

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

ON THE APPLICATION OF

MIAMI STUART REALTY, LLC

For a Special Permit for Planned Development - Multi-family Dwelling under
Section 7.2.1. of the Zoning By-Law.

Decision: SP09-14

YES (with conditions)

A public meeting of the Planning Board was held on February 23, 2010 in the Third Floor Conference Room of the Town Office Building, Bartlet Street, Andover, MA. Present and voting on this matter were Paul Salafia, Linn Anderson, Vincent Chiozzi, Joan Duff, and John McDonnell.

RECEIVED
TOWN CLERK'S OFFICE
2010 MAR - 3 P 2:58
TOWN OF ANDOVER, MASS

Pursuant to public notice in the Andover Townsman, a newspaper of general circulation in the Town of Andover, published on December 24, 2009, and December 31, 2009, 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 January 12, 2010 on an application filed on November 27, 2009 by Miami Stuart Realty, LLC, for a Special Permit for Planned Development - Multi-family Dwelling for the development of 5 residential units in two new buildings, along with 7 surface parking spaces on a .21 acre tract of land located at 60-62 Essex Street, identified as Lot 6 on Assessor's Map 55.

Following an initial presentation and discussion on January 12, 2010, the hearing and review were continued through subsequent sessions conducted on January 26 and February 9, 2010, 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 Miami Stuart Realty, 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.

The Board focused on several elements of the project, such as the exterior design of the buildings, the driveway configuration, the number of units located on the site, the installation of the porous pavement, several issues initially raised by the Department of

Public Works, and the Operations and Maintenance Plan. At this time, the Planning Board has all of the information needed to deliberate on the proposed project.

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 mixed-use 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. The design standards and review criteria in this section have been met. *The applicant has the support for these criteria by the Design Review Board, the Board of Health, the Building Inspector and the Department of Public Works.*
2. The provisions for parking and vehicular circulation on the site and access onto adjacent roadways will promote safe traffic control and flow.
The Planning Board in accordance with section 7.2.5.2d. of the Andover Zoning By-Law where as "the Planning Board, in its discretion, may allow alternative dimensional design for parking spaces and parking aisles if the Board finds that the design satisfies the objective" of Section 5.1.1 Off Street Parking the Purpose Section.
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 proposed fencing and landscaping do provide an adequate buffer for adjoining properties as well as improve the view from the roadway.
4. Any provision for pedestrian ways will provide safe and convenient access on-site with linkage to adjacent pedestrian areas.
The applicant proposes to link the site with the parking lot adjacent to the site. The sidewalk will be improved along the frontage of the property. The site is within 400 feet of the train station.
5. The project will provide for adequate drainage, water and sewer facilities with sufficient capacity to serve the planned development.
The drainage report is satisfactory as presented by the applicant as well as the previous review in 2007 for the previous proposed redevelopment. The site is less than ¼ of an acre as well as a redevelopment project of an existing developed site. Water and sewer capacity are sufficient.

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

The proposal includes 5 units of housing with an anticipated trip generation of 34 trips per day using ITE standards, however the applicant makes the reasonable case that the units are adjacent to the train station and therefore should reduce the trips to approximately 17 per day. The existing use had two units with two bedrooms each. The proposal adds three bedrooms to the site. Staff is not concerned that the site will generate an inordinate amount of traffic to the area.

Section 9.4.

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

New housing units, such as the ones proposed (706 SF to 1366 SF) both rental and ownership are needed in Andover. The units are located within 400 feet of the commuter rail which provides for transit oriented housing.

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

The site accommodates 7 parked cars at one time and an adjacent parking lot may at times provide visitor parking. The driveway was widened to 18 feet to safely accommodate vehicles entering and possibly exiting at the same time.

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.

4. Neighborhood character and social structures.

The neighborhood is a mixed use neighborhood. Behind the site is the Dundee Park industrial and commercial area. The property across the street is a mix of retail and commercial uses and the property immediately to the west is multifamily rental housing. In staff's opinion, the proposed multifamily housing is appropriate for the area.

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

The drainage is meant to be improved with the completion of the project. The aesthetics of the site and building design were improved through the Public Hearing process. The proposed exterior design of both buildings is recommended by the Design Review Board to the Planning Board.

