



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Date: December 18, 2017

CONDOMINIUM REVIEW BOARD STAFF REPORT

Site: Millbrook Lofts, 9 & 39 Medford St.

Applicant Name: Berkeley Investments

Tenant Names: Sydney Gassen, Taylor Gassen, William Gassen, Susan Zackon, Ali Ali, Naufan Pilaveel, Angelo Tuyisabe, Gaura Veilokani, Christian Eckenrode, Yueqian Shi, John Jacques, John Barton, Chioun Lee, William McDermott, and Paul Reinert.

Legal Notice: Request from Berkeley Investments for Removal Permits to be issued for Units 202, 207, 212, 404, 411, 501, 502, 504, 604, 610, 612, 711, PH2, PH4, PH5, PH8 and PH10 at Millbrook Lofts, Somerville

Date of Public Hearing(s): December 18, 2017

I. Description of Request

This staff report is being provided to the Board in advance of the Condo Review Board meeting on December, 18, 2017 to inform the Board of necessary background information involving the Condominium Conversion application for the Millbrook Lofts located at 9 & 39 Medford St. As far as staff are aware, this is the first time an application has come before the Board that involved so many units (100), 15 of which are Inclusionary affordable units; 5 of which are affordable units designated for artists. This is also the first time a property with Inclusionary units is being submitted for condo conversion; something that is permitted under the Somerville Zoning Ordinance (SZO) §13.35. Millbrook Lofts currently offers the following amenities: 5 artist live-work spaces, a gallery, fitness center, roof deck, green roof, and one level of garage parking.

II. Background

The following approvals were obtained by the Grantor from the City of Somerville regarding the Property to construct 100 units, of which five are affordable artist live/work spaces, in one building located at 9 Medford Street, Somerville, MA 02143 and 5% of the gross sq. ft. of the building must be for artist use: (i) the Somerville Planning Board Decision dated November 21, 2013 as recorded on February 7, 2014 in the Middlesex South District Registry of Deeds in Book 63257, Page 14; (ii) the Somerville Zoning Board of Appeals (ZBA) Decision dated January 8, 2014 as recorded on February 7, 2014 in the Middlesex South District Registry of Deeds in Book 63257, Page 31; (iii) the De Minimis Revision Approval by George Proakis, Director of Planning for the City of Somerville, dated March 13, 2014; and (iv) the De Minimis Revision Approval by George Proakis, Director of Planning for the City of Somerville, dated May 27, 2014 (hereinafter collectively the “Decisions”).

At a meeting held on October 17, 2017 that Berkeley Investments requested through its legal representatives at Adam Dash and Associates, Berkeley Investments and its counsel communicated interest in converting the 100 rental units at Millbrook Lofts to condominiums. This building includes 15 Inclusionary affordable units, five of which are designated as artist units. During this meeting, the 15 Inclusionary units were discussed, specifically in regard to the City’s desire for the units to remain affordable and available to current tenants regardless of their ability to purchase. Both the SZO § 13.3.5 and the Affordable Housing Restriction recorded with the master deed require that in the event of a conversion, the affordable units remain affordable under the Inclusionary Housing Program. Rental units initially set to be affordable to households with incomes at or below 50% Area Median Income (AMI) become an affordable homeownership opportunity to households with incomes at or below 80% AMI. While rental units set to be affordable to households with incomes at or below 80% AMI become affordable homeownership units for households with incomes at or below 110% AMI. Tenants of affordable units at the time notice to convert is provided, have a right of first refusal to purchase their unit.

All parties acknowledged that not all 15 affordable households may be in a position or want to purchase their unit at this time. As such, it was mutually agreed between Berkeley and the City that the City would look into a potential partnership with the Somerville Community Corporation (SCC), who could potentially purchase the 15 affordable Inclusionary units should a current tenant not be in a position or want to purchase their unit, and would prefer to continue renting under the Inclusionary Rental Program. This would provide households who cannot purchase the opportunity to continue renting their current unit beyond the two-year notice period. All parties understand and expect that these 15 Inclusionary and affordable units are to remain as such, including the 5 artist live/work units. The requirement that 5% of the gross sq. ft. of the building remain for artist use will also remain in place whether the building tenure is rental or home ownership.

