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Docket Number 3624

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STATEMENT OF PROCEEDINGS

The Petitioner seeks to amend the existing Special Permit issued in Docket No. 2306 on April 9, 1980 in order to allow the Redevelopment Board to review the proposed application for a mixed use development at the 400-402 Massachusetts Avenue real estate.

Some of the conditions of the existing Special Permit would need to be waived and jurisdiction transferred to the Arlington Redevelopment Board as the property being located on Massachusetts Avenue comes within the jurisdiction of the Arlington Redevelopment Board under Environmental Design Review.

The property is located in a B1 Zoning District.

Legal notice was provided in the Arlington Advocate for two (2) consecutive weeks, with the notice indicating that a hearing would be held on Tuesday, June 23, 2020 by way of Zoom Hearing due the COVID-19 Pandemic Crises with the hearing commencing at 7:30 p.m.

The Board was in receipt of the following:

1. Plans showing conversion of the property consisting of A100 and A101;
2. A photograph compilation of the property;
3. An e-mail dated December 17, 2019 from the Planning Department to Robert J. Annese indicating their position with respect to the conversion of the property to one office and four residential units;
4. Memorandum of Fact and Law submitted by Attorney Robert J. Annese;
5. Prior Zoning Board of Appeals Decision, Docket #2306; and
6. Memorandum from the Planning Department from the Town from Jennifer Raitt, Director, Department of Planning and Community Development dated June 17, 2019

In addition, the Board was in receipt of the following correspondence from the public:

- E-mail from Chris Loreti to Christian Klein, Chair of the Zoning Board of Appeals, "Correction: Docket 3624, 400-402 Massachusetts Avenue", dated June 19, 2020.
- E-mail from Chris Loreti to Christian Klein, Chair of the Zoning Board of Appeals, "Additional Comments: Docket 3624, 400-402 Massachusetts Avenue", dated June 22, 2020.
- E-mail from Chris Loreti to Christian Klein, Chair of the Zoning Board of Appeals, re Additional Comments: Docket 3624, 400-402 Massachusetts Avenue, dated June 23, 2020.
- E-mail from Patricia Worden to Christian Klein, Chair of the Zoning Board of Appeals, "hearing, 400-402 Massachusetts Av.", dated June 23, 2020.

The evidence introduced at the hearing indicated that the 1980 Zoning Decision provided that there be no more than two (2) apartments developed on the site and that there be at least one (1) onsite parking space per dwelling unit to be set aside for apartment tenants and that the entrance to the basement space be from the front of the building with an open stairway leading down from the inside entrance and clearly marked as to how to enter the basement.

Petitioner now seeks to amend that Special Permit in accordance with the new mixed use bylaw for the Town requesting that the building be allowed to have one (1) office unit and four (4) residential units in accordance with the plans submitted with its zoning application and that the requested relief be transferred to the Arlington Redevelopment Board since the ARB has the primary jurisdiction to hear the appeal.

The property contains 4,756 square feet and is nonconforming with respect to the terms of the present zoning bylaw with regard to front yard setback, side yard setback and there is no useable open space.

There are presently two (2) parking spaces at the property and Petitioner proposes a total of six (6) parking spaces while the required parking spaces would be 6.1 parking spaces in accordance with the zoning bylaw.

The Petitioner's evidence during the course of the Hearing indicated that the relief sought before the ARB related to a Special Permit issued by the Zoning Board on April 9, 1980 in Docket No. 2306 in accordance with Section 5-26 (Districts and Uses) of the Zoning Bylaw.

The Zoning Board's 1980 Decision limited the number of apartments in the structure to two (2). Since the date of the prior decision the Zoning Bylaw has been amended to allow for a mixed use development in the B1 Zoning District in which the property is located.

The evidence introduced by Petitioner indicated that Petitioner's requested relief relates to an increase in the number of allowable residential units in the building from two to four with the intent to maintain one office unit.

The total gross floor area (GFA) would remain the same.

The structure is non-conforming with respect to the Zoning Bylaw's lot size, floor area ratio, lot area per dwelling, front, side yards depths, usable open space and parking space minimum requirements contained in the Bylaw.

As a result of the increase in the requested number of residential units, the proposal would increase the non-conformity to the lot area per dwelling unit by reducing it from 2032 square feet per unit to 921 square feet per unit.

Petitioner proposes an increase in the number of parking spaces to six, which would meet the 1980 Special Permit's requirements of one parking space per one bedroom residential unit.

Petitioner indicated that if there is any increase in the number of bedrooms per unit, then the Petitioner, at the time of the Hearing before the ARB could request a parking reduction in the mixed use district subject to a "Transportation Demand Management Plan" (TDM).

FINDINGS OF FACT AND DECISION OF THE BOARD

The Board finds that amending the existing Special Permit (Docket #2306, issued April 9, 1980) to allow the Arlington Redevelopment Board to openly and fully review a proposed application for mixed use on the property is appropriate. The Board finds that the original conditions for granting the Special Permit can be reconsidered during Environmental Design Review under Section 3.4 of the Zoning Bylaw and should be withdrawn in the event that the Redevelopment Board finds that the Special Permit Decision Criteria of Sections 3.3.3 and 3.4 would be met by the mixed-use proposal. In addition, the Board finds that if a proposed application for mixed-use is not approved by the Redevelopment Board, the existing use of the property continues to be appropriate, and the 1980 Special Permit conditions should remain in effect.

