

DECISION OF THE ANDOVER PLANNING BOARD
AS A SPECIAL PERMIT GRANTING AUTHORITY

ON THE APPLICATION FOR

89-93 Main St

For a Special Permit for Planned Development – Mixed Use under Section 7.2 of the
Zoning By-Law.

Decision: SP13-07

YES (with conditions)

A public meeting of the Planning Board was held on August 27, 2013 in the Third Floor Conference Room of the Town Office Building, Bartlet Street, Andover, MA. Present and voting on this matter were Joan Duff, Vincent Chiozzi, James Doherty, Lelani Loder and Zachary Bergeron.

Pursuant to public notice in the Andover Townsman, a newspaper of general circulation in the Town of Andover, published on June 27, 2013, and July 4, 2013, and pursuant to notice sent by mail, postage prepaid, to all interested parties under the provisions of Massachusetts General Laws Chapter 40A, a public hearing was convened on July 16, 2013 on an application filed on May 17, 2013 by Jared Eigerman, Esq. of Dalton & Finegold, on behalf of Lincoln Essex OAV, LLC, for a Special Permit for Planned Development - Multi-

RECEIVED
TOWN CLERK'S OFFICE
2013 AUG 29 A 11:29
TOWN OF ANDOVER, MASS

family Dwelling for development/conversion of an existing structure at 89-93 Main Street, identified as Lot 125 on Assessor's Map 55.

Following an initial presentation and discussion on July 16, 2013, the hearing and review were continued through a subsequent session conducted on August 13, 2013, when the hearing was closed. All of the voting members of the Board noted above were present throughout the entirety of the hearing.

Representatives from Lincoln Essex OAV, LLC, hereinafter referred to as the developer, presented the proposed project to the Board and to the citizens in attendance at the hearing. The project is more fully depicted on the plans hereinafter referenced.

CONSIDERATIONS AND FINDINGS OF THE BOARD

In considering the issuance of a special permit under the Andover Zoning By-Law, the Planning Board, acting as Special Permit Granting Authority, is required to render a decision and make certain findings pursuant to Section 9.4. of the By-Law. The decision of the Board must also be based upon the specific standards described in the section of the By-Law which are applicable to the type of permit being sought; in this instance those found under Section 7.2., as well as any appurtenant or relevant subsections. In the opinion of the Board the application complies with the specific standards for development in the General Business Zoning District. The Board finds that the project is in compliance with the applicable standards of the Zoning By-Law. The Board must also find that the proposed use covered under the Special Permit will not be unreasonably detrimental to the established or future character of the neighborhood and Town, and that the project is in harmony with the general purpose and intent of the By-Law. In making those findings the Board is to give due consideration to the following:

Section 7.2.

1. That the design standards and review criteria in this section have been met.

The Design Standards include Access, Parking, Landscaping, Screening, Lighting, Disposal Area, and Utilities.

To date the applicant has the approval for these criteria by the Design Review Board and the Board of Health.

DPW - No comments were raised at the IDR relating to the current proposal. In the event the applicant should seek to improve the public space between their building and the municipal lot, further review by DPW would be necessary.

2. The provisions for parking and vehicular circulation on the site and access onto adjacent roadways will promote safe traffic control and flow.

As part of the applicant's submission a detailed analysis describing the parking demand for the site has been provided, which depicts a peak demand of 53 parking

spaces. The project also includes public pedestrian access improvements between the site and the Town Municipal Lot & Historical Society. Pursuant to the Section 5.1.12.3. of the Zoning By-Law, said improvements would qualify for a 15% reduction in required off-street parking, thus reducing the required parking by 8 spaces, bringing the total to 45 spaces, with the same number of spaces being on site presently. The applicant has also made arrangements with the Historical Society, adjacent to the site to utilize 10 off-street parking spaces located along its southerly lot line during the hours of when they are closed. In addition, the applicant has committed to pursue ten (10) monthly parking permits with the Town via the Business Parking Program, thus bringing the total available parking spaces to 65, with 95 spaces being required by Zoning without Planning Board consideration. The applicant will manage onsite parking via a property manager, along with a detailed set of "Rules and Regulations" that will be appended to all leases at the site.

