



**TOWN OF FRAMINGHAM**  
ZONING BOARD OF APPEALS

150 Concord Street B2  
Framingham, MA 01702

CITY OF FRAMINGHAM  
CITY CLERK'S OFFICE

2017 DEC 26 P 2:19

**BOARD OF APPEALS CASE NO. 17-30**

**PETITION OF NATIONAL DEVELOPMENT ASSOCIATION OF NEW ENGLAND, INC. and STAPLES, INC.**

**DATE OF DECISION: DECEMBER 12, 2017**

**1. Application**

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of NATIONAL DEVELOPMENT ASSOCIATION OF NEW ENGLAND and STAPLES, INC. (hereinafter the Applicant), for property located at 225 CROSSING BOULEVARD. This Decision is in response to a Petition for a Use Variance and Variance for height (hereinafter the Application).

**2. Applicant**

National Development Association of New England, Inc.  
2310 Washington Street  
Newton Lower Falls, MA 02462

**Owner**

Staples, Inc.  
500 Staples Drive  
Framingham, MA 01702

**3. Location**

Property is located at 225 Crossing Boulevard and identified by Assessors' Parcel ID 105-71-9725-000 (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 December 12, 2017 the Board moved to approve the requested VARIANCES by two (2) in favor, one (1) opposed, of three (3) members sitting on the Application. The petition is therefore DENIED. The record of the vote is stated as follows:

PHILIP R. OTTAVIANI, JR.	NO
SUSAN S. CRAIGHEAD	YES
STEPHEN MELTZER	YES

**5. Proceedings**

The Application was received by the Board on June 15, 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 July 18, 2017 at 7:15 P.M. in the Blumer Community Room of the Memorial Building. The hearing was continued to September 12 at 8:00 PM; October 23 at 8:00 PM; November 14 at 8:00 PM; and December 12 at 7:30 PM, at which point a decision was made. The Applicant consented to extend the decision deadline on two occasions, to November 30 and December 29. Board Members Philip R. Ottaviani, Jr., Susan Craighead, Stephen Meltzer, and Alternate Rick McKenna, were present throughout the proceedings. The minutes of the public hearing and submissions on which this Decision is

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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.

At the July 18 meeting, Attorney Peter Barbieri introduced himself, Mr. Douglas Straus of National Development, and Justin Dufresne of VHB. Mr. Barbieri proceeded to explain the request for a Variance for height and a Use Variance to build residential condominiums and apartments within the Light Manufacturing (M-1) zoning district. He summarized the site was roughly 31 acres, 15% of which was steep slope, vernal pools, wetlands, and buffer zones which severely restrict development. The allowed height within the M-1 zone is six stories or 80 feet; however for residential use, the maximum height is three stories or 40 feet. The applicant proposes 68 feet, four levels of which would be for residential use and the remainder to pitch the roof and provide attic space. He stated that according to the zoning bylaw, parking could be defined as an additional story; however this determination has not yet been made.

Mr. Ottaviani voiced concern regarding the Staples operation, parking, and the condominium and apartment ratio.

Attorney Barbieri explained there were no intentions or anticipation of change regarding the Staples operation. He stated that the letters from the Community & Economic Development Division (C&ED) and the Planning Board contradict what was proposed and supported in the Corporate Mixed Use (CMU1) zoning district in 2014. The Town's market report for the previously proposed rezoning analyzed the commercial amenities suggested retail and commercial spaces existed. He stated the Staples site would not be visible from Route 9 and that a retailer would not find it economically feasible to locate on site.

Mr. Straus clarified the proposed multi-family would consist of 200 condominiums and 160 apartment rentals. Mr. Ottaviani stated that since the CMU proposal by the Planning Board, the Town is aware of roughly 1,200 condos/apartments pending within the next few years. Mr. Barbieri commented that this was the only proposal within the CMU district.

