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AMESBURY CITY CLERK

PLANNING BOARD DECISION

Property Ownership:	**Uphill Ventures LLC,** **C/o Diesel Realty LLC** **481 Hilldale Avenue, Haverhill MA 01832**
Applicant:	**David Martin** **Martin Development, LLC** **481 Hilldale Avenue, Haverhill MA 01832**
Application Type:	**SPECIAL PERMIT – Retail and Office Use**
Project:	**Building Redevelopment & Parking Lot**
Location:	**77 Elm Street & 11 Fruit Place, Amesbury, MA 01913**
Date:	**May 09, 2016**

A. GENERAL

On or about 11/19/2015, the Amesbury Planning Board (the "Board") received a Special Permit application for proposed improvements to an existing building with 21,000 +/- sf (gross floor area) and a proposed parking lot along Fruit Place, passageway improvements, landscaping, utilities and stormwater management improvements ("Project") at 77 Elm Street in Amesbury MA. The application was submitted along with a Site Plan (the "Plan") drawn on 11/01/2015 by Horsley Witten Group, Inc., 90 Route 6A, Sandwich MA 02563 last revised on 05/02/2016 and submitted along with supporting documents by Brian Kutcher on behalf of David Martin (the "Applicant"). The set of plans consists of thirty six (36) sheets and includes civil, landscaping and building improvement plans.

By mutual consent, the initial public hearing was held on 01/11/2016 and subsequent continued public hearings on 02/08/2016, 02/22/2016, 03/14/2016, and 04/11/2016. The public hearing was closed and a decision was rendered on 05/09/2016. This is the Final Action of the Board ("Decision") on the Special Permit application.

B. FINDINGS:

1. **Subject Property:** The Property is located at 77 Elm Street and 11 Fruit Place. Lot 38 Map 53 consists of 18,008 sf and Lot 139A Map 40 consists of 8,734 sf with a combined total area of 26,742 sf. The parcels are zoned Central Industrial (IC);

2. **Site Plan Approval:** A site plan review application was filed for the proposed project. The Board made specific findings in its review of said application. Those findings are pertinent to the Board's review of this special permit and are included here by reference and made part of this decision. The Board approved the site plan and rendered a decision dated 05/02/2016 approving the proposed improvements shown on the final site plan with conditions. This special permit application for the proposed retail use on the first floor is being reviewed by the Board in conjunction with the approved site plan;

3. **Proposed Use:** The application made to the Board is to allow retail uses in the first floor and for office uses on the other floors of the existing building. The subject property is located in the downtown area and in close proximity to the Merrimack Valley Regional Transportation Center (MVRTA). The surrounding area is highly developed and comprises of mix of light industrial, commercial and residential uses. The Board finds that the proposed uses
   a) are desirable and compatible with the character of the neighborhood,
   b) are desirable to the public convenience and for a more vibrant downtown,
   c) will not be an intensification of the existing uses, and
   d) are not detrimental to the public health or welfare.

4. **Public Infrastructure:** The subject property is located in an area with existing municipal utility services. The approved site plan shows improvements to the existing infrastructure and has been found by to be adequate for the proposed uses. The Board finds that the project will not create any undue burden on the utilities, municipal services or public infrastructure by the proposed changes to the existing uses or addition of the requested retail uses; and

5. **Traffic Circulation and Pedestrian Safety**: The Board along with City Officials reviewed the traffic study presented along with the application. The traffic study was also reviewed by the Board's peer review consultant. The various improvements to the existing passageway connecting Clarks Street and Fruit Place along with the new parking lot are an improvement over existing conditions. The Board finds that these improvements will provide better parking and vehicular circulation options to the patrons and also improve pedestrian access to the rear of the existing building.

Based on the findings noted above, the Board finds that the Project satisfies the Special Permit Criteria under Section X.J of the Amesbury Zoning Bylaw (the "Bylaw").

C. WAIVERS

The Applicant has requested specific waivers from the provisions of Amesbury's Subdivision Rules and Regulations and the Zoning Bylaw (see Table 1 – Exhibit #2). The Board has endeavored to grant waivers from those rules and regulations, only to the extent necessary, where the waivers are consistent with the purpose and intent of the regulations and would not threaten public health, safety or welfare and to minimize harm and disruption to the locus and real property abutting the locus. In the event that further waivers are required, the Applicant shall submit a written request for such waiver(s) to the Board and the Board may grant or deny such additional waivers in accordance with applicable rules and regulations in effect at that time. TABLE 1 (Exhibit # 2) lists the waivers granted to the extent necessary to construct the approved plan as submitted and revised.

