

Southern Middlesex - 20/20 Perfect Vision i2 Document Detail Report

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Doc#	Document Type	Town	Book/Page	File Date	Consideration
166902	DECISION		43160/350	06/28/2004	
Property-Street Address and/or Description					
23 GEORGE					
Grantors					
READING TOWN OF, LYNCH JAMES T, L A B REALTY TRUST					
Grantees					
References-Book/Pg Description Recorded Year					
Registered Land Certificate(s)-Cert# Book/Pg					

D9

Town of Reading

16 Lowell Street
 Reading, MA 01867-2683
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April 20, 2004

2004 APR 20 P 6:26

**MODIFICATION TO
 PERMIT: CASE #00-10**

ZONING BOARD OF APPEALS**Comprehensive Permit - Modification**

Address: 23 George Street (Assessors Map 3, Lots 2, 32)

Applicant: James T. Lynch, Trustee
 L.A.B. Realty Trust
 Deed Bk 2911 Pg 591

A TRUE COPY ATTEST:

TOWN CLERK

PROCEDURE

5, 11, 04
 I hereby certify that
 twenty days have elapsed
 since this decision was
 filed in this office
 and no appeal from the
 decision has been filed.

Town Clerk

1. On or about April 6, 2000, the Reading Zoning Board of Appeals ("ZBA") approved the comprehensive permit application of James T. Lynch, trustee of L.A.B. Realty Trust ("Applicant") made pursuant to Chapter 40B for the property located at 23 George Street, as amended (the "Project"), subject to certain findings and conditions, all of which are contained in a Comprehensive Permit and Decision filed with the Town Clerk on May 16, 2000 (the "Permit").
2. As settlement to the litigation resulting from the appeal of the comprehensive permit by abutters, the Applicant has applied to the ZBA for approval of a Permit modification revising the access so as to: (a) change the access from George St. to Curtis St.; (b) add an access easement from Curtis Street through Map 3, Lot 31 to the approved site so as to allow 2-way access; (c) transfer ownership of a portion of land with frontage on George St. which was formerly part of the originally approved site to abutting litigants.
3. In conjunction with the Applicant's request for modification the ZBA received the following items:
 - a. Revised Site Layout Plan prepared by P.J.F. and Associates, dated June 12, 2003, as further revised: July 25, 2003; August 13, 2003; August 27, 2003; September 23, 2003; November 28, 2003; December 1, 2003; January 21, 2004; February 24, 2004; March 10, 2004; March 23, 2004; March 29, 2004 and April 8, 2004.
 - b. Memorandum from Town Counsel John Gannon to ZBA, dated October 2, 2003.
 - c. Preliminary Drainage Evaluation prepared by Hayes and Associates, dated November 28, 2003.
 - d. Grading & Drainage Site Plan prepared by P.J.F. and Associates, dated November 28, 2003.
 - e. Memorandum from Paul Finocchio, PJF Associates, to Attorney Steven Cicatelli, dated December 11, 2003.
 - f. Letter from Curtis St. abutters to Selectmen, dated December 13, 2003.



