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BOARD OF APPEALS CASE NO. 18-07

PETITION OF ARISTA DEVELOPMENT, LLC; FAY AND WENDELL MAH; PETER AND STEVEN COLLOTTA

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 ARISTA DEVELOPMENT, LLC; FAY AND WENDELL MAH; and PETER AND STEVEN COLLOTTA (hereinafter the Applicant), for property located at 1, 11, and 13 HARTFORD STREET. This Decision is in response to a Petition for a Finding for the reconstruction of a nonconforming commercial structure and Variances for insufficient ATM drive-thru setback and insufficient landscape buffers as required by the Zoning By-Law (hereinafter the Application).

2. Applicant

Arista Development, LLC
520 Providence Highway, Suite 9
Norwood, MA 02062

Property Owner

Fay and Wendell Mah
183 Lakeshore Drive
Wayland, MA 01778

Property Owner

Peter and Steven Collotta
80 Oxbow Road
Framingham, MA 01701

3. Location

Property is located at 1, 11, and 13 HARTFORD STREET and identified by Assessors' Parcel ID's 112-00-8107-000/112-00-8129-000/112-00-8245-000 (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 Board voted to GRANT the requested FINDING and 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 March 15, 2018 pursuant to MGL, Ch. 40A, §10, MGL, Ch. 40A, §6, and the Framingham Zoning By-Law. The Application was considered by the Board at a duly noticed public hearing of the Board on April 10, 2018 at 7:30 P.M. in the Ablondi Room of the Memorial Building. The hearing was subsequently continued to May 15 at 7:15 P.M. and June 12 at 7:00 P.M., at which point a decision was made. Board Members Philip R. Ottaviani, Jr., Susan S. Craighead, Stephen Meltzer, and Alternate Joseph Norton were present throughout the proceedings. The minutes of the public hearing and submissions on which this Decision is based, which together with this Decision constitute the record of the

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proceedings, may be referred to in the Office of the Zoning Board of Appeals at the Memorial Building.

At the April 10 meeting, Attorney Paul Galvani introduced himself, Project Manager Doug Benoit, William Lorigan of Lorigan Architects, and Phil Henry of Civil Design Group, LLC. Mr. Galvani proceeded to summarize the characteristics of the three properties. The proposal is to demolish the existing buildings and construct a new commercial building to be a bank branch. The proposed building would be smaller than the existing and located within a portion of the existing building footprint. The proposed structure would have a single story and contain a gross floor area of approximately 2,100 square feet. The gross floor area ratio would be approximately 0.12 and the development would result in landscaped open space equivalent to 21% of the lot as compared to approximately 5% existing. The development includes a drive thru ATM kiosk to be located closer to the Elder Street side of the land and approximately 19 off-street parking spaces.

Mr. Galvani added, in terms of zoning relief the Building Commissioner had determined that the structure required a Finding, as the proposal would be within the footprint of the existing and not increase the nonconformity. He explained that the proposal would require variances to construct an ATM drive-thru kiosk within the required front and side yard setbacks, and to construct an off street parking lot with less than the required landscaped buffers to abutting residential uses.

Ms. Nancy Freeman (5 Elder Street) stated she was in favor of the bank; however, she voiced concern regarding fencing. Mr. Galvani responded, there would be six feet of solid fence along the property. Ms. Freeman voiced concern regarding the narrow street and the ATM drive-thru lighting and glare. Ms. Craighead asked if the lights would be blocked when a vehicle is at the ATM. Mr. Gray responded, yes. Mr. Ottaviani added, the ATM would be before the Planning Board. Ms. Cheryl Cardarelli (10 Elder Street) stated she was in favor of the proposal. She commented that a solid fence is preferred and voiced concern regarding ATM height, lighting, posted signage for speed, and signage facing the residential street. On behalf of Ms. Kathryn Ferri (471 Concord Street), Ms. Karen Stone introduced herself and questioned the off-street parking on Hartford, fencing, walk-in ATM, and the parking lot. Mr. Joe Freeman (5 Elder street) spoke in favor of the proposal but voiced concern regarding traffic congestion. Mr. Galvani responded, ample parking would be provided for the bank parking, and that it would be in the City's jurisdiction to remove the Hartford Street parking. Mr. Ottaviani stated and the Board agreed they would need to visit the site prior to making a decision.

At the May 15 meeting, Mr. Henry explained the modified plans specifically focusing on the photometric plan, drive-thru ATM, and landscaping. He stated, the proposed six-foot white vinyl fence would be angled and that the combination of the angle and height would terminate any headlight obstruction to abutters. Further evaluation of the landscape and drive-thru will be considered and reviewed through the Planning Board process.

Mr. Henry explained that the ATM drive-thru canopy had been adjusted to no longer need front yard setback relief. However, the proposed width would extend six inches into the side yard. Ms. Craighead asked if the Applicant had reached out to the abutters regarding these changes. Mr. Henry responded yes, they were sent letters with contact information.

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Mr. Ottaviani asked if existing businesses were notified regarding the proposal and possibly needing to relocate. Mr. Galvani responded, he was unsure. Ms. Patel, owner of Daily Market, stated the property owner did not notify the tenants and they were unaware. Mr. Ottaviani argued that it is common courtesy and requested the property owners send letters to notify each tenant of the proposal.

At the June 12 meeting, Mr. Ottaviani announced that a thirteen-page petition of opposition was submitted. Mr. Galvani pointed out that the wording was not factually correct, many of the signatories were not neighbors, and that tenants were given notice, as requested by the Board at the May 15 meeting.

