



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
**JOSEPH A. CURTATONE**  
**MAYOR**

*PLANNING DIVISION*

**PLANNING BOARD**

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ELIZABETH MORONEY  
MICHAEL A. CAPUANO, ESQ.  
JOSEPH FAVALORO  
JAMES KIRYLO

**Case #: PB #2009-17-R1-05/12**  
**Site: 1 Benton Road**  
**Date of Decision: May 17, 2012**  
**Decision: Approved with Conditions**  
**Date Filed with City Clerk: May 22, 2012**

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**PLANNING BOARD DECISION**

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**Site:** 1 Benton Road

**Applicant Name:** MLM Realty Trust  
**Applicant Address:** none listed  
**Property Owner Name:** MLM Realty Trust  
**Property Owner Address:** none listed  
**Agent Name:** Richard G. Di Girolamo  
**Agent Address:** 424 Broadway, Somerville, MA 02145  
**Alderman:** Thomas Taylor

Description: Per the order of Land Court of the Commonwealth of Massachusetts, on a decision dated April 18, 2012 (Land Court Case 10 MISC 440141 and 11 MISC 446982), the Planning Board shall hold a hearing on the 2009 case submitted by applicant/owner, MLM Realty Trust. The applicant/owner is seeking Site Plan Approval under SZO §5.4 and §8.8 in order to subdivide an existing land parcel into two separate parcels of 12,296± sf and 9,622± sf. The Land Court (Ct.) has annulled the original decision on this case and remanded it to the Planning Board to determine “what reasonable conditions, if any, may be imposed on Plaintiff’s plan incident to site plan review.”<sup>1</sup>

Zoning District/Ward: RB / Ward 3  
Zoning Approval Sought: Site Plan Approval  
Date of Application: Original application filed December 29, 2009

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<sup>1</sup> The Court stated that “Application of the SZO provisions violate the uniformity provision of section 4 of the Zoning Act because they were invoked in the form of a denial, which is not an option for site plan review except in rare circumstances which are not presented in this case. Thus, this Court finds that the decisions of the Planning and Zoning Boards must be annulled.”



**CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143**  
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Complete Application: March 19, 2010  
Initial Planning Board Decision: August 24, 2010  
ZBA Appeal Decision: March 2011  
Remand from Land Court: April 18, 2012

Case #PB 2009-17-r1-05/12, a remanded case from the Land Court based upon the denial of Case# PB 2009-17 was opened before the Planning Board at Somerville City Hall on May 17, 2012. Notice of the meeting was given to persons affected and was published and posted. After a meeting on May 17, 2012 the Planning Board took a vote.

## I. BACKGROUND

1. Subject Property: The subject property is a 21,918 sf parcel on the corner of Benton Road and Summer Street. The property is located in the RB zone.
2. Proposal: The proposal is to subdivide the lot into two parcels of 12,296 sf with the existing structure (Lot 1) and a new vacant 9,622 sf lot (Lot 2). The newly created lot would be large enough to allow a by-right three-family development. The proposed lot is a complying, buildable lot in the RB zone. The proposed residential use of the lot (3 residential units) is a use by right in the RB zone. The single additional proposed lot (Lot 2) complies with the dimensional requirements of the RB zone. Required RB lot size is 7,500 s.f. Lot 2 has 9,622 s.f. Lot 2 is a buildable, complying lot that will host three (3) new residential units, a use by right in the RB zone.
3. Nature of Application: In order to subdivide the lot, the Applicant requires Site Plan Approval under SZO §5.4 and §8.8. A subdivision that only creates one new lot is classified as a minor project under SZO §5.4.5 and the rules and regulations pertaining to site plan approval, and administrative approval of the subdivision can be granted; however, since three members of the Planning Board requested review of this proposal, it has gone before the Planning Board for review.
4. Surrounding Neighborhood: To the west of Lot 2 is a 4-unit property (18 Westwood Road) and a 2-unit property (16 Westwood Road). A large apartment building is at the rear (north) of the property, having 29 residential units (163 Summer Street) and then 68 residential units (157 Summer Street). Three (3) residential units (1 Benton Road) and Summer Street are to the east, and Benton Road to the south.
5. Impacts of Proposal: The purpose of the subdivision is to create a new lot on which a three-family dwelling, a use-by-right, will be constructed.
6. Instructions of the Court: After a denial by the Planning Board in 2010, upheld by the ZBA in 2011, the Land Court reviewed the case in a summary judgment hearing in August 2011. The Land Court, finding a violation of uniformity (predictability and equal treatment) ruled in April 2012 to remand the case to the Planning Board “for its determination forthwith of what reasonable conditions, if any, may be imposed on Plaintiff’s Plan incident to site plan approval.”