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- g. Memorandum from Attorney Steven Cicutelli, dated July 30, 2003, dated August 12, 2003, August 13, 2003, August 29, 2003, September 25, 2003, October 17, 2003, October 23, 2003, November 6, 2003, December 3, 2003, December 10, 2003, December 11, 2003, December 15, 2003, January 9, 2004, January 21, 2004, January 28, 2004, February 24, 2004.
 - h. Town staff memorandum from: DRT Minutes, dated August 19, 2003; Fire Chief Greg Burns, dated July 2, 2003, December 9, 2003; Town Engineer Joe Delaney, dated September 4, October 2, 2003, December 6, 2003; Town Planner Chris Reilly, dated October 2, 2003, October 16, 2003, October 21, 2003.
 - i. Petition from Curtis Street abutters to ZBA, dated January 18, 2004.
 - j. Memorandum from Attorney John Lamond to ZBA, dated January 22, 2004.
 - k. Memorandum from Chris Reilly to BOS, dated January 27, 2004.
 - l. Selectmen Minutes, Dated February 10, 2004.
 - m. Exhibit 11: Revised Table of Zoning Relief from Applicant.
 - n. Letter from Robin Hamilton, dated March 3, 2004.
 - o. Memorandum from Attorney John Lamond to Attorney John Gannon, dated March 8, 2004.
4. Pursuant to the Town of Reading Zoning Board of Appeals Comprehensive Permit Rules and 760 CMR 31.03, on June 5, 2003 on a motion duly made and seconded, ZBA members Edmund Balboni, Susan Miller, Robert Redfern and Paul Dustin voted 4-0 in favor of a determination of substantial modification on the request by the Applicant. The ZBA held a duly noticed and advertised public hearing on July 10, 2003, continued to: August 7, 2003; September 4, 2003; October 2, 2003; November 6, 2003; December 11, 2003; January 22, 2004; February 19, 2004; and closing on March 11, 2004, to consider the requested modification. This Decision received its final review before the public on April 8, 2004, and was signed and filed with the Town Clerk on April 20, 2004.
 5. Upon review of testimony, Town staff comments and requested revisions to the site plans, the ZBA determined that the proposed two way access from Curtis Street did not constitute adequate vehicular access for ingress and egress to the development, and did not satisfy abutters' safety concerns.
 6. The ZBA requested revisions to the proposed plans that would allow one way access from Curtis Street ("ingress") and one way access to George Street ("egress"), subject to approval by the Fire Chief and Town Engineer.
 7. The ZBA scheduled working sessions on March 22, 2004, March 29, 2004 and April 5, 2004 with the abutters, litigants, Applicant, ZBA Chairman and Town staff to attempt to reach agreement on concerns regarding access and mitigation of site and off-site related impacts. The ZBA Chairman reported the results of these working sessions to the ZBA on April 8, 2004.

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8. The working sessions and negotiation between the litigants' and Applicant's counsels resulted in a settlement of the appeal and approval of revised plans, subject to Town Counsel review of the draft decision and the deeding of the triangular parcel at the end of the egress necessary for a modification of the proposed egress to allow for increased separation from the Capobiancos' driveway.
9. On April 8, 2004, ZBA members John Jarema, Robert Redfern and Susan Miller approved this Decision, subject to Town Counsel review, by a duly made motion and vote of 3-0.

FINDINGS

The Board makes the following findings:

A. Determination of Substantial Change

Based upon its review of the Revised Site Layout Plans, dated June 12, 2003, and the comments received on the plans from Town staff and committees, pursuant to the Reading ZBA Comprehensive Permit Rules [§7.01], the ZBA determined that the changes requested are substantial and that the Permit shall be modified in the following respects as indicated below.

B. Health, Safety and Planning Issues

Based upon its review of the Revised Site Plans, as submitted above, and the comments received on the Plans from Town staff and committees, the ZBA hereby makes the following findings:

1. The original proposed settlement having been modified as the result of requests by the ZBA, the final revised plan dated April 8, 2004 will result in the settlement of the Appeal by the litigants, as agreed by the Applicant and litigants and attested by their counsels in the ZBA meeting on April 8, 2004. Such plan and this Decision shall be fully executed by all parties to the litigation and filed as an Agreement for Judgment in the litigation. If such plan and Decision are not filed as an Agreement for Judgment in the litigation, the plan lastly revised March 10, 2003 shall apply and shall be deemed to be the approved plan for this comprehensive permit application amendment. Two parcels will be created from the originally approved site, which will be deeded to abutters as shown on the approved plans.
2. The modified plans as approved by the ZBA will address abutter concerns on George Street and Curtis Street regarding the impact by traffic to and from the site.
3. The modified plans will provide appropriate and safe access, in accordance with Town standards. The revised site will have ingress from Curtis Street and egress to George Street. Thus, with on-site and off-site-related improvements, the

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- infrastructure can handle the added capacity needs of additional trips generated from the project; care shall be taken to provide safe access in and out of the site.
4. The modified plan as approved by the ZBA will result in the relocation of an existing house on the land containing the proposed ingress (Assessors Map 3, Lot 31). The relocated house shall conform to Reading's Zoning By-Laws.
 5. As determined by the Town Engineer, adequate soils exist to allow the revised grading and drainage plans to meet DEP Stormwater Management Best Practices.
 6. Protection of the Curtis Street and George Street neighborhood from visual and infrastructure affects from this density needs to be provided.
 7. If required the Applicant will need approval by the Selectmen, as Road Commissioners, for the any proposed changes to Curtis Street and George Street required by the Project.