The applicant seeks to amend the current special permit for this use in order to allow for a mixed-use development under the Zoning Bylaw. Under Section 3.4.2A and G the special permit "shall be acted upon by in accordance with the environmental design review procedures and standards of this Section 3.4." This Board does not have the authority to issue a special permit that would authorize the applicant's project. Indeed, if the property were not already subject to a special permit issued 30 years ago for a different use, the applicant would have filed its request for a Special Permit with the Redevelopment Board and we would not have been involved at all.

The property is, however, subject to an existing Special Permit that allows for two apartments and three offices on the site and makes provision for parking spaces for the dwelling units, entrances to the offices, and lighting and mechanical ventilation for basement offices. Refer to "In the matter of Frank Pacuito, Docket No. 2306 Opinion of the Board", dated April 9, 1980. This Special Permit is under the continuing jurisdiction of the Zoning Board of Appeals. If it remained in effect, and if the Redevelopment Board granted a Special Permit for the use that the applicant proposes today, the property would be subject to conflicting conditions.

Under the Zoning Bylaw, the Redevelopment Board is the Special Permit Granting Authority for this site and proposed use. It has the final say on whether the proposed project is consistent with the provisions of the Zoning Bylaw relating to Special Permits. Certainly the two Boards should not engage in duplicative review, particularly because approval of the application may involve discretionary conditions that must be prescribed by one board or the other.

The Redevelopment Board will, of course, grant a special permit only after finding that all applicable decision criteria have been met. If the Redevelopment Board approves the project, then the four conditions of the 1980 Special Permit must be withdrawn to avoid conflicting requirements. If the Redevelopment Board rejects the proposed project, then the Board of Appeals considers continuation of the current use under 1980 Special Permit's conditions to be appropriate. In order to facilitate review of the applicant's proposal by the Redevelopment Board, the jurisdiction of the Zoning Board of Appeals must be suspended during the pendency of proceedings before the Redevelopment Board.

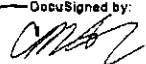
At the close of the Hearing, the Board voted unanimously to grant the Petitioner's request to amend the existing Special Permit (Docket #2306, issued April 9, 1980) with the following conditions:


- 1. Pending the issuance of a Special Permit under Environmental Design Review by the Arlington Redevelopment Board, the four conditions set forth in the original decision are withdrawn.**

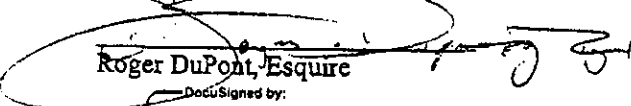
2. Pending the issuance of a Special Permit under Environmental Design Review by the Arlington Redevelopment Board, the Zoning Board of Appeals shall terminate jurisdiction with respect to the original Special Permit grant.
3. Should the Applicant fail to secure a Special Permit from the Arlington Redevelopment Board, the above conditions are null and void, and the existing Special Permit shall remain in full force and effect.


The Inspector of Building is hereby notified that he is to monitor the site and should proceed with appropriate enforcement procedures at any time he determines that violations are present. The Inspector of Buildings shall proceed under Section 3.1 of the Zoning Bylaw of the Town of Arlington, Massachusetts and the provisions of Chapter 40A Section 21D of the Massachusetts General Laws, and institute non-criminal complaints. If necessary, the Inspector of Buildings may also approve and institute appropriate criminal action, also in accordance with Section 3.1.

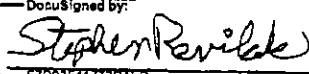
The Board hereby makes a detailed record of all its proceedings relative to this appeal; sets forth the reasons for its decision and finding; directs that this record be filed in the office of the Redevelopment Board and in the office of the Town Clerk and shall be a public record, and that notice of this decision be made forthwith to each party in interest. Appeals to this decision, if any, shall be made pursuant to Section 17 of the Zoning Act (Massachusetts General Laws, Chapter 40A), and shall be filed within twenty days after the date of filing of such decision in the Office of the Town Clerk.

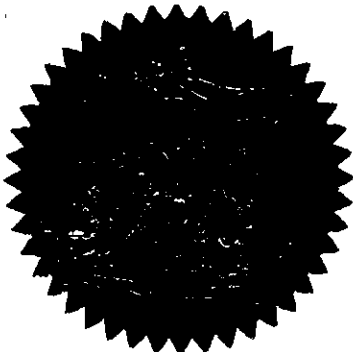
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Christian Klein RA, Chair

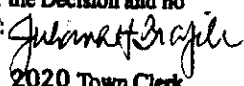
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Roger DuPont, Esquire

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I hereby certify this is a True Copy of the Decision of the Arlington Zoning Board of Appeals as filed with the Office of the Town Clerk of the Town of Arlington, Massachusetts on JULY 17, 2020 and that 20 days have elapsed after the Decision and no Appeal has been filed. ATTEST: 

Date of Issue SEPTEMBER 29, 2020 Town Clerk