



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
**JOSEPH A. CURTATONE**  
**MAYOR**

PLANNING DIVISION

**PLANNING BOARD**

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ELIZABETH MORONEY  
MICHAEL A. CAPUANO, ESQ.  
JOSEPH FAVALORO  
JAMES KIRYLO  
DANA LEWINTER (ALT.)

**Case #: PB #2009-17**  
**Site: 1 Benton Road**  
**Date of Decision: August 24, 2010**  
**Decision: Petition Denied**  
**Date Filed with City Clerk: September 7, 2010**

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**PLANNING BOARD DECISION**

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**Site:** 1 Benton Road

**Applicant Name:** MLM Realty Trust  
**Applicant Address:** none listed  
**Property Owner Name:** MLM Realty Trust  
**Property Owner Address:** none listed  
**Agent Name:** Richard G. Di Girolamo  
**Agent Address:** 424 Broadway, Somerville, MA 02145  
**Alderman:** Thomas Taylor

**Description:** The Applicant seeks Site Plan Approval under SZO §5.4 and §8.8 in order to subdivide an existing land parcel into two separate parcels of 12,296± sf and 9,622± sf.

<u>Zoning District/Ward:</u>	RB / 3
<u>Zoning Approval Sought:</u>	Site Plan Approval for Subdivision
<u>Date of Application:</u>	Original application filed December 29, 2009
<u>Complete Application:</u>	March 19, 2010
<u>Date(s) of Public Hearing:</u>	4/1/10, 4/15/10, 5/6/10, 6/3/10, 7/15/10, 8/24/10
<u>Date of Decision:</u>	August 24, 2010
<u>Vote:</u>	5-0

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Case #PB 2009-17 was opened before the Planning Board at Somerville City Hall on April 1, 2010. 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 and the Somerville Zoning Ordinance (SZO). After hearings on 4/1/10, 4/15/10, 5/6/10, 6/3/10, 7/15/10 and 8/24/10 the Planning Board took a vote.



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## **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 is 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.
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.
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.
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.

## **SCHEDULE OF MEETINGS**

The project is a minor project under SZO 5.4.5 and the Section 3 of the Rules and Regulations Pertaining to Site Plan Approval (SPA Rules), under 3.A.5. When the Planning Staff informed the Board of the project, three members of the Planning Board indicated by e-mail on March 16, 2010 (Kevin Prior, Elizabeth Moroney and Michael A. Capuano) that they would want to hear the case in a public hearing as allowed by Section 3 of the SPA Rules. After providing an initial submission in December 2009, the applicant met the requirements for minimum submission under Section 4C of the SPA Rules in March 2010. The first public hearing was scheduled for April 1, 2010.

Based on the findings the Planning Staff recommended at the April 1, 2010 meeting that the Planning Board require the following items be submitted in order to fully evaluate the findings under §5.4.6 of the SZO. Section 4D notes that "the Planning Board . . . may request additional information beyond that submitted by the Applicant, but only that which is reasonably related to demonstrating compliance with a specific standard or criteria of Section 5.4.6".



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This additional information would be valuable if the application was deemed reasonable with conditions as allowed in Chapter 6, Section 6.C of the SPA Rules, which state that, "[w]hen an application is deemed generally acceptable, but is of a nature where specific approval of each standard or criteria of SZO Section 5.4.6 cannot be reached (such as in subdivision, where all physical site development plans may not be finalized at the time of the plot recording), the Planning Board may attach a condition(s) requiring recordation of deed restrictions or covenants ensuring future compliance with specifically applicable standards of SZO section 5.4.6."

Based upon the provisions of Section 4D and Section 6C of the SPA Rules, the Planning Staff recommended and the Planning Board requested the following information:

1. Architectural elevations for (the) new structure specifying materials, colors and finishes . . . includ(ing) information on the design context by showing a photographic montage of (nearby) existing buildings, or similar study.
2. Building shadow analysis
3. General drainage patterns and plans, including drainage inlets/outfalls, and proposed erosion and sedimentation controls
4. Landscape plans, including schedule of materials and planting specifications
5. Exterior lighting plan
6. Any changes to paving plans, traffic circulation and parking plans.

At the April 15, 2010 meeting the Planning Staff provided an additional staff report. The Staff indicated that applicant provided all of the requested information except the shadow study which the applicant proposed to provide before the start of construction. At that time, the Staff recommended conditional approval subject to five conditions, including the development of the covenant allowed under Section 6C of the SPA Rules.