MODIFICATION TO PERMIT

This modification to the Permit does not alter any Conditions imposed by the ZBA in its Comprehensive Permit and Decision dated April 6, 2000, except as to the following Conditions set forth below. If there is a conflict between the conditions contained herein and those contained in the April 6, 2000 Decision, this "Modification to Permit" shall control.

CONDITIONS

1. The Project shall have a one way, 18' wide ingress from Curtis Street across an access easement on Map 3, Lot 31, to one way, 18' egress to George Street, except where indicated on the approved plans lastly revised April 8, 2004. Map 3, Lot 3 (the "Triangle") shall be deeded over to the Applicant by the litigants per agreement as attested to by both parties before the ZBA on April 8, 2004, upon which this Decision is granted; if such transfer is not made in accordance with the agreement the plan which shall control the development shall revert to the lastly revised plan dated March 10, 2004.
2. The building units shall be constructed in substantial conformance with the plans submitted as part of the Comprehensive Permit approval dated April 6, 2000. As originally approved, the Project shall be limited to 10 condominium units, 3 of which shall be affordable. The site shall be constructed in substantial conformance with the plans of record listed above, specifically the plans entitled "Site Plan of Land of 23 George Street in Reading, MA, prepared by P.J.F Associates, lastly revised April 8, 2004. If, after the issuance of the modified comprehensive permit the Applicant seeks to change its proposal as approved by the ZBA or transfer ownership, the Applicant shall promptly notify the ZBA in writing, describing such change. Within 20 days the ZBA shall determine and notify the Applicant whether it deems the change substantial or insubstantial (see 760 CMR 31.03) If the ZBA determines the change is

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insubstantial, the comprehensive permit shall be deemed to incorporate the change. If the ZBA determines the change is substantial, it shall hold a public hearing within 30 days of its determination and issue a decision within 40 days of the close of the hearing. Only the changes in the proposal or aspects of the proposal affected thereby shall be at issue in the hearing.

Review and Final Plans

3. Prior to the commencement of any construction on the site, the Applicant shall provide through the Town Planner for Town review and approval a complete set of construction documents for the site to confirm compliance with the Conditions of this approval. If requested, the Applicant shall provide a reasonable number of additional copies of documents for review by Town staff. At a minimum, these documents shall include:
 - a. Final site layout.
 - b. Final site grading and drainage design: The applicant shall submit a final drainage design to the Town Engineer, which plan shall comply with the DEP Stormwater Management Policy and shall be subject to review and approval by the Town Engineer. The final plans shall include complete profiles, elevations and detail drawings for the drainage design. The egress to George Street shall be graded to maximize site lines, subject to review and approval by the Town Engineer.
 - c. Final landscaping plan: Prior to the issuance of any Certificate of Occupancy, the Applicant shall establish subject to the approval of the Town Planner the location, species, design and proposed schedule for the installation of screening, landscaping, and/or fencing related to each portion of the site for which the modification is being requested, so as to properly screen or buffer that section from existing, abutting residential properties. The Applicant shall engage an arborist and use best practices to protect existing trees on site, and to minimize the impact of construction on such trees and the trees of abutters. In addition, prior to commencement of construction on the Site, the Applicant shall meet with the Town Tree Warden and abutters in order to identify those trees on the abutters' properties that are immediately adjacent to the Property and the pre-construction condition of each such tree. Following this meeting, the Applicant in coordination with the Town Tree Warden shall identify best practices to minimize the impact of construction to trees located on the abutters' properties. The Applicant shall follow any such practices identified, with the exception of site grading, roadways and buildings as approved in the approved plan.
 - d. A utility plan showing all existing and proposed sewer, water, drainage, gas, electric, telephone, and cable lines (as applicable): This plan shall include all rims and inverts of catch basins and manholes, all proposed pipe sizes and materials, pipe slopes, hydrant locations, pole locations, street lighting locations and any other pertinent utility information.

