



CITY OF SOMERVILLE, MASSACHUSETTS

PLANNING BOARD

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Case #: PB2007-29-R0809

Date of Decision: August 20, 2009

Decision: *Petition Approved*

Filed with City Clerk: August 26, 2009

PLANNING BOARD DECISION

Site: Assembly Square Phase 1AA (Assembly Square Drive and IKEA)

Applicant Name: FR Sturtevant Street, LLC

Property Owner Name: FR Sturtevant Street, LLC & FR Assembly Square, LLC

Property Owner Address: 1626 East Jefferson Street Rockville, MD 20852

Alderman: William Roche

Legal Notice:

The Applicant, FR Sturtevant Street, LLC, and its Agent, Hugh Hahn, Vanasse Hangen Brustlin, Inc. seek a Special Permit (S.Z.O. §5.3.10) for a time extension of the original Special Permit with Site Plan Review-A final level approval of a phase ("Phase 1AA") of a planned unit development (S.Z.O. §16.8.3) including a store selling furniture, home furnishings, and carpets (IKEA) (S.Z.O. §7.11.9.7.c) and a restaurant (S.Z.O. §7.11.10.1.1.c), and roadways, infrastructure, and associated improvements serving Phase 1AA, and dedication of useable open space available to the public, all under the Planned Unit Development Preliminary Master Plan approved by the Planning Board on December 14, 2006 and a Special Permit for signage for Phase 1AA (S.Z.O. §6.4.14.C & §12.4), approved by the Planning Board on October 18, 2007 (PB2007-29) and revised through Planning Board approval October 16, 2008 (PB2007-29-R0908) and December 18, 2008 (PB2007-29-R1108), with *de minimis* revisions approved by the Planning Director January 22, 2009 and May 13, 2009, and any additional revisions approved by the Planning Board or Planning Director prior to the August 20, 2009 hearing date.

The owners of the parcels subject to these applications are:

FR Sturtevant Street, LLC – Parcels 99-A-2, 99-A-3, 99-A-4, 99-A-5, 99-A-7, 99-A-8, 99-A-6, 101-B-24

FR Assembly Square, LLC – Parcels 67-A-1, 86-A-1

These parcels are also commonly known as 16-34 and 100 Assembly Square Drive (f/k/a Sturtevant Street), 123 and 147 Foley Street, the so-called "Yard 21 Parcel" and the proposed area of Assembly Square Drive.

Assembly Square Mixed Use District (ASMD); Planned Unit Development Overlay District - A (PUD-A).

Zoning District/Ward: Assembly Square Mixed Use District (ASMD); Planned Unit Development Overlay District - A (PUD-A) / Ward 1

Zoning Approval Sought: Special Permit under SZO§5.3.10

Date of Application: July 28, 2009

Date(s) of Public Hearing: August 20, 2009

Date of Decision: August 20, 2009

Vote: 5-0

Case # PB2007-29-R0709 was opened before the Planning Board in Alderman's Chambers at City Hall on August 20, 2009. 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. After one hearing of deliberation, the Planning Board took a vote.

PROJECT HISTORY

On December 14, 2006, the Planning Board granted Planned Unit Development-A-Preliminary Master Plan (PUD-PMP) approval, subject to certain conditions, for a development area that includes the subject property.

On October 18, 2007, the Planning Board granted conditional approval of (PB2007-29):

- SPSR-A for final level approval of a phase of the PUD (§6.4.9), including construction of an IKEA store up to 340,000 s.f. in size, including an accessory restaurant use, 1,320 parking spaces for the store and 200 additional spaces for the Orange Line station, and reconstruction and realignment of Assembly Square Drive; and,
- Special Permit for Signage in order to exceed the maximum height and area of allowable signage (SZO §6.4.14.c); and,
- Site Plan Approval for subdivision of parcels (SZO §5.4).

On October 16, 2008, the Planning Board (PB2007-29-R0908) granted approval to revise the SPSR-A in order to accommodate certain changes to the building and the site including the accommodation of the future multi-use path, reduction and configuration of parking facilities, removal of outside vehicular ramp, alteration of façade (egress stairs and addition of windows to west and north façades), revision of drainage and other underground utility design to accommodate site changes; and to revise the Special Permit for Signage in order to reconfigure the sign plan.

On December 18, 2008 the Planning Board (PB2007-29-R1108) granted approval for revisions to the layout of Assembly Square Drive with associated revisions to the Site Plan Approval for subdivision.

On August 6, 2009 the Planning Board (PB2007-29-R0709) granted approval for revisions to the gateway elements and landscaping at the intersection of Assembly Square Drive and Mystic Avenue and to incorporate landscaping elements along the eastern side of Assembly Square Drive.

