



CITY OF SOMERVILLE, MASSACHUSETTS
OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: PB 2016-05
Date: November 3, 2016
Recommendation: Conditional Approval

PLANNING STAFF REPORT

Site: 654 Mystic Avenue

Applicant Name: Anthony Fava & Ryan Hunt
Applicant Address: 11 Elkins Street, #250, Boston, MA 02127
Property Owner Name: Fieldcom Realty Trust
Property Owner Address: P.O. Box 2307, Woburn, MA 01888
Agent Name: Richard G. Di Girolamo
Agent Address: 424 Broadway, Somerville, MA 02145
Alderman: Tony Lafuente

Legal Notice: Applicants, Anthony Fava and Ryan Hunt, and Owner, Fieldcom Realty Trust, seeks Design & Site Plan Review for a subdivision under SZO §5.4 to subdivide one lot into three. BB Zone. Ward 4.

Zoning Approval Sought: Site Plan Approval

Date of Application: Original application filed March 7, 2016

I. PROJECT DESCRIPTION

1. **Subject Property:** The subject property is a 9,583 square foot lot containing an 830 square foot commercial structure formerly housing an auto garage. The subject property is covered with bituminous material (asphalt) and presents a retaining wall running along the rear length of the property. A shorter, stepped retaining wall runs along the Moreland Avenue frontage. Currently, there are three, large curb cuts providing access to the property from Mystic Avenue. For some time, a chain-link fence has run the length of the Mystic Avenue frontage. The property overlooks Mystic Avenue and I-93. The property is located in the BB zone, but the rear of the property abuts an RA zone.

Fig. , below: Aerial view of subject parcel.



