



TOWN OF FRAMINGHAM
ZONING BOARD OF APPEALS

150 Concord Street B2
Framingham, MA 01702

2017 SEP 15 P 4:10
TOWN CLERK
FRAMINGHAM

BOARD OF APPEALS CASE NO. 17-32

PETITION OF BAYSTONE DEVELOPMENT LLC AND FRAMINGHAM FRANKLIN LLC

DATE OF DECISION: SEPTEMBER 12, 2017

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of BAYSTONE DEVELOPMENT LLC AND FRAMINGHAM FRANKLIN LLC (hereinafter the Applicant), for property located at 480 FRANKLIN STREET. This Decision is in response to a Petition for a Use Variance, Variance for height, Variance for more than one principal use, and a Special Permit for a restaurant (hereinafter the Application).

2. Applicant

Baystone Development, LLC
21 Center Street
Weston, MA 02493

Owner

Framingham Franklin, LLC
PO Box 166
Shrewsbury, MA 01545

3. Location

Property is located at 480 Franklin Street and identified by Assessors' Parcel ID #111-50-2385-000 (hereinafter the Site).

4. Board Action

After due consideration of the Application, the record of proceedings, and based upon the findings set forth below, on September 12, 2017 the Board voted to GRANT the requested VARIANCES and SPECIAL PERMIT by a unanimous vote in favor of the petition of three (3) members sitting on the Application. The record of the vote is stated as follows:

PHILIP R. OTTAVIANI, JR.	YES
STEPHEN MELTZER	YES
JOSEPH NORTON	YES

5. Proceedings

The Application was received by the Board on July 11, 2017 pursuant to MGL, Ch. 40A, §10, and the Framingham Zoning By-Law. The Application was considered by the Board at a duly noticed public hearing of the Board on August 8, 2017 at 7:00 P.M. in the Blumer Community Room of the Memorial Building. The hearing was continued to September 12, 2017 at 8:00 PM, at which point a decision was made. Board Members Philip R. Ottaviani, Jr., Stephen Meltzer, Joseph Norton, and Alternate Edward "Ted" Cosgrove, were present throughout the proceedings. The minutes of the public hearing and submissions on which this Decision is based, which together with this Decision constitute the record of the proceedings, may be referred to in the Office of the Zoning Board of Appeals at the Memorial Building.

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At the August 8, 2017 meeting, the Applicant, Mr. Roy McDowell explained that the property was recently placed under agreement and the project was in the due diligence process. He disclosed that the project team had held community meetings to discuss the proposal with abutters. Prior to meeting with abutters, 240 multifamily units were proposed and eventually 233 units with a sit-in restaurant was agreed upon. Mr. McDowell commented that neighbors spoke in favor of the amendments. Mr. Meltzer asked for an estimate of how many units would be lost if the Applicant was required to abide by the height regulations. Mr. McDowell responded, roughly 58 units.

Attorney Peter Barbieri stated that four Variances and a Special Permit were required, one for use, more than one principal use, height, and for an accessory swimming pool. He proceeded to summarize that the property had over three hundred sixty (360) feet of frontage on Franklin Street and five hundred sixty (560) feet of frontage on Mt. Wayte Avenue; lot area of 292,984 square feet; and that two structures currently exist on site. He proceeded to explain that the parcel was unique, the lot had frontage on two streets, the site housed two structures, over fifty thousand (50,000) square feet, and that a portion of the slope easement for Mt. Wayte Avenue was within the layout of the site. He stated that the requirement to demolish the existing buildings, inability to use over sixty thousand (60,000) square feet of the property along the roadways because of the commercial use setback requirements, imposed a financial hardship.

Mr. William Labarge (TMM 16) and Mr. Richard G. Baritz (TMM 7) voiced concern regarding the amount of students and questioned the amount of condominiums and apartments. Mr. Todd McDowell stated, 7% of the units would be 660 sq. ft. studios, 41% would be 800-940 sq. ft. one-bedroom apartments, 47% would be 1,000 sq. ft. two-bedroom apartments, and 4.5% would be 1,400-1,600 sq. ft. three-bedroom apartments/town houses. Mr. Brad Bowler (TMM 12) voiced concern regarding public safety, potential fires, and the cost of public safety services. Mr. Roy McDowell responded, that Code Red was hired to conduct extensive analyses and would remain with the project to provide biweekly progress reports and safety conditions. Mr. Dennis Giombetti spoke in favor of the proposal; however, voiced concern regarding density related to traffic and building height. Ms. Betty Muto (TMM 12) voiced concern regarding hydrology, parking, waste management, on-site washer and dryers, property managers, and designated parking spaces. Mr. Roy McDowell responded that geotechnical testing had been completed and that underground parking would not be an issue. There would be available staff 24 hours, 7 days a week managing the property. He stated that every apartment would have their own washer, dryer, and water/sewer bill.

