



CITY OF SOMERVILLE, MASSACHUSETTS  
ZONING BOARD OF APPEALS

SOMERVILLE, MA  
JUN 26 - 9 P 1:23

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RICHARD J. DALEY, JR., ALT.  
STUART J.L. GARDNER, ESQ., ALT.

Date: June 26, 2002  
Appeal: #2002-23  
Location: 343-349 Summer Street

Decision of Board of Appeals on the Appeal of

**SPECIAL PERMIT  
WITH SITE PLAN REVIEW  
APPROVED  
WITH CONDITIONS**

Applicant: Emerald Development Group  
Owner: Massachusetts Bay  
Transportation Authority

The Applicants, Emerald Development Group and Owner MBTA, and Agent Terry Morris, the Applicant seeks a special permit with site plan review (SZO §7.11.1.c) in order to construct a four story, 16 unit residential building with the potential of having the two inclusionary units off site and underground parking Central Business District (CBD) zoning district.

Date of Filing Appeal: February 15, 2002  
Date of Public Hearing: April 10, 2002  
Date of Decision: June 26, 2002  
Zoning District: Central Business District (CBD)  
Relief Sought: §7.11.c to construct a four story, 16 unit residential building with underground parking

Appeal #2002-23 was opened before the Zoning Board of Appeals at Somerville City Hall on April 10, 2002. Notice of Public Hearings was given to persons affected and was published and posted, all as required by M.G.L. c. 40A, sec. 11 and the Somerville Zoning Ordinance.

Present and sitting were Members, Philip Ercolini, Gerald McCue, Herbert Foster, Mary Jeka and Stuart Gardner with Maryann Heuston absent. Gerald McCue read a description of the appeal into the record, noting that the Planning Board had not yet made a recommendation on this project.

The property is a 16,796 s.f. lot located in the Davis Square Central Business District (CBD). Currently, the site is vacant with the exception of the shaft for the subway tunnels underneath. The vacant portion of the site is covered with grass and a chain link fence with wooden slats surrounds the perimeter of the site.

The Chairman invited the Applicant to present their project to the Board.

Terry Morris presented the proposal for sixteen residential units in a Central Business District. He stated that that the site is just bordering the residential zoning district outside of Davis Square. He stated that there are similar buildings in the neighborhood and commercial buildings with respect to height and size. Terry Morris testified that the site has an MBTA vent shaft from the red line on it. He stated that they were uniquely challenged to design this property with the required access necessary to the vent shaft, incorporating the costly digging required to put parking underground and incorporate the concerns and comments from the neighborhood meetings. He stated that there was an element of transition from the commercial to the residential space and their design would be meeting all other requirements with respect to zoning required. Terry Morris testified that he had met with the Davis Square Task force and Alderman Connolly at three community meetings, the community was pleased a residential property would be built at the site, and pleased to see the proposal included two affordable housing units.

Ms. Helen Balani an abutter from 21 Windom Street stated that she and her neighbor opposed the project, based on the scale, the height and the setbacks of the property. She submitted over one hundred signatures opposing the project to the Board.

Dr. Mohamed Butt, a direct abutter at 341 Summer Street stated that the Emerald Group had never contacted him and that the proposed building had insufficient setbacks with respect to the rear and side yards.

Mr. Henry Balani of 21 Windom Street stated that he opposed the project due to the size and scope of the building. He stated that sixteen units were too many and the units were not marketed to attract families that would lend stability to the neighborhood.

Gerald McCue asked Mr. Balani if he preferred a residential use versus a commercial one.

Mr. Balani stated that he would prefer residential.

Bill Gioiosa of 339 Summer Street stated that he had been involved with the rezoning of the property in the eighties. He stated that he personally wanted to develop that parcel however the MBTA had a fifty-foot

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restriction around the shaft site, which would be financially difficult to build around it and under it and the rear setbacks that would be required.

Terry Morris stated that there were no side yard setbacks in a commercial zone.

Bill Gioiosa stated that the rooflines of the project were so much higher than the immediate neighborhood but overall project was good. He also stated that safety issues with respect to the smoke that may be vented from the shaft and the height of the building were the outstanding issues.

Ms. Carol Dempkowski of 39 Hawthorne Street testified that she would be looking at this project from every view and angle as she looked out her door, she felt it was significantly larger than the previous three homes that were taken by eminent domain and that this project would generate around six million dollars. Ms. Dempkowski stated that reducing the project scale would still allow the Applicant to make a profit.

Pat Delano of 26 Windom Street stated that the building was nice, however too high and it would be the largest and highest structure in the neighborhood. She stated that the parking would not be adequate to accommodate the number of cars for the unit's owners and guests, adding to the congestion and lack of parking for the present residents.

Lee Auspitz stated that he had followed this particular piece of property for the last twenty-five years. He testified that the MBTA originally planned to take by eminent domain up to six-eight homes, but opted to take three. He stated that there was no public process prior to the sale listing of this property, as was the practice of the MBTA prior to the privatization of the real estate division. He testified that the purpose behind the rezoning was to protect the residential area on the outskirts of Davis Square.