Fig. 2, below: View of parcel from corner of Moreland looking toward Somerville

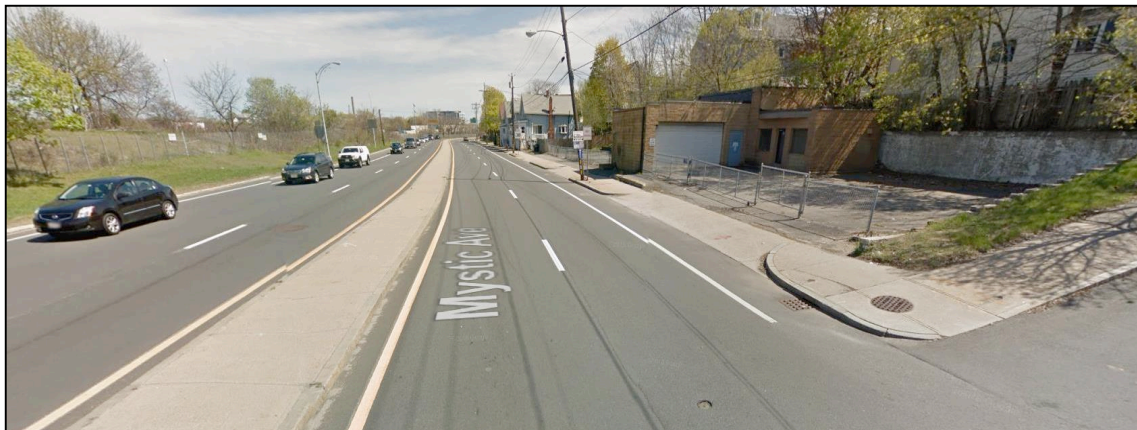
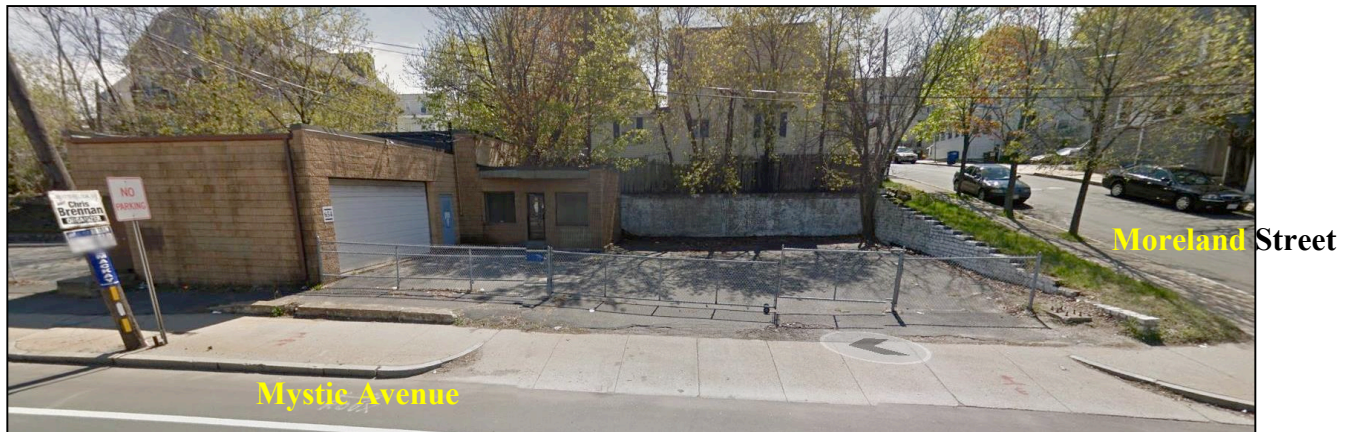
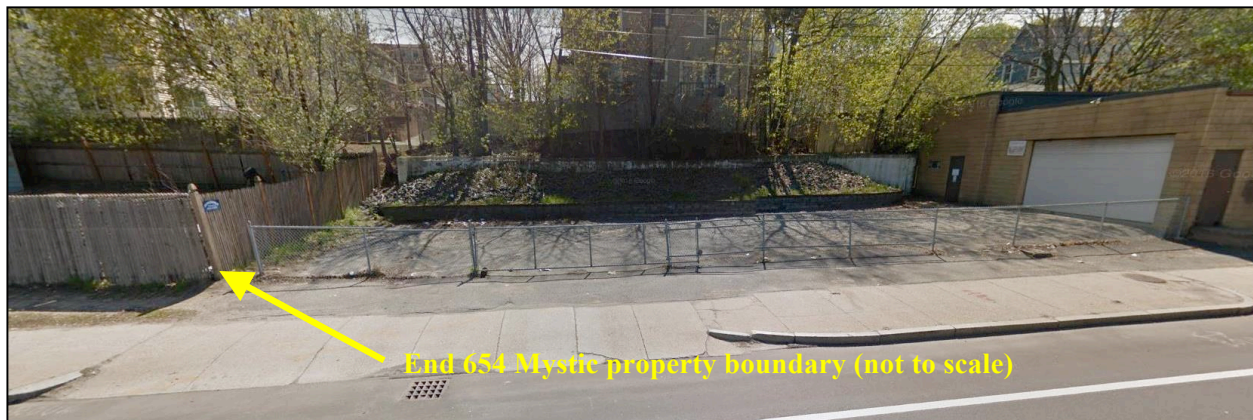


Fig. 3, below: Right corner of lot as it abuts Moreland Street.*Fig. 4, below: Left corner of lot as it abuts 640 Mystic Avenue. The property at 640 Mystic Avenue (off-image, left) has been demolished since this google image was taken in spring, 2016)*

The previous use of this building was as a drive-in insurance claim center for Arbella's auto insurance program. It has been vacant for a few years. The property was the site of a ZBA case early in 2015. An applicant was seeking to expand a used car dealership onto this site. The ZBA, after considerable discussion, approved the application with conditions to limit the number of cars and address the site design. But, throughout that process there was significant concern that the proposal was not a viable long-term use of the site. In the proposed zoning overhaul, the Planning Staff recommended a residential use designation for the site, so that it could be a more attractive gateway to the city. After the ZBA approved the used car activity the Board of Aldermen did not approve the license for that use, as they also agreed that there were better long-term uses of the site. The site has been vacant since that time.