The City, Berkeley Investments and Princeton Properties, Berkeley’s Management Company at Millbrook, worked closely together to host a resident meeting to discuss Berkeley’s intention to convert to condominiums. The meeting was held on November 16, 2017 at the Millbrook Lofts to inform all tenants of Berkeley’s intention to convert the building to condominiums; handouts were made available to those in attendance providing tenants with information regarding their rights through this process, a timeline for the proposed conversion and information about the proposed condominiums. Copies of all of the handouts from the meeting were also provided to all tenants on November 17, 2017 with Berkeley’s formal notice to convert.

The November 16th meeting was attended by Berkeley Investments, Princeton Property staff, as well as Attorney Adam Dash, Dartmouth Group, City Housing Division staff, and SCC Real Estate Director Scott Hayman. At the meeting, Housing Director Mike Feloney walked through the tenant rights handout, and

also shared with Inclusionary tenants in attendance that the City has begun to work with SCC to explore and pursue the possibility of SCC purchasing Inclusionary units that residents are not themselves in position to buy. It was explained that if SCC were to purchase these units, it would allow the Inclusionary tenants to continue to rent their units, regardless of the condominium conversion. Those Inclusionary tenants who are in a position to buy their unit can do so at an affordable rate, as per the SZO and the recorded Affordable Housing Restriction. Housing Division staff is currently in the process of inquiring if any of the current Inclusionary tenants are interested in purchasing their units. The City will calculate the maximum sales prices for the units per SZO §13.3.3. Thus far, six out of 15 Inclusionary tenants have expressed that when more information becomes available and if financially feasible, they would be interested in purchasing their units.

On November 17, 2017, as mentioned above, Berkeley Investments provided tenants with formal notice (enclosed) of their intention to convert the building into condominiums. This means that the notice period of either one year or two years began on November 17, 2017 and will expire either on November 17, 2018 or on November 17, 2019 for households who provide verification of having a disability, being low income, or elderly. The inclusionary unit tenants do not have to provide verification of this as they have already provided and are found eligible for two years notice.

On Wednesday, November 22, 2017 the Housing Division emailed a memo to fourteen inclusionary unit tenants and left a voicemail and mailed the memo to the fifteenth household. The memo described Berkeley Investment's intention to convert Millbrook Lofts to condos and explained the process required by the owner. The memo provided further details on the Condo Review Board meeting date and time for Dec. 18th and invited households to provide comment if they wish to. Lastly, the Housing Division offered assistance in filling out the tenant portion of the application provided by Berkeley Investments and stated that SCC, Berkeley and the City are working together in creating a seamless transition for inclusionary tenants. With the memo, a copy of the projected notice timeline provided by Berkeley was attached as well as the handout with tenants' rights under the condo conversion ordinance and contact information for the Housing Division and other relevant parties.

If there are tenants who wish to buy their units prior to their notice period coming to an end, those tenants may waive their tenant rights to the notice period in order for the Removal Permit to be granted for their unit, so they will then be able to purchase their unit.

After the granting of a removal permit for condominium conversion or sale pursuant to section 7-66 of the CRB Ordinance, the declarant shall make a written offer to convey each unit to the tenant who rents or leases that unit. The offer shall be made within 30 days of the granting of the removal permit, or the filing of the master deed (this has been interpreted to be filing with the Board), whichever comes later, and shall remain open for another 30 days. This means that the right of first refusal period will be different for many of the units, since they are not all coming before the Board at the same time. Staff to the Board will be sure to track which units are submitted when, in order to better inform tenants as well as keep track of the process.

Berkeley Investments has submitted a first 'tranche' of applications, one of several batches they intend to submit. For each application, Berkeley Investments will provide one set of required documents including the letter of good standing, final water bill, deed, one check, and the first six pages of the application, except for page 5 and pages 8-12 which will be submitted individually for each unit.

