agencies or departments. Final action of said permits shall be filed with the Board as a matter of record;

III. PRIOR TO RELEASE OF LOTS AND ISSUE OF BUILDING PERMIT

1. The site shall be stabilized and roadway construction shall be completed to the satisfaction of the Board or its designee, to ensure emergency access for public safety prior to issue of foundation permit. The gravel base for the driveway shall be prepared as per engineering standards and the binder course shall be required prior to issuance of the building permit;
2. The off-site improvements to the culvert on Middle Road as approved by Board shall be constructed and completed by the Applicant to the satisfaction of the Engineering Department, Department of Public Works and the Conservation Commission Agent;
3. Copy of all recorded easements on individual lots and access easements over the private roadway for DPW access and utilities;
4. Submit recorded copies of the conservation restriction for the parcel to be donated to the Town;

5. The applicant or their successors shall provide the Building Inspector with the form attached with this decision completed and signed off by each of the Town officials listed on that form (PB200601-BUILDING); and
6. The Board shall review the house plans and building design for individual lots.

IV. PRIOR TO ISSUE OF OCCUPANCY PERMIT

1. The applicant or their successors shall provide the Building Inspector with the form attached with this decision completed and signed off by each of the Town officials listed on that form (PB200602-OCCUPANCY);
2. All site improvements, including landscaping and lighting shall be completed and installed as per approved plans and conditions of approval of the Planning Board's decision prior to the issue of last occupancy permit;
3. The Planning Board shall issue a letter to the applicant and the Building Inspector stating whether conditions of approval have been met or not and whether construction to date is per the approved plans;
4. Upon completion of construction the Applicant shall submit an 'as-built' or 'record conditions' plan to the Planning Board along with a written confirmation from a Registered Professional Engineer, indicating that construction complies with the approved site plans and conditions of approval, including drainage and utility plans. Ten percent (10%) of the performance bond shall be retained until the street is accepted by the Town as a public way.

V. IN PERPETUITY

1. The proposed roadway, associated utilities and all off-site improvements shall be installed and completed in two (2) years from the date of endorsement of the approved plans;
2. The Planning Board shall require the inspection of all on site improvements and off-site improvements to ensure that the work is carried out in accordance with the approved site plan and to ensure that all improvements are in compliance with the conditions of the Special Permits granted for this project;
3. The Homeowners' Association shall be responsible for the maintenance, operation and repair of the Stormwater management system and the stormwater operation and maintenance plan shall be outlined, as approved by the Board. This shall include any and all systems such as Deep Hooded Catchbasins, drainage channels, sediment forebay, detention and stilling basins and infiltration systems;

4. The proposed work shall comply with the "Order of Conditions" issued by the Amesbury Conservation Commission upon the said premises. The Order of Conditions from the Amesbury Conservation Commission shall be carried out to the satisfaction of the Commission. Any violation of the Order of Conditions issued by the Conservation Commission shall be deemed to be a violation of this Special Permit, with all remedies to the Town of Amesbury as provided by law;
5. Any request for alteration to the Order of Conditions made by the applicant to the Amesbury Conservation Commission (or to Department of Environmental Protection, upon appeal) shall be simultaneously corresponded to the Board;
6. At all times, and under all conditions, intrusion upon the wetlands, including, but not by way of limitation, any and all filling, shall be accomplished in the least intrusive manner, with the absolute minimum amount of fill necessary to accomplish the goal according to sound engineering practices and in conformance with other authorities, licenses and permits of agencies, local, state and federal, of appropriate jurisdiction;
7. The applicant shall pay for any police details associated with construction on the site along Middle Road;
8. No more than eighteen (18) inches of concrete foundations shall be exposed concrete and shall be veneered with brick or stone;
9. Two bay garages shall have individual doors for each bay. Garage doors shall have transom light. All garages shall be setback a minimum of five (5) feet from the main façade of the house excluding any front porches;
10. Lot "X" shown on the approved plans shall only be used for open space conservation purposes and Lot "Y" shall be used only for providing the detention basin and access to it. Both these lots are unbuildable lots;
11. All existing trees identified by the Board or its agents to be preserved and protected that are damaged or lost due to negligence or otherwise during construction shall each be replaced with three trees of the Board's choice and shall be a minimum of three (3) inch in caliper at four (4) feet above grade at the time of planting. Final landscaping plan shall be reviewed and approved by the Board. The cul-de-sac island shall be maintained by the home-owners association;
12. No performance bond or surety funds related to the cost of landscaping, including trees, shrubs and other plantings and its repair and replacement shall be released until the expiry of one (1) year from the date of issue of last certificate of occupancy;
13. No construction or reconstruction except as shown on the recorded plan shall occur without a further submission of plans to the Planning Board and a notation to this effect shall appear upon the recorded plan and upon any deeds to any property;

