



CITY OF SOMERVILLE, MASSACHUSETTS
OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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MAYOR

PLANNING DIVISION

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Case #: ZBA # 2010-60
Site: 1 Benton Road
Date of Decision: March 2, 2011
Decision: *Petition Denied*
Date Filed with City Clerk: March 16, 2011

ZBA DECISION

Applicant Name:	MLM Realty Trust
Applicant Address:	400 Crown Colony Drive, Quincy, MA 02169
Property Owner Name:	MLM Realty Trust
Property Owner Address:	400 Crown Colony Drive, Quincy, MA 02169
Agent Name:	Thomas F. Reilly, Esq., Cooley Manion Jones, LLP
Agent Address:	21 Custom House Street, Boston, MA 02110

Legal Notice: Applicant and owner MLM Realty Trust is seeking an administrative appeal (SZO Section 3.3.2.a and 3.2.4) of the denial of a Planning Board decision for Site Plan Review (SZO 5.4) and Subdivision (SZO 8.8). This is an appeal of the Planning Board action on August 24, 2010 to deny the petition of the applicant to subdivide the lot into (2) lots consisting of one lot of 11,917 square feet and one lot of 9,622 square feet.

<u>Zoning District/Ward:</u>	RB zone/Ward 2
<u>Zoning Approval Sought:</u>	§3.3.2.a, §3.2.4 & §8.8
<u>Date of Application:</u>	September 22, 2010
<u>Date(s) of Public Hearing:</u>	11/17, 12/1, 12/15/10, 1/5, 1/19, 2/2, 2/16 & 3/2/11
<u>Date of Decision:</u>	March 2, 2011
<u>Vote:</u>	5-0

Appeal #ZBA 2010-60 was opened before the Zoning Board of Appeals at Somerville High School Auditorium on November 17, 2010, and the ZBA took initial testimony during this public hearing. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L. c. 40A, sec. 11



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and the Somerville Zoning Ordinance. The hearing was then continued until December 1, 2010, December 15, 2010, January 5, 2011, January 19, 2011, February 2, 2011 and February 16, 2011. No testimony was taken at these meetings. The meeting was continued to March 2, 2011 where additional testimony was taken. After these two(2) hearing(s) of deliberation, the Zoning Board of Appeals took a vote.

BACKGROUND

1. **Subject Property:** The subject property is a 21,918 sf parcel on the corner of Benton Road and Summer Street. There is a house on the property, the Benton-Corwin house, circa 1890, that was recently renovated from a single-family to a three-family. There is a curb cut to a parking area on Benton Road and a new curb cut to a parking area on Summer Street. The property was on the list of properties to be designated to a local historic district in the past; however, it was not designated due to the previous owner's hesitation towards the designation and assurance that he would work with the Historic Preservation Commission in the future. The property is a contributing portion of the National Register of Historic Places district called the Westwood Road Historic District. It is adjacent to, but not a part of, the local Westwood Road historic district.

2. **Proposal:** The proposal was to subdivide the lot into two parcels of 12,296 sf with the existing structure and a new vacant 9,622 sf lot. The newly created lot would be large enough to allow a by-right three-family development. This proposal was taken up by the Planning Board in 2010, beginning with a hearing in April 2010 that was eventually decided on August 24, 2010 when the Planning Board denied the site plan application. The abutter, per the SZO and the Rules and Regulations for Site Plan Approval filed an appeal with the ZBA under Section 3.2.2.a and 3.3.4 requesting that the ZBA overturn the Planning Board's decision.

3. **Subdivision in Somerville:** Unlike many other communities in Massachusetts which have large amounts of unimproved land, Somerville is densely developed with very little remaining open space. While other communities needed regulations to set standards for new roads, such regulations do not apply to a community like Somerville. Based upon this, and upon concerns about the impact of the state's Subdivision Control Act on the City's planning goals in the early 1990's, the City of Somerville submitted a home rule petition in 1993 to exempt the City from the provisions of G.L. c.41 §81K-§81GG, more commonly known as the Subdivision Control Act. The home rule legislation was approved (Acts of 1993, Chapter 288). Without being subject to the provisions of the Subdivision Control Act, the City has developed separate review procedures for subdivision. The SZO §8.8 states that all subdivision of land in Somerville is subject to the Site Plan Approval portion of the SZO under §5.4. The Rules and Regulations for Site Plan Approval indicate that appeals of decisions of the Planning Board will be conducted per applicable sections of Massachusetts law. Therefore the applicant appealed the Planning Board case to the ZBA.

