

CITY OF FRAMINGHAM

ZONING BOARD OF APPEALS

150 Concord Street B2  
Framingham, MA 01702

2018 JUN 26 A 9:33

BOARD OF APPEALS CASE NO. 18-17

PETITION OF BRE DDR SHOPPERS WORLD LLC

DATE OF DECISION: JUNE 12, 2018

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 for mixed use 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 June 12, 2018 the 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 16, 2018 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 12, 2018 at 7:30 P.M. in the Ablondi Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Susan S. Craighead, Stephen Meltzer, and Alternates Edward "Ted" Cosgrove, Joseph Norton, and Rick McKenna were present throughout the proceedings. Due to potential imminent changes to the makeup of the Board, Mr. Ottaviani appointed Mr. Cosgrove, Mr. Norton, and Mr. McKenna as alternates. 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.

Attorney Katherine Garrahan introduced herself, Ken Anghowser of BRE DDR, Jocelyn Mayer and Kathleen Keen of Vanasse Hangen Brustlin, Inc. (VHB), and Talia Cannistra of

Cube 3 Architects. Ms. Garrahan explained that two Variances were requested, for use and height. She explained, the Variances were originally granted by the Board on August 23, 2016 (decision #16-15), amended on January 10, 2017 (decision #17-08), and extended January 9, 2018 pursuant to decision #17-08. She stated, the petitioner is unlikely to pull building permits prior to decision #17-08 lapse date of July 24, 2018, and is therefore reapplying.

Ms. Garrahan summarized, the proposed development includes a seven-story, 85-foot-tall structure including six residential stories above a commercial level and residential lobby. The building will include 175 apartments with related residential amenities. The proposal includes an improved network of pedestrian sidewalks and multi-purpose paved paths from Route 9 and through the Site, leading to Flutie Pass and the Natick Mall on the east and to the AMC Theatres and Logan Express to the North.

Ms. Craighead clarified that the fundamental Variances and circumstances have not changed from what was granted in ZBA decision #17-08 (Exhibit 6.6). Board members voiced no concerns.

## **6. Exhibits**

- 6.1. Application filed with the Building Official for a Mixed Use residential and commercial structure, dated May 16, 2018.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the City Clerk on May 22, 2018.
- 6.3. Filing fee in the amount of \$500.00.
- 6.4. Conservation Commission comments dated June 12, 2018.
- 6.5. ZBA decision #16-15, filed with the Town Clerk September 6, 2016.
- 6.6. ZBA decision #17-08, filed with the Town Clerk January 24, 2017.
- 6.7. Brief in support of the petition on behalf of the Applicant by Attorney James D. Hanrahan and Attorney Katherine Garrahan, submitted with the application.
- 6.8. "AMC South Parking Lot Redevelopment at Shoppers World" revised traffic impact and access study, prepared by VHB, 101 Walnut Street, PO Box 9151, Watertown, MA, 02471, dated January 2018.
- 6.9. Photometric plan entitled "Shoppers World" prepared by The Omnilite Collection, and dated January 25, 2018.
- 6.10. Plans set entitled "19 Flutie Pass Development – Site Plans", issued January 30, 2018 and amended February 13, 2018, prepared by VHB, 101 Walnut St., Watertown, MA 02471, containing legend and general notes (C-1), Abutters plan (C-2), Overall Site Plan (C-3), Layout and Materials Plan (C-4.1 and C-4.2), Grading and Drainage Plan (C-5), Utility Plan (C-6), Erosion and Sediment Control Plan (C-7), Site Details (C-8.1), Site Details (C-8.2), Site Details (C-8.3), Site Details (C-8.4), Site Details (C-8.5), Planting

Plan (L-1), Planting Details and Notes (L-2), Existing Conditions Plan of Land (Sv-1 and Sv-2).

- 6.11. Floor plan set entitled “Flutie Pass Development”, dated January 30, 2018 and revised February 12, 2018, prepared by Cube 3 Studio, 360 Merrimack St., Lawrence, Mass., containing Ground Floor Plan- Retail (A-101), Second Floor Plan (A-102), Third Floor Plan (A-103), Typical Floor Plan 4-7 (A-104), Roof Plan (A-105), Conceptual Perspectives (A-200), Exterior Elevations (A-201), Exterior Elevations (A-202), dated January 30, 2018 and revised February 13, 2018. Conceptual Building Section (A-301) dated January 24, 2018.

Exhibits 6.9, 6.10 and 6.11 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 and Regional Center (RC) overlay district.
- 7.2. On May 16, 2018, the Building Official denied the Application for mixed-use structure 85-feet in height under Section VI.G.I of the Zoning By-Law.
- 7.3. On May 22, 2018 the Applicant filed with the City Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a Use Variance and Variance for height from the Zoning By-Law.
- 7.4. Notice of the public hearing was duly published in “THE METROWEST DAILY NEWS” on May 28 and June 4, 2018 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11.
- 7.5. The Applicant wished to submit this Application for a new public hearing as the previously issued Variances were scheduled to lapse July 24, 2018. However, the petition requests nothing new or substantially different from the Board. The building footprint and residential-retail use of the structure remains unchanged, with only the apportionment of the floor area changed. The proposed height, for which a Variance was previously granted, also remains unchanged. The Board maintains that, but for the requested relief, the property would not realistically be developed in accordance with allowable uses and the dimensional requirements of the Zoning Bylaw. The findings of the original Decision therefore remain unchanged.
- 7.6. 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 six stories and 80 feet. Variances are needed to allow Mixed Use in the M-1 zone and to allow the additional height of seven stories and 85 feet.
- 7.7. 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.

- 7.8. 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 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.
- 7.9. 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.
- 7.10. 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.
- 7.11. 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.
- 7.12. 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.*

7.13. 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 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.*

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

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

7.15. 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.

7.16. If the rights authorized by this Variance are not exercised within one year of the date of grant of such Variance, 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 this Variance shall lapse at the expiration of the one-year period. If the Variance lapses, such rights pertaining to the Variance may only be reestablished after notice and a new hearing pursuant to G.L. c. 40A, §10.

7.17. 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

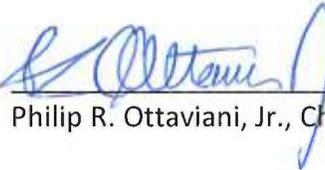
owner of the recording, including recording information, shall be furnished to the Board and the Building Official

- 7.18. 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 City 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 City Clerk.

ZONING BOARD OF APPEALS

By:  \_\_\_\_\_  
Philip R. Ottaviani, Jr., Chairman

*Dedicated to excellence in public service.*