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- e. Detail sheet(s) showing all standard construction details, with proper numbering for repetitive structures, including but not limited to: manholes, pavement installation, subdrain system, infiltration field installation, drywells, and any other detail necessary for the proper installation of site improvements.
- f. Site Lighting Plan: site lighting as proposed on the Site Plan as noted above shall be designed to reduce both onsite and offsite glare, and shall be decorative. Lighting shall be baffled or shielded so as not to glare into dwellings that abut the site.
4. Prior to the issuance of a building permit, the Applicant shall give the Reading Police Department written permission to ticket vehicles that park in the ingress and egress. The Applicant, at its sole cost, shall install NO PARKING signs as indicated on the approved plan.
 5. Prior to the issuance of the first Certificate of Occupancy, the ingress shall have a ONE WAY sign installed at the end of the Curtis Street right of way and a speed table installed before the easement to Town land (Map 3, Parcel 33), and the egress shall have a speed table and STOP sign installed entirely before the Capobianco's driveway, subject to the approval of the Town Engineer. A 10 MPH speed limit shall be posted on the ingress and egress, as indicated on the December 1, 2003 "Traffic and Signage Plan" referenced above. The Applicant shall provide a driveway on the Capobiancos property, addressed at 21 George Street (Map 3, Lot 26) with additional access to the egress, subject to the satisfaction of the Capobiancos and approval by the Town Engineer. The ingress shall allow public access to the Town-owned parcel (Map 3, Lot 33).
 6. The existing fence between Map 4, Lots 34 and 35 shall be removed by the Applicant, who shall replace it with fencing or landscaping to the satisfaction of the Hamiltons and Town Planner. The Applicant shall install a new, 6' white, vinyl fence on the lot boundary of properties addressed at Map 3, Lot 30; Map 3, Lot 28; Map 3, Lot 27 and Map 3, Lot 26, and elsewhere as agreed in writing by the Applicant and abutters.
 7. Vertical granite or alternate curbing shall be installed on both sides of the ingress except on that portion of the ingress providing snow storage and adequate width for the easement as indicated on the approved plan, and on both sides of the length of the egress except on that portion required for the Capobiancos driveway, subject to the approval of the Town Engineer where indicated.
 8. All utilities shall be installed underground. The water main serving the site shall be looped from Curtis Street to George Street.
 9. Prior to the issuance of the first Certificate of Occupancy, at the Applicant's sole cost Curtis Street shall be paved with a 2" overlay to George Street and the curbing in front of 102 Curtis Street shall be reset, subject to the approval of the Town Engineer. The

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Applicant shall modify the driveway at 102 Curtis Street to the satisfaction of the Hamiltons and the Town Engineer; any street tree removal required for the modification of said driveway shall be subject to the approval of the Tree Warden.

10. The Applicant shall adhere to the hours of construction in the requirements of the Reading Rules and Regulations for Subdivision. These hours are:
Construction activity, deliveries and unnecessary noise by workers shall not take place off or on the site or in any building contained therein except during the following hours:
Mondays through Fridays inclusive: 7:00 AM to 8:00 PM,
Saturdays: 9:00 AM to 5:00 PM,
Sundays and Legal Holidays: none;
- In addition, no heavy equipment shall be operated on, or brought to, the site except during the following hours:
Mondays through Fridays inclusive: 7:30 AM to 5:00 PM,
Saturdays: 9:00 AM to 12:00 PM (noon),
Sundays and Legal Holidays: none.
11. Curtis Street and George Street shall be kept clear and passable at all times except as necessary to allow off-site construction as required by this Decision. No equipment or construction-related vehicles for work on-site shall be parked on the street, and no refuse containers, trailers or construction materials of any kind shall be placed or stored upon the street. The Applicant shall ensure that Curtis Street and George Street and other local streets and private ways are kept clear of dirt and debris, which may accumulate as a result of construction activities for the Project.
12. Construction activities shall be conducted in a workmanlike manner at all times. Blowing dust or debris shall be controlled by the Applicant through stabilization, wetting down, and proper storage and disposal methods.
13. The Applicant shall submit a final set of as-built electronic drawings, in a form and format as determined by the Engineering Division, prior to the issuance of a Certificate of Occupancy for the last unit.
14. The ZBA hereby requires, that the following aspects of the modification shall be and shall remain forever private, and that the Town of Reading shall not have, now or ever, any legal responsibility for operation or maintenance of the same:
- All driveways and parking areas
 - Stormwater management facility
 - Snow plowing and removal
 - Landscaping
 - Driveway, parking area and walkway lighting

