

Commonwealth of Massachusetts

Town of Milton

Denial of Application for Special Permit and Site Plan Approval

For Planned Unit Development of 131 Eliot Street

Carrick Realty Trust, Applicant

Applicant, Carrick Realty Trust, has filed an application for a special permit and for site plan approval of a planned unit development at 131 Eliot Street, Milton. Pursuant to Section III, Subsection J of Chapter 10 of the General Bylaws known as the Zoning Bylaws, the Planning Board of Milton, duly constituted as special permit granting authority, for the reasons hereafter specified, denied the application by vote on August 23, 2012. The Applicant had insisted that the Board vote on the application notwithstanding advice that there were zoning noncompliances which would preclude approval and notwithstanding offers by the Board to work with Applicant to make the project zoning-compliant.

1. The Proposed Building is Too Big.

The applicable zoning for Central Avenue Planned Unit Development appears in Section III Subsection J of the Zoning Bylaws. Section III.J.4.b (entitled "Floor Area Ratio") provides that "[b]uildings in a Central Avenue planned unit development, exclusive of parking structures and areas used solely for parking shall not have a floor area ratio (FAR) in excess of one and one-half (1.5) times the area of the lot in the business district." In a letter dated July 19, 2012 Warren Daniel, architect for Applicant computed the pertinent floor area of the proposed building to be 58,461 square feet. The business-zoned lot area is 35,524 square feet. Dividing 58,461 by 35,524 results in an FAR (floor area ratio) of 1.646. An FAR of 1.646 exceeds the maximum FAR of 1.5 permitted by the zoning. Hence the FAR of the proposed building exceeds the maximum permitted by the zoning, and the application must be denied.

There is a provision in Section III.J.4.b that “[i]f the Planning Board determines that the area of the lot in the business district is the same as the qualifying lot area and that a development will preserve, if feasible, or replace in-kind, one or more significant natural features on the site and provide significant amenities to the public, the Planning Board may permit a bonus for a higher FAR not to exceed 15% for a higher FAR.” The only significant natural feature on the site at the time of application or thereafter was a 200 year-old black oak tree about 50 feet tall with an average crown spread of 77.5 feet, a circumference of 15 feet and diameter of 58 inches measured 4.5 feet above grade. On March 9, 2011 Applicant removed the tree: Applicant seeks an FAR bonus under the zoning. Applicant has submitted a landscape plan prepared by William Fleming Associates dated July 1, 2010 supplemented by an amendment in June 2012 showing a small public space on the corner of Eliot Street and Central Avenue. By vote on August 23, 2012 the Planning Board denied the bonus on the basis that the Applicant had not proposed an adequate replacement in-kind of the black oak tree and had not proposed adequate public amenities to warrant a bonus. The suggestion was made for applicant to provide a 5,000 square foot public space with improved design and landscaping on the corner of Eliot Street and Central Avenue.

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2. The Proposed Building May Have Too Many Stories. The business-zoned lot on which the building is proposed slopes, rising from an elevation of 23.5 feet at Central Avenue on the East to about 36 feet at the lot line on the West. As a consequence, the first floor would be at street level at Central Avenue and would be largely, if not entirely, underground on the West. When viewed from Central Avenue the proposed building appears to have five stories notwithstanding zoning in Section III.J.4.d which provides that “buildings shall not contain in excess of four (4) stories, not including any basement level...”Applicant takes the position that the first floor is not a “story” but is a “basement” and that therefore the building has only four stories and complies with the zoning.

Section III.J does not define “basement” but the underlying zoning for the business district does. Section V.d of the business district zoning construes a “basement to qualify as such if the finished height of the first story is no more than 4 feet above the “mean finished grade” of the ground contiguous to the building. The Planning Board requested the Applicant to provide a plan showing the “mean finished grade” but Applicant failed to do so notwithstanding specific advice that a determination of whether the first floor was a “basement” depended on such a plan showing “mean finished grade.”

Applicant offered no reason for the failure to provide a plan showing the mean finished grade. Without such a plan and the requisite calculations showing a distance of less than 4 feet from such

mean finished grade to the finished height of the floor above, there was no showing of compliance with the zoning requirement that there be no more than four stories.

3. The Proposed Building May be Too Tall

The proposed building sits within what would be the cellar hole of the building currently on the site (an abandoned ice cream factory). The zoning in Section III.J.4.d provides that “buildings...shall not exceed a height of more than forty five (45) feet above the average elevation of the building footprint prior to construction without fill, as determined by the Planning Board.” The zoning in Section III.J.4.d also requires that the height of the first floor shall be a minimum of eleven (11) feet...” The Planning Board has discretion to allow “protrusions of up to eight feet above the roofline, such as elevator shaft housings or chimneys; so long as the appearance of the building remains architecturally coherent, visually attractive and appropriate to its setting.” Applicant has provided a document entitled “Existing Building Profile” in which Applicant calculated the building to be at average elevation of 29.83 feet. He also has provided a theoretical average elevation of the footprint of the proposed building at 29.5 feet on an assumption that filling of the cellar hole were to have occurred.