With nearly 323 public parking spaces in the municipal lots proximate to the site, combined with well over 200 on-street spaces within the five minute walking shed, combined with the available 55 private parking spaces, in the opinion of staff the project would have sufficient parking to accommodate this mixed use project. The applicant has sufficiently demonstrated that the parking needs for this project are such that a lower total of on-site parking will adequately serve all uses.

To improve vehicular circulation and enhance public safety, the applicant will remove nine (9) existing parking spaces along the southerly property boundary.

To help distinguish the Town Municipal Lot from the private parking, the applicant is proposing additional signage, see Site Improvement Plan, as prepared by Huntress Associates, dated 6.18.13 revised. Although not associated with this proposal, the applicant has agreed to make every reasonable effort to partner with the Town to pursue formal hardscape of the area between the municipal lot and private lot to further distinguish ownership. Said enhancement would also allow for additional public parking spaces to be created.

3. The provision for landscaping and screening will provide an adequate buffer for adjoining properties and will minimize the impact of the proposed uses and parking areas, and the effect of the bulk and height of buildings and structures.

The applicant is proposing to enhance the vegetative buffer along the westerly property boundary, thus providing additional buffering from abutting properties, see Site Improvement Plan.

4. Any provision for pedestrian ways will provide safe and convenient access on-site with linkage to adjacent pedestrian areas.

The project includes creating new public pedestrian access between the site and the Town Municipal Lot, with additional linkages to the adjacent Historical Society. The applicant has already implemented pedestrian improvements along Main Street,

by removing the grade differential along the frontage of their building, thus providing for superior accessibility for all patrons.

5. The project will provide for adequate drainage, water and sewer facilities with sufficient capacity to serve the planned development.

The applicant is proposing to resurface the existing parking lot and add 682 sf of pavement in proximity to an existing wetland in the rear of the property. Although minor in nature, the applicant has filed with the Conservation Commission to allow for improvements to the existing storm water management system. Said improvements are contemplated at the southwest corner of the parking lot and are intended to help reduce suspended solids in the runoff from the lot, as well as from the adjacent Town lot.

Adequate water and sewer facilities presently exist on site.

6. The intersections and roadways likely to be affected by the proposal are of sufficient capacity and design to accommodate the planned development.

Whereas the present site has been operating as a mixed use property dating back to 1961, in the opinion of staff the adjacent roadways have sufficient capacity and have been designed to accommodate the rehabilitation and renovation of Andover Village Square, as contemplated by the applicant.

Section 9.4.

1. Social, economic, or community needs which are served by the proposal.

The development/conversion of 89-93 Main Street provides for new social, economic and community needs and is consistent with the goals of the 2012 Master Plan, specifically:

Housing goals H-1.1 – H1.5.: Seven new housing units, (14 rental units in total), ranging in size from (672 sf to 1,213 sf) are needed in Andover. The project presents an opportunity for adaptive reuse of an existing building, while offering refurbished housing units under 2,500 sf in downtown, with one new affordable unit being created. The units are located within 1,900 feet of the commuter rail which provides for transit oriented housing.

Economic goals ED 1.2, 1.4, 2.2: The project presents a unique opportunity to bring new life to an aged facility, by redeveloping and preserving 64,474 sf of mixed used space in downtown. By redeveloping the existing building the applicant is reinforcing the Town's character and enhancing the overall economic environment in downtown.

2. Traffic flow and safety, including parking and loading.

With nearly 323 public parking spaces in the municipal lots proximate to the site, combined with well over 200 on-street spaces within the five minute walking shed,

combined with the available 55 private parking spaces, the project would have sufficient parking to accommodate this mixed use project. The applicant has sufficiently demonstrated that the parking needs for this project are such that a lower total of on-site parking (45 spaces, 10 spaces via Historical Society) will adequately serve all uses. To improve vehicular circulation and enhance public safety, the applicant will remove nine (9) existing parking spaces along the southerly property boundary.

3. Adequacy of utilities and other public services.

As confirmed by the Board of Health and the Department of Public Works, the utilities and services are adequate to service the existing facility.