In consideration of all of the foregoing, including the plans, reports, and testimony at the hearing, 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 Miami Stuart Realty, LLC owner of 60-62 Essex Street, more specifically shown as Lot 6 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, Cover Sheet, Dated October 9, 2009 (revised January 27, 2010);
 - b. Sheet - 2, Layout and Materials, Dated October 9, 2009 (revised January 27, 2010);
 - c. Sheet - 3, Grading/Utility Plan, Dated October 9, 2009 (revised January 27, 2010);
 - d. Sheet - 4, Construction Details, Dated October 9, 2009 (revised January 27, 2010);
 - e. Architectural Elevations, Duplex Building, Dated 1-10-10;
 - f. Architectural Elevations, Triplex Building, Dated 1-10-10;
3. 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;
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. Construction activities shall be conducted in a workmanlike manner;

7. Construction of the project, once begun, shall continue through to completion as expeditiously and continuously as possible; however, in the event that construction activities cease on the part of the developer for a period of nine (9) months from the date of last observed activity, the Board may convene a public hearing for the purpose of revocation or modification of the permit;
8. Construction equipment, building materials, debris, and contractor's vehicles associated with the project shall not be stored or parked on Essex 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;
9. 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;
10. 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;
11. During the driveway and parking lot construction phase, an engineer with porous pavement expertise shall be on site to inspect and coordinate the appropriate installation of the porous pavement.
12. 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;
13. 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 trees that die within one year from the date of planting in kind and in similar size.
14. Prior to 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;

15. The developer shall be responsible to complete the activities as outlined in the Operation and Maintenance Plan dated February 3, 2010, with the exception that the surface of the porous pavement shall be cleaned “quarterly and up to monthly” in lieu of “monthly”.
16. The Planning Board determined that the proposed plan showing an 18’ access and egress width meets the criteria of Section 5.1.1 in the Zoning By-law; The developer shall construct the access /egress at the narrowest width on less than 18’ 0”.
17. The site shall contain no more than 5 dwelling units and shall contain one dwelling unit per 1817 SF of lot area;
18. Reconstruction of the public sidewalk along the frontage of the property shall be required;
19. The project shall designate one unit as affordable in accordance with the 15% affordability requirement of the by-law. Affordability of the said unit shall be in perpetuity, or if such restriction cannot be legally provided, then said units shall be 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. The affordable units shall be sold to persons making 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) Units Only application prepared by the developer for the Town’s submittal to DHCD. The LIP may be subject to any amendments promulgated by DHCD, and income amounts may be adjusted to reflect current requirements. The developer shall submit any such adjustments to the Planning Board, or its designated agent, for review and approval. Prior to any construction on the site, except for the demolition of existing buildings, the developer shall provide the Planning Board, or its designated agent, with a copy of the completed Local Initiative Program Application to be submitted by the Town to the Department of Housing and Community Development (DHCD). It is intended that the affordable units in the project count towards the Town’s statutory 10% affordable housing count established by DHCD under Chapter 40B MGL, and the developer shall cooperate in all efforts to ensure that the intent is met. If at any time, the affordable unit in the project is to be sold, the developer shall submit to the Planning Division the proposed form of Deed Rider to be attached to and recorded with the deed, and such Deed Rider shall be applicable to the sale and resale of the affordable unit.
20. Prior to the sale of any residential unit in the project the developer shall have submitted to the Planning Division, all documents associated with a Condominium Homeowners’ Association, master deed, project management program (if any), and deed rider (if any). The documents will be reviewed and approved by Town


Counsel with respect to form and compliance with any applicable conditions contained herein. The final documents shall be recorded in the Registry of Deeds prior to the sale of any residential unit in the project.

21. The Andover Housing Partnership Committee may determine that in lieu of one affordable unit at this location compensation to the Andover Housing Trust Fund is a viable option. In such case conditions 18 and 19 above do not apply.
22. 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 there under 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, §17, from the grant thereof) with the Town Clerk.
23. Prior to the recording of this permit at the Registry 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;
24. 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; and
25. 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.

The Planning Board deliberated on the application during public meeting on February 23, 2010, and subsequently voted (5-0) to issue the foregoing Special Permit with Conditions.

THE ANDOVER PLANNING BOARD

Date: March 3, 2010



Paul J. Salafia, Chairman

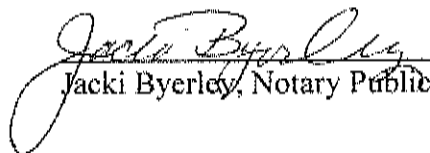
Essex, ss:

COMMONWEALTH OF MASSACHUSETTS

Date:

On this 3rd day of March, 2010, by Paul J. Salafia 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, KATHLEEN F. MCKENNA, Acting 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 MARCH 3, 2010 and no appeal has been filed with the Town Clerk.

Date: March 24, 2010

Kathleen McKenna
Town Clerk