

RECEIVED
1 27 09

DECISION

TOWN OF BELMONT, MASSACHUSETTS PLANNING BOARD

DECISION UPON APPLICATION OF NORTH SHORE CONSTRUCTION & DEVELOPMENT INC. FOR A SITE PLAN APPROVAL

NOVEMBER 6, 2009

On April 16, 2009, North Shore Construction & Development Inc. (the "Applicant"), applied for a Site Plan Approval, pursuant to Massachusetts General Laws Chapter 40R ("Chapter 40R" or the "Act"). The site is coterminous with the Oakley Neighborhood Smart Growth Overlay Zoning District and contains approximately 1.5 acres (the "Property"). The Property is known as Map 3, Blocks 179, 193, 193A, 197, 198 and Map 5 Block 97 of the Belmont Assessing Department Records and is identified as "Our Lady of Mercy" located on the north side of Belmont Street and on the east and west sides of Oakley Road in Belmont, Massachusetts.

The Planning Board (the "Board"), opened a duly advertised public hearing on May 27, 2009 and continued the public hearing to the following dates: June 24, 2009, July 29, 2009, August 26, 2009, and September 9, 2009. Sitting for the Planning Board were Jennifer Fallon, Chair; Sami Baghdady; Karl Haglund, Andres Rojas, and Carla Moynihan. On September 9, 2009 the Board closed the Public Hearing but allowed written comments to be submitted. On September 23, 2009 the Board closed the written record and began deliberations. On October 28, 2009 the Board conducted another public meeting to deliberate on this application for Site Plan Approval (the "Application"). The Applicant granted the Board an extension of time up to 4 P.M. on November 12, 2009 to file a written decision on the Application.

In addition to having copies of the complete application available for public review at the Office of Community Development, 19 Moore Street, consistent with the provisions of Chapter 40R, Section 11, the Board notified the following boards, committees, and commissions of the filing of the Application by sending a copy thereof to such local boards for their recommendations, all of which have been made a part of the record of these proceedings and have been taken into consideration by the Board in rendering its decision.

Board of Selectmen
Board of Health
Conservation Commission
Fire Department
Police Department
Department of Public Works
Water and Sewer Commission
Belmont Housing Trust
Belmont Housing Authority (memo only)
Building Commissioner (memo only)
Zoning Board of Appeals (memo only)

The Proposal:

The subject property consists of four non-contiguous parcels of land owned by the Archdiocese of Boston. The four parcels include the following:

Parcel A – 401 & 407 Belmont Street consisting of the former Our Lady of mercy church and convent buildings and includes 28,237 square feet of land.

Parcel B – 15 Lawndale Street consisting of the former parish rectory building and includes 9,182 square feet of land.

Parcel C – 23 Oakley Road consisting of the former parish center most recently leased to the Town of Belmont for use as a senior center and includes of 13,169 square feet of land.

Parcel D – 10 Oakley Road consisting of an asphalt paved parking lot and includes of 15,212 square feet of land.

The property was rezoned at the 2007 Special Town meeting as the Oakley neighborhood Smart Growth District under M.G.L. Chapter 40R.

The applicant proposes to construct 17 residential units on the property to include 15 townhouse units and 2 single family homes. Three of the townhouse units will be sold as affordable units as specified under Chapter 40R. All townhouse units will have 3 bedrooms, 2½ baths, either a 1 car or two car garage and will vary in size from 1,438 ft² to 2,040 ft². The two single family homes will consist of 4 bedrooms, 2½ baths, a 2 car garage and will vary in living area from 2,567 ft² to 2,696 ft².

Original plans for the four parcels are summarized as follows:

Parcel A – Demolish and remove all structures on this lot. Three buildings to be constructed consisting of eight units. The units will be sold as condominium units. Two of the units will be affordable units. Two driveways onto Belmont Street will access these 8 units.