D. APPROVAL OF THE SITE PLAN AND CONDITIONS THERETO

Upon notice and after a public hearing in accordance with the statute (General Laws, Chapter 40A, section 11) and the Amesbury Zoning Bylaw, and after full consideration of the evidence presented, and upon the findings made in Section B of this Decision, the Board determined that a conditional Special Permit is granted for the proposed retail and office uses including the improvements to the existing Building and site at 77 Elm Street and the proposed Parking Lot at 11 Fruit Place in Amesbury as shown on the approved Plan further upon the conditions and hereinafter set forth, for the premises described in the application.

I. PERPETUITY CONDITONS:

1. **Allowed Uses**: This Decision allows retail and office uses in the existing building in the location shown on the approved site plan. The approval also grants specific relief from the provisions of the zoning bylaw (Sections VI & VIII) to allow the site improvements at 77 Elm Street and the proposed Parking Lot at 11 Fruit Place including the improvements to the existing passageway and Fruit Place. No other additions, expansions or alteration of existing building except as shown on the approved plan set is allowed by this Decision. Changes to uses or changes to the building footprint or gross floor area shall only be allowed after approval by the Board;

2. **Legal Documents:** Prior to issuance of a building permit, the following documents shall be submitted to the Board and the Building Inspector:
   a) Documents Recorded at the Southern Essex Registry of Deeds:
      i. Planning Board Decision and Plan Set - A copy of this Decision and Approved Plan Set (Plans referenced in Exhibit #1);
      ii. Order of Conditions - A copy of the recorded Order of Conditions;

   b) Building Covenants and Restrictions - Recorded copies of all use restrictions, building and site design covenants for signage, building, lighting, utilities and landscaping maintenance shall be provided. Note, the approved light fixtures on the

building and light poles in the parking areas, quantity and type of landscaping shrubs and plants, exterior building materials, property and dumpster fences, and other on-site improvements shall be maintained in perpetuity and no changes shall be made without prior written approval of the Board. Repairs and replacement of any of these components shall be made in accordance with approved plans and as per the Board's Decision;

c) Temporary and Permanent Construction Easements - A copy of legal documents and plans describing all temporary and permanent easements necessary for making the approved improvements to the subject property, including but not limited to, the retaining walls shall be submitted to the Board, said easements to be shown on the Plan to be recorded, and restrictions to be noted on such plan. The Applicant shall also submit to the Board any written or recorded instruments granting or agreeing to such easements and/or covenants;

d) Public Access Easements - A plan, easement and legal description shall be submitted for public access and utility easements over the improved section of Fruit Place extension ("Passageway') starting at Clarks Road and upto the end Fruit Place as shown on the approved site plan. A copy of legal documents and plans describing all easements affecting the use of the subject property shall be submitted to the Board for review and approval, said easements to be shown on the Plan to be recorded, and restrictions to be noted on such plan. The Applicant shall also submit to the Board any written or recorded instruments granting or agreeing to such easements and/or covenants;

e) Passageway Maintenance – The Applicant shall submit an acknowledgement stating the responsibility of the Applicant, heirs and assignees of maintenance and replacement of sidewalks, driveway, parking areas, landscaped areas and stormwater management system within the improved passageway connecting Clarks Street and Fruit Place as shown on the approved plan for acceptance by the Board; and,

f) Covenant - A covenant shall be placed on the development or building(s) or other structures erected or placed on, or application for a building permit made with respect to any building/structure, until a Performance Bond have been established with the Board. This covenant is to be received by the Board prior to the

commencement of any of the on- or off-site improvements approved and shown on the Plan and will remain in place until the Applicant completes all of the site work (including the installation of utilities) and off-site improvements as per Final Plans.

3. **Retaining Walls:** All retaining walls over four (4) feet shall be designed by a structural engineer and accompanied by supporting documentation indicating that the existing soils and fill are appropriate for the proposed design. Additional test pits and accompanying data shall be supplied with the retaining wall design and details, if necessary and requested by the City for review by the Board's Agent to establish consistency with Final Plans;

4. **Sedimentation and Erosion Control (S & E.C.) Bond** – The Applicant shall be required to post Surety with the Board for Sedimentation and Erosion to ensure that stormwater runoff management and erosion control measures are implemented on site as per Final Plans and other engineering drawings and to ensure that remedial actions can be taken to address any detrimental impacts from erosion and sedimentation during construction and until the stormwater management system is fully operational;

5. **Performance Bond:** The Applicant shall be required to post a surety with the Board to ensure that all site stormwater systems and other site improvements including landscape improvements are installed and completed as shown on the Final Plans. This bond is separate and in addition to the S & E.C. Bond Prior to release of any Surety, the Board shall verify with its construction observation consultant that the work has been completed as per approved plans. The form and amount of surety shall be subject to final approval by the Board;