2. **Proposal:** At its core, this is a very simple application. The Applicant proposes to sub-divide this parcel at 654 Mystic Avenue into three lots. Lot 1, which would abut Moreland Street, is proposed at ~3,178 square feet. Lot 2, to the left, is proposed at ~3,251 square feet. Lot 3, which would abut 640 Mystic Avenue, is proposed at ~3,316 square feet. The subdivision of lots with frontage on an existing street is typically treated under Massachusetts Law as an 'approval not

required' plan under the Subdivision Control Act. Such lots are entitled to immediate approval by the Planning Board or its designee within 21 days of the initial application.

But, the City of Somerville, through a 1993 home rule petition was able to petition the state legislature to exempt the city from the subdivision control act. Following this action, the City established the strategy of permitting lot splits under the Site Plan Approval (recently renamed as "Design and Site Plan Review") regulations of the Somerville Zoning Ordinance.

These sort of design and site plan reviews are also common in Massachusetts communities, and typically permit a Planning Board to review and place site-specific conditions on development plans that would otherwise be permitted by-right. Through many years of case law, courts have determined that a review and conditioning of an otherwise permitted site and design plan is legal. But, the review authority cannot deny such a plan unless the circumstances surrounding the case create a situation that is "an intractable problem so intrusive" that it cannot be mitigated by conditions. While site plan reviews have been litigated in many communities, the staff is not aware of any decision where a court has up held a site plan denial based upon this "intractable" standard. Typically, courts send denials back to the Board and tell the Board to approve them. The language about an "intractable problem" is adopted and incorporated in Somerville's Design and Site Plan Review section of the ordinance.

The process of using a Design and Site Plan Review to regulate subdivision is unique to Somerville, and prior to 2010 had not been tested in any significant way. In 2010 the Planning Board denied the subdivision of the lot at 1 and 3 Benton Road in Somerville. The applicant appealed the denial. In a 2012 decision, the judge in this case remanded the case to the Planning Board and instructed the Board to approve the project. But, the judge also informed the Board that they could place reasonable conditions on the approval. This decision provides guidance on how to address an application such as this one. The Board has the ability to review not just the subdivision of lots, but also the design of the proposed buildings on the lots. The Board can request necessary information to make its decision. The Board can establish reasonable conditions for approval of the project, including conditions on the subdivision as well as on the structures that will be built after the subdivision is complete. But, the 2012 case (MLM Realty Trust vs. Somerville) also provides specific direction from the court that the Planning Board should not deny such a project.

In this case, the Applicant has provided the Board with plans for buildings and the finished site. The applicant proposes three (3) dwelling units on each lot for a total of nine (9) dwelling units across the original parcel.¹

Lot size/lot size per dwelling unit: Since the BB zone does not have a minimum lot size requirement, all of the proposed lots are buildable lots. The proposal has each of the three lots that are larger than 3,000 square feet, therefore each lot meets the minimum of 875 square feet of lot area per unit. At 1.43, 1.40, and 1.28, the structure on each lot is well under the maximum-allowed FAR of 2.0 in this zone.

Front, rear and side yards: There are no side yard minimums required for this project as the side yards of this BB lot do not abut a residential district. The rear yard, because it abuts an RA

¹ A different application by a different applicant has been submitted to ISD for an adjacent lot. This would be a separate 3 unit project on the lot immediately to the left of the site (as viewed from Mystic Avenue). But, that is a by-right application, and therefore is not a part of the package that is before the Planning Board.

district line, must be no less than 15 feet deep as per *SZO §8.5.i footnote 12*. The proposal complies with this requirement.

Landscaping/pervious/ground coverage: The majority of the existing parcel is covered with bituminous material, leaving approximately 1% “landscaped” under current conditions. The Applicant’s proposal would bring 45% landscaping or more to each of the proposed parcels.

Section 8.5.g footnote 5 allows the reduction of front yard setbacks, but for those setbacks to be no less than 10 feet. The Applicant’s proposal allows for 10’ to 15’ front yard setbacks.

With regard to pervious material, overall ground coverage and landscaping, the Applicant does not create any new non-conformities and the proposal improves upon the existing conditions.