Parcel B – A three unit building will be constructed on this location and will form a single condominium association. Two driveways from Lawndale Street will access the under building garages serving these units.

Parcel C – Existing building to be demolished and removed. Lot to be subdivided into two lots, and a single family house constructed on each lot.

Parcel D – Asphalt driveway and prior building debris to be removed. Two 2-family structures to be built on the site; buildings to be joined by a common party wall. Two driveways from Oakley Road will access the four units. One of the units will be affordable.

A waiver is requested to allow a second driveway to access the structure at 15 Lawndale Street.

Submissions to the Board included:

1. Oakley Neighborhood Smart Growth Overlay District Development Application Form, dated April 16, 2009; Narrative Statement in Support of Application, dated April 16, 2009; revised August 18, 2009

2. Our Lady of Mercy”, Lawndale Street, Oakley Road, and Belmont Street, Site Plan of Land prepared by Sullivan Engineering Group, LLC, dated April 13, 2009; revised June 30, 2009; revised August 12, 2009; revised August 31, 2009; revised September 1, 2009; revised October 6, 2009; final revision dated October 9, 2009. Said plan includes:
 - Sheet 1: Cover Sheet
 - Sheet 2: Existing Conditions Plan of Land
 - Sheet 3: Lotting Plan of Land
 - Sheet 4: Proposed Site Development Plan
 - Sheet 5: Proposed Grading and Utility Plan
 - Sheet 6: Landscape Plan
 - Sheet 7: Building Plan, 405 Belmont Street, Building A
 - Sheet 8: Building Plan, 405 Belmont Street, Building B
 - Sheet 9: Building Plan, 405 Belmont Street, Building C
 - Sheet 10: Building Plan, 15 Lawndale Street
 - Sheet 11: Building Plan, 23 Oakley Road
 - Sheet 12: Building Plan, 4 Lawndale Street
 - Sheet 13, 13A & 13B: Building Plan, 6-12 Oakley Road (including revisions)
 - Sheet A-1, pages 14-21 added August 12, 2009 to determine building story, grade, and height for zoning purposes for all proposed buildings.
2. Renderings of the project site and building designs, submitted May 13, 2009, revised June 30, 2009; revised August 12, 2009; revised August 31, 2009; revised September 1, 2009; revised October 6, 2009; final revision dated October 9, 2009.
3. Proposed Affordable Housing Deed Rider, submitted April 16, 2009.
4. Purchase and Sale Agreement dated January 16, 2009, submitted April 16, 2009.

The applicant submitted the following information during the Planning Board’s review:

1. Drainage Analysis for Our Lady of Mercy in Belmont, Massachusetts prepared by Sullivan Engineering Group, LLC, dated August 12, 2009.
2. Communication from Environmental Protection Agency regarding exemption from obtaining a construction general permit from the Agency.
3. Summary statement of comments and Applicant’s response, dated August 18, 2009
4. Letter from applicant dated September 11, 2009 along with alternative drawings for structure at 6 – 12 Oakley Road.
5. Letter from Applicant with photos of neighborhood house types dated September 17, 2009 reasserting compliance with By-Law and Design Standards.
6. Letter from applicant’s attorney summarizing his interpretation of Ch. 40R statute.
7. Examples of proposed Residential Lighting Fixtures, October 15, 2009
8. Stormwater Operation and Maintenance Plan, submitted October 15, 2009.
9. LEED for New Construction v 2.2, Project Checklist, submitted October 15, 2009.