## II. FINDINGS ON REMAND

While the remand from the Court does not require the Board to make findings under 5.4.6, SZO, the findings inform the Board<sup>2</sup>.

1. *The development complies with all standards set forth for the overlay district in which it is located.*

<sup>2</sup> “Applicant” or “Plaintiff” means includes the applicant and its successors or assigns.

The subject property is not located within an overlay district. See Ct. Finding No. 3. The underlying or base zoning district in which the property is located is Residence B (RB). The purpose of the RB zoning district is “[t]o establish and preserve medium density neighborhoods of one-, two- and three- family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts.”

2. *“The development shall be integrated into the existing terrain and surrounding landscape. Building sites shall, to the extent feasible:*

*a. minimize use of wetlands, steep slopes, floodplains, hilltops; b. preserve natural or historic features; c. maximize open space retention; d. preserve scenic views from publicly accessible locations; e. minimize tree, vegetation and soil removal, blasting and grade changes; f. screen objectionable features from neighboring properties and roadways.*

The landscape plan indicates that three deciduous trees would be planted in the right side yard of the new structure and two deciduous trees would be planted in the front yard.

As noted in the staff report, securing a special permit to allow driveway access from Summer Street should the applicant, in its discretion, so decide may further benefit the site.

The subdivision and development meet these findings.

3. *“The development shall be served with adequate water supply and sewage disposal systems. For structures to be served by sewage disposal systems, the applicant shall document the status of Department of Environmental Management (DEM) and/or other sewage permits.”*

The Applicant or future developer of the site will have to work with the Department of Public Works and the DEM to ensure that adequate water supply and sewage disposal systems are satisfactory to these departments. The subdivision and development meet these findings.

4. *“The development shall incorporate measures that are adequate to prevent pollution of surface and groundwater, to minimize erosion and sedimentation, and to prevent changes in groundwater levels, increased rates of runoff and minimize potential for flooding. Drainage shall be designed so that groundwater recharge is maximized, and at the project boundaries the runoff shall not be increased in amount or velocity.”*

Any future development on the lot will conform to the requirements of the City’s Engineering Department for stormwater management, and proposed conditions. The subdivision and development meet these findings.

5. *“To the extent feasible, development shall minimize demands placed on municipal services and infrastructure.”*

The subdivision should not place any unforeseen demand on municipal services and infrastructure. The subdivision and development meet this finding.

6. *“The development shall provide for safe vehicular and pedestrian movement within the site and to adjacent ways, including sidewalks, crosswalks and the like.”*

The subdivision and development meet these findings.

7. *“Building design and landscaping shall be in harmony with the prevailing character and scale of buildings in the neighborhood through the use of appropriate building materials, screening, and other architectural techniques.”*

To the extent feasible, the subdivision of land and development meet this finding.

The architectural elevations of the residential building that were submitted by the applicant incorporate elements of buildings in the area.

8. *“Electric, telephone, cable TV and other such utilities shall be underground except where this cannot be accomplished because it is physically or environmentally infeasible, in which case such utilities shall be screened.”*

Future development will be subject to all applicable requirements. The subdivision and development meet these findings.

9. *“Exposed storage areas, machinery, service areas, truck loading areas, utility buildings and structures and other unsightly uses shall be set back and/or screened to protect neighbors from objectionable features.”*

The proposed use of the lot is a three-unit residential structure, a use by right, that would not likely include exposed storage, machinery, service areas, truck loading areas, utility buildings and structures; however, if these items were present onsite, they would be screened. The subdivision and development meet this finding.

10. *“To the extent feasible, proposed projects shall be designed in such a way as to minimize shadows on neighboring properties.”*

The subdivision and development meet this finding.

11. *“There shall be no unreasonable glare onto public roads and other public ways into the night sky, or onto neighboring properties from lighting or reflection.”*

The subdivision and development meet this finding.

It is unlikely that a new three-unit building would cause unreasonable glare onto the public roads, ways or onto neighboring properties from lighting or reflection. The lighting plan (on the landscape plan) indicates that there would be two lights on the front of the house by the front door, a light on the right side of the house that would be on a motion sensor, and two lights in the back of the house above the garage, and such other reasonable lighting.