On December 11, 2017 Berkeley Investments submitted an application for removal permits for an initial 17 units to be presented during the upcoming December 18, 2017 Condo Review Board meeting. Of the 17 units submitted, six of the units were vacated prior to the notice to convert to condos was served, with

the necessary paperwork completed. Those units are 502, 404, 612, 610, PH5, and PH8. Unit 502 vacated at the end of their lease on 8/31/17, unit 404 vacated at the end of their lease on 10/13/17, and unit 612 vacated at the end of their lease on 9/17/17. PH5 was never occupied. Regarding PH8, the tenants were legally evicted with the unit being vacated on September 22, 2017. The tenant who had been in unit 610 transferred to unit 407 on October 25, 2017 rendering unit 610 vacant.

Three of the 17 units submitted are being leased by corporations, who then use the units to house their short-term employees/consultants. Those employees do not sign leases; however, the corporations do have lease agreements. Those units are 501, 202, and 207. Unit 202 was vacated on 11/3/17; they had a 1 month lease from 10/4/17 to 11/3/17 and they vacated at the end of their lease. Unit 207 was vacated on 11/16/17; they had a 1 month lease from 10/18/17 to 11/16/17 and vacated at the end of their lease. Unit 501 will become vacant on 1/7/18 as they have a 3 month lease from 10/10/17 to 1/7/18 and have given notice that they intend to vacate at the end of their lease. The application for these corporate units is complete, including affidavits from the respective corporations waiving their tenant rights.

Lastly, 8 of the 17 applications were or are occupied by tenants. These units are 212, 411, 504, 604, 711, PH2, PH4, and PH10. At this time, completed tenant documents have been provided for unit 212, 411, 504, 604, and 711. The rest of these units are still pending as staff has received a waiver of rights, but not pages 9-12 of the condo conversion application (the tenant portion of the CRB application). These units will not be presented to the Board until the applications are complete.

III. Applicable Somerville Condominium Conversion Ordinance Sections for Consideration:

Sec. 7-66 Removal of Rental Units

(d) Considerations

- (1) The benefits to the citizens of the city of issuing the permit;
- (2) The hardships imposed on the tenants residing in the unit proposed to be removed, including any mitigating provisions made by the applicant; and
- (3) Any aggravation of the shortage of rental housing accommodations in the city, especially of units suitable for families of low and moderate income, for elderly, for handicapped, or for people on fixed incomes, which may result from the proposed removals.

Sec. 7-76 Notification of conversion

- (a) A declarant who intends to convert a housing accommodation to condominium ownership must give the board and each of the tenants of any and all rental units therein written notice of his or her intention to so convert the premises no later than one year before the declarant files a master deed.
- (c) However, in the case of a housing accommodation occupied in whole or in part by a handicapped tenant or occupied by an elderly or low or moderate income tenant, the period of notice for each such tenant shall be no less than two years.
- (e) All notices given pursuant to this section shall be personally served upon tenants or mailed to tenants by certified mail. The notice shall advise tenants of their rights and of the procedures that exist under this article. It shall also include a statement of such tenant rights and procedures as exist under the rules or regulations of the board governing removal from market of rental units in order to convert them to condominiums as the board may adopt from time to time pursuant to the authority granted by this article.
- (f) No tenant may be given notice by the declarant to vacate the premises upon less than the one-year notice as provided in subsection (b) of this section, except by reason of nonpayment of rent, conduct that disturbs other tenants' peaceful enjoyment of the premises, or other substantial violation of the terms of the tenancy. The terms of the tenancy may not be altered during any notice period under this article.

Failure of a declarant to give notice as required by this section shall be a defense to an action by the landlord to recover possession of the rental unit.

(g) Nothing in this section permits termination by a declarant of a housing rental agreement in violation of its terms. Any tenant under a housing rental agreement shall have the right, at any time after receipt of a notice pursuant to subsections (a), (b) and (c) of this section, to terminate the housing rental agreement upon 30 days' written notice to the landlord, which 30 days shall start to run from the date the next rental payment is due. Such termination shall be without penalty or other termination charge to the tenant.