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15. Before the issuance of the first Certificate of Occupancy in any phase, the Applicant shall provide a performance bond or surety to the Town for construction of incomplete site improvements on that portion of the site on which the Applicant is working or will be disturbing in the current phase, which bond shall be in a form reasonably acceptable to Town Counsel. The bond shall be provided to the Town prior to the first Certificate of Occupancy being issued to the Applicant. The bond shall include the remaining costs to complete the portion of the site on which work is being undertaken plus a ten (10%) percent contingency as calculated by the Town of Reading Engineering Division. If the construction period of that phase of the development lasts more than two (2) years, the bond or surety may be increased to account for inflation, based on recent inflation rates. The calculations reflected as line-items used to establish the amount of the bond or surety shall be attached to the Bond. As used herein, "site improvements" means the drainage system, soil stabilization, landscaping, water and sewer lines, and the driveway improvements to the ingress, egress and throughout the site. The performance bond or surety amounts shall be reduced as the work on a line-item is properly completed, upon recommendation of the Town Engineer and approval by the ZBA.

Affordable Units

16. The work to be completed under this modified permit shall commence within 1 (one) year of the date of filing of this Decision with the Town Clerk's office. If the Project is phased the cumulative total of Certificates of Occupancy issued for affordable units in the Project shall always be at least twenty-five percent (25%) of the total Certificates of Occupancy issued for all units. The previously developed phases must provide adequate utility service, emergency access and vehicular access and parking to service each building in that phase.
17. The Affordable Units shall be restricted as affordable in perpetuity or for as long as allowed by law, whichever is longer, and shall be designated in the Regulatory Agreement and Condominium Documents, shall be mixed among the units and shall be indistinguishable from market rate units as to size, exterior construction, quality, architecture and exterior features.
18. Prior to the issuance of any building permit, the Applicant shall submit the final draft of the Regulatory Agreement to Town Counsel and shall receive approval as to form of such agreement. Town Counsel shall have thirty (30) days to conduct such review and respond to the Applicant with any changes, additions or deletions. Once approved by Town Counsel as to form, the final draft Regulatory Agreement shall be submitted to the ZBA for its approval, which approval shall be issued in writing within forty-five (45) days of submittal. The parties shall thereafter execute the Regulatory Agreement. No building permit shall be issued until approval from the ZBA is issued.

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- 19. The Condominium Documents shall provide that the annual budgets for the site shall include estimated amounts for yearly maintenance of the drainage system and all fencing, which amount shall be kept in a separate account and shall not be used for the maintenance, repair or replacement of any other portion of the common areas of the condominiums. The Condominium Trustees shall certify annually to the Town such provision has been made in the condominium budgets and the amounts so certified.
- 20. The Applicant shall submit a lottery plan for sale of the affordable units to the ZBA for approval prior to the issuance of any Certificate of Occupancy. Under the lottery plan, the lottery agent shall be Citizens Housing and Planning Association (CHAPA), who may engage an independent lottery agent to conduct the lottery for the selection of residents for all Affordable Units in accordance with this comprehensive permit. If CHAPA is unwilling to manage the lottery, the ZBA may appoint another agent. All costs associated with the lottery plan shall be borne by the Applicant.
- 21. Prior to the issuance of the first Certificate of Occupancy for any building, the Applicant shall submit to Town Counsel the final draft of the Monitoring Agreement and Deed Rider for approval as to form. Once approved by Town Counsel as to form, the final draft Monitoring Agreement and Deed Rider shall be submitted to the ZBA for its approval which shall be issued in writing within forty five (45) days of submittal. No Certificate of Occupancy shall be issued until approval from the ZBA is issued.

EXCEPTIONS

The Board grants the following waivers from local by-laws, rules and regulations:
(Attached)

5, 11, 04

Signed:

Robert E. Hooper
John A. ...
Dusan K. Miller

I hereby certify that twenty days have elapsed since this decision was filed in this office and no appeal from the decision has been filed.

Sheryl A. Johnson
Town Clerk

A TRUE COPY ATTEST:
Sheryl A. Johnson
TOWN CLERK

READING ZONING BOARD OF APPEALS

This Modification of the Comprehensive Permit shall be filed in the office of the Town Clerk and recorded in the Middlesex Registry of Deeds.

Any appeals to this decision must be filed within twenty days under MGL Chapter 40B Section 22.

Anna C. ...
Asst. Middlesex S. Register