Ms. Cynthia Laurora (TMM 11) questioned the fiscal impacts, parking, and price ranges. Mr. McDowell responded that typically no car is parked for 24 hours, people are in and out of frequently, the prices ranged from \$1,500-\$3,500 depending on the unit. Ms. Laurora questioned if the developer would sell the units post construction. Mr. McDowell responded, the goal was to create a long term portfolio and that there were no intentions to flip this property. This property would be built and kept by the family. Mr. Ed Kross (TMM 12) voiced concern regarding sidewalks along Mt. Wayte Ave. Mr. McDowell responded that there would be discussion with the Planning Board (PB) and Department of Public Works (DPW). Mr. Gerald Bloomfield (TMM 1) questioned why the proposal was before the Board and not the new government and questioned tax implementation. Ms. Kathryn Nelson (43 Wood Terr.) voiced concern regarding density and lack of commercial space. Ms. Caroline Levy (P 12) recommended

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the site connect with the abutting baseball fields, Barbieri school, Cushing Park, and provide access to the pond. Ms. Susan Bernstein (TMM 7) voiced concern regarding density, the housing and rental market, and amenities. Ms. Ronda Andrews (P 16) voiced concern regarding fire safety and restaurant parking spaces. Ms. Kathleen Demarco (TMM 16) questioned the effect on the existing water and sewer system and if a new one would be required and voiced concern regarding traffic. Ms. Judith A. Grove (TMM 15), Ms. Laura Keith (TMM 17), Mr. Bruce Farrell (P12 Day Hill Rd.) spoke in favor of the proposal. Ms. Cheryl Gordon (600 Union Ave.) stated she would be in favor of what the neighbors favored, especially direct abutters.

The Board voted to continue the hearing to September 12, to allow sufficient time for the applicant to provide additional information.

At the September 12, 2017 meeting, Attorney Barbieri explained the reduction of stories in the building along Mt. Wayte Avenue, from four stories to three, reducing the unit quantity to two hundred ten (210). He proceeded to discuss the supplemental materials, including the school impact and revised plans. The Applicant also explained the changes to the plans, which include the removal of the fourth (4th) floor of building along Mt. Wayte Avenue. The height of the three story building is 49 feet. The removal of the top floor lowers the number of units to two hundred ten (210). Attorney Barbieri further addressed the grounds for the issuance of a Use Variance, Height Variance and the Special Permit.

Mr. Bloomfield urged additional attention to the demographic analysis. Ms. Bernstein urged the Board to consider the Variance criteria and state statute. Ms. Muto requested a more detailed hydrologic analysis. Ms. Beth Grealey (P7) commented on the proposal in terms of timing and the government transition. Mr. Bill Lynch (P7) questioned tax revenue. Mr. Steve Grealey (P7) urged the Board to consider the large request. Mr. Kross commented on the density of the proposal. Ms. Kathy Nelson urged the Board to consider the Variance criteria. Mr. Peter Pleshaw (TMM 11) questioned street view.

Mr. Meltzer stated that the Zoning Board only had jurisdiction on the height and use of the proposal. Mr. Cosgrove asked if the board was comfortable with the project size, rather than what the proposal looked like. Mr. Barbieri commented that the Applicant was still required to go before the Planning Board and Conservation Commission, and that aesthetics would then be discussed. Mr. Norton commented that he would still prefer to see additional retail space.

6. Exhibits

- 6.1. Application filed with the Building Official for a 233 unit residential structure and restaurant, dated June 30, 2017.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on July 14, 2017.
- 6.3. Filing fee in the amount of \$500.00.
- 6.4. Conservation Commission comments dated July 18, 2017.
- 6.5. Planning Board comments dated July 27, 2017.
- 6.6. Abutter comments dated July 26 and September 12, 2017.

