



TOWN OF FRAMINGHAM
ZONING BOARD OF APPEALS

150 Concord Street B2
Framingham, MA 01702

2016 SEP -6 P 3: 01

TOWN CLERK
FRAMINGHAM

BOARD OF APPEALS CASE NO. 16-15
PETITION OF BRE DDR SHOPPERS WORLD LLC
DATE OF DECISION: AUGUST 23, 2016

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of BRE DDR SHOPPERS WORLD LLC (hereinafter the Applicant), for property located at 19 FLUTIE PASS. This Decision is in response to a Petition for a Use Variance and Variance for height (hereinafter the Application).

2. Property Owner and Applicant

BRE DDR Shoppers World LLC
3300 Enterprise Parkway
Beachwood, OH 44122

3. Location

Property is located at 19 Flutie Pass and identified by Assessors' Parcel ID 094-54-9604-000 (hereinafter the Site).

4. Board Action

After due consideration of the Application, the record of proceedings, and based upon the findings set forth below, on August 23, 2016 the Board voted to GRANT the requested VARIANCES by a unanimous vote in favor of the petition of three (3) members sitting on the Application. The record of the vote is stated as follows:

PHILIP R. OTTAVIANI, JR.	YES
SUSAN S. CRAIGHEAD	YES
STEPHEN MELTZER	YES

5. Proceedings

The Application was received by the Board on May 13, 2016 pursuant to MGL, Ch. 40A, §10, and the Framingham Zoning By-Law. The Application was considered by the Board at a duly noticed public hearing of the Board on June 21, 2016 at 7:45 P.M. in the Blumer Community Room of the Memorial Building. The hearing was continued to July 12 at 8:00 PM, August 9 at 8:15 PM, and was concluded at a special hearing on August 23, 2016 at 7:00 PM. Board Members Philip R. Ottaviani, Jr., Susan S. Craighead, Stephen Meltzer, Alternate Joseph Norton, and Alternate Edward Cosgrove, were present throughout the proceedings. At the hearing on July 12, 2016, Ms. Craighead and Mr. Cosgrove were absent, and the Applicant requested a continuation of the hearing without testimony or discussion. The minutes of the public hearing and submissions on which this Decision is based, which together with this Decision constitute the record of the proceedings, may be referred to in the Office of the Zoning Board of Appeals at the Memorial Building.

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At the June 21 meeting, Attorney James Hanrahan was present with the project team and explained the circumstances of the variances DDR was requesting. The site was previously used as a snow dump and overflow parking for the AMC cinemas. DDR had previously obtained approval to develop a retail project on the site. He stated that the 136 proposed residential units would be 10% affordable. Mr. Conor Nagle of VHB gave an overview of the site and engineering constraints. Ms. Talia Cannistra of Cube3 provided an overview of the building design. Mr. Jeffrey Martin of DDR and Ms. Lauren Jezienicki of Buzzuto were present and provided additional statements about the project. Several Town Meeting Members and residents raised concerns about the height, use, and area impacts. The Board requested more information on traffic, an economic analysis showing why 136 residential units were required, as well as a height simulation by way of a balloon test to show the proposed building height.

At the August 9 meeting, Mr. Hanrahan discussed the content of a supplemental brief which addresses economic hardship supporting the use variance application. Mr. Nagle summarized the balloon test. Discussion ensued about the need for 136 residential units. More comment was provided by members of the public and Town Meeting Members. Due to the late hour, and the delay due to Board absences and heavy agenda, the Board voted to hold a special meeting on August 23 to conclude and vote on the matter.

On August 23, discussion continued on the need for the additional height and use variance to allow residential units. There was discussion of the number of residential units required to offset the cost of needed amenities based on the Operating Expense Ratio analysis that was provided by Bozzuto. Members of the public and Town Meeting Members voiced support and opposition. Board members summarized their feelings on the matter and deliberated on whether there was in fact the requisite hardship.