4. **Nature of Application:** In order to subdivide the lot, the Applicant requires Site Plan Approval under SZO §5.4 and §8.8. A subdivision that only creates one new lot is classified as a minor project under SZO §5.4.5 and the Rules and Regulations Pertaining to Site Plan Approval (SPA Rules); however, since three members of the Planning Board requested review of this proposal, per the SPA Rules, the project was required to go before the full Board for review. After this denial, the applicant filed an appeal per SZO Sections 3.2.2.a and 3.3.4 which allow the ZBA to hear cases to overturn an administrative decision under the SZO.

5. **Surrounding Neighborhood:** The property is surrounded by one-, two-, and multi-family homes. St. Catherine's church is in close proximity. As noted above, the Westwood Road local historic district abuts the property, and the property is a part of the Westwood Road National Register district.

6. **Required Findings:** In order to grant a site plan approval, the SPGA must make certain findings and determinations as outlined in §5.4.6 of the SZO. The ZBA, under appeal, must review the findings and the decision of the Planning Board along with application material and a legal brief submitted by the applicant and determine if the Planning Board decision was in violation of any provision of this Ordinance or MGL chapter 40A (per section 3.2.3)



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SPECIFIC FINDINGS UNDER SECTION 5.4.6

In order to grant the site plan approval, the SPGA must make certain findings and determinations as outlined in §5.4.6 of the SZO. The Planning Board made the following findings, and, upon appeal, the ZBA upheld these findings.

1. *"The development complies with all standards set forth for the overlay district in which it is located."*

The application is not located in an overlay district.

2. *"The development shall be integrated into the existing terrain and surrounding landscape. Building sites shall, to the extent feasible:*

a. minimize use of wetlands, steep slopes, floodplains, hilltops;

The development minimizes impact on wetlands, floodplains or hilltops located onsite, as there are no wetlands, floodplains or hilltops on the site. There is a slope downward from the western portion of the site to the eastern portion. The slope appears to be incorporated into the proposed new design.

b. preserve natural or historic features;

The Planning Board finds, and ZBA agrees that the proposal does not preserve the natural or historical features of the large lot at 1 Benton Road. The project does not protect the value and the nature of the structures within the National Register district and the adjacent Local Historical District. There are numerous nearby historic properties that retain their value because of their setting within a historic setting of large homes on larger than typical lots. The development of three additional units on a site where two units have already recently been added in the existing house will create a situation that is not consistent with this finding. Because the subdivision would subsequently allow for the development of three units on the site by-right, the Planning Board finds, and ZBA agrees, that there is no reasonable condition that can mitigate this impact.

c. maximize open space retention;

The Planning Board finds, and ZBA agrees, that the proposal does not maximize open space retention by allowing the development of a large three-family structure on a historic rear yard adjacent to a Local Historic District. Because the subdivision would subsequently allow for the development of three units on the site by-right, the Planning Board finds, and ZBA agrees, that there is no reasonable condition that can mitigate this impact.

d. preserve scenic views from publicly accessible locations;

The Planning Board finds, and ZBA agrees, that the proposal does not preserve scenic views from publicly accessible locations by allowing the development of a large three-family structure on a historic rear yard adjacent to a Local Historic District and forever altering the scenic nature of the neighborhood. Because the subdivision would subsequently allow for the development of three units on the site by-right, the Planning Board finds, and ZBA agrees, that there is no reasonable condition that can mitigate this impact.

e. minimize tree, vegetation and soil removal, blasting and grade changes;

The landscape plan indicates that three deciduous trees would be planted in the right side yard of the new structure and two deciduous trees would be planted in the front yard. The Applicant stated that no blasting and only minimal grade changes would be required and the only substantial trees that would be removed are currently dead.

f. screen objectionable features from neighboring properties and roadways.



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The project requires a large driveway from both the new and existing curbcut. To safely exit onto Benton Road a driveway will be in the front yard of the proposed new building, where its turning area will need to be visible for safety purposes. This will not be screened. Furthermore, parking for the rear driveway will be visible from adjacent historic properties. The Planning Board indicated that safety concerns would require the Board to affirm the recommendation of the Traffic and Parking Director to allow applicants to exit forward onto Benton Road. No screening was proposed by the applicant. Were the project to be approved, screening techniques would need to be reviewed to find if appropriate conditions could address this circumstance.

3. The development shall be served with adequate water supply and sewage disposal systems. For structures to be served by sewage disposal systems, the applicant shall document the statues of Department of Environmental Management (DEM) and/or other sewage permits.

The Planning Board finds and ZBA agrees, that, had this project been approved, the applicant could work with DEM and DPW to meet this finding.