4. Neighborhood character and social structures.

The site is located in the General Business District, with a Planned Development – Mixed Use project being consistent with the Table of Uses Regulations, Section 3.1.3, Table 1, D.2. of the Andover Zoning By-Law. In staff's opinion, the proposed mixed use project is appropriate for this downtown location.

5. Impacts on the natural environment, including, but not limited to air, water pollution, noise, stormwater runoff, and aesthetics.

The existing parking lot will be resurfaced, with an additional 682 sf of pavement being installed in proximity to an existing wetland in the rear of the property. Although minor in nature, the applicant has filed with the Conservation Commission to allow for improvements to the existing stormwater management system. Said improvements are contemplated at the southwest corner of the parking lot and are intended to help reduce suspended solids in the runoff from the lot, as well as from the adjacent Town lot.

The aesthetics of the site and building design were improved through the Public Hearing process. The proposed exterior design of building has been reviewed and approved by the Design Review Board.

The applicant is proposing to enhance the vegetative buffer along the westerly property boundary, thus providing additional buffering from abutting properties, see Site Improvement Plan, dated 6.18.13 as revised.

In consideration of all of the foregoing, including the plans, reports, and testimony at the hearings, the Planning Board finds that with appropriate conditions the proposal will not be unreasonably detrimental to the neighborhood and the Town, and that the proposal will not derogate from the general purpose and intent of the By-Law. It is the expressed intent of the Board through this permit and through the conditions attached thereto, to provide for the orderly development of the site.

CONDITIONS OF THE PERMIT

1. For purposes of this approval, the "developer" is currently identified as Lincoln Essex OAV, LLC, owner of 89-93 Main Street, more specifically shown as Lot 125 on Assessor's Map 55. The term "developer" shall also include any future sale, lease, and transfer of the project to a successor in interest. Any successor(s) in interest shall be bound by, and subject to, all applicable conditions stated below. The developer as defined is responsible for construction of the project, including all contractors, subcontractors, vendors, or other parties working on the site. The developer is responsible for making sure that all contractors, subcontractors, vendors, or other parties working on the site are aware of the conditions;
2. All construction activities shall be in conformance with and strictly follow these conditions and the following plans:
 - a. Sheet 1 of 2, Existing Conditions Plan, dated April 22, 2013, as prepared by Merrimack Engineering Services;
 - b. Sheet 1 of 2, Pre & Post-Development Plans of Land at 89-93 Main Street, dated April 22, 2013, as prepared by Merrimack Engineering Services;
 - c. Sheet - L-1, Site Improvement Plan, dated June 18, 2013 (revised), as prepared by Huntress Associates, Inc.;
 - d. Sheet 1 of 1, ALTA/ACSM Land Title Survey, dated July 19, 2011, as prepared by Merrimack Engineering Services.

Any amendments or revisions to the foregoing plans, in whatever form or extent, including architectural design or material changes, shall be submitted to the Planning Division for consideration as to whether they constitute major or minor amendments;

3. Except to the extent it is amended by this Special Permit, all previous zoning relief on record for the Property as of the date of this Special Permit shall remain in full force and effect;
4. Prior to demolition or construction activities of any kind, the developer shall inform the Inspector of Buildings, the Department of Public Works (DPW), the Police Department and the Fire Department, of the project schedule;
5. Demolition activities and removal of debris shall be in accordance with a schedule approved by the Inspector of Buildings, and such schedule shall provide for the hours during which demolition and/or hauling operations may be conducted, and shall provide for designation of a hauling route for trucks. The demolition contractor shall notify the police for a detail during demolition. All loaded trucks shall be appropriately covered, and all public streets shall be kept free and clear