The following information was submitted by various Town Departments:

1. Memo from Donna Moultrup, Director of the Department of Health, commenting on the landscaping as it relates to attracting rodents.
2. Memo from Lt. J. Peter Hoerr, Belmont Police Department, commenting on off-street parking and smaller condominium associations.
3. Memo from Peter Castanino, Director of the Department of Public Works, concerning ownership and responsibility for the sanitary sewer main collecting from several of the properties and replacement of public sidewalks.
4. E-mail message from Peter Castanino, Director of the Department of Public Works, regarding curb stops for all water services to the larger parcels.
5. Memo from Glenn Clancy, Director of the Department of Community Development, regarding determination of average grade, methodology used to determine height of structures, and elevations showing existing grade of lots.
6. Memo from Glenn Clancy regarding compliance with zoning by-law and review of drainage calculations. Also noting that street trees on Trapelo/Belmont needs to be coordinated with the Trapelo Corridor plans.
7. E-mail from Capt. John Pizzi, Belmont Fire Department, regarding fire protection systems and locations of additional fire hydrants.
8. E-mail from Capt. John Pizzi, Belmont Fire Department, indicating that a minimum of three additional fire hydrants would be required with locations to be specified following submission of building plans.
9. E-mail from Tom Walsh, Tree Warden regarding coordination of tree species, size of openings in sidewalks for tree plantings, and type of sub-soil to be used for tree plantings.
10. Letter from Mary Trudeau, Conservation Commission Agent confirming that the project was not affecting any wetland areas.

Other submittals included:

1. Belmont Housing Trust, June 4, 2009. Questions were raised on the size and location of the proposed affordable units; urge a single condominium association for all 15 townhouse units; concerns with financial pro formas and condominium fees.
2. Belmont Housing Trust, September 20, 2009. Additional questions on marketing and monitoring of affordable units.
3. Communications from neighborhood residents: Linda Rice, 15 Indian Hill Road; Lenna Garibian, 99 Pine St.; Grace Takvarian, 42 Old Middlesex Road; DeNee Reiton Skipper, 24 Essex Road; Rosanne Dorris, 9 Oakley Road; Judith Feinleib, 87 Oakley Road; Peter & Allison Jones, 70 Oakley Road; Rory Phimster, 19 Benton Road; Virginia Jordan, 34 Lawndale Street; Jennifer A. deSa, 20 Lawndale Street; Anna Helgason, 30 Oakley Road; Joanna Hilgenberg, 50 Oakley Road; Neil Goldstein, 15 Oakley Road; Sonia Guterman, 20 Oakley Road; Brian Saper, 16 Old Middlesex Road; Ronald Eng Young, 48 Oakley Road; Nancy Conlin, 37 Oakley Road.

4. Letter from the Oakley Neighborhood Association dated June 12, 2009. This letter questions whether the proposed project conforms with the intent and standards of the 40R Smart Growth statute and as adopted in the Town's Zoning By-Laws. The letter primarily questions conformance with the design standards.
5. Letter from the Oakley Neighborhood Association dated September 7, 2009. Continues to argue that the development does not conform to the design standards.
6. Review of proposed project from Concord Square Planning & Development dated July 17, 2009. At the request of the Office of Community Development, Concord Square reviewed the proposed project for conformance with the Oakley Neighborhood Smart Growth By-Law and Design Standards.
7. Letter from Concord Square Planning & Development dated September 15, 2009 in response to a letter from a resident criticizing their review.
8. Letter from Belmont Historical Commission objecting to the architectural scale, proportion and appearance of the proposed project.

Applicant's Presentation

The applicant, Ron Lopez, his attorney, Daniel Harrington, and his engineer, Jack Sullivan presented an overview of the application. Mr. Lopez noted that all existing structures on the site would be razed. Only 17 residential units were proposed although the zoning allowed eighteen. Mr. Harrington commented that the team had worked very carefully to conform to all elements of the zoning and design standards and that no waivers of setbacks or other dimensional regulations were requested. Currently parking for the existing structure at 15 Lawndale is in the rear of that structure thereby effectively eliminating any rear yard. The applicant proposes a building with garages under exiting to Lawndale Street. This allows space for a rear yard, increases amount of pervious surface but does require a waiver for an additional curb cut on Lawndale. Mr. Harrington stressed that the proposed project meets all the requirements of the zoning and of Chapter 40R

Mr. Sullivan reviewed the proposed site plan. The plan significantly increases the amount of pervious surface. Drainage calculations were requested and submitted. No trees would need to be cut down and additional street trees would be planted along side the site parcels. The two three unit buildings off Belmont Street are situated perpendicular to the street so the view from the street is that of a single family home. Only one driveway needed to serve six units with parking hidden behind the structures.