4. "The development shall incorporate measures that are adequate to prevent pollution of surface and groundwater, to minimize erosion and sedimentation, and to prevent changes in groundwater levels, increased rates of runoff and minimize potential for flooding. Drainage shall be designed so that groundwater recharge is maximized, and at the project boundaries the runoff shall not be increased in amount or velocity."

The Applicant stated that there would be minimal grade changes on the site and drywells would be installed to collect roof gutter runoff. Had the project been approved, any future development on the lot would have to conform to the requirements of the City's Engineering Department for stormwater management.

5. "To the extent feasible, development shall minimize demands placed on municipal services and infrastructure."

The subdivision would not place any unforeseen demand on municipal services and infrastructure.

6. "The development shall provide for safe vehicular and pedestrian movement within the site and to adjacent ways, including sidewalks, crosswalks and the like."

The intersection of Benton Road and Summer Street has limited sight lines and extensive pedestrian traffic. Although crash data indicates that there have not been extensive accidents there, abutters identified specific risks that result in numerous near misses. The applicant previously applied to DPW and received a second curbcut on the lot at 1 Benton Road, as allowed per Section 9.9.c of the SZO. But, addition of this curbcut, plus the additional traffic on the Benton Road driveway opening put traffic exiting this lot from close to this intersection in two locations.

The curb cut along Summer Street was recently constructed and the plan indicates that the pre-existing curb cut along Benton Road will be reduced from approximately 35 feet to 13 feet. The proposed parking scheme for the site involves cross easements for shared driveways. Two parking spaces for the existing house will use the Benton Road curbcut, while access to parking for the new lot will be through the curbcut on Summer Street.

The Planning Board reviewed two attempts by the applicant to address concerns about the situation created by the curbcuts, the traffic conflicts from the driveways and the impacts of developing a structure with new parking demand close to the intersection of Benton Road and Summer Street. The first traffic impact memo, dated May 3, 2010, attempted to make a case that no mitigation was necessary. In response to this report, the Traffic & Parking office requested reconfiguration of the driveway at 1 Benton Road to allow vehicles to exit forward onto Benton Road.

The second traffic report recommended reducing vegetation, replacing a stop sign, adding a 'stop sign ahead' sign, replacing intersection warning signs, adjusting pavement markings, and improving ADA ramps. The



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Planning Board reviewed these at the meeting on July 15, 2010. These were resubmitted to Traffic & Parking for comments before the August 24, 2010 meeting. Traffic & Parking made recommendations to accept some of the improvements but not others, citing concerns with the impacts of some of the improvements.

The Planning Board reviewed the circumstances surrounding the traffic improvements, and concluded that they did not address the underlying issues with the intersection that would be further impacted by the new units that could be developed after the subdivision at this site. The Planning Board finds, and ZBA agrees, that the application does not provide for safe vehicular and pedestrian movement. Furthermore, the Planning Board finds, and ZBA agrees, that, despite the numerous attempts by the applicant, there is no reasonable condition that can be placed on this application to address this concern.

7. *“Building design and landscaping shall be in harmony with the prevailing character and scale of buildings in the neighborhood through the use of appropriate building materials, screening, and other architectural techniques.”*

The architectural elevations incorporate elements of historic buildings in the area, but the development of a new residential structure in a rear yard adjacent to a Local Historic District is not in harmony with the prevailing character and scale of buildings with the neighborhood. Planning Staff worked with the applicant on building and site design, and proposed a condition that Planning and Historic Preservation staffs continue to work on project design. Nonetheless, the Planning Board finds, and ZBA agrees, that any new development on this site, regardless of its design, would not be in harmony with the prevailing character and scale of a neighborhood that has stood for a long time with very large homes on larger-than-normal lots. Furthermore, no reasonable condition can be placed on this application to address this concern.

8. *“Electric, telephone, cable TV and other such utilities shall be underground except where this cannot be accomplished because it is physically or environmentally infeasible, in which case such utilities shall be screened.”*

The application included a recommendation from Planning Staff to remove the electrical installation on the front of the existing structure at 1 Benton Road. This utility installation disrupted the Summer Street front entrance and porch of the historic home. Otherwise, had the application been approved, the applicant would need to meet applicable city requirements.

9. *“Exposed storage areas, machinery, service areas, truck loading areas, utility buildings and structures and other unsightly uses shall be set back and/or screened to protect neighbors from objectionable features.”*

The proposed use of the new site is a three-family structure that would not likely include exposed storage, machinery, service areas, truck loading areas, utility buildings and structures; however, if these items were present onsite, they would have to be screened.