Sec. 7-69. Tenants' right to purchase unit

(a) After the granting of a removal permit for condominium conversion or sale pursuant to section 7-66, the declarant shall make a written offer to convey each unit to the tenant who rents or leases that unit. The offer shall be made within 30 days of the granting of the removal permit, or the filing of the master deed, whichever comes later, and shall remain open for another 30 days.

(b) The tenants' right to first purchase expires at the end of the 30-day period following the declarant's offer.

(c) If the tenant and declarant do not execute a contract for purchase and sale of the unit during that 30-day period, the declarant may not offer to sell that unit during the following 180 days after the expiration of that 30-day period at a price or on terms more favorable to the prospective purchaser than the price or terms offered to the tenant. This section will not apply to any condominium unit which is converted to exclusively nonresidential use.

(d) If a declarant, in violation of subsection (a) of this section, conveys a unit to a purchaser for value who has no knowledge of the violation, recordation of the deed conveying the unit extinguishes any right a tenant may have under subsection (a) of this section to purchase that unit, but does not affect the right of the city to prosecute the declarant for a violation of subsection (a) of this section.

Sec. 7-70. Tenant relocation reimbursement

(a) When a declarant or other landlord recovers possession of a rental unit pursuant to the granting by the board of a removal permit pursuant to section 7-66, the tenant thus displaced who meets the qualification of this section shall be entitled to recover from the declarant the costs of relocation.

(b) Within 14 days after receiving a receipted bill for the costs of relocation, the declarant must pay actual moving expenses to a maximum amount of \$300.00 or one month's rent per rental unit, whichever is higher, for any tenant and the tenant's family whose total income for the previous year was equal to or less than the qualification income for Section 8 Housing Assistance for the city. Failure of the tenant to tender verification of income upon written demand by the declarant shall constitute a waiver of the right to receive funds.

Sec. 7-71 Access and repair to units

(a) The tenant in a rental unit for which a removal permit for condominium conversion has been granted by the board shall not unreasonably withhold consent to the declarant or his or her agents or designees to enter the unit in order to inspect the premises, obtain data, or show the unit to prospective or actual workers or purchasers. The declarant shall give the tenant at least two days' notice of an intent to enter the unit and may enter only at reasonable times.

(b) A declarant or other landlord shall not undertake rehabilitation, repair, or improvement of a rental unit even if a removal permit has been granted by the board, while the unit is occupied by a tenant, nor permit or create any unreasonable disruption of the common areas of a housing accommodation. "Unreasonable disruption" shall include, but is not limited to restricting access to common areas or units, interference with the quiet use and enjoyment of the premises, abuse of the right of access to units or harassment of tenants.

Sec. 7-72. Interruption of essential services

Any tenant who experiences interruption or discontinuance of essential services in his or her dwelling unit or in the common area of his or her housing accommodation, may notify the condominium review and rental unit removal board and the building and health departments of the city of such conduct. The building and health departments shall, upon notification by the tenant and verification that such conduct does exist, order appropriate corrective action.

Sec. 7-73. Cancellation of conversion

If a declarant, after receiving removal permits and sending notice of intent to convert to the tenants as required by section 7-67(a), abandons the condominium conversion plan, neither the declarant or any subsequent owner of the property may send another such notice to any of these tenants for a period of 18 months. The declarant shall file with the board a statement of the abandonment of the condominium conversion plan, and the above-referenced eighteen-month period shall begin to run upon the date of such filing.

V. Applicable Zoning Board of Appeals Decision and Staff Report Sections for Consideration:

Relevant sections excerpted from ZBA Staff Report SECTION II. FINDINGS FOR SPECIAL PERMIT with SITE PLAN REVIEW (SZO §6.5.D.1, 7.13.E, 6.5.D.2, & 9.17.2.A) include:

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Below is an explanation of how the project meets the zoning requirements:

Affordable Housing- Projects in the TOD-100 district are subject to a 15% inclusionary housing requirement. For the proposed project, this translates into the creation of 15 permanently affordable units at a location where none exist today. The 15 affordable units will be made available to households in accordance with the City's inclusionary housing ordinance.