Board members were concerned that no professional architect or professional landscape architect were represented on the applicant's development team. It was noted that the buildings were very similar in design and that little landscaping was being provided. At subsequent meetings, the applicant added an architect and landscape architect to the team. The architect added several details to the various buildings that helped make the design more in conformance with the existing neighborhood. The landscaping was also significantly improved through the addition of a number of trees and bushes, in particular bushes along the foundations of the various buildings.

Comments from the public reflected a concern with the razing of the former rectory building at 15 Lawndale. Mr. Lopez noted that he was not razing that structure but that the current owner, the

Archdiocese of Boston, had made the decision and submitted an application to demolish the structure. Following a discussion with neighborhood residents, revised plans were submitted that replicated the façade of the former rectory building and that removed the second curb cut and need for a waiver on Lawndale Street site. This was accomplished by combining Parcels A & B into a single lot with an 11 unit condominium complex. Doing so enabled the removal of the garage from the 3 unit building on the former rectory site by adding a parking space to the common parking lot serving the two three unit buildings off Belmont Street.

Noting that the Oakley Neighborhood Smart Growth Zoning District included a set of Design Standards, abutters to the property also raised concerns with the building proposed at 6-12 Oakley Road. Specifically, neighbors objected to the two driveways on Oakley road and the resulting number of garages facing the street. Comments were made that while garages under residences existed in the neighborhood, they were a relatively minor feature while the proposed project included this design as a significant feature. The Planning Board concurred with the residents and urged the applicant to redesign the structure at 6 – 12 Oakley Road to have one driveway enter/exit on Belmont Street. Revised plans were submitted moving the second driveway, relocating the front door of the unit closest to Belmont Street to face Belmont Street, and include a wrap around porch. These changes now gave the structure more of a single family appearance. The applicant also established a public place at the corner of Oakley Road and Belmont Street for residents of the neighborhood.

Planning Board Decision:

Therefore, after considering the Objectives of Site Plan Approval as set forth in Section 6C of the Zoning By-Law, the Oakley Neighborhood Smart Growth Overlay District Design Standards, the revised plans submitted, the statements made at the public hearings, and its deliberations, the **PLANNING BOARD VOTED (5 TO 0) TO APPROVE THE APPLICATION, SUBJECT TO THE FOLLOWING CONDITIONS:**

CONDITIONS

1. This Site Plan Approval is granted solely to North Shore Construction & Development Inc., and shall not be transferred to any other person or entity without the written approval of the Board. In the event North Shore Construction & Development Inc. sells, transfers, or assigns any of its interest in the Project, this Approval shall be binding upon the purchaser, transferee, or assignee.

2. Prior to the issuance of a Building Permit, the Applicant (which for the purposes of these conditions shall include its successors and assigns) shall submit the following final engineered plans and supporting documentation (“Final Plans”), which plans shall be consistent with the Project Plans as modified to reflect this Decision and shall be subject to review and approval by the Board or its designee:
 - Existing Conditions Plan of Land
 - Lotting Plan of Land
 - Final Proposed Site Development Plan including locations and descriptions of all materials, site features and improvements (including location & screening of exterior trash area for Unit 11).
 - Final Proposed Grading and Utility Plan including proposed lighting for parking lot in rear of 405 Belmont Street. Fixtures for all proposed residential lighting should be shown and

technical manufacturer's cuts provided. Plan should also indicate locations of dedicated water curb stops as per memo from Department of Public Works dated August 21, 2009. Landscape Planting Plan including: Existing Trees to remain, New Tree & Shrub List (quantity, type, and sizes), and Planting Details.