- from any debris, stones, gravel, or other earth materials associated with the project;
6. Construction activities (including start-up and operation of equipment, transport of materials to and from the site, earth work, clearing, grubbing, tree removal, and erection of structures) shall be conducted between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday. Saturday activities may be permitted upon written request to, and approval from, the Inspector of Buildings, however, such Saturday activities may be approved subject to restricted hours, and such approval may be revoked if any terms or conditions of the approval are violated and/or if complaints are received from abutters. Work inside a structure once enclosed (walls, roof, windows, and doors) is not subject to this condition. All construction activities shall be conducted in a workmanlike manner;
 7. Construction equipment, building materials, debris, and contractor's vehicles associated with the project shall not be stored or parked on Main Street. All such equipment and materials shall be stored or parked on the site in such manner and location as to not create a hazard or visual blight to abutting properties, and shall be secured against unauthorized entry. All activities on the site shall be conducted in a workmanlike manner. Construction debris and litter shall be collected and stored in appropriate containers on the site and shall be removed as promptly and regularly as possible. Appropriate measures (or those directed by the Inspector of Buildings) shall be taken on the site so as to protect adjacent properties and ensure the safety of pedestrian and vehicular traffic during construction;
 8. Burning or burial on the site of demolition debris or construction debris of any kind is strictly prohibited. All such debris shall be promptly removed from the site, or shall be stockpiled on the site in an appropriate location and covered until removed;
 9. Disturbed earth surfaces (exposed) shall be stabilized within thirty (30) days of establishment of final grading on the site by appropriate methods, such as loaming and seeding, hydroseeding, straw covering, or matting;
 10. All exterior lighting on the site (parking areas and building) shall conform to the plans referenced in Condition 2 above. A post installation lighting inspection will be made by Planning Staff, and any adjustments necessary to prevent spillover or glare onto adjacent properties or roadways will be the responsibility of the property owner;
 11. Any landscaping provided on the plans (as shown in Condition 2) must be planted and survive one (1) year following initial planting. The developer shall replace any landscaping that dies within one year from the date of planting in kind and in similar size;
 12. Prior to any future occupancy of the buildings the access/egress driveways, parking area, pavement markings, on-site street improvements such as landscaping associated with the project shall have been completed;

13. The project may include up to fourteen (14) multifamily dwelling units. The property currently includes seven (7) lawful multifamily dwellings, and the project will add seven (7) more for a total of fourteen (14). The project may not include any additional multifamily dwelling units without an amendment to this Special Permit;
14. Pursuant to Section 7.2.4 of the Zoning By-Law, project shall designate one (1) multifamily dwelling unit as affordable, which is fifteen percent (15%) of the seven (7) new multifamily units, rounded to the nearest whole number. Affordability of said unit shall be in perpetuity, or if such restriction cannot be legally provided, then said unit shall be kept affordable for a period of not less than ninety-nine (99) years, and said period in either event shall be referenced in all applicable documents associated with the project.
 - a. The affordable unit shall be sold to persons earning not more than eighty (80%) percent of the Area Median Income as established by the U.S. Department of Housing and Urban Development. Affordability shall also be governed by the final Local Initiative Program (LIP) application prepared by the applicant for the Town's submittal to the Massachusetts Department of Housing & Community Development (DHCD).
 - b. The LIP may be subject to any amendments promulgated by DHCD, and income amounts may be adjusted to reflect current requirements. The applicant shall submit any such adjustments to the Board or its designated agent for review and approval.
 - c. It is intended that the affordable units in the project count towards the Town's statutory ten percent (10%) affordable housing count established by DHCD under Chapter 40B of the General Laws, and the applicant shall reasonably cooperate in all efforts by the Town to ensure that such intent is satisfied. Prior to occupancy of any of the seven (7) new multifamily dwellings at the property, the applicant shall provide the Board or its designated agent with a copy of the completed LIP application to be submitted by the Town to DHCD.
 - d. If at any time, the affordable unit in the project is to be sold, the applicant shall submit to the Planning Division the proposed form of Deed Rider to be attached to and recorded with the deed for such affordable unit, and such Deed Rider shall be applicable to the sale and resale of the affordable unit.
 - e. Upon petition by the applicant, the Andover Housing Partnership Committee (AHPC) may determine that *in lieu* of the project's including one (1) affordable unit on site pursuant to this condition, the applicant may

pay compensation to the Andover Housing Trust Fund in an amount to be reasonably determined by the AHPC;