Ms. Craighead asked for the attic height. Mr. Barbieri responded that the pitch was included within the 68 feet and not considered a separate story. Ms. Craighead voiced concern regarding the government transition and apartment absorption rate. Mr. Barbieri argued that the 2014 studies indicate residential within the CMU district would be a viable use. Ms. Craighead responded that the proposed CMU Bylaw did not pass at Town Meeting and was only a proposal.

Mr. Straus responded that the TOD developments downtown were different than the proposed. This proposal would have luxury amenities including a pool, walking trails, club room, and all social amenities. Mixed use development would not work; it would be very difficult to obtain a retail lease in an office park.

Ms. Cosgrove questioned why the Applicant would convert valuable commercial space into residential. Mr. Straus stated that the site work required for commercial space would be economically infeasible.

Mr. Bill McCarthy (TMM 10), Ms. Norma Schulman (TMM 5), Mr. William Labarge (TMM 16), Mr. Jim Rizoli (TMM 14), Mr. Stephen Shull (TMM 2), Mr. Bill Lynch (P 7), Ms. Kathleen McCarthy (TMM 10), Ms. Caroline Levy (P12), Mr. Gerald Bloomfield (TMM 1), Ms. Susan Bernstein (TMM 7), voiced concerns regarding traffic, school aged children, government transition, apartment influx, public safety, and amenities. Ms. Cheryl Kramer (1900R Worcester Rd.) voiced concern regarding access to her property, 1900 Worcester Road. Mr. Arthur White spoke on behalf of Eastleigh Farm and urged the board to consider conditioning relief on utilization of Transfer of Development Rights (TDR).

Ms. Craighead requested the Applicant provide documentation stating that commercial cost of development would be excessive and prohibit development, additional information pertaining to children living in apartments, and requested the Applicant coordinate a balloon test with ZBA staff. The hearing was continued to September 12.

At the September 12 meeting, the Applicant requested and the Board voted to continue the hearing to October 23. At the October 23 meeting, the Applicant requested and the Board voted to continue the hearing to November 14. There was no discussion at the September 12 and October 23 meetings.

At the November 14 meeting, Attorney Peter Barbieri introduced Mr. John Lynch of Staples and Jack O'Neil of National Development. He explained: six acres of the site could not be used due to topography; cost of construction would be detrimental; the property was unique due to its location and existing site conditions; the M-1 zone allows up to six stories, only four are proposed; and that the balloon test showed very minimal visual impact. He stated the residential use would have less of an impact as compared to manufacturing. Mr. Barbieri mentioned that the project proposed a tax revenue projection higher than the school system impact. He suggested the proposal would have less of an environmental impact and a financial and traffic benefit to the Town, as opposed to a manufacturing use.

Mr. Barbieri stated permitting from Conservation Commission and Planning Board would still be required and stated the TDR would be unnecessary because there was no need for Floor Area Ratio (FAR) relief. Mr. McKenna voiced concern regarding the loss of over 30 acres of manufacturing zoned land.

At the December 12 meeting Mr. Ottaviani stated the proposal should be before City Council and that there was concern regarding 1,600 units already proposed in town. Mr. Barbieri responded the 1,600 proposed units were within half a mile from downtown but the Staples proposal was not within the district.

Mr. Meltzer questioned if the Applicant should be seeking a zoning change instead of Variance relief. Ms. Cosgrove agreed. Mr. Barbieri responded spot zoning would be an issue. Mr. Ottaviani added lack of commercial space did not support the proposal. Mr. Cosgrove, Mr. McKenna, and Mr. Norton agreed that with the transition to a City, the demand for commercial space could potentially increase.

Mr. Meltzer and Ms. Craighead agreed that the Applicant had addressed and met the Variance standards. Mr. Ottaviani stated the proposal should be before the City Council.