6. Exhibits

- 6.1. Application filed with the Building Official for a Mixed Use residential and commercial structure, dated May 12, 2016.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on May 13, 2016.
- 6.3. Extension of Decision Deadline filed with the Town Clerk on August 10, 2016.
- 6.4. Filing fee in the amount of \$500.00.
- 6.5. Conservation Commission comments dated June 21, 2016.
- 6.6. Planning Board comments dated July 12, 2016.
- 6.7. Letters of support and opposition dated August 9, 17, and 18, 2016.
- 6.8. Brief and Supplemental Brief in support of the petition on behalf of the Applicant by Attorney James D. Hanrahan and Attorney Katherine Garrahan.
- 6.9. Slide presentation entitled "19 Flutie Pass Development, Framingham, MA" dated June 21, 2016, prepared by Cube3 Studio.
- 6.10. Slide presentation entitled "AMC South Parking Lot Redevelopment: Framingham Zoning Board of Appeals Presentation", prepared by VHB and dated August 9, 2016.

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- 6.11. "Summary of Traffic Study" memorandum from Vinod Kalikiri, PE, PTOE of VHB, 101 Walnut Street, Watertown, Mass., dated August 18, 2016.
- 6.12. "Operating Efficiency Analysis" prepared by Bozzuto, stamped "Received" by the ZBA office on August 18, 2016..
- 6.13. Copy of a decision of the Town of Framingham Planning Board, filed with the Town Clerk on February 23, 2016 and recorded at the Registry of Deeds, granting special permits and modifications of previously issued site plan approval and special permits.
- 6.14. Conceptual North, South, East, and West Elevations, prepared by Cube 3 Studio, 360 Merrimack St, Lawrence, MA 01843, dated May 13, 2016.
- 6.15. Plan set entitled "Site Plans" (C-1 to C-7; Sv-1 and Sv-2), prepared by VHB, 101 Walnut St., Watertown, MA 02471, dated May 12, 2016.
- 6.16. Plans set entitled "Flutie Pass Residential, Progress Print", dated May 13, 2016, prepared by Cube 3 Studio, 360 Merrimack St., Lawrence, MA 01843, containing first floor plan (A-100), second floor plan (A-101), third floor plan (A-102), fourth floor plan (A-103), typical floor plan (A-104), elevation plans (A-200 and A-201), and building section (A-301).

Exhibits 6.14, 6.15 and 6.16 shall be hereinafter referred to as the "Plans."

7. Findings and Conclusions

Based upon its review of the Application, exhibits, and the public hearing thereon, the Board makes the following findings and conclusions:

- 7.1. The property is located within the Business (B) and Light Manufacturing (M-1) zoning districts.
- 7.2. On May 12, 2016, the Building Official denied the Application for a mixed use structure 85-feet in height under Sections IV.E.2 and VI.G.I of the Zoning By-Law.
- 7.3. On May 13, 2016 the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a Use Variance and Variance from the Zoning By-Law.
- 7.4. Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on June 6 and June 13, 2016 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11.
- 7.5. The M-1 district is zoned for Light Manufacturing, which does not allow Mixed Use. The maximum height in the M-1 zoning district is 6 stories and 80 feet. Variances are needed to allow Mixed Use in the M-1 zone and to allow the additional height.
- 7.6. The site is currently a surface parking lot, previously used as an overflow lot and snow storage for the AMC cinemas across Flutie Pass. Due to a reduction in the number of seats in the theater, and resulting reduction in the required parking, the parking lot is no longer necessary to that facility. A bowling alley and other retail uses were recently permitted on the site. Based upon market conditions and the Mixed Use zoning on the western portion of the property and such Mixed Use zoning on the adjacent property, the Applicant reconsidered the project, and decided to pursue a residential component above the previously permitted commercial uses.
- 7.7. The site is uniquely constrained due to a large utility easement, which does not permit structures to be built, as well as extensive wetlands. It is also unique because of extensive

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bedrock preventing subsurface construction. The intended Light Manufacturing use designated by the Zoning Bylaw is very unlikely to be built on site, as there are currently no manufacturing uses in that particular M-1 district area. Given the current market for retail space and trends in retail development, it is reasonable that a residential consumer base is needed to ensure the success of the project.