12. *“The site plan shall comply with all zoning requirements.”*

No zoning violations would be created by the proposed subdivision. The proposed site plan conforms to the minimum lot size and minimum frontage requirements set forth in Article 8 of the Ordinance. After subdivision and development, the existing structure continues to conform to other dimensional requirements such as minimum lot area per dwelling unit, floor area ratio, yard setbacks, etc. The Applicants have shown that a proposed development on the new lot also conforms to the dimensional and parking requirements. Upon subdivision and development, the applicant will need to relocate the two parking spaces that are using the new lot for access to parking for the old lot, or, in the alternative, file for Special Permit under section 9.13.c and 9.9.a of the SZO. The conditions reflect this situation. Therefore, this subdivision and development meet this finding.

### III. DECISION

#### Site Plan Approval under §8.8

Present and sitting were Acting Chair Elizabeth Moroney, and Members Michael A. Capuano, James Kirylo, and Joseph Favaloro. Upon making the above findings, Elizabeth Moroney made a motion to approve the requested Site Plan with conditions. James Kirylo seconded the motion. Wherefore the Planning Board voted **4-0** to **APPROVE** the application for Site Plan Approval **WITH THE FOLLOWING CONDITIONS.**

#	Condition	Timeframe for Compliance	Verified (initial)	Notes												
1	<p>Approval is for a subdivision of parcel 43-G-14 into two parcels of 12,296± sf and 9,622 sf±. This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table border="1" data-bbox="248 478 886 1041"> <thead> <tr> <th data-bbox="248 478 565 516">Date (Stamp Date)</th> <th data-bbox="565 478 886 516">Submission</th> </tr> </thead> <tbody> <tr> <td data-bbox="248 516 565 615">Mar 19, 2010 (completion date)</td> <td data-bbox="565 516 886 615">Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td data-bbox="248 615 565 741">Dec 14, 2009 with revisions on Feb 18, 2010 prepared by Design Consultants, Inc.</td> <td data-bbox="565 615 886 741">subdivision plan</td> </tr> <tr> <td data-bbox="248 741 565 840">Mar 4, 2010 with revision on Mar 30, 2010 (Apr 12, 2010)</td> <td data-bbox="565 741 886 840">landscape plan (site plan)</td> </tr> <tr> <td data-bbox="248 840 565 938">Mar 4, 2010 with revisions on March 30, 2010 (Mar 31, 2010), all, dated.</td> <td data-bbox="565 840 886 938">landscape plan (showing vegetation and lighting)</td> </tr> <tr> <td data-bbox="248 938 565 1041">Mar 22, 2010 (Apr 12, 2010)</td> <td data-bbox="565 938 886 1041">front, right side, and rear elevations</td> </tr> </tbody> </table> <p>Modification to the plan(s) which are not minor can be allowed by ISD.</p>	Date (Stamp Date)	Submission	Mar 19, 2010 (completion date)	Initial application submitted to the City Clerk's Office	Dec 14, 2009 with revisions on Feb 18, 2010 prepared by Design Consultants, Inc.	subdivision plan	Mar 4, 2010 with revision on Mar 30, 2010 (Apr 12, 2010)	landscape plan (site plan)	Mar 4, 2010 with revisions on March 30, 2010 (Mar 31, 2010), all, dated.	landscape plan (showing vegetation and lighting)	Mar 22, 2010 (Apr 12, 2010)	front, right side, and rear elevations	Submittal of Subdivision Plan	ISD	
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2	<p>This subdivision concerns the division of land for the purpose of developing the structure submitted with the subdivision plans, subject to the conditions included herein. The by-right residential structure is a three-unit structure that appears to meet all zoning requirements to be constructed in the RB zoning district. Such a plan shall be modified as follows, and the modified plan shall be provided to ISD for a building permit. The modified plan should adjust, incorporate or note each of the following as appropriate, and the structure shall be built to the plans. The updates shall be as follows:</p> <ol style="list-style-type: none"> <li>1. Windows:                     <ul style="list-style-type: none"> <li>o All windows, excluding the basement windows, shall be double hung with 6 over 1 sashes.</li> <li>o Each individual, double hung window shall be of the same proportion.</li> <li>o Window casings should be thick enough to overlap and protect the end grain of siding boards, but shall always be a minimum of 3 inches.</li> </ul> </li> </ol> <p>Windows shall use true or simulated divided lights</p> <p>Dormers:</p> <ul style="list-style-type: none"> <li>o Paneling for the dormer sidewalls shall be set to match the slope of the roof the dormer extrudes from.</li> <li>o The slope of any dormer roof shall be less than 45 degrees.</li> </ul>	Building Permit	ISD													