Gerald McCue offered a point of information to the Board regarding Mr. Auspitz. He stated that Mr. Auspitz had been on the Davis Square Task Force for many years and has been an advocate for the area, helping launch the success that the Square now enjoys.

Alderman Jack Connolly testified that he lives within two hundred yards of the red line station and his is very familiar with the "T" related activities and he has hosted six meetings, three neighborhood and three with the Davis Square Task Force and the residents expressed their desire for this space to be a residential use. He stated that he understands the concerns that have been voiced over the size and height of the building. Alderman Connolly asked that the Fire Chief address any concerns with respect to access and issues that would involve the public safety.

Lee Auspitz inquired about the vent shaft and asked how difficult it would be to construct the underground parking lot with the space below it housing the red line operation. He stated that *he was also concerned* with the home ownership of the properties versus rentals that would deteriorate the neighborhood with transients.

Terry Morris stated that the red line ran very deep into the ground, ninety feet below grade and that the requirements to build the underground parking would be met, although costly to construct.

On April 24<sup>th</sup> the Board reconvened and the Chairman noted that the Applicant had asked for a continuance to continue working out concerns with the neighbors.

The Board voted (5-0) to allow the continuance until June 12, 2002.

On June 12<sup>th</sup> the Board met to discuss the matter of 343-349 Summer Street. The Chairman read a description of the project and noted that the Planning Board had recommended conditional approval of the special permit on the revised project dated June 6, 2002. The Chairman asked the Applicant to present the changes to the original design submitted to the Board.

Terry Morris stated that the outstanding issues had been resolved with the Planning Board, City Engineer and other state agencies. He stated that the Fire Department would have no objection to the plan pursuant to the final agreement of the land lease from the Dilboy Post for a Fire Lane and subsequent approval from the City Solicitor's office. He testified that the affordable housing promised would be allowed to be off site, as allowed under the SZO and as long as the two inclusionary units were in Ward 5 or 6, however if the units were unable to be placed into these wards Emerald Development would offer three units of affordable housing to the City. He stated that as a result of having the inclusionary units off site, they were able to reduce the number of units to fourteen and scale back the size of the building and the roofline.

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Terry Morris stated that they would try to save as many trees as possible on the site and that they had done a shadow test to see the effects of the building location with respect to the light cast on to the abutting neighbors and the results showed minimal shadowing from September to May and then only at certain times during the day.

Elizabeth Dembitzer testified that she was an owner of the recently constructed units by Emerald Development at Weston Avenue and that the residents were plagued with problems with respect to roof leaks, water in garages, faulty designs and long lists of punch list items not completed. She stated that the Emerald Development Group had only been interested in collecting the money from the sales, not completing the units and attending to the ongoing problems that have taken months for them to address. She stated that there were no managers on site to deal with the problems and that there was a part time handy man employed who had quit shortly after being hired. Ms. Dembitzer stated that they could not trust this development group.

Ms. Carol Dempkowski of 33 Hawthorne Street stated that she was unable to attend the last meeting, however there is not a single resident in favor of the fourteen unit development that still had a fourth story in the rear of the building. She stated that there were no complete sets of drawings, showing the porches and the decks removed from the rear of the building. She testified that there were one hundred people that signed a petition in opposition of the project and she did not understand why this project needed to be so large.

Gerald McCue stated that they needed to get a sense of what the neighbors desired, however based on the number of people against the project at the previous hearing, the majority was pleased with the new design. He stated that from Ms. Dempkowski's testimony many neighbors were still unhappy with the project.

Philip Ercolini asked if the off site inclusionary housing would be new construction and of the same quality as the on site units.

Director of Housing, Dharmena Downey stated that the inclusionary units would meet all requirements and be comparable to the units on site.

Gerry McCue stated that time limits should be imposed to make certain the project does not reflect how long the Cross Street project took to offer the approved units for affordable housing.

Dharmena Downey stated that the Certificate of Occupancy cannot be issued without the market and affordable units completed.

The Chairman asked the Applicant in what price range would the market units be offered at.

Terry Morris responded in the mid \$400,000.00 range.

The Chairman requested that the Applicant provide a cost proforma.

Terry Morris stated that by supplying a cost proforma it could affect his business with respect to his competitors.

Herbert Foster stated that although there was overwhelming opposition at the last meeting, there were not many people in attendance at this evenings' meeting.

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Terry Morris read letters to the Board from abutters that had originally opposed the project. He stated that the compromises satisfied these opponents and now they wrote in support.

Mary Jeka asked the Applicant to respond to the complaints about their Weston Ave property.

Terry Morris testified that it was not to their advantage to have someone speak ill about us at a public meeting. He stated that there was a problem with leaks, both a refrigerator and roof. He then stated that the units were under warranty and honored for twelve months, he had a person full time there to address the punch list and items, and he apologized and he would look into the concerns brought before the Board the next day.

The Board reconvened on June 26<sup>th</sup> and the Chairman opened the matter up for discussion noting that Stuart Gardner would be voting for Maryann Heuston, who had been absent for one of the public hearings.