- 7.8. A balloon test was conducted at the site to simulate the height of the proposed structure. Very few people noticed the balloon or made any comment. The test demonstrated that there would be little visual impact to surrounding neighborhoods by the proposed building height. Board members reviewed the traffic study and were not concerned about a major impact on traffic in the area. The additional height requested (5 feet) is a minor increase over what is allowed by right. The site is not directly adjacent to any residential neighborhoods. The Board finds that any substantial impact to the area is unlikely.
- 7.9. The Variance standard established by the G.L. c. 40A §10 and the Framingham Zoning By-Law is a demanding criterion. The Board must find that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures, which especially affect such land or structures but do not affect generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. Also, the circumstances under which a Variance may be granted are not unlimited.
- 7.10. There are circumstances relating to the soil conditions, shape, or topography of the land or structures for which the Variance is being sought. *The Board finds that this parcel is unique, in that the site sits on top of bedrock; a large portion of the site is unbuildable due to the utility easement and extensive wetlands; and the remaining buildable portion of the site is constrained.* Such circumstances especially affect such land or structures but do not affect generally the zoning district in which the land or structures are located.
- 7.11. Owing to such circumstances, a literal enforcement of the provisions of this By-law would involve substantial hardship, financial or otherwise, to the petitioner. *The bedrock is the primary reason for the additional height requested. The one story of required parking above the ground floor retail could be placed underground if not for the expense of removing the bedrock. The Applicant has made a reasonable argument that a lesser number of residential units, bringing down the height by one story, would render the project financially infeasible, since the operating costs of the project are in effect fixed due to on-site staff, and certain amenities needed to make residences attractive to renters. The Applicant has also made a reasonable argument that, but for a Use Variance for mixed use in the Light Manufacturing zone, the site would probably not be developed for its intended use. There is currently no manufacturing in that particular district area. Furthermore, an alternative retail-only project might not be built because the traditional brick-and-mortar retail market is struggling. Retail is more viable when there is a built-in consumer base which is enhanced by the addition of a residential component.*
- 7.12. The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the By-Law or from the intent of the district in which the Variance is being sought. *Since the Light Manufacturing district area in question has no manufacturing uses, and was originally*

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established when demand for manufacturing space was greater, and since other allowed uses are not likely to be built on site without the addition of residences, the grant of a Use Variance would not be detrimental to the public good, nor would the addition of residences substantially derogate from the intent and purpose of the Bylaw. The additional height is a small deviation from the maximum as established in the Bylaw. A balloon test was conducted and demonstrated that the proposed height would have minimal impact on any adjacent neighborhoods. The additional height may be granted without detriment to the public good or substantial derogation from the intent of the Bylaw.

7.13. The Board grants these Variances with the following condition:

7.13.1. The proposed building shall be located and constructed as shown on the Plans.

7.14. This Decision applies only to the requested Variances. Other approvals or permits required by the By-Law, other governmental boards, agencies or bodies having jurisdiction, shall not be assumed or implied by this Decision.

7.15. If the rights authorized by these Variances are not exercised within one year of the date of grant of such Variances, such rights shall lapse. The Applicant may request an extension to the one-year period by submitting a written Application for extension prior to expiration of the one-year period. However, it is solely within the discretion of the Board to grant such an extension. An extension shall be for a period not to exceed six (6) months. If the Board fails to act on the request for extension within thirty days of the date of the requested extension, all rights authorized by these Variances shall lapse at the expiration of the one-year period. If the Variance lapses, such rights pertaining to the Variances may only be reestablished after notice and a new hearing pursuant to G.L. c. 40A, §10.

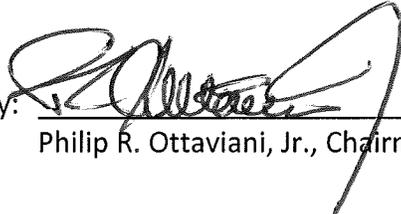
7.16. This Decision shall be recorded at (as appropriate) the Middlesex South District Registry of Deeds or District of the Land Court prior to the issuance of a Building Permit. A copy of the recorded or filed Decision certified by the Registry, and notification by the owner of the recording, including recording information, shall be furnished to the Board and the Building Official

7.17. The terms, conditions and provisions of this Decision shall run with the land and shall be binding upon the Applicant, its successors in interest and assigns, and shall be enforceable by the Town of Framingham.

8. Appeals

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, §17 and shall be filed within twenty (20) days after the date of filing this Decision with the Town Clerk.

ZONING BOARD OF APPEALS

By: 

Philip R. Ottaviani, Jr., Chairman

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