15. Prior to the sale of any multifamily dwelling unit in the project the applicant shall have submitted to the Planning Division all documents associated with a condominium trust or homeowners' association, including the master deed, condominium bylaws any project management program, and any deed riders (Condominium Documents), for the purpose of their review and approval by Town Counsel with respect to form, and for compliance with any applicable conditions of this special permit. The final, approved Condominium documents shall be recorded in the Registry of Deeds prior to the sale of any multifamily dwelling unit in the project;
16. Prior to occupancy of any future businesses at 89-93 Main Street, the developer shall provide to the Planning Division for review and approval, the final "Rules & Regulations" as they relate to joint use of parking. Upon approval, said "Rules & Regulations" shall be recorded at the Essex North Registry of Deeds;
17. In addition to the multifamily dwelling units, the project may include up to 51,258 square feet in gross floor area of non-residential uses, including, without limitation: business-professional-administrative office; fast-food/bakery, non-exempt education; personal services establishments; retail sales; and sit-down restaurants. The mix of non-residential uses in the project that total up to 51,258 square feet in gross floor area may change from time to time without the need for an amendment to this Special Permit; provided, however, that any mix of non-residential uses in the project that generates a peak demand for on-site shared parking in excess of fifty-three (53), shall require an amendment of this Special Permit;
18. The applicant has sufficiently demonstrated that the peak demand for shared parking to serve the project, assuming up to fourteen (14) multifamily dwelling units plus an additional up to 51,258 square feet in gross floor area of non-residential uses is fifty-three (53) parking spaces. To entitle the project to a reduction of required on-site parking of eight (8) spaces from fifty-three (53) spaces to forty-five (45) spaces, prior to occupancy of any future businesses at the Property, the applicant shall provide to the Planning Division for its review and approval, not to be withheld or delayed unreasonably, a final, executed agreement between the applicant and the Andover Historical Society by which the applicant shall have the right to park up to ten (10) vehicles at 97 Main Street (Tax Assessor Map 55, Lot 124) for use by residential and/or non-residential tenants of the project, shared with the Andover Historical Society, every day between 6:01 p.m. and 8:59 a.m.;
19. The applicant shall offer to each tenant of a multifamily dwelling in the project at least one (1) parking space on site for use between 6:01 p.m. and 8:59 a.m., Monday through Friday, and unlimited as to hour on Saturdays, Sundays, and

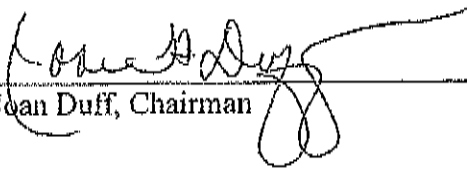
- holidays. Thus, the fourteen (14) multifamily dwelling units authorized under this Special Permit shall require the applicant to offer as many as fourteen (14) on-site spaces to tenants of multifamily dwellings in the project;
20. In addition to the up to fourteen (14) on-site parking spaces to be made available for multifamily dwelling use, the project shall include at least thirty-one (31) parking spaces on site for all non-residential uses in the project, during all hours and on all days. Between 6:01 p.m. and 8:59 a.m., Monday through Friday, and unlimited as to hour on Saturdays, Sundays, and Holidays, up to thirty-one (31) on-site parking spaces shall be made available for use by sit-down restaurant uses in the project;
 21. Prior to the recording of this permit at the Essex North Registry of Deeds the developer shall provide at least four (4) sets of the plans and drawings described under Condition 2 above to the Planning Department for distribution;
 22. Prior to the recording of the Special Permit, the applicant shall provide to the Planning Department a digital file containing the plan if produced using computer aided drafting and design (CADD) software. The file format shall be in AutoCAD DWG (or ASCII DXF) version 2004 or earlier and Adobe PDF, delivered on CD-ROM or DVD-R media. AutoCAD file delivery shall be in full model view and individual sheet views. The digital file shall include property boundaries, dimensions, easements, rights-of-way, edge of pavement, edge of sidewalk, edge of water bodies, wetland boundaries, topographic contours, spot elevations, parking areas, road centerline and associated text. Said digital data shall be delivered in the Massachusetts Coordinate System, North American Datum 1983 and North American Vertical Datum 1988, in U.S. Survey Feet. A review of the digital file shall be made by the Department of Public Works prior to the recording of the Special Permit;
 23. Prior to the issuance of Occupancy Permits, the applicant shall submit to the Planning Department digital files of as-built plans of the features listed above, including utilities and approximate building location, following the format described above;
 24. Although it is not required as part of the Board's issuance of this Special Permit, the applicant is encouraged:
 - a. To negotiate with the Andover Historical Society to secure the right by license or lease to create and use up to ten (10) new off-street parking spaces at 97 Main Street (Tax Assessor Map 55, Lot 124) for use by commercial and/or residential tenants of the project, shared with the Andover Historical Society. Such ten (10) new spaces would be in addition to any right applicant may hold to park up to ten (10) vehicles at 97 Main Street to support a reduction of required on-site parking of eight (8) spaces from fifty-three (53) spaces to forty-five (45) spaces under Condition 18, above;