14. Unless specifically waived herein, and otherwise specifically waived after further hearing, all streets, ways, and utilities within or serving the proposed development shall conform to all Subdivision Rules and Regulations. The Applicant shall make its request in writing to the Board for any additional waivers that may be needed to construct this subdivision as per this Decision;
15. Any change to the Definitive Subdivision Plan or special conditions herein including, but not limited to, landscaping plan, lighting plan, architectural details, off-site improvements or to any recorded legal documents shall only be allowed after review and approval by the Planning Board. The board shall, if it so determines, require the applicant to submit an application for modification to the Definitive Subdivision and/or Special Permit and hold a public hearing for review of the requested modifications; and
16. Further subdivision of the property or creation of additional units shall not be allowed and a notation to this effect shall be placed on the approved plans;

Chair, Amesbury Planning Board

TO:

Thomas Anderson
37 Middle Road
Amesbury, MA 01913

PLANNING BOARD VOTE:

On 05/02/2007, the Amesbury Planning Board voted 5-0 in favor of the Special Permit and Definitive Subdivision Plan Approval as per findings and conditions noted above.

The following members of the Amesbury Planning Board voted in favor of the motion to grant this Permit subject to the above stated findings and conditions of approval:

Ara Sanentz

Michael Browne

Howard Dalton

Hillary Ward

Karen Solstad


M. Browne, Chair

Filed with the Town Clerk on _____

Town Clerk

A building permit is required for any construction remodeling. It is your responsibility to file this Special Permit with the Registry of Deeds and to record the plans after endorsement; forms may be obtained from the Town Clerk's Office.

Any appeal shall be made pursuant to Section 17, Chapter 40A, M.G.L. and shall be filed within twenty (20) days after the date of filing of such notice in the office of the Town Clerk's Office.

Compliance with Special Permit Conditions Set Forth by the Amesbury Planning Board prior to Issuance of a Building Permit

SIGN-OFF FORM (PB200601-BUILDING)

(IMPORTANT: IT IS THE RESPONSIBILITY OF THE PERSON SEEKING BUILDING PERMIT TO GET THE SIGN OFF FROM EACH OF THE DEPARTMENTS LISTED BELOW. THE TOWN WILL NOT BE HELD RESPONSIBLE FOR LACK OF ACTION ON THE APPLICANT'S BEHALF. BEFORE SIGNOFF, COPIES OF THE RECORDED DECISION AND THE APPROVED PLAN SET SHOULD BE SUBMITTED TO THE PLANNING OFFICE.)

By signing below, the following Town Department/Town Officials, agree that the conditions of this permit prior to making application for building permit have been completed and recommend that an application for a building permit for the units indicated below may be granted:

Planning Office/Town Planner _____

Engineering Department/Town Engineer _____

Department of Public Works/DPW Director _____

Conservation Commission/Agent _____

Police Department _____

Fire Department _____

**Compliance with Special Permit Conditions of the Amesbury Planning Board prior
to Issue of Certificate of Occupancy**

SIGN-OFF FORM (PB200602-OCCUPANCY)

(IMPORTANT: IT IS THE RESPONSIBILITY OF THE PERSON SEEKING CERTIFICATE OF OCCUPANCY TO GET THE SIGN OFF FROM EACH OF THESE DEPARTMENTS. THE TOWN WILL NOT BE HELD RESPONSIBLE FOR LACK OF ACTION ON THAT PERSON'S BEHALF)

The following Town Department/Town Officials, by signing below, agree that the conditions of this permit from the start of construction to prior to issue of occupancy permit have been completed and recommend that the Certificate of Occupancy be granted for the units indicated on this form.

Planning Office/Town Planner _____

Engineering Department/Town Engineer _____

Department of Public Works/DPW Director _____

Conservation Commission/Agent _____

Police Department _____

Fire Department _____