10. *“To the extent feasible, proposed projects shall be designed in such a way as to minimize shadows on neighboring properties.”*

A shadow study of the new structure would ensure that the proposed project would minimize shadows on the neighboring properties. Had the project been approved, the proposed covenant would specify that the Applicant must submit a shadow study to the Planning Staff for review prior to construction of a structure on the new lot, and that the study should minimize shadow impacts on abutting properties.

11. *“There shall be no unreasonable glare onto public roads and other public ways into the night sky, or onto neighboring properties from lighting or reflection.”*

It is unlikely that a new three-unit building would cause unreasonable glare onto the public roads, ways or onto neighboring properties from lighting or reflection. The lighting plan (on the landscape plan) indicates that there would be two lights on the front of the house by the front door, a light on the right side of the house that would be on a motion sensor, and two lights in the back of the house above the garage.



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12. *"The site plan shall comply with all zoning requirements."*

The proposed site plan conforms to the minimum lot size and minimum frontage requirements set forth in Article 8 of the Ordinance. After subdivision, the existing structure continues to conform to other dimensional requirements such as minimum lot area per dwelling unit, floor area ratio, yard setbacks, etc. The applicant has shown that a proposed three-unit development on the new lot could also conform to the dimensional and parking requirements.

The Planning Board finds, and ZBA agrees, that the application is inconsistent with the purpose of the SZO, and specifically it does not meet the requirement to "conserve the value of land and buildings" and "to preserve historical and architectural resources of the City". The application proposes a subdivision to allow a new three-family dwelling in a location that is within a National Register historical district and adjacent to a Local Historic District. In such a site, a new building will be large and will have impacts on views, light and congestion within this neighborhood. The development will not conserve the value of land and buildings, as the new development will reduce the value of adjacent historic structures through the loss of open space and views from those properties. It will also have a negative impact on the historical and architectural resources of the city, by carving up the large lot on which the original Benton-Corwin house was located, separating the home from its expansive rear yard. Furthermore, the application will allow an owner to place a new structure on the site, forever altering the historic character of the neighborhood. No reasonable condition will allow the project to conform to this standard, and therefore the Planning Board concludes, and ZBA agrees, that the project cannot meet this standard.

BASIS FOR DECISION

SZO Section 5.4.4.C indicates that the Planning Board "shall approve a submission in the form submitted or with reasonable conditions pertaining to the purpose of this Section 5.4 unless the Planning Board finds that:

1. The submission is incomplete;
2. The imposition of reasonable conditions would not ensure that the project would conform to the standards and criteria set forth in Section 5.4.6; and
3. The project does not comply with other specifically applicable requirements of this Ordinance."

Based upon this standard and the above findings, the Planning Board finds, and ZBA agrees, that that no reasonable conditions can ensure that the project will conform to the standards and criteria set forth in Section 5.4.6 and furthermore finds that the project does not comply with a specifically applicable requirement of the ordinance, in particular the purpose of the Ordinance.

DECISION:

Present and sitting were Chairman Herbert Foster, members Orsola Susan Fontano, Richard Rosetti, T.F. Scott Darling, III, Esq., and Alternate Josh Safdie. Upon making the above findings, Orsola Susan Fontano made a motion to DENY the applicant's administrative appeal under SZO Section 3.2.3 and 3.2.4 of the Planning Board's decision of August 24, 2010 as filed in the City Clerk's office on September 7, 2010 for site plan review under SZO 5.4 and Subdivision under SZO 8.8, an appeal of the Planning Board's action on August 24, 2010 to deny the petition of the applicant to subdivide the lot into two lots consisting of one lot of 11,917 square feet and one lot of 9622 square feet. T. F. Scott Darling seconded the motion. Wherefore the Zoning Board of Appeals voted **(5-0)** to DENY the requested administrative appeal and thereby uphold the decision of the Planning Board.



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Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*
Orsola Susan Fontano, *Clerk*
Richard Rossetti
T.F. Scott Darling, III, Esq.
Josh Safdie (Alt.)

Attest, by the Administrative Assistant:

Dawn M. Pereira

Copies of this decision are filed in the Somerville City Clerk's office.
Copies of all plans referred to in this decision and a detailed record of the
SPGA proceedings are filed in the Somerville Planning Dept.

CLERK'S CERTIFICATE

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 3.2.10.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on _____ in the Office of the City Clerk, and twenty days have elapsed, and

FOR VARIANCE(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ any appeals that were filed have been finally dismissed or denied.

FOR SPECIAL PERMIT(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

Signed _____ City Clerk Date _____



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