- b. To obtain up to ten (10) monthly parking permits from the Town of Andover at its public parking lot at 97 Main Street (Tax Assessor Map 55, Lot 124) for use by residential and/or non-residential tenants of the project;
 - c. To pursue a public/private partnership with the Town of Andover to enhance vehicular/pedestrian access at the northerly property line where the on-site parking lot for the project abuts the Town's public parking lot at 85 Main Street (Tax Assessor Map 55, Lot 127). Said partnership is intended to help further distinguish the Municipal Lot from the project's private parking lot, with the goal of creating additional public parking spaces on Town property, along the common property line;
 - d. To exhaust all reasonable efforts to pursue a public/private partnership with the Town of Andover to enhance the public realm along the northerly property line where the buildings at the Property abut the Town's public parking lot at 85 Main Street (Tax Assessor Map 55, Lot 127). Said partnership is intended to create a dynamic sense of place that will reinforce the Town's character and enhance the overall economic environment in downtown;
25. This Special Permit is subject to Section 9.4.7. of the Andover Zoning By-Law, "Special Permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within twenty-four months following the filing of the special permit approval" (plus such required to pursue or await the determination of an appeal referred to in G. L. c. 40A, s 17, from the grant thereof) with the Town Clerk;
26. Following final lease up of the project or 18 months from the final approval of the Planning Board (whichever comes first), the developer shall provide the Planning Division with a status report on parking. Said status report shall include the number of available on-site parking spaces, leased/rented parking spaces, along with a summary of the short term parking demand depicted by hour, day and peak demand. Should the Inspector of Building receive complaints regarding the parking on site, the Inspector may at his discretion require the applicant to come back to the Board for review of the parking;

The Planning Board deliberated on the application during public meeting on August 27, 2013, and subsequently voted (5-0) to issue the foregoing Special Permit with Conditions.

THE ANDOVER PLANNING BOARD

Date: 8-29-13


Joan Duff, Chairman

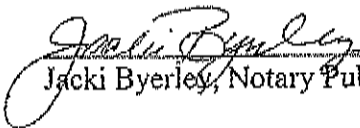
Essex, ss:

COMMONWEALTH OF MASSACHUSETTS

Date:

On this 29 day of August, 2013 by Joan Duff the authorized agent of the Andover Planning Board, proved to me through satisfactory evidence, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the documents are truthful and accurate to the best of her knowledge and belief and who acknowledged to me that she signed it voluntarily for its stated purpose and acknowledged the foregoing to be the free act and deed of the Andover Planning Board.

Before me,

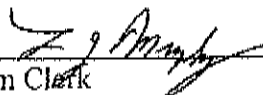

Jacki Byerley, Notary Public

My Commission Expires: July 4, 2014

CERTIFICATION

I, Lawrence J. Murphy, Town Clerk of the Town of Andover, Massachusetts, do hereby certify that twenty (20) days have elapsed since this decision of the Andover Planning Board was filed in the Office of the Town Clerk on _____ and no appeal has been filed with the Town Clerk.

Date: Sept. 19, 2013


Town Clerk