

Town of Middleborough
Massachusetts

PLANNING DIRECTOR
Ruth McCawley Geoffroy

Planning Board

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February 21, 2014

Stephen J. McKinnon, Chairman
Middleborough Board of Selectmen
10 Nickerson Avenue
Middleborough, MA 02346

Re: Earth Removal Permit, 288 Thompson Street

Honorable Board,

The Planning Department is in receipt of GAF Engineering's revised Plans dated February 17, 2014 and response letter dated February 19, 2014 regarding the proposed Earth Removal Application for 288 Thompson Street.

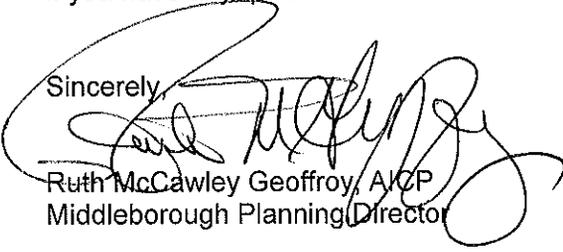
1. A condition requiring the 2 street front lots to be reconfigured, recorded and conveyed, prior to earth removal becoming valid would be acceptable. I have not seen the revised application and trust that all owners of land involved in the application have signed it as stated.
2. There continues to be no 100' treed buffer between the earth removal project and the abutting residential property. The proposal now is to provide the buffer on the residential lots with a Conservation Restriction granted to the MA NHESP. This 100' buffer combined with the lots' front yard setback reduces the usable area on the lot for house, deck and backyard to only 50'-80' for the two lots along Fuller Street (2065-1 and 2146-1) and takes away ½ of the lot's usable area on Proposed Lot 8. (see Attachment 1)
3. The issue of Earth Removal being accessory or incidental to cranberry bog construction is covered under Old Colony Boy Scouts of Am v. Zoning Board of Appeals of Plymouth, 31 Mass. App. Ct. 46 (1991) and Henry v. Board of Appeals of Dunstable, both of which are covered and attached with Town Counsel's 12/1/94 correspondence (see Attachment 2). Attorney Mather advised that he would provide an economic analysis to show that the earth removal was indeed incidental to the construction of the bogs; however no analysis has been received to date. It should be noted that according to R.S Means and the MADOT weighted bid averages, sand and gravel sells for approximately \$23/c.y. delivered, while its cost for removal and delivery is approximately \$6.30 per c.y.; the value of the gravel to be removed would be \$16.70/c.y., more or less for a total value of \$13 million for the 775,243 c.y. of earth to be removed from the site. Requesting that the developer reconfigure this design to avoid the highest hill abutting the street front lots and reducing the cut required onsite by 30' is not unreasonable and is logistically doable. Relocating the reservoir to the southeast will reduce the overall impacts by reducing the amount and depth of earth to be removed and the time required for said removal (see Attachment 3 - Conceptual Reservoir Relocation Plan).
4. As ADE pointed out in their 2/6/14 review letter, the revised plan proposes to remove more earth than the original by making the southerly slope 12.5:1 rather than 2:1. It is unclear what the purpose of this change is, except to remove more earth, as the slope which should have been lessened is the

one closest to the future homes along Fuller Street, not the southerly one 300' from abutting properties to the south. A 12.5:1 slope is wholly inappropriate and results in the defoliation and stripping of an additional 3 acres of land. The newly revised plan dated 2/17/14, now shows 3:1 slopes rather than 2:1 on the other three sides of the earth removal. Although less steep, this design continues to provide no treed buffer, removes even more earth and strips/excavates almost 2 acres more of land. This project appears to be going in the wrong direction with each iteration, in that the earth removal and site alteration is getting bigger while the cranberry bog is getting smaller. The first submission showed approximately 8 acres of alteration, 743,512 c.y. of earth removal and a 3.53 ac. cranberry bog; the second plan showed approximately 11 acres of alteration, unspecified volume of earth removal and a 3.31 ac. cranberry bog; and, now the 3rd iteration shows approximately 13 acres of alteration, 775,243 c.y. of earth to be removed and a 3.15 ac. cranberry bog.

5. It should be noted that the plans state "'Permit Set' (Not for Construction)" in the bottom right hand corner. These are engineered construction plans suitable for the earth removal operation; if some necessary detail is missing it should be added to this set. The Permit plans must be the Construction Plans; otherwise the specific design that is being discussed here and ultimately permitted may never be the built.
6. Correspondence submitted to the Board includes emails with Eve Schluter of the Natural Heritage and Endangered Species Program (NHESP or "Natural Heritage"). It appears that Natural Heritage is trying to consolidate the footprint as much as possible, pushing it toward Fuller Street, while the Town is trying to provide a treed buffer to the earth removal. I have discussed the Town's concerns with Eve and provided her with my two previous comment letters; she was unaware of the Town's need for a buffer, etc. We determined in the discussion that it may be productive for Town Staff, the Town's engineer and the developer to all meet together so that the concerns/needs of all of the parties are discussed together so that an acceptable plan is the result. The Planning Board has done this on previous projects where there was joint jurisdiction with Heritage, namely Harvestwood Estates, and it was very successful. Brian Madden of LEC represented the developer of that project as well. It appears that this earth removal project will be required to go through the MEPA process for more in depth environmental impact analysis; should the Board to delay in issuing a permit for this project until the MEPA review is completed?

If you have any questions or wish to discuss this matter further please do not hesitate to contact me.

Sincerely,



Ruth McCawley Geoffroy, AICP
Middleborough Planning Director

Attachments

Cc: Middleborough Planning Board
Charles Cristello, Town Manager
Patricia Cassady, Conservation Agent
Robert Whalen, Building Commissioner
Jeanne Spalding, Health Officer
Richard Tabaczynski, ADE
William Madden, GAF Engineering
Joseph Arruda, Bridgewater Sand and Gravel
Peter Beaton, Bayside Agricultural, Inc.
Everose Schluter, PhD, NHESP