- 6.7. Brief and Supplemental Brief in support of the petition on behalf of the Applicant by Attorney Peter R. Barbieri.
- 6.8. Traffic report entitled "Proposed Apartment Development, 444 Franklin Street, Framingham, MA", prepared by Ron Miller & Associates, 56 Teresa Road, Hopkinton, MA 01748, and dated June 29, 2017.
- 6.9. Correspondence from Baystone Development dated August 31, 2017, including updated Plans and Renderings, Fiscal Impact Analysis School, School Age Children Analysis, and Geotechnical Letter, dated August 28, 2017.
- 6.10. Conceptual images entitled "444 Franklin Street, Baystone Development", including North View From Intersection, View Looking Up Mt. Wayte Ave., North View from Intersection, East View from Franklin St., South View from Franklin St., Restaurant view from Franklin St., View from Day Hill Road, North View from Mt. Wayte Ave., View Looking Down Mt. Wayte Ave., Aerial View 1/2, Aerial View 2/2, and conceptual site plan, prepared by ICON Architecture, and submitted July 11, 2017. Revised conceptual images dated August 31, 2017.
- 6.11. Site plan entitled "Concept Plan", prepared by Bohler Engineering, 352 Turnpike Road, Southborough, MA 01772, dated July 20, 2017, revised August 25, 2017.

Exhibits 6.10 and 6.11 shall be hereinafter referred to as the "Plans".

7. Findings and Conclusions

Based upon its review of the Application, exhibits, and the public hearing thereon, the Board makes the following findings and conclusions:

- 7.1. The property is located within the Light Manufacturing (M-1) zoning district.
- 7.2. On June 30, 2017, the Building Official denied the Application for residential structures, four (4) stories and fifty-nine (59) feet in height and for a restaurant under Section IV.E.2, Section II.B.1.C., Section II.B.5.J. and Section II.B. of the Zoning By-Law.
- 7.3. On July 14, 2017, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining Variances for multifamily residential, more than one principal use on a lot, and height; and a Special Permit for the restaurant use.
- 7.4. Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on July 24 and July 31, 2017 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11. No Town Meeting Members from Precinct 13 were present.
- 7.5. The M-1 district is zoned for Light Manufacturing, which does not allow Residential Use. The maximum height of residential structures in the M-1 Zoning District is three stories and forty feet. Variances are needed to allow Residential Use in the M-1 Zone, to allow for the height of residential structures over three stories and forty feet and to allow more than one use of the property, residential and restaurant.
- 7.6. The site is currently a vacant Shopping Center. Commercial/retail use was permitted on the site in 2014. Based upon the inability to obtain commercial/retail tenants, the Applicant reconsidered the Project and decided to pursue a residential component and a restaurant.

- 7.7. The site is uniquely constrained due to its two (2) street frontages and an easement for Mt. Wayte Avenue, which does not permit structures to be built on over thirty thousand (30,000) square feet of the site. The Site is also unique because of the size of the lot and existing vacant development. The intended Light Manufacturing uses designated by the Zoning By-Law are very unlikely to be built on site, as there are currently no manufacturing uses in that particular M-1 District area. Given the current market for retail space and trends, residential use is the only viable option for the use of the site.
- 7.8. The Variance standard established by Mass. Gen. Laws c. 40A, §10 and the Framingham Zoning By-Law is a demanding criterion. The Board must find that owing to circumstances relating to the soil conditions, shape or topography of such land or structures, which especially affect such land or structures but do not affect generally the Zoning District in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. Also, the circumstances under which a Variance may be granted are not unlimited.
- 7.9. The Variance standard established by the G.L. c. 40A §10 and the Framingham Zoning By-Law is a demanding criterion. The Board must find that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures, which especially affect such land or structures but do not affect generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. Also, the circumstances under which a Variance may be granted are not unlimited.
- 7.10. There are circumstances relating to the soil conditions, shape, or topography of the land or structures for which the Variance is being sought. *The Board finds that this parcel is unique, in that the use of the site is restrained by easements and street frontages unlike any other site in the District. The site is also unique due to its current vacant development.* Such circumstances especially affect such land or structures but do not affect generally the zoning district in which the land or structures are located.
- 7.11. Owing to such circumstances, a literal enforcement of the provisions of this By-law would involve substantial hardship, financial or otherwise, to the petitioner. *The cost of the demolition of the existing dwelling, the removal of the parking lot and all the drainage structures therein, and the fact that commercial space is not available, make Residential Use with a restaurant the only viable option for the Site. In order to accomplish the development for the Residential Use (two hundred ten (210) units) of the site, an additional story height for two (2) of the larger buildings is necessary. The Applicant has made a reasonable argument that a lesser number of residential units, bringing down the height by one (1) story or to forty (40) feet and elimination of the restaurant would render the Project financially infeasible. The Applicant has also made a reasonable argument that, but for a Use Variance for Residential Use and a Variance for the two (2) uses in the Light Manufacturing Zone, the site would probably not be developed for its intended use. There is currently no manufacturing in that particular district area or any demand for commercial space.*