6. **Site Plan Approval**: The approval is in conjunction with the Board's approval dated 5/2/2016 of the Site Plan allowing the proposed Building and site improvements at 77 Elm Street and the proposed Parking Lot at 11 Fruit Place including the improvements to the existing passageway and Fruit Place. The conditions of Site Plan Approval as noted in that decision are included herein and are deemed to be conditions of this Special Permit by reference. Any violations of the conditions of Site Plan Approval or changes not allowed

by the Board shall be deemed a violation of the Special Permit, with all remedies to the City of Amesbury as provided by law;

7. **Interim As-builts:** Upon installation of the retaining walls shown on the approved site plan, the Applicant shall prepare an interim as-built plan and certified by a Massachusetts certified P.E. that the walls have been built in compliance with MA building code requirements as per approved Site Plan;

8. **Signage** – This Decision implicitly or explicitly does not endorse or approve any proposed signs. All proposed building signs shall be mounted at the first floor level on the Elm Street side. Only wall mounted signs made with natural materials shall be allowed. Back lit signs shall not be allowed. Any new signs shall require the submission of separate sign application. Final sign details shall be submitted for the Board for review and approval;

9. **Site Plan Modifications:** Prior to expansion, addition or alteration of uses not allowed by this Site Plan and Special Permit Approval, the Applicant shall provide detailed information and plans along with a formal written request for modification to the approved Site Plan and Special Permit for determination of minor or major modification and approval by the Board. Any substantial modifications to the approved Site Plan or changes that impact the criteria under Section X.J or the Performance Standards under XI.C.8 or conditions of approval of this Decision shall be subject to review and approval of the Board. The Board shall, if it so determines, require the applicant to submit a new application for modification to the approved Site Plan and hold a new public hearing for review of the requested modifications; and

10. **Validity:** This permit is valid only for the use and structure to the extent approved in the Decision and shall expire within two years from the issuance date if construction is not started in that time period. Any changes to the site plan, uses or other improvements shown on the approved plan without the approval of the Board shall render those unauthorized improvements or changes null and void. This permit is contingent upon the issuance of an Order of Conditions from the Amesbury Conservation Commission in

compliance with the Massachusetts Wetlands Protection Act and related regulations, G. L. c. 131, § 40-40A, and the Amesbury Wetlands Ordinance and Regulations or if said permit(s) is appealed, a subsequent issuance of a Super-ceding Order of Conditions from the Massachusetts Department of Environmental Protection (Mass DEP). This permit shall become final only upon 1) the recording of the Site Plan Approval granted by the Board for the final Site Plan and improvements shown on said Plan and accompanying Site Plan set (civil only); and 2) the issuance of all other state and federal permits required to start any construction activity allowed per this permit. The Site Plan Approval shall expire upon the expiration of the final environmental permit, unless said permit(s) is extended by the permit granting authority.

Chair, Amesbury Planning Board

EXHIBITS:

Exhibit #1: Site Plan – Civil

All plans prepared for 77 Elm Street, Amesbury, MA. 01913
Prepared by: HWG, Inc., 90 Route 6A, Sandwich MA 02563 unless noted otherwise.

Sheet: 1 of 9	Sheet #: C-1	**Title Sheet: Mill 77, 77 Elm Street, Amesbury, MA** Date: November 2015; Last Revised: March 2016
Sheet: 2 of 9	Sheet #: C-2	**Existing Conditions** Date: November 2015; Last Revised: March 2016
Sheet: 3 of 9	Sheet #: C-3	**Construction Notes** Date: November 2015; Last Revised: March 2016
Sheet: 4 of 9	Sheet #: C-4	**Overall Site Plan** Date: November 2015; Last Revised: March 2016
Sheet: 5 of 9	Sheet #: C-5	**Site Layout Plan** Date: November 2015; Last Revised: March 2016
Sheet: 6 of 9	Sheet #: C-6	**Grading and Utilities Plan** Date: November 2015; Last Revised: March 2016
Sheet: 7 of 9	Sheet #: C-7	**Construction Details (1)** Date: November 2015; Last Revised: March 2016
Sheet: 8 of 9	Sheet #: C-8	**Construction Details (2)** Date: November 2015; Last Revised: March 2016
Sheet: 9 of 9	Sheet #: C-9	**Construction Details (2)** Date: November 2015; Last Revised: March 2016