Final Building Plans and Elevations, 405 Belmont Street, Building A

Final Building Plans and Elevations, 405 Belmont Street, Building B

Final Building Plans and Elevations, 405 Belmont Street, Building C

Final Building Plans and Elevations, 15 Lawndale Street

Final Building Plans and Elevations, 23 Oakley Road

Final Building Plans and Elevations, 4 Lawndale Street

Final Building Plans and Elevations, 6-12 Oakley Road

Final Stormwater Drainage calculations showing compliance with the Stormwater Management Guidelines promulgated by the Massachusetts Department of Environmental Protection ("DEP")

Driveway and sidewalk design with profiles.

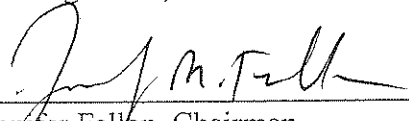
3. During construction, the Applicant shall conform to all local, state, and federal laws regarding noise, vibration, dust, and blocking of any roads. The Applicant shall at all times use all reasonable means to minimize inconveniences to residents in the general area. Construction shall not commence on any day before 7:00 A.M. on weekdays, and 8:00 A.M. on Saturday, and shall not continue beyond 6:00 P.M. There shall be no construction on any Sunday or state or federal legal holiday.
4. Prior to commencing construction, the Applicant shall prepare and present to the Board or its designee, for its approval, a construction management plan that shall include, but not be limited to, a phasing plan, a description of staging and storage areas, measures to control erosion and sedimentation, limitations on hours of work, a description of proposed earth removal, types and numbers of vehicles and vehicle trips involved with construction, a construction parking plan, tree and brush clearing and grading and general site mitigation measures.
5. Final locations of any new or additional fire hydrants to be determined in consultation with the Belmont Fire Department and installed prior to issuance of Certificate of Occupancy.
6. "Structural Soil" shall be used for all trees planted under the town sidewalks. This soil is designed to go under paved surfaces and allows the tree roots to grow while doing a minimal amount of damage to the paved surface. Consult with tree warden for specifications.
7. The applicant agrees to a donation of \$5,000 to the Town of Belmont to be used for purchase and/or construction of benches and a bus shelter along Belmont Street fronting the proposed development. These funds are to be provided prior to the issuance of a Certificate of Occupancy.
8. Applicant shall provide to the Town prior to the issuance of a building permit a performance bond in the amount of \$60,000 to insure all work on public sidewalks and public rights of way is completed to the standards of the Town's Engineering Department.
9. The applicant shall work with the Belmont Department of Public Works to remedy the water drainage issue in front of 6-12 Oakley Road. This may involve the installation of street catch

basins or other remedies as determined by the Town, all at the expense of the applicant. All work to be completed prior to the issuance of a certificate of occupancy for the buildings at 6 – 12 Oakley Road.