On January 22, 2009, May 13, 2009 and August 13, 2009, *de minimis* revision applications were approved by the Planning Director that slightly altered the alignment of the public use path, building, landscape and Assembly Square Drive plans.

PROJECT DESCRIPTION

The applicant is requesting an Extension of the previously approved permits of the maximum one year in order to extend the life of the original approval until October 18, 2010.

Section 5.3.10 of the Somerville Zoning Ordinance provides that:

A special permit or a special permit with site plan review shall lapse two years from the granting thereof, or such shorter time as specified in said permit, if a substantial use thereof has not sooner commenced, except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause. Good cause shall be determined by the SPGA, and only upon a finding of demonstrated hardship (e.g. financing problems, labor strike, bad weather conditions, or act of God) and that there has been good faith effort to overcome the hardship and expedite progress. The period of extension of the life of a special permit or special permit with site plan review shall be, at minimum, the time required to pursue or await determination of an appeal, but the maximum extension shall not exceed one (1) year beyond the original permit life.

The Applicant has submitted documentation of several steps taken in order to “expedite progress” of the project’s construction. The Applicant’s statement is attached, along with a timeline of events.

EVALUATION & FINDINGS

Demonstration of Hardship

SZO §5.3.10 cites four examples of “hardship”: financing problems, labor strike, bad weather conditions, and act of God. In addition to these examples, litigation and other obstacles related to obtaining a permit may be considered a hardship.

The Planning Board acknowledges that difficult conditions exist within the current financial markets which are slowing the pace of development. The ongoing recession has been recognized to be the largest slow down in the U.S. economy since the Great Depression and the near implosion of the financial markets have severely curtailed access to private credit.

Compounding the national trends, the Assembly on the Mystic project requires a significant financial outlay for public infrastructure well in advance of the opening of the new IKEA store. Specifically, full depth utility work (water, sewer, storm water) is required along the length of the existing and new Assembly Square Drive and a base coat of the roadway must be in place before construction commences on the IKEA building. Estimates are that the infrastructure investment necessary for the IKEA opening is approximately \$89 million.

Difficult macro-economic conditions combined with newly created sources of public funding, which are still developing in terms of how they operate and fund projects, have created a financial hardship for the applicant due to the availability and length of time it is taking to secure the infrastructure capital.

Good Faith Effort to Overcome Hardship and Expedite Progress

Significant work has been made since the time of the original permit issuance as can be seen attached document, where the Applicant identifies the “good faith effort” that have been completed. Significantly, in July, Governor Patrick announced a commitment to providing \$65 million in public funds for the construction of infrastructure in Assembly Square. Specifically, in May 2009, a \$2.1 million Growth District Initiative grant was awarded by the Commonwealth to the City for Assembly Square

infrastructure. That has funded engineering design, the demolition of structures previously on the site and environmental remediation work in the roadway that will allow roadway construction to begin. In July, the applicant and the City received preliminary certifications from the Commonwealth that the Assembly on the Mystic would receive \$50 million of I-Cubed infrastructure funds. Initial materials have been submitted to the Board of Aldermen relative to required municipal action to accept the funds and a public hearing will be scheduled in early September. Additionally, the project is moving through the federal stimulus process and will soon be under review by the Municipal Planning Organization (MPO) for a grant of approximately \$13 million.

In addition, the applicant has demonstrated a "good faith effort" to advance the project by continuing to revise and improve the permits for Phase 1AA. Specifically, the pre-100% design for the roadway improvements were submitted to the City and have been approved (additional review is ongoing by MassHwy) and building plans have been submitted and are under review by the Inspectional Services Division.

Based on the above, the Planning Board finds that the Applicant has made good faith efforts to overcome the demonstrated hardships and to expedite progress.

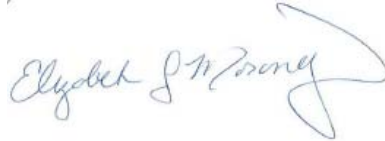
DECISION

Present and sitting were members Kevin Prior, Elizabeth Moroney, Joseph Favaloro, Michael Capuano and Dana Lewinter. Upon making the findings referenced above and included in the attached appendices, Kevin Prior made a motion to approve the request for **Extension of the previously approved Special Permit with Site Plan Review and Special Permits** for Final Level Approval of Phase 1AA of the Assembly Square Planned Unit Development-A-Preliminary Master Plan approved by the Planning Board on December 14, 2006; and Joseph Favaloro seconded the motion. Wherefore the Planning Board voted (5-0) to **APPROVE** the request.

Attest, by the Planning Board:



Kevin Prior, *Chairperson*



Elizabeth Moroney



Joseph Favaloro



Michael Capuano, Esq.



Dana Lewinter

<p>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.</p>

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, 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 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 _____