

COMMONWEALTH OF MASSACHUSETTS
CITY OF GARDNER
ZONING BOARD OF APPEALS
DECISION

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2010 FEB -4 P 3: 22
CITY CLERKS OFFICE
GARDNER, MA

NAME: Longview Partners, LLC
ADDRESS: 63 Edgell Street, Gardner, MA 01440

DECISION OF THE BOARD OF APPEALS REGARDING THE USE OF THE PREMISES LOCATED ON:

Parker Hill Road (Map ID: T-23/15/8)

IN THE CITY OF GARDNER, THE PREMISES BEING MORE PARTICULARLY DESCRIBED IN A DEED DULY RECORDED IN WORCESTER DISTRICT REGISTRY OF DEEDS:

BOOK 39120 PAGE 185

ON APPLICATION DATED August 26, 2009 FOR A **Special Permit** TO:

Conduct earth alteration as defined in Section 1060 Gardner City Zoning Ordinances, directly behind your property at 117 Parker Hill Road, Gardner, MA. Denied by the Building Commissioner as it does not comply with Section 10, Subsection 1061, in Single Family Residential I Area, of the Gardner Zoning Ordinance.

The Gardner Zoning Board of Appeals at its January 26, 2010 meeting voted unanimously to grant with conditions a Special Permit to Mark Harasimowicz to conduct earth alterations at property to the rear of 117 Parker Hill Road, Gardner, MA.

A site visit was held on November 21, 2009. The Applicant had begun to conduct earth alterations at the property. Over the past few years, trees were removed from the property. The property consists of a significant downward grade from Parker Hill Road to the edge of the property closest to Court Road and Temple Street. The activities of the applicant resulted in the disturbance of established topsoil and in combination with heavy rainfall and the altered drainage characteristics created by the removal of the trees resulted in erosion of earthen materials onto abutting properties.

The Applicant engaged the services of the engineering firm of Whitman & Bingham Associates, Leominster, MA to design a mitigation plan that will both stabilize the disturbed slope and capture the drainage of the property and manage that water in compliance with the intent of the Massachusetts Department of Environmental Protection (MADEP) Stormwater Management Standards and the Gardner Zoning Ordinance criteria for earth alteration (Section 1064).

In its deliberations, The Board considered carefully the mitigation plan developed by Whitman & Bingham. This decision references the following documents prepared by Whitman & Bingham Associates.

1. Plan entitled "Proposed Site & Grading Plan for Proposed Drainage Resolutions in Gardner, Massachusetts" prepared for Mark Harasimowicz, Parker Hill Road, Gardner Massachusetts 01440, dated December 9, 2009 consisting of 2 sheets with no revisions referenced.

2. "Stormwater Management System Design Report for Mark Harasimowicz off Parker Hill Road, Gardner, MA, and dated December 10, 2009.

Many of the conditions for the granting of this Special Permit refer to these documents.

The Board also recognizes that a Special Permit must be issued for this property as it will alleviate undesirable drainage issues on abutting properties. The option of denying the Special Permit is not reasonable.

At the Public Hearing held November 10, 2009 and continued to December 15, 2009, Mark Harasimowicz alerted the Board that the property is owned by Longview Partners LLC. The application submitted for the Special Permit does not indicate the owner of the property. Mr. Harasimowicz explained the familial relationship between the partners and himself. The Board desires that a new amended application reflecting the correct owner of the property be submitted. This is addressed further in the conditions for the granting of this Special Permit.

The Applicant addressed the nine conditions outlined in Section 1182 of the Ordinance and are summarized below:

With regard to whether the proposed construction is compatible with the use in the neighborhood, the Board believes that as the application is to complete earth alteration and mitigate a drainage issue, this condition is not applicable.

The work will have no effect on the safe passage of vehicular and pedestrian traffic at the property. The work is taking place at the rear of the property. The proposed mitigation plan will improve the general safety of the impacted area as on-site surface drainage will be managed on the property.

The condition on whether the work will provide adequate off street parking is not applicable for this work.

The work provides adequate facilities to manage surface drainage on the property. The mitigation plan includes the construction of two retention basins, swales and channels to manage the surface drainage.

No permanent nuisance is created by the proposed work. While construction of the mitigation plan is ongoing, typical noise from a construction site will exist. Appropriate measures will have to be implemented to prevent erosion during and post construction and are addressed as a condition in the granting of this Special Permit.

The proposal, once constructed, the design engineer believes will not be an inconvenience or hazard to abutters. The drainage structures proposed as part of the mitigation and drainage resolution will ameliorate impact to abutters resulting from the earth alterations at the property. During construction and until the stormwater basins are constructed and stabilized with established growth, appropriate safety measures will be required to be in place to protect abutting properties.

The proposal is in harmony with the general purpose and intent of the Ordinance.