Using 29.83 feet as the average elevation of the building footprint prior to construction then the allowable maximum height of the building would be at an elevation of 74.83 feet (29.83 plus 45). The elevation of the lower garage floor is 23.5 feet and the proposed building has 4 ten-foot high floors and 1 eleven-foot high floor for a total of 51 feet. The height of the proposed building would thus be at an elevation of 74.5 feet, leaving only 3 inches for any necessary protrusions above the roofline.

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Although it is inevitable that there will be such protrusions and notwithstanding a request for plans showing such protrusions, Applicant has produced no plans or otherwise described the protrusions.

Without an exercise of the Board’s discretion to permit certain well-designed protrusions, the proposed building inevitably will be too tall.

4. The Parking is Inadequate.

In Section III.J.7 the zoning requires that “parking for business use shall be dependent on the type of business use.” It goes on to provide that “[i]n the absence of specification of the business use in the application for a special permit, four spaces per 1000 square feet of business floor area shall be required.” The zoning requires that “[i]n no event shall the business use area be less than 50% of the area of the principal floor of the building.” The principal floor (the floor above the ground floor which Applicant has denominated as the “basement”) contains 16,172 square feet according to applicant’s calculations (letter of Warren Daniel, Architect to Milton Town Planner dated July 19, 2012.) The Planning Board has rejected Applicant’s argument that the area used for parking on the principal floor should be excluded from the area of the principal floor. Hence a minimum of 8,086 square feet of business use area is required. Applicant’s proposed building contains 8,100 square feet of business use area, and since there is no specification of the business use in the application, the zoning requires 32 business-use parking spaces.

In Section III.J.8 the zoning requires that “there shall be a minimum of one parking space for each bedroom in the housing units.” Applicant’s proposed building would contain 30 two-bedroom units and 5 one-bedroom units. For a building with 65 bedrooms, 65 residential parking spaces are required by the zoning. The zoning thus requires a total of 97 business-use and residential parking spaces. Applicant’s plan shows 88 spaces, 9 less than the minimum required by the zoning.

Although the Planning Board offered to work with the Applicant with respect to this deficiency and mentioned the possibility of use of parking sharing, Applicant has presented no proposals for parking sharing. He has suggested that “[t]his deficit may be handled by the use of zipcar rental cars” but has not presented any specifics on how this suggestion might work.

Accordingly, the application must be denied for failure of Applicant to provide the minimum number of parking spaces required by the zoning.

5. The Third Story on Central Avenue is Not Adequately Set Back.

Applicant’s proposed building rises 51 feet from the sidewalk on Central Avenue. It appears to have five stories but, as discussed above, the ground floor might be a “basement” depending on the mean finished grade of the building. If the Applicant were to have shown that the ground floor qualified as a basement, then the proposed building would have four stories.

The zoning in Section III.J.4.e (entitled “set-backs of the Third and Fourth Stories”) provides that “the third and fourth stories of any building shall be set back from the second story sufficiently so as to maintain a scale appropriate to nearby residential areas.” The zoning requires that “[s]et-backs shall meaningfully reduce the appearance of the bulk of the building above the second floor.” The zoning

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permits the Planning Board to grant an exception to the set-back requirements if the Board finds that “the entire building is set back from the lot line so as to meaningfully reduce the appearance of the bulk of the building.”

There is a parallel requirement in Section III.J.5 (“Design Standards” which in subparagraph b provided that “[b]uilding walls shall not rise in an uninterrupted vertical plane more than 25 feet, and step backs of walls above that height shall be employed and shall be visually prominent.” The Planning Board can grant an exception to this requirement “upon a finding that a greater uninterrupted rise is architecturally appropriate and does not cause an unacceptable appearance of bulk in the building.

In Applicant’s latest iteration of the Central Avenue façade of the proposed building, Applicant has stepped back the fourth story by 16 feet. The third story gives the appearance of a mansard roof beginning at the plane of the building 31 feet above the street and sloping inward so that the top of the story is set back from the plane of the façade by about 2 feet.

The Planning Board does not consider that this third story mansard meaningfully reduces the appearance of the bulk of the building above the second floor. It does not help maintain a scale appropriate to nearby residential areas. The building is only set back 14 feet from the Central Avenue property line. In addition, the third story mansard begins on the vertical plane of the Central Avenue façade thirty-one feet above the sidewalk. Under Section III.J.5.b the step back should have started at 25 feet and should have been visually prominent, which the mansard is not.

The Planning Board finds that the current design of the third story of the Central Avenue façade is not in compliance with the requirements of Section III.J.4.e and Section III.J.5.b, that an exception to

these requirements is not warranted, and that the application must therefore be denied.

Conclusion

For each of the foregoing reasons the application for special permit and site plan approval has been denied.

The Planning Board does not believe that this result, although compelled by the various zoning noncompliances, is a desirable outcome. The Planning Board has worked hard with this Applicant to try to fashion an acceptable plan. Although there are important details not discussed herein which still need to be worked out, the Planning Board believes that with some reasonable changes the current proposal (once presented in a unified, amended application containing all requisite plans and documents) could have been made approvable. However, the Board could not force the Applicant to make these changes. Reluctantly, at the insistence of Applicant for a vote on a clearly deficient plan, the Planning Board by vote of the undersigned has denied the application.