Stuart Gardner stated that he had visited the site and concluded that this site had limitations. He stated that all considerations and accounts of the neighbors and the Weston Ave residents would need to be addressed.

Mary Jeka stated that she lived in this neighborhood and she would appreciate the developer listening to the neighbors and she had come to the same conclusion about the site being limited.

Herbert Foster stated that he had been on the Board when the Weston Ave project was approved and he thought that it was a good project however he was disappointed to hear of the problems with the punch lists. He suggested that conditions might be attached to address those concerns.

Gerald McCue stated that he agreed with his fellow Board Members.

Philip Ercolini stated that the neighborhood process along with the input from the Davis Square Task Force encouraged him. He stated that this was indeed a tight site and that by reducing the height and units would help address some of the visual concerns of the project. The Chairman stated that the phrase "you are only as good as your last project" does apply here, and it is the concern of the Board that you fulfill your obligations to the residents of the Weston Ave project.

Gerald McCue raised a point of information that the Fire Department still had outstanding issues about the fire lane easement.

The Planning Director indicated that there was a letter from the Deputy Fire Chief addressing the lease agreement with the Dilboy Post allowing fire lane access to the property be forwarded to the City Solicitor's office and the Planning Board, this could also be conditioned as part of the permit.

The Board found with respect to granting the request for a special permit:

1. The Board found that the Applicant had worked with the neighborhood and Ward Alderman to create a project that would be beneficial to the neighborhood. The Applicant had reduced the height of the building by twelve feet and two units reduced after size concerns were voiced in the neighborhood. The inclusionary units would be off site, but comparable to the units at site. The changes would also increase the landscaping and open space around the building. The project meets with the standards set in the SZO for a special permit, and seeks no other zoning relief.
2. The Board found that the neighborhood desired residential properties to be built, since residential homes were taken by eminent domain by the MBTA prior to the construction of the red line. The Board found that this site having been rezoned some years ago as a (CBD) Central Business District has consistency of purpose, "to promote a strong pedestrian character and scale in those areas" and it promotes the SZO §6.1.5 "to provide for and maintain the uniquely intergraded structure of the uses of the City... to encourage the most appropriate use of land throughout the City...to encourage housing for persons of all incomes. The style of the building incorporates many elements of design from the neighborhood with gables and Victorian style features which will make the transition of the site visually pleasing.

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3. The Board also found this site to be limited in potential due to the shaft site upon it and the easement necessary by the MBTA to continue to access the site for periodic maintenance. The Board also found that concerns with parking would be addressed by an underground parking facility.
4. Although the Board and residents had concerns about the Developer's previous project at Weston Avenue, attempts were being undertaken by the Developer to address those concerns. The Board directed the Developer to work to ensure that this new development would not experience the communication and punch list problems seen at the Weston Avenue site.

Gerald McCue made a motion to approve the requested the special permit with site plan review incorporating the findings of fact and conditions listed in the Planning Board Report dated June 6, 2002:

- 1) Approval is based upon the submitted floor plans and elevations received by the Planning Department on May 10, 2002, Site Plan and Landscaping Plan submitted on February 26, 2002. However, the Applicant shall attempt to increase the building setback from the lot line on the east side where possible. Any other substantial changes or further revisions to these plans must be reviewed and approved by the Planning Staff;
- 2) All of the landscaping on the site shall be installed according to National Nurseryman's Standards. Any proposed street trees shall be selected and installed in accordance with the requirements of the OHCD program manager for tree planting;
- 3) The condominium association documents shall be subject to review and approval of the Planning Staff and shall include adequate provisions for maintenance of both the building and all on-site amenities, including landscaping, fencing, lighting and parking areas;
- 4) The developer shall meet with the City's Housing Director in order to finalize an implementation plan for the affordable housing units associated with this development. Evidence of this approval will be submitted to the Planning Staff before final signoff on the building permit;
- 5) Written certification of the creation of the required affordable housing units must be obtained from the OHCD Housing Director before the issuance of a Certificate of Occupancy (C.O.);
- 6) The two off-site inclusionary units will be located within Ward Six or on the perimeter of Ward Six and Ward Five. The proposed location is subject to review and approval of the City's Housing Director and if no site is available within the two specified Wards (5 or 6) that the Applicant must supply a third inclusionary unit to the City.
- 7) The Applicant will submit documentation for an easement for an eighteen foot wide fire lane across the adjacent Dilboy Post parking lot in accordance with the plan submitted on May 31, 2002. This easement will be reviewed and approved by the Fire Chief and the City Solicitor and submitted to the Planning Department prior to the issuance of a building permit;
- 8) The Applicant shall submit a Construction Management Plan subject to review and approval of the Ward Alderman. The Plan shall include the following at a minimum:
  - A requirement that all delivery trucks to the site will not use Elston, St. James or Windom Streets.
  - All contractors will be required to park on the site and not on the residential side streets during the duration of construction. If no on-site parking is available, then the Applicant shall secure another off-site parking location for the contractors.
  - Construction will only occur six days a week, not on Sundays, and between 7 a.m. and 4 p.m. The Applicant shall flyer the neighborhood if any work is planned for a Sunday or holiday.

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