Ms. Patel of Daily Market and Mr. Mustafa of Hartford Street Pizza, stated that they did not receive notification and spoke in opposition. Mr. Bill Lynch (District 7) questioned if the district Councilor had any comments and stated his positive opinion of the property owners.

Mr. Galvani stated, the current tenants were at will and the property owners had rights to make changes to their properties. He added, direct abutters all spoke in favor of the proposal. Mr. Meltzer asked for a timeline, should the petition be approved that night. Mr. Galvani responded, the next step was to file with the Planning Board, likely at the end of August, with approval likely taking at least two meetings. Construction plans and permitting would likely take a few months ending around October. Mr. Meltzer stated that he felt the zoning requirements were satisfied. Ms. Craighead commented that a decision could be challenged based on the tenant and property owner conflict. She added that the proposal would be an improvement to the area.

6. Submitted for the Board's deliberation were the following exhibits:

- 6.1. Application filed with the Building Official for the construction of a 2,100 sq. ft. one-story bank, dated March 15, 2018.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the City Clerk on March 16, 2018.
- 6.3. Filing fee in the amount of \$500.00.
- 6.4. Planning Board comments dated April 6, 2018.
- 6.5. Board of Health comments dated April 6, 2018.
- 6.6. Memorandum in support, prepared by Attorney Paul Galvani, dated March 15, 2018.
- 6.7. Petition in opposition, stamped "Received" by ZBA staff on June 12, 2018.
- 6.8. Existing conditions plan entitled "ALTA/NSPS Land Title Survey", prepared by Civil Design Group, LLC, 21 High Street, Suite 207, North Andover, MA 01845, and dated January 31, 2018.
- 6.9. Renderings entitled "Proposed Bank for Arista Development" depicting Proposed Exterior Elevations (ACP-2) and Proposed Plan (ACP-1), prepared by Lorigan Architects, 377 Main Street, Fitchburg, MA 01420, and dated March 22, 2018 and April 4, 2018.

- 6.10. Plan set entitled "ATM Landscape Exhibit", depicting ATM Landscape details and Planting List, prepared by Civil Design Group, LLC, 21 High Street, Suite 207, North Andover, MA 01845, and dated May 3, 2018.
- 6.11. Photometric Plan entitled "Framingham Bank Lithonia KAD LED Layout" and dated May 7, 2018.
- 6.12. "Site Plan (4)" prepared by Civil Design Group, LLC, 21 High Street, Suite 207, North Andover, MA 01845, dated March 12, 2018, revised April 4, 2018, April 30, 2018 and May 3, 2018.

Exhibits 6.9, 6.10, 6.11, and 6.12 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) zoning district.
- 7.2. On March 15, 2018, the Building Official denied the Application for a permit to construct a 2,100 square foot one-story bank, pursuant to §IV.E.2, §I.D.8.b, and §IV.E.2.5.d of the Zoning By-Law.
- 7.3. On March 16, 2018, the Applicant filed with the City Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining Variances and a Finding from the Zoning By-Law.
- 7.4. Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on March 26 and April 2, 2018 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11.
- 7.5. 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.
- 7.6. The applicant is requesting variances for side setback and insufficient landscaped buffers. While the initial proposal would have located the ATM drive-thru within the front setback facing Elder St., the modified site plan shows that the ATM will have a 25.1' front setback. The proposed side setback for the ATM is 13.1' where 15' are required. The required landscaped buffer is 15 feet; 3 feet are proposed.
- 7.7. There are circumstances relating to the soil conditions, shape, or topography of the land or structures for which the Variance is being sought. *The property has an irregular shape and has frontage on two streets, which, when the required setbacks are applied, limit the redevelopment potential of the property for the intended uses in the Business zone.*

- 7.8. Owing to such circumstances, a literal enforcement of the provisions of this By-law would involve substantial hardship, financial or otherwise, to the petitioner.
- 7.9. 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. *The proposed project will be an improvement to the property and the proposed banking use is allowed in the Business zone.*
- 7.10. Section I.D.8.b. of the Zoning Bylaw allows for reconstruction of a pre-existing nonconforming commercial structure where the Board finds that the reconstruction will not make the structure more nonconforming. The applicant seeks a Finding under this section to allow the construction of a new bank building that retains essentially the same position as the building to be demolished, with the front of the building sitting on the sidewalk with zero setback, and a side setback of 3 feet where currently there are 1.3 feet.
- 7.11. G.L. c. 40A, §6 applies to pre-existing, nonconforming uses or structures and requires a Finding when the nonconforming structure is extended or altered in such a way that the extension does not at all affect the nonconformity. *The Board finds that the proposed reconstruction will not increase the nonconforming nature of the structure, and that it will not be substantially more detrimental to the area than the existing structure.*
- 7.12. The Board grants this Finding and Variances with the following condition:
- 7.12.1. The proposed building shall be constructed as shown on the Plans.
- 7.13. This Decision applies only to the requested Variances and Finding. 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.
- 7.14. 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.
- 7.15. If the rights authorized by this Finding are not exercised within three years of the date of the filing of this Decision with the City Clerk, said Finding shall lapse. If construction or substantial use has not commenced within this three-year period, the Applicant may request an extension by submitting a written Application to the Board which contains an explanation of good cause for the failure to exercise the rights of this Finding. A written request for an extension must be submitted to the Board at least 30 days prior to the expiration of the three-year period.
- 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 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

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