Traffic and Parking: Each lot significantly exceeds the required parking under the ordinance. At the request of neighbors and the Ward Aldermen, the applicant completed a traffic study. The project adds very little additional traffic to an already busy thoroughfare. The project will require residents to pull vehicles into and out of the development site through three driveways. Each of these driveways is aligned with an existing curbcut. The garage design permits applicants to pull into and out of the driveways in a forward direction. The traffic study establishes that the driveways have adequate site distances for exiting and entering the driveways.

Building height: Normally, in the BB zone, buildings may have a maximum height of 50 feet and be up to four stories. However, in cases such as 654 Mystic where the property abuts an RA district line, any structure (or portion of a structure) within thirty feet of that district line shall be limited to three stories and forty feet in height. The design of the proposed residences causes the roofline to step down as the building reaches the rear of the lot. The front-most portion of the building, which is 30-feet from the RA district line, is presented as 3 stories and 40 feet in height, complying with the district requirements.

Planning staff completed an extensive review of the dimensions of the zoning ordinance, and the structures appear to comply with all zoning requirements.

3. **Neighborhood Feedback:** The applicant and Ward Alderman hosted two meetings in the neighborhood to discuss the project. During these gatherings, neighbors expressed interest in adding a hydrant on Ash Avenue, having an engineering study of the retaining wall behind the site prior to construction, and reducing elements on the roof of the building (which have since been removed). The applicant has completed these changes and they are reflected on the plan.

Some neighbors also requested the addition of more parking on the site. One intermediate version of the plan included additional parking spaces in the front yard. The staff requested, and the applicant agreed, that this front yard parking be removed, as it created substantial urban design and on-site vehicle circulation problems.

Staff has received additional comments in opposition to the project in general. But, based upon the nature of this case (a subdivision to create by-right lots), and based upon the interest in finding a viable long-term use for this site that can be a more attractive and welcoming building at the border of our City, the staff recommends approval of this project. If the Board determines

that there are additional reasonable conditions that can address neighborhood concerns, staff will work with the Board to incorporate those conditions into the recommendation.

II. RECOMMENDATION

Design and Site Plan Review under §5.4

Section 5.4.2.A(4) of the SZO allows the Planning Board to consider approval of subdivisions, lot splits, lot mergers and lot line adjustments under Section 5.4 through Design and Site Plan Review.

- *SZO Section 5.4.6 indicates that the Planning Board “shall approve a design and site plan upon making positive findings . . . (and) may reject a design and site plan only when:*
 - 1. The submittal fails to furnish adequate information required for review*
 - 2. The imposition of reasonable conditions would not ensure compliance to standards, as applicable; and/or*
 - 3. The submittal, although proper in form, includes or creates an intractable problem so intrusive on the needs of the public in one regulated aspect or another and cannot be adequately mitigated.*

Staff finds that the submission is complete:

Architect: Khalsa Design

Surveyors/Engineers: Design Consultants, Inc. : Civil Engineers and Land Surveyors

Landscape Architect: Blair Hines Design Associates, Landscape architects

Staff finds that the Applicant has submitted documentation satisfying requirements via either/both application documents, architectural, landscaping, or engineering plans and related reports.

Staff finds that the conditions outlined in the table at the end of this report to be reasonable and shall be implemented on this project. All future plans and associated documents that are submitted to the City of Somerville for review/approval/permitting henceforth regarding this project shall reflect these conditions. Staff finds that the project proposal complies with the requirements of the SZO.

Per Section 5.4.7, the Planning Board may attach conditions and/or limitations to the approval of any design or site plan it deems necessary in order to ensure compliance to the findings and/or standards as required for the specific district the design and site plan review process is authorized, and including but not limited to consideration of the following:

1. Integration of the project into the existing terrain and surrounding landscape to preserve natural features and minimize the removal of trees, site grading, soil removal, and the blasting of rock;
2. Preservation of scenic views from civic spaces;
3. Minimization of shadows and unreasonable glare cast upon civic spaces and neighboring properties;

4. **Implementation of measures to prevent the pollution of surface and groundwater, minimize erosion and sedimentation, maintain or recharge groundwater levels, reduce the amount and velocity of surface run-off, and minimize the potential for flooding.**
5. **Screening of storage areas, machinery, service areas, truck loading areas, utility buildings and structures and other unsightly uses.**

Based upon this standard and the above findings, the Planning Staff recommends **CONDITIONAL APPROVAL** of the requested **SITE PLAN APPROVAL**.