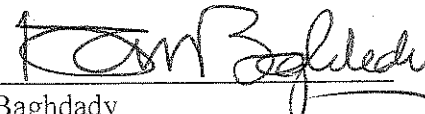
10. Applicant shall provide a Storm-water Operation & Maintenance Plan for the onsite infiltration field prior to the initiation of site work. Said plan to be incorporated as an addendum to the condominium documents for the 11 unit condominium association at 405 Belmont Street.
11. The catch basins on grade shall be designed to capture fully the 100-year storm event (6.6 inches of rainfall in a 24 hour period).
12. The Belmont Water Department shall inspect the water main installation during construction. Approval of installation by the Water Department is required prior to issuance of the first Certificate of Occupancy.
13. All utilities within the Property (including electric, telephone, cable, and other such lines and equipment) shall be underground.
14. The driveway and turn-around area serving 6 – 8 Oakley Road shall be minimized to the extent possible with appropriate documentation verifying compliance submitted to Town Engineer. The turn around should be redesigned to serve a single vehicle only. The curb cut should be narrowed to 14 feet.
15. The driveway and turn-around area serving 6 – 8 Oakley Road shall be constructed of rigid pervious pavement material selected by the applicant and approved by the Building Commissioner.
16. The Applicant shall provide to the Town prior to the issuance of a building permit documentation of compliance with LEED standards as specified in Section 6C of the Town Zoning By-Law. Compliance may be demonstrated through the completion and submittal of a LEED checklist.
17. The Applicant shall submit draft Affordable Units Regulatory and Monitoring Agreements to the Board for its review and approval prior to the issuance of a Building Permit. Subsequent changes to the draft agreements must be approved by the Planning Board. Such documents shall include the Town as a party to the Agreements with the right to enforce and impose sanctions and shall contain, at a minimum, the following terms:
 - a. Preference in the rental of the Affordable Units shall be given to Belmont residents.
 - b. A Belmont resident shall be as determined in Section 6.10 of the Zoning By-Law.
 - c. The Applicant shall select, with the prior approval of the Board, a Lottery Agent for the selection of the purchasers of the Affordable Units. Prior to conducting the Lottery, the Lottery Agent shall submit a final Lottery Plan to the Board for its review and approval.
 - d. The Applicant shall designate the Monitoring Agent subject to approval by the Board.
 - e. The fees of such Monitoring Agent shall be paid by the Applicant.

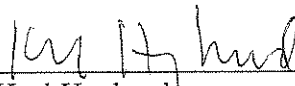
18. The Applicant shall submit fully executed Affordable Units Regulatory and Monitoring Agreements to the Board before the issuance of a Certificate of Occupancy.
19. The Affordable Units and the market rate units shall be distributed proportionately within the buildings of the Project and among bedroom types. The Affordable Units shall be comparable to the market-rate units in terms of location, quality, character, room size, number of rooms, amenities and external appearance. The interior finishes of and appliances in the Affordable Units shall be comparable to the interior finishes and appliances in the market-rate units. The Affordable Units shall be constructed simultaneously with the construction of the market-rate units and occupancy permits shall be issued at a proportional rate for affordable as for market rate units. The affordable units are identified as Parcel A – 401 & 407 Belmont Street, Units 2 and 5; Parcel D – 6-8 Oakley Road, Unit 1.
20. The Applicant shall submit to the Board for its review and approval to ensure consistency with this decision, copies of Final Condominium Documents that include designation, ownership, and maintenance responsibilities of all common areas prior to issuance of Certificate of Occupancy for any condominium units.
21. The Applicant shall submit to the Board a Final As-Built Site Plan showing the Property line and the location of all buildings and other improvements on the Property. Said As-Built plan shall be stamped by a Professional Land Surveyor or Registered Land Surveyor and shall be submitted within 90 days of the final Certificate of Occupancy.
22. Subsequent to the expiration of all applicable appeal periods and, in any event, prior to the issuance of any Building Permit for the Project, the Applicant shall record this Decision in the Middlesex County South District Registry of Deeds and shall provide the Office of Community Development and the Building Inspector with a copy of this Decision endorsed with the applicable recording information.

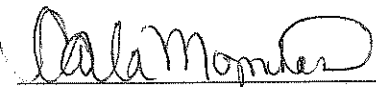
Planning Board, Town of Belmont,

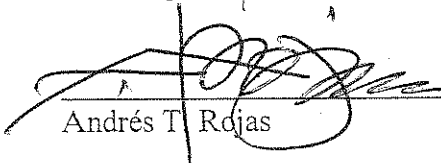

Jennifer Fallon, Chairman

November 6, 2009
Date

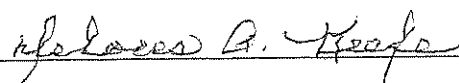

Sami Baghdady


Karl Haglund


Carla Moynihan


Andrés T. Rojas

Filed with the Town Clerk on November 6, 2009.


Delores Keefe, Town Clerk