On whether the proposal would or would not have a detrimental impact on City services is not applicable to this Application.

On whether the proposal should be considered consistent with the City's Community Development Plan or Master Plan is not applicable to this Application.

This Special Permit is granted with the following conditions:

- Applicant shall submit to the Building Commissioner, prior to the commencement of any activity or construction on this project, an amended application for Special Permit denoting the current ownership of this property. Along with the application, the Applicant(s) will also provide a certified copy of the entity documents, listing all partners, principals, and members as appropriate.
- Applicant to submit a schedule for the construction of the drainage mitigation project. Schedule should show date of proposed commencement of activities through total completion of the project. This schedule to be submitted to the City Engineer for review and approval no later than March 15, 2010. A copy of the approved schedule shall be supplied to the Building Commissioner. The schedule should show project completion being no later than September 15, 2010.
- The Applicant shall adhere to and implement the Storm Water Maintenance Program (Program) as developed by Whitman & Bingham and as found in Section 2 of the above referenced "Stormwater Management System Design Report".
 - The Stormwater Maintenance Plan – Member Roster and Inspection and Maintenance Report Form shall be completed as required by the Program.
 - These forms to be completed at six (6) month intervals as outlined in the above referenced "Stormwater Management System Design Report".
 - Copies of these reports to be submitted to the City Engineer upon completion.
- Upon completion of the basins, the first four (4) inspection and maintenance reports shall be completed by the designer (Whitman & Bingham) who shall certify the performance and construction of the drainage mitigation plan in adherence of the submitted and approved plan (referenced above). This report shall be submitted no later than thirty (30) days after the inspection period. The first report shall be due within thirty (30) days of completion of the two basins, including drainage pipe and appurtenances. The fifth and subsequent reports shall be completed by the Applicant or primary property owner upon which the basin structures are located.
- Basins, swales and appurtenances shall be inspected at least semi-annually with mowing, sediment removal and embankment maintenance accomplished as needed. Any maintenance needed or completed shall be noted on the "Inspection and Maintenance Report Form" found in Section 2 of the above referenced report.
- City Engineer, or an engineer hired by the Board and paid for by the Applicant, will inspect construction of the drainage resolution project at intervals he deems necessary referencing the construction schedule and timeline submitted by the Applicant. Should any issues related to construction or deviations to the approved plan be necessary or if noted during inspection, the work shall cease and a revised drainage resolution or mitigation plan shall be submitted to the City Engineer or Board engineer for approval. A copy of the approved plan shall be submitted to the Building Commissioner. This revision shall be submitted within 30 days of the notice to cease work. Work shall not recommence without the approval of the City Engineer or Board engineer.
- Prior to the commencement of construction, Applicant shall implement, install or construct any and all temporary measures to prevent erosion on the site, included but

not limited to off site impact from the work. Any breaches to the temporary containment measures must be cleaned up and rectified within forty-eight (48) hours, unless deemed infeasible by the City Engineer or Board engineer.

- Hours of operation for the earth alteration and construction of the mitigation measures shall be 7:00 AM to 5:00 PM Monday through Friday.

ANY PERSON AGGRIEVED BY A DECISION OF THE BOARD OF APPEALS OR ANY SPECIAL PERMIT/VARIANCE GRANTING AUTHORITY, WHETHER OR NOT PREVIOUSLY A PARTY TO THE PROCEEDING, OR ANY MUNICIPAL OFFICER OR BOARD MAY APPEAL EITHER TO THE SUPERIOR COURT, DISTRICT COURT, OR LAND COURT DEPARTMENT OF THE TRIAL COURT FOR THE COUNTY IN WHICH THE LAND CONCERNED IS SITUATED BY BRINGING AN ACTION WITHIN TWENTY (20) DAYS AFTER THE DECISION HAS BEEN FILED IN THE OFFICE OF THE CITY OR TOWN CLERK. (M.G.L. SECTION 17, CHAPTER 40A)

A COPY OF THIS DECISION HAS THIS DAY BEEN FILED WITH THE PLANNING BOARD AND THE CITY CLERK, CITY OF GARDNER:

CERTIFIED THIS 4th DAY OF February, 2010

Raymond F. LaFond (d) Randall Heglin (d) Michael Gerry (d)
 Raymond F. LaFond, Chairman Randall Heglin, Clerk Michael Gerry, Third Member

I, Alan L. Agnelli, City Clerk, City of Gardner, hereby certify the attached decision by the Zoning Board of Appeals was filed with my office on 2/4/2010 and that twenty days have elapsed since the filing of said decision with my office and that no appeal concerning said decision has been filed or that any appeal that has been filed has been dismissed or denied.

2/25/2010
Dated

Alan L. Agnelli
Alan L. Agnelli, City Clerk RS