The Applicant has provided a complete application, reasonable conditions can be placed on the proposal to ensure that the project conforms to the standards and criteria set forth in Section 5.4, and the project complies with applicable requirements of the Somerville Zoning Ordinance.

#	Condition	Timeframe for Compliance	Verified (initial)	Notes										
1	<p>Approval is for the subdivision of parcel 46/C/1 into three lots of the following approximate dimensions: Lot One 3,178 ± sf; Lot Two 3,251 ± sf, Lot Three 3,316 ± sf.</p> <p>This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>March 7, 2016</td><td>Initial application filed with City Clerk’s Office</td></tr><tr><td>May 16, 2016</td><td>Updated plans submitted to OSPCD</td></tr><tr><td>October 14, 2016</td><td>Updated plans submitted to OSPCD</td></tr><tr><td>October 20, 2016</td><td>Final plans submitted to OSPCD</td></tr></table> <p><u>ANY</u> changes to the approved plans shall be submitted to Planning Staff for their review prior to implementation of said changes. Planning Staff shall determine if the changes proposed are <i>de minimis</i> in nature or if the proposed changes require Planning</p>	Date (Stamp Date)	Submission	March 7, 2016	Initial application filed with City Clerk’s Office	May 16, 2016	Updated plans submitted to OSPCD	October 14, 2016	Updated plans submitted to OSPCD	October 20, 2016	Final plans submitted to OSPCD	BP	Plng.	
Date (Stamp Date)	Submission													
March 7, 2016	Initial application filed with City Clerk’s Office													
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October 20, 2016	Final plans submitted to OSPCD													

	Board review. Applicant is expected to use the subdivision to construct the structure in the enclosed plans, and shall return to the Planning Board for any modification to the plans in excess of a minor amendment under SZO 5.4. The Planning Staff may require the applicant to file a deed restriction with the subdivision to limit development to the plans submitted, in the event that the applicant is immediately proceeding to construction after the subdivision is filed.			
Trash/Recycling				
2	Trash and recycling storage for all 9 units shall be located inside of the structures, and only moved outside on the same day as pickup.	Perpetual	Plng./ ISD	
3	For developments with 7 or more residential units or commercial development, the Owner/Applicant is required to hire a private company to remove trash and recycling on a regular basis.	Perpetual	ISD/Plan ning	
Parking				
4	There shall be no parking in the front yard of any of the parcels. All front yards shall be landscaped/patio area and shall contribute to and not detract from landscaping and pervious surface calculations.	Perpetual	Plng./ ISD	
Site Design				
5	The Applicant shall present updated civil plans to the Planning Office and to the City's Engineering Department depicting how much fill will be added to the site, of what the fill is comprised, where the fill comes from, and detailing engineering renderings of what the actual finished grade will be. Planning and Engineering must sign off on these plans before any permits are issued for work on the site.	BP/site prep	Plng/Eng ineering/ ISD	
6	Landscaping shall be installed exactly as rendered on the plans dated October 20, 2016. There shall be no reduction in plant count or changes in plant type without prior submission to and approval by Planning Staff	CO	Plng/ISD	
7	The applicant shall ensure that all landscape/pervious calculations match submitted plans.	BP	Plng/ISD	
8	Prior to the start of construction, an engineering report shall be submitted on the retaining wall at the back of the lot. The engineering report shall: <ul style="list-style-type: none"> • Present a plan for addressing the structural integrity of the existing retaining wall in relation to the proposed project; • Be presented to the City Engineer for review and sign off prior to the issuance of a building permit. 	BP	Plng/Eng ineering	