	<ul style="list-style-type: none"> <li>○ .</li> <li>2. Front Entry:             <ul style="list-style-type: none"> <li>○ The front doorway shall include transom windows as well as sidelights.</li> <li>○ Sidelights shall not extend below the lock rail of the front door, with panels below.</li> <li>○ Divided transom lights, if present, shall be of the same width as the sidelights; height may be reduced.</li> </ul> </li> <li>3. Columns:             <ul style="list-style-type: none"> <li>○ The base, shaft, and capital of each porch column shall be properly proportioned by creating columns with flat faces; or using proportions of one of the classical Five Orders of Architecture;</li> <li>○ The base of any column shall not extend over the foundation wall of the porch.</li> <li>○ The neck of any column shall be aligned with the face of the architrave above.</li> <li>○ The handrails and bottom rails of the porch railing shall attach directly to the porch columns. (see porch at 2 Benton Road for an example of this)</li> </ul> </li> <li>4. Corners:             <ul style="list-style-type: none"> <li>○ Corner boards, where shown on the plan, shall be installed and shall be a minimum of six inches in width</li> </ul> </li> </ul>			
3	<p>The structure shall be placed on the lot in accordance with applicable setbacks for the RB zone, except that the applicant is encouraged to use the exemptions allowed under the SZO to place, at applicant's discretion, the front setback at a similar distance to other Benton Road houses.</p>	Building Permit	ISD	
4	<p>Adequate areas for storage of trash and recycling shall occur inside of the building, and no dumpster shall be provided.</p>	Building Permit	ISD	
5	<p>Runoff from this site to adjacent lots and/or the city streets shall not exceed existing runoff prior to construction.</p>	Building Permit	ISD / Engineering	
6	<p>A solid fence can be built, at applicant's option, along the rear of any Westwood Road lot and separating their property from this property.</p>	Building Permit	ISD	
7	<p>The applicant shall not locate a driveway between the structure and the lots on Westwood Road. The applicant shall locate the driveway along the right side of the house, furthest from the Westwood Road lot line, and shall ensure that the house is placed so that adequate width exists for running the driveway along this side. As an alternative, should the applicant choose to pursue such alternative, at the applicant's option, the applicant may seek any applicable ZBA special permit per section 9.13.c and 9.9a to access the parking in the rear of lot 2 from the driveway along Summer Street over lot</p>	Building Permit	ISD	

	<p>1, and may either close the Benton Road curbcut on lot 2 and relocate the two spaces using this curbcut that are currently on lot 1, or retain it to access the two parking spaces currently on lot 1. The Board and its staff will support such a special permit application should the applicant opt to pursue it that locates all traffic off Summer Street. Should this potential option not be feasible, as determined by applicant, the Board would support a special permit, should the applicant in its discretion decide to pursue it, that locates traffic for lot 2 off Summer Street and retains the Benton Road curbcut only for access to the current two spaces on lot 1.</p>			
8	<p>To the extent feasible, the applicant will seek to maintain existing healthy trees.</p>	<p>Prior to tree removal</p>	<p>ISD / OSPCD T&amp;I</p>	

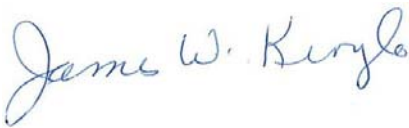
Attest, by the Planning Board:



Elizabeth Moroney



Joseph Favaloro



James Kirylo



Michael A. Capuano, Esq.

Copies of this decision are filed in the Somerville City Clerk's office.  
Copies of all plans referred to in this decision and a detailed record of the  
SPGA proceedings are filed in the Somerville Planning Dept.

**CLERK'S CERTIFICATE**

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 3.2.10.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on \_\_\_\_\_ in the Office of the City Clerk, and twenty days have elapsed, and

FOR VARIANCE(S) WITHIN

\_\_\_\_\_ there have been no appeals filed in the Office of the City Clerk, or

\_\_\_\_\_ any appeals that were filed have been finally dismissed or denied.

FOR SPECIAL PERMIT(S) WITHIN

\_\_\_\_\_ there have been no appeals filed in the Office of the City Clerk, or

\_\_\_\_\_ there has been an appeal filed.

Signed \_\_\_\_\_ City Clerk Date \_\_\_\_\_