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BOARD OF APPEALS CASE NO. 18-29

PETITION OF RSG GROUP, LLC AND 1500 WORCESTER ROAD, LLC

DATE OF DECISION: OCTOBER 9, 2018

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of RSG GROUP, LLC and 1500 WORCESTER ROAD, LLC (hereinafter the Applicant), for property located at 1500 WORCESTER ROAD. This Decision is in response to a Petition for a USE VARIANCE to convert a mixed-use structure into multi-family residential, as required by the Zoning By-Law (hereinafter the Application).

2. Applicant

RSG Group, LLC
1323 Worcester Road (H2)
Framingham, MA 01701

Property Owner

1500 Worcester Road, LLC
45 School Street, 2nd Floor
Boston, MA 02108

3. Location

Property is located at 1500 Worcester Road and identified by Assessors' Parcel ID 108-61-5776-900, 108-61-5776-901, 108-5776-902, 108-61-5776-903, and 108-61-5776-904 (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 October 9, 2018 the Board voted to GRANT the requested USE VARIANCE 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 September 7, 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 October 9, 2018 at 7:15 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. 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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Mr. Russell Nelson introduced himself and his son, Mr. Gregory Nelson. Russell Nelson proceeded to explain the request to convert five existing vacant office spaces into six residential condominiums.

Ms. Craighead asked for clarification to how much commercial space was located at the site. Russel responded, the buildings are primarily residential with the exception of the management office, a Real Estate office, and Headhunter office.

Ms. Kathleen McCarthy (25 Westgate Road) voiced concern regarding loss of tax revenue. Mr. Ottaviani clarified that units would be converted from business into residential, and eventually sold as condominiums, not apartments. Mr. Ottaviani asked if there were any rental apartment units on site. Mr. Steven Lane of Lane Management Group (1500 Worcester Road) responded, there are 180 residential condominium units, some owner occupied and some rented. Mr. Ottaviani asked if there were any other commercial units. Mr. Lane responded, only two would remain the Real Estate and Headhunter offices.

Mr. McKenna asked if there would be designated parking spaces specific to each unit. Russell responded that the proposal would comply with the required parking regulations.

Mr. Kenneth Cargan voiced concern regarding parking. Ms. Craighead asked if units have deeded parking. Russell responded, no but outside parking was open.

Chapel Hill East representatives, Mr. Nick Larry, Ms. Linda Levett, and Mr. William Haverman, spoke in favor of the proposal.

Mr. Meltzer and Ms. Craighead agreed they did not have a problem with the proposal.

6. Exhibits

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

- 6.1. Application filed with the Building Official for a permit to convert offices to residential, dated August 30, 2018.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the City Clerk on September 14, 2018.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Conservation Commission comments, dated September 17, 2018.
- 6.5. Letter of support submitted by Tim Paoli, Agent for the Board of Directors, Chapel Hill East Condominium trust, and dated October 3, 2018.
- 6.6. Memorandum prepared by the Applicant and submitted with the application, entitled "Support of Petitioner's Request for Variance" (Exhibit C).
- 6.7. Map set including 2017 Aerial Map; 1995 Aerial Map; Framingham GIS mapping of Existing Land Use; Framingham GIS mapping of Existing Zoning; Framingham GIS mapping of Existing Building Footprints; and Framingham GIS mapping of Existing Topography.

- 6.8. Plan set entitled “Chapel Hill Condominium Conversion” including Garage Plan, Level G Building A (G-A); Garage Plan, Level G2 Building A (G2-A); Garage Plan, Level G2 Building A (G2-B); Building Floor Plan Floor 1 (1A); Building Floor Plan Floor 1 (1B); Building Floor Plan Floor 1 (1C); Building Floor Plan Floor 2 (2A); Building Floor Plan Floor 2 (2B); Garage Plan Level 2 Building C (2C); Building Floor Plan Floor 3 (3A); Building Floor Plan Floor 3 (3B); Building Floor Plan Floor 3 (3C); Building Floor Plan Floor 4 (4A); Building Floor Plan Floor 4 (4B); Building Floor Plan Floor 4 (4C); Building Floor Plan Floor 5 (5A); Building Floor Plan Floor 5 (5B); Building Floor Plan Floor 5 (5C); Building Floor Plan Floor 6 (6A); Building Floor Plan Floor 6 (6B); Building Floor Plan Floor 6 (6C); Building Floor Plan Floor 7 (7B); Building Floor Plan Floor 7 (7C); Building Floor Plan Floor 8 (8C); and Mechanical Penthouse (MP); prepared by Rizzo Associates, 1 Grant St., Framingham, MA 01701, and dated November 1, 2004.
- 6.9. Conceptual floor plans including First Floor Plan – Middle Section of Building (Project is Portion North of Main Hall) (Page 8); Conversion Plan Concept (North Portion of First Floor) (Page 9); 2 Bedroom Floor Plan Concept (Residential Condominiums (Page 10); and 1 Bedroom Floor Plan Concept (Residential Condominiums) (Page 11), submitted with the application.
- 6.10. Site plan entitled “Chapel Hill East”, prepared by Rizzo Associates, 1 Grant St., Framingham, MA 01701, dated January 30, 2003 and revised November 30, 2004.

Exhibits 6.8, 6.9 and 6.10 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 and Highway Corridor (HC) overlay district.
- 7.2. On August 30, 2018, the Building Official denied the Application for a permit to convert a mixed-use office and multi-family structure into multi-family residential pursuant to §II.B.I.C and §VI.G.I of the Zoning By-Law.
- 7.3. On September 14, 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 from the Zoning By-Law.
- 7.4. Notice of the public hearing was duly published in “THE METROWEST DAILY NEWS” on September 24 and October 1, 2018 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11.
- 7.5. The proposed project would convert five office use condominiums into six residential condo units. The Zoning By-law does not allow Multi-family by right in the B zone. The Building Commissioner determined that a Use Variance was necessary to allow the conversion. The existing building contains 180 existing residential condos. With the offices being converted, the building would be entirely residential.
- 7.6. 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

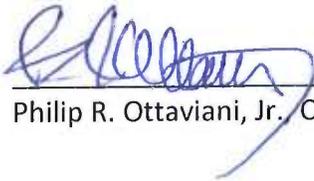
the soil conditions, shape, or topography of such land or structures, which especially affect such land or structures but do not affect generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial 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.

- 7.7. There are circumstances relating to the soil conditions, shape, or topography of the land or structures for which the Variance is being sought. Such circumstances especially affect such land or structures but do not affect generally the zoning district in which the land or structures are located. *The building was constructed in 1966 as apartments and converted into condos in 2004. It is a pre-existing non-conforming structure.*
- 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 condo association supports the project, and as the building is already predominantly residential, the elimination of small offices will not have any material impact.*
- 7.10. The Board grants this Variance with the following condition:
 - 7.10.1. The proposed addition shall be located as shown on the Plans.
- 7.11. This Decision applies only to the requested Variance. 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.
- 7.12. 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.
- 7.13. 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
- 7.14. 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