The Planning Board opened the public hearing on April 15, 2010 and took public testimony. Present at this hearing were Acting Chair Elizabeth Moroney, members James Kirylo and Michael A. Capuano and alternate Dana LeWinter. The following individuals presented public testimony on the project: Alderman Connolly, Alderman Taylor, Alderman Gewirtz and Alderman White spoke against the proposal. Alderman Desmond submitted comments in opposition, but did not attend. Sara Rosenfeld spoke in favor of the project. Elizabeth Bicknell appeared in opposition to the project, stating concerns regarding architecturally inferior renovations make to 1 Benton Road. Susan Karp Kelley appeared and testified in opposition to the project. She stated concerns regarding the watershed district line though the property, density and historic character. Rita Edmonds appeared and spoke in opposition to the project stating concerns regarding density, water run off and traffic. David Dahlbacka appeared and spoke in opposition to the project stating concerns regarding taxes and stated the city should encourage commercial development instead of residential development. Louise Hale stated her opposition to the project stating concerns regarding water run off, removal of trees, automobile fumes and the impact that the subdivision will have on the enjoyment and value of her property. At the completion of the hearing, the Board continued the case to the Planning Board meeting on May 6, 2010.

At the meeting on May 6, 2010 the Planning Board took up the case again. Present were Acting Chair Elizabeth Moroney, members James Kirylo, Joseph Favaloro and Michael A. Capuano and alternate Dana LeWinter. Mr. Favaloro indicated and certified that he listened to the audio recording of the meeting on April 15, 2010. At this meeting, the Board heard new testimony about proposed traffic mitigation from the applicant. The Board also heard from abutters about traffic mitigation concerns. The following individual spoke about the traffic concerns: John Pijewski, Susan Karp Kelly and Patricia Bonnet. At the conclusion of this meeting the Planning Board continued the hearing until May 20, 2010

On May 20, 2010, the Planning Board took no testimony and continued the hearing until June 3, 2010.

On June 3, 2010, the Planning Board took up the case again. Present were Acting Chair Elizabeth Moroney, members James Kirylo, Joseph Favaloro and Michael A. Capuano and alternate Dana LeWinter. The Board



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discussed the traffic mitigation plan, and expressed additional concerns about traffic impacts. At the conclusion of that meeting, the Planning Board continued the hearing until June 24, 2010.

On June 24, 2010, the Planning Board took no testimony and continued the hearing until July 15, 2010

On July 15, 2010, the Planning Board took up the case again. Present were Acting Chair Elizabeth Moroney, members James Kirylo, Joseph Favaloro and Michael A. Capuano and alternate Dana LeWinter. The applicant presented new information from a new traffic engineer, providing new mitigation recommendations. At the conclusion of this meeting the Planning Board continued the hearing until August 5, 2010

On August 5, 2010, the Planning Board took no testimony and continued the hearing until August 24, 2010.

On August 24, 2010, the Planning Board took up the case again. Present were Acting Chair Elizabeth Moroney, members James Kirylo, Joseph Favaloro and Michael A. Capuano and alternate Dana LeWinter. Chairman Kevin Prior was also in attendance at the meeting but did not vote because he did not attend previous meetings with testimony. The Board opened the case and voted to move into an executive session to discuss strategy regarding potential pending litigation. At the conclusion of the executive session, the Board reconvened in open session. No votes were taken in the executive session. At that time the Board continued public testimony, and deliberations. The following spoke at the hearing: John Pijewski, Susan Karp Kelley, and Paul Kelley. At the conclusion of this testimony the Board took a vote on this case.

#### **SPECIFIC FINDINGS UNDER SECTION 5.4.6**

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 Planning Board finds the following.

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 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 that there is no reasonable condition that can mitigate this impact.

- c. maximize open space retention;*



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The Planning Board finds 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 that there is no reasonable condition that can mitigate this impact.

*d. preserve scenic views from publicly accessible locations;*

The Planning Board finds 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 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.*

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 made finds 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."*



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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 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 that the application does not provide for safe vehicular and pedestrian movement. Furthermore, the Planning Board finds 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 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."*



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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.

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 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 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 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



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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 Acting Chair Elizabeth Moroney, and Members Michael A. Capuano, James Kirylo, and Joseph Favaloro and Alternate Dana LeWinter . Upon making the above findings, Michael A. Capuano made a motion to deny the requested Site Plan. Joseph Favaloro seconded the motion. Wherefore the Planning Board voted **5-0** to **DENY** the application for Site Plan Approval.



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Attest, by the Planning Board:



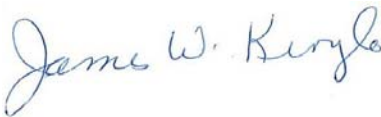
Elizabeth Moroney



Michael A. Capuano, Esq.



Joseph Favaloro



James Kirylo



Dana LeWinter

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 in accordance with Section 6E of the Rules and Regulations Pertaining to Site Plan Approval.



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This is a true and correct copy of the decision filed on \_\_\_\_\_ in the Office of the City Clerk,  
and

\_\_\_\_\_ 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.

Signed \_\_\_\_\_ City Clerk Date \_\_\_\_\_