Exhibit #2:
Table 1: List of Waivers

Section(s) of Subdivision Rules and Regulations/Zoning Bylaw	Requested Waiver	Decision of the Board
7.09.G (Subdivision Regulations) – Curbing Curbing shall be required to be installed on all streets. Curbing shall be constructed of granite. Slanted curbing shall be provided on sidewalks at pedestrian crosswalks and all crosswalks shall be wheelchair accessible. Curbing shall be sealed to the road pavement.	Granite curb is provided along Fruit place and Fruit place Extension. Concrete curb is provided in the parking lot	Granted to the extent necessary to construct the plan as approved.
7.09. J (Subdivision Regulations) - retaining Wall- Except where existing sound ledge is available, all proposed retaining walls shall be constructed of natural fieldstone or fieldstone veneer and shall not exceed a maximum height of five (5) feet.	Concrete block wall is proposed with a maximum height of 15'-6"	Granted to the extent necessary to construct the plan as approved.
8.04.A.1 (Subdivision Regulations) - Stormwater Pipe All drain pipes shall be at least twelve (12) inches inside diameter, made of reinforced concrete conforming to Massachusetts DPW specifications for Class III pipe, or such higher class as may be required by depth of cover, which shall be not less than thirty-six (36) inches.	HDPE is provided and acceptable to the Department of Public Works (DPW)	Granted to the extent approved by DPW
Section VIII – Loading An off-street space used for loading or unloading not less than 14 feet in width, 45 feet in length,	As a mill redevelopment project space is very limited. A shared 9'x35' loading zone within Fruit Place extension has been proposed	Granted to the extent necessary to construct the plan as approved.
Section XI.C.a. - Roadway Design Pavement widths for traveled ways (that is, not including parallel or perpendicular on-street parking) shall not be less than	A waiver is requested from the 24' aisle width. Due to the limited space	Granted to the extent necessary to construct the plan as approved

twenty (20) feet for two-way traffic or twelve (12) feet for one-way traffic;	available, an 18' – 20' wide travel-way is proposed. Based upon the traffic report and analysis, this is an acceptable distance for two-way low volume traffic. The proposed layout and dimensions are an overall improvement to the current access drive and unorganized rear parking.	
Section XI.C.8.b - Off-Street Parking; Section VIII- On site Parking Spaces The proposed use of the building is either: 1) office uses on all three floors or; 2) ground floor retail use and upper floor office use.	A total of 25 spaces are provided on site. The waiver is request to allow the use of public parking spaces within 300 feet of the project site (Letter dated 3/29/16)	Granted to the extent necessary to construct the plan as approved.
Section XI.C.8.b.2 - Parking Parking within the front yard setbacks-	Due to the limited space typical of urban mill re-development projects, a waiver is requested to allow parking within the setbacks.	Granted to the extent necessary to construct the plan as approved.
Section XI.C.8.c - Retaining wall and landscape design Retaining wall design and landscaping requirements	Fewer street trees are proposed and the retaining walls exceed the maximum height requirements due to the urban location and size of the mill building and its required parking	Granted to the extent necessary to construct the plan as approved.
Section XI.C.8.h,j,k &o - Hazardous Material, EIA, Noise, and Marina-Related activities The Board may request information regarding hazardous materials, environmental performance standards, noise and marina-related activities is requested.	This is a mill re-development project and does not include these components	Granted to the extent necessary to construct the plan as approved.

TO:
David Martin
Martin Development, LLC
481 Hilldale Avenue
Haverhill MA 01832

PLANNING BOARD VOTE:

On 05/09/2016, the Amesbury Planning Board voted in favor of the approval of the Special Permit and Site Plan, as amended, for the proposed Improvements to the existing Mill Building at 77 Elm Street and the proposed Parking Lot at 11 Fruit Place in Amesbury MA for David Martin Development, LLC., subject to the findings, waivers and conditions noted in this Decision.

Filed with the City Clerk on 7/13/2016

Barrie Kitchen

The Special Permit shall not take effect until a copy of the Decision bearing the certificate of the City Clerk is recorded as required under M.G.L. c40A, Section 11. No work under the Special Permit shall commence until the Special Permit takes effect. It is your responsibility to record this Decision with the Registry of Deeds and to record the approved plans after endorsement by the Planning Board.

Any appeal shall be made pursuant to M.G.L.c40A, Section 17 and shall be filed within twenty (20) days after the date of filing of such notice in the office of the Town Clerk's Office.

Compliance with Conditions Set Forth by the Amesbury Planning Board Decision prior to Issuance of a Building Permit

SIGN-OFF FORM (PB200601-BUILDING)

(IMPORTANT: IT IS THE RESPONSIBILITY OF THE PERSON SEEKING BUILDING PERMIT TO GET THE SIGN OFF FROM EACH OF THE DEPARTMENTS LISTED BELOW. THE TOWN WILL NOT BE HELD RESPONSIBLE FOR LACK OF ACTION ON THE APPLICANT'S BEHALF. BEFORE SIGNOFF, COPIES OF THE RECORDED DECISION AND THE APPROVED PLAN SET SHOULD BE SUBMITTED TO THE PLANNING OFFICE.)

By signing below, the following Town Department/Town Officials, agree that