

CITY OF FRAMINGHAM

ZONING BOARD OF APPEALS

150 Concord Street B2
Framingham, MA 01702

CITY OF FRAMINGHAM
CITY CLERK'S OFFICE

2018 MAY 29 P 12:45

BOARD OF APPEALS CASE NO. 18-13

PETITION OF MAMMOTH DEVELOPMENT COMPANY, LLC; CONCORD STREET REALTY, LLC; AND
CHALIFOUX REALTY, LLC

DATE OF DECISION: MAY 15, 2018

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of MAMMOTH DEVELOPMENT COMPANY, LLC; CONCORD STREET REALTY, LLC; AND CHALIFOUX REALTY, LLC (hereinafter the Applicant), for property located at 236 COCHITUATE ROAD AND 873 CONCORD STREET. This Decision is in response to a Petition for a Variance for side and front setbacks (hereinafter the Application).

2. Applicant

Mammoth Development, LLC
632 Washington Street
South Easton, MA 02375

Property Owner

Chalifoux Realty, LLC
277 Linden Street
Wellesley, MA 02482

Property Owner

Concord Street Realty, LLC
873 Concord Street
Framingham, MA 01701

3. Location

Property is located at 236 COCHITUATE ROAD and 873 CONCORD STREET and identified by Assessors' Parcel IDs 093-15-8166-000 and 093-15-8225-000 (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 May 15, 2018 the Board voted to GRANT the requested VARIANCES 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
SUSAN S. CRAIGHEAD	YES
JOSEPH NORTON	YES

5. Proceedings

The Application was received by the Board on April 20, 2018 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 May 15, 2018 at 7:45 P.M. in the Ablondi Room of the Memorial Building. Stephen Meltzer recused himself and sat in the audience. Board Members Philip R. Ottaviani, Jr., Susan S. Craighead, Joseph Norton, and alternate Rick McKenna, 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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Attorney Paul Galvani was present with Michael Coffman of Mammoth Development, LLC and Max Puyanich, CEO of ConvenientMD. Mr. Galvani proceeded to read Exhibit 6.5 addressing the existing conditions, applicant information, project summary, and zoning relief requested. Mr. Puyanich explained that ConvenientMD is a full service urgent care center similar to a hospital emergency room. He emphasized the need for signage because of the fact that most clients traveling to the center will be sick, injured, or in distress.

Attorney Galvani proceeded to explain the request to install two conforming freestanding signs, one on Concord Street and the other on Cochituate Road, and two wall signs which would require relief from the Sign Board. The Board discussed the sign cases and voted to grant the requested relief, with the conditions that the total square footage shall not exceed 200 sq. ft.

Mr. Galvani proceeded to explain that combining the two lots, 236 Cochituate and 873 Concord, creates a 0.84-acre site. The proposed building would contain a single story and have a building footprint and gross floor area of approximately 5,070 sq. ft. The proposed building would have a front setback of 12.5 feet from the front line along Cochituate Road. The northwesterly corner of the proposed building will have a side setback of 8.4 feet; only a small portion of the building will be within the required 15 feet side setback. The two curb cuts depicted show right in and right out access on Cochituate Road, and full access on Concord Street.

He explained that the lot has frontage on three streets, creating a substantial hardship for any kind of redevelopment of this land. The redevelopment of this property would result in a new and attractive building that could provide a valuable service to the community. The proposed site plan shows compliance with all other dimensional and parking requirements including Floor Area Ratio (FAR), lot coverage, landscaped open space, and off street parking.

Mr. Meltzer (10 Duggan Drive), speaking from the audience, disclosed that he had a financial interest in Concord Street, LLC and had recused himself and sat in the audience for that reason. He explained, he has owned the Concord Street property since 2006 and has marketed the property for sale since 2012 with little to no luck. He explained, the structure was built in 1952, is C-class office space, and not economically feasible to make improvements in order to attract upscale tenants. He spoke to the importance of the signage and explained the existing topography that dips down on Cochituate Road, the busy intersection, and the easiness of missing the driveway. He stated that the signage was important for safety reasons along with a way of identification.

Ms. Craighead questioned whether the pharmacy would be open to the public. Mr. Puyanich responded, no. The state of Massachusetts does not allow such operation. The pharmacy would strictly serve the clients being treated in the urgent care facility and would only be for inside consumption. He stated that if the state of Massachusetts did ever allow facilities to dispense medication to its clients, they would.