7.12. The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the By-Law or from the intent of the district in which the Variance is being sought. *Since the Light Manufacturing district area in question has no manufacturing uses, and was originally established when demand for manufacturing space was greater, and since other allowed uses are not likely to be built on site without the addition of residences, the grant of a Use Variance would not be detrimental to the public good, nor would the addition of residences substantially derogate from the intent and purpose of the Bylaw. The additional height is a small deviation from the maximum as established in the By-Law and the height is less than the height than allowed for commercial buildings. The Height and Use Variances may be granted without detriment to the public good or substantial derogation from the intent of the By-Law as the approval of the project would provide for a use of the vacant property.*

7.13. The Board grants these Variances with the following condition:

7.13.1. The proposed building shall be located and constructed substantially as shown on the Plans. Any modifications of the Plans resulting from the required Site Plan Review process shall require that the Applicant submit the final set of Planning Board Approved Plans to the Board. In no event shall the number of units exceed two hundred ten (210) nor shall the height of the two tallest structures exceed four (4) stories or fifty-nine (59) feet nor shall the three-story building height exceed 49 feet.

7.14. This Decision applies only to the requested Variances. Other approvals or permits required by the By-Law, other governmental boards, agencies or bodies having jurisdiction, shall not be assumed or implied by this Decision.

7.15. If the rights authorized by these Variances are not exercised within one year of the date of grant of such Variances, such rights shall lapse. The Applicant may request an extension to the one-year period by submitting a written Application for extension prior to expiration of the one-year period. However, it is solely within the discretion of the Board to grant such an extension. An extension shall be for a period not to exceed six (6) months. If the Board fails to act on the request for extension within thirty days of the date of the requested extension, all rights authorized by these Variances shall lapse at the expiration of the one-year period. If the Variance lapses, such rights pertaining to the Variances may only be reestablished after notice and a new hearing pursuant to G.L. c. 40A, §10.

7.16. Subject to the conditions stated in this Decision, the Board finds the following conditions of approval of a Special Permit have been met:

7.16.1. The specific site is an appropriate one for such a use or structure. The property is located in the Light Manufacturing Zoning District, which allows restaurants through a Special Permit.

7.16.2. Adequate and appropriate facilities for the restaurant use will be provided for the proper operation of the proposed use, including adequate off-street parking.

7.16.3. The use or structure as developed will not create a hazard to abutters, vehicles or pedestrians. The proposed restaurant facility conforms to the By-Law Requirement.

7.16.4. The use or structure is consistent with the intent of the district in which the use is proposed, and with the Purpose and Intent of this By-Law. The property is located in

the Light Manufacturing Zoning District which allows restaurants through a Special Permit.

7.16.5. All municipal services necessary to meet the needs of the proposed use must be adequate and sufficient. All services necessary to meet the needs of the proposed restaurant use are adequate and sufficient.

7.17. The Board grants this Special Permit subject to the following conditions:

7.17.1. The proposed restaurant facility shall be located and constructed substantially as shown on the Plans. Any modifications of the Plans resulting from the required Site Plan Review process shall require that the Applicant submit the final set of Planning Board Approved Plans to the Board.

7.17.2. The restaurant shall contain no more than 60 seats.

7.18. If the rights authorized by this Special Permit are not exercised within two years of the date of filing of the Decision with the Town Clerk, said Special Permit shall lapse; provided, however, that the Board in its discretion and upon written application by the Applicant may extend the time for exercise of such rights for a period not to exceed six (6) months. A request to extend said time limits shall be made in writing to the Board at least 30 days prior to said expiration date. The Board herewith reserves its rights and powers to grant or deny such extension, and to require any appropriate changes to this approval. If the Board does not grant such an extension within thirty days of the date of application therefore, and upon the expiration of the original one year period, such rights may be reestablished only after notice and a new hearing pursuant to MGL, Ch. 40A, §9.


7.19. This Decision shall be recorded at (as appropriate) the Middlesex South District Registry of Deeds or District of the Land Court prior to the issuance of a Building Permit. A copy of the recorded or filed Decision certified by the Registry, and notification by the owner of the recording, including recording information, shall be furnished to the Board and the Building Official.

7.20. The terms, conditions and provisions of this Decision shall run with the land and shall be binding upon the Applicant, its successors in interest and assigns, and shall be enforceable by the Town of Framingham.

8. Appeals

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, §17 and shall be filed within twenty (20) days after the date of filing this Decision with the Town Clerk.

ZONING BOARD OF APPEALS

By: 
Philip R. Ottaviani, Jr., Chairman