Arts Related Use - SZO §6.5.F requires 5% of gross square feet to be arts related. This is satisfied with the creation of 5 artist live work units, the arts amenity space that will be programmed by the residents, and the gallery/media room totaling roughly 7,000 square feet or 5.7% of the gross area.

Pages 10 and 11-

All new development must undergo design review under Section 5.6 of this Ordinance, with findings giving consideration to the Design Guidelines of Section 6.5.H

13. Individual Artist Live/Work Spaces should be designed as closely as possible in accordance with the "Design Guidelines for Artist Housing" produced by the Somerville Arts Council.

17. Usable Open Space should be located to support public gathering. To the extent possible, usable open space should be designed to appear as an extension of existing public space, through consistency in design and materials. The provision of an interconnected series of open space to support pedestrian movement is encouraged.

The usable open space is designed to welcome the public but also allow residents to gather and relax.

18. Installation of public art is encouraged in order to add visual interest and distinguishing features to landscaped or other public areas. There will be space for a public art area in the park at the front of the property. The exact location is to be determined.

IV. Staff Recommendation

Points staff recommend for the Board's consideration include the following general considerations:

- 1) That the Board requests any additional information it believes it may need in order to come to a fully informed decision, given that this is an unprecedented circumstance.
- 2) That the Board review the specific considerations outlined by section 7-66(d) of the Somerville Condominium Conversion Ordinance(SCCO) and asks any questions it may have that pertain to these areas of consideration, which include the following three considerations:
 - a. The benefits to the citizens of the city of issuing the permit
 - b. The hardships imposed on the tenants residing in the unit proposed to be removed, including any mitigating provisions made by the applicant
 - c. Any aggravation of the shortage of rental housing accommodations in the city, especially of units suitable for families of low and moderate income, for elderly, for handicapped, or for people on fixed incomes, which may result from the proposed removals
- 3) Under section 7-71(b) of the SCCO, the declarant shall not "permit or create any unreasonable disruption of the common areas of a housing accommodation. 'Unreasonable disruption' shall include, but is not limited to restricting access to common areas or units, interference with the quiet use and enjoyment of the premises, abuse of the right of access to units or harassment of tenants." The Board should inquire into any rehab plans, including rehab of the common space, and whether any proposed plans may violate SCCO 7-71(b). The Board can ask the applicant for their position on this.
- 4) The Board may condition removal permits becoming effective until the expiration of notice period and pay particular attention to tenanted units to determine if households are elderly, disabled or low-moderate income. This is recommended as well if/when any affordable Inclusionary units come before the Board, with the understanding that if the tenant, Berkeley, the City and SCC come to a mutual agreement prior to the expiration of the two year notice period required, that they can come back before the Board to seek a modification to any removal permit conditions.
- 5) That the Board Chair begins the CRB meeting with a brief announcement acknowledging the Millbrook application and informing those in attendance that there are nine applications to be presented to the Board before the Millbrook application is heard.
- 6) That the Board maintains clearly designated periods of time for each part of the meeting in order to ensure that there is order to the meeting and that everyone involved has the appropriate opportunity to speak. In addition, it is important that the Board have the opportunity to ask any questions it may have during the business section of the meeting, following public comment.
- 7) That the Board consider allotting a specific amount of time for each public comment if it appears that there will be a high volume of public comments. City staff requests that the Board direct any person who wishes to make a public comment to first step to the designated table/podium and announce their name and relation to the application e.g. tenant, advocate etc. in order for staff to effectively document each comment made.
- 8) That the Board considers all public comments made, and take time to review those comments in the context of the tenant rights outlined by the SCCO in order to ensure that tenant rights are protected throughout this process. In addition, the Board can ask for additional information or evidence as necessary in order to verify information provided. This process may include the Board requesting that City counselors be consulted as well.
- 9) That following the public comment period, but prior to any potential voting, the Board suggest a motion to review this Staff Report and highlight specific details pertinent to the application, such as the number of units under review at this meeting, the number of units total, the number of affordable units, the Zoning requirement of 5% square footage to be designated specifically for artist space, etc.

The Board reserves the right to have staff supplement or modify this report based upon any new evidence presented to the Board.

DRAFT