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## **6. Exhibits**

- 6.1. Application filed with the Building Official for a residential structure, dated June 14, 2017.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on June 19, 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 13, 2017.
- 6.6. Abutter comments dated October 23, 2017.
- 6.7. Comment letter from the Community and Economic Development Director, Arthur Robert, dated July 14, 2017.
- 6.8. Letters and briefs in support of the petition on behalf of the Applicant by Attorney Peter R. Barbieri, dated July 18, 2017; September 7, 2017; and November 14, 2017.
- 6.9. Corporate Mixed-Use (CMU) Zoning District Transportation Master Plan, prepared by Vanasse & Associates, Inc., 35 New England Business Center Drive, Suite 140, Andover, MA 01810, dated October 2016.
- 6.10. Traffic report entitled "Proposed Residential Development on Staples Drive – Trip Generation Summary", prepared by VHB, 101 Walnut Street PO Box 9151, Watertown, MA 02472, and dated June 7, 2017.
- 6.11. Balloon test presentation entitled "Proposed Building Height Balloon Mock-Up", prepared by VHB, and dated October 3, 2017.
- 6.12. Conceptual images entitled "9/90 Crossing Framingham, MA", including North Elevation, South Elevation, West Elevation, TYP. 50-Unit Garage (N.E), Buildings 1 & 2 Parking Plans, Buildings 1 & 2 Grade Plans, Buildings 1 & 2 Typical Plans, prepared by Cube 3 Studio, 360 Merrimack Street Building 5, Floor 3, Lawrence, MA, and dated, June 8, 2017.
- 6.13. Architectural plan renderings entitled "Pulte Homes Corp. Building Elevations", including Building 1 and 2 Elevations (A3.20), prepared by Minno Wasko Architects, 80 Lambert Lane, Suite 105, Labertville, New Jersey, 08530, and dated May 2, 2016.
- 6.14. Site plans entitled "Conceptual Site Plan", (C-1 and C2) prepared by VHB, Union Station Suite 219, 2 Washington Square, Worcester, MA 01604, dated June 7, 2017.

Exhibits 6.12, 6.13 and 6.14 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 14, 2017, the Building Official denied the Application for multifamily housing under Section II.B.I.C and Section IV.E.2 of the Zoning By-Law.

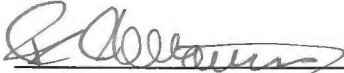
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- 7.3. On June 19, 2017, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining Variances for multifamily residential and height.
- 7.4. Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on July 3 and July 10, 2017 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11. Two Town Meeting Members from Precinct 7 were present, Mr. Bill Lynch and Ms. Susan Bernstein.
- 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 and to allow for the height of residential structures over three stories and forty feet.
- 7.6. 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.
- 7.7. While the Applicant presented a case that the property was unique due to steep slopes, rendering it less marketable for commercial uses as intended in the Zoning Bylaw, Board members questioned whether this was the only possible use of the site, and whether the claimed hardship was self-created or would be experienced by any applicant. Ultimately, Mr. Ottaviani felt that the fourth criterion for granting a variance was not met. *The desired relief could not be granted without substantial detriment to the public good and without nullifying or substantially derogating from the purpose and intent of the Zoning Bylaw or from the intent of the district in which the variance is being sought.* The Zoning Bylaw clearly does not intend for residential uses to be located in the M-1 zone, and the Town's Master Plan states that the commercial/industrial nature of the 9/90 Corporate Center should be maintained and expanded. Board members expressed concern about removing land from the commercial tax base. While Town Meeting had considered changing the zoning to allow for mixed use, Town Meeting voted against such a change. The mixed use that had been contemplated would have offered a live-work-play environment with a mixed-use neighborhood feel. This proposal does not offer significant amenities or other retail or entertainment uses that would attract residents. Board members questioned whether people would want to live in such an isolated development, needing to leave in their car for the vast majority of their needs, and the impact that would have on traffic.
- 7.8. Since a unanimous vote is needed to approve the variances, the motion to approve failed by a 2-to-1 vote. Ms. Craighead moved to approve as presented, seconded by Mr. Meltzer. Mr. Ottaviani voted in opposition. The petition is therefore DENIED.

**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