Mr. Ottaviani spoke in favor of the proposal and complimented ConvenientMD on their positive contributions referenced in Exhibit 6.6.

6. Exhibits

Submitted for the Board's deliberation were the following exhibits:

- 6.1. Application filed with the Building Official for the construction of a medical office building, dated April 13, 2018.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the City Clerk on April 20, 2018.
- 6.3. Police Department comments dated April 24, 2018.
- 6.4. Conservation Commission comments dated May 14, 2018.
- 6.5. Memorandum in Support prepared by Attorney Paul Galvani, submitted with the Application.
- 6.6. Letters of support from Anthem Blue Cross and Blue Shield; Boys and Girls Clubs of Central New Hampshire; ConvenientMD Bedford Facility; Exeter Fire Department; Metrowest Commercial Real Estate; New Hampshire School Nurses' Association; Concord Family YMCA.
- 6.7. Elevations including East Elevation, West Elevation, North Elevation, and South Elevation, sheet A201, prepared by Dennis Mires PA, The Architects, 697 Union Street, Manchester NH, and dated April 18, 2018.
- 6.8. Plans entitled "Plot Plan (1)", dated April 5, 2018, and "Site Layout Plan (C-101)", dated April 13, 2018, prepared by Allen & Major Associates, Inc., Woburn, Mass.

Exhibits 6.7 and 6.8 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 Office and Professional (P) zoning district and Regional Center (RC) overlay district.
- 7.2. On April 13, 2018, the Building Official denied the Application for the construction of a medical office building under Section IV.E.2 of the Zoning By-Law.
- 7.3. On April 20, 2018 the Applicant filed with the City Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a Variance from the Zoning By-Law.
- 7.4. Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on April 30 and May 7, 2018 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11.
- 7.5. The petitioner proposes a single-story commercial structure with a building footprint and gross area of approximately 5,070 square feet. The proposed building will have a front setback of 12.5 feet at its closest point from the front lot line along Cochituate Road. The current dwelling on the site of 236 Cochituate Road has a front setback of 12.8 feet. The northwesterly corner of the proposed building will have a side setback of 8.4 feet,

although this portion of the building consists of a small bump-out which accommodates mechanical equipment. As can be seen from the site plan, only a very small portion of the building will be within the required 15 feet side setback. The current structure on 873 Concord Street would be demolished and used for the parking lot of the new urgent care facility.

- 7.6. Mr. Stephen Meltzer, a member of the Board, recused himself from deliberations because he is the owner of 873 Concord Street via Concord Street Realty LLC. He spoke from the audience attesting to the difficulty of attracting interest in the property for office and professional uses, due to it being a dated property with Class C office space. He explained that it would not be financially feasible to upgrade the building to Class A or B space given the market and taxes.
- 7.7. Mr. Galvani explained that the traffic pattern on Cochituate Road (Route 30) limited access to a “right in, right out” turning movement, which meant that a second access from 873 Concord Street was desirable. The access to the site limited where the parking lot could be located, which in turn limits where a building can be placed. Given the constrained parking and access situation, if the building were required to be outside of the required 30-foot front setback and 15-foot side setback, the project would be infeasible.
- 7.8. 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.
- 7.9. 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 site is irregular in shape and has frontage on three sides. The odd shape makes difficult the redevelopment of this land for any allowable office and professional use.*
- 7.10. 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 current residential and office uses on the two existing lots are no longer viable economically, and previous attempts to develop the properties have failed.*
- 7.11. 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. *The urgent care use is allowed in the zoning district, and the dimensional relief would not cause any detriment to the public good.*
- 7.12. The Board grants these Variances with the following condition:

7.12.1. The proposed facility shall be located and constructed as shown on the Plans.

7.13. 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.

7.14. 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.

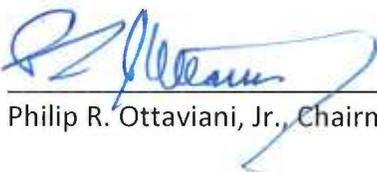
7.15. This Decision shall be recorded at (as appropriate) the Middlesex South District Registry of Deeds or District of the Land Court prior to the issuance of a Building Permit. A copy of the recorded or filed Decision certified by the Registry, and notification by the owner of the recording, including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

7.16. 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 City 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 City Clerk.

ZONING BOARD OF APPEALS

By: 
Philip R. Ottaviani, Jr., Chairman