	Implementation of engineering plan: <ul style="list-style-type: none"> The engineering plan shall be followed exactly as signed off by the City Engineer The City Engineer shall sign off on all work performed on the existing or new retaining wall. 			
9	The electric, telephone, cable TV and other such lines and equipment shall be placed underground from the source or connection. The utilities plan shall be supplied to the Wiring Inspector before installation.	BP	Wiring Inspector /Electrical	
10	ALL exterior lighting on ALL facades of the building shall be downcast and shall not cast light only any abutting properties.	CO/Perpetual	ISD/Planning	
11	The Applicant shall consult with Lights and Lines to determine the need/location for transformers/conduits and the like on the property and/or the upgrade of any pole/line capacity.	BP	Lights & Lines	
Building Design				
12	The roof shall remain flat and there shall be no roof decks permitted on the site.	Perpetual	ISD/Planning	
13	ALL materials and colors proposed for the exterior of the new construction will be presented to Planning Staff for their review and approval PRIOR TO their installation	BP	Planning/ISD	
14	Any venting pipes shall be wrapped to match the color of the roofing material through which it protrudes or shall be painted to match the color of the siding through which it protrudes.	Perpetual	Planning/ISD	
15	There shall be no venting on the Mystic Avenue façade of the buildings.	Perpetual	Planning/ISD	
16	The Applicant must provide an accessibility narrative prior to the issuance of a building permit.	BP	ISD/Plng.	
Environmental				
17	Notification must be made, within the time period required under applicable regulations, to the Massachusetts Department of Environmental Protection (DEP) if there is any release of oil, hazardous materials, or regulated hazardous substances at the site. The City's OSE office, Fire Department and the Board of Health shall also be notified.	BP	OSE/FP/BOH	
18	All environmental reports and testing shall be submitted to Planning Staff as they are completed. Staff reserves the right to ask that these reports be "peer reviewed" by a city consultant at the cost of the Applicant.	BP	Plng/Engineering	

19	The Applicant shall work with the Sustainable Neighborhoods Initiative coordinator to review air handling and filtration systems in the building. Air intakes shall not be located between the building and Mystic Avenue, shall provide adequate filtration systems to address the particulates that typically come off I-93. The final plan for particulate handling shall be submitted to Planning/ISD prior to the issuance of a building permit.	BP	ISD/Sustainable Neighborhoods/Planning	
20	The Applicant shall provide notice of intent to strictly comply with applicable State and Federal regulations regarding air quality including without limitation continuous dust control during demolition and construction.	BP	Plng/OSE	
Stormwater				
21	New sanitary connection flows over 2,000 GPD require a removal of infiltration and/or inflow by the Applicant. This will be achieved by submitting a mitigation payment, established by the City Engineers Office, to the City based on the cost per gallon of I/I to be removed from the sewer system and a removal ratio of 4:1. If a different ratio of removal or mitigation payment amount is adopted by the Board of Aldermen prior to the Applicant receiving a Certificate of Occupancy, payment will be adjusted to the BOA rate. The Applicant shall work with Engineering and meet this condition before a certificate of occupancy is issued.	BP	Engineering/Planning/ISD	
22	Storm water runoff shall not be routed into the City sewer system. Plans for such runoff must be approved by the Engineering Department and shall not create storm water maintenance issues for abutting properties or the City.	BP	Engineering	
Off-site Improvements				
23	A new hydrant shall be installed on Ash Avenue. Said hydrant and its <u>exact</u> location shall be shown on revised civil plans.	BP	Fire Prevention/Planning/ISD	
24	If requested prior to final sign-off, the applicant shall contribute up to \$2,000 for the purchase of a 'Welcome to Somerville' sign to be placed on public property in the general vicinity of the development.	Final sign off	Planning	
Fire Department Review				
25	The Applicant shall meet all of Fire Prevention's requirements	CO	Fire Prevention	
Maintenance				
26	All greenery shall be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Planning/ISD	

27	The Applicant, its successors and/or assigns, shall be responsible for maintenance of both the building and all on-site amenities, including landscaping, fencing, lighting, parking areas and storm water systems, ensuring they are clean, well-kept and in good and safe working order.	Perpetual	Planning/ ISD	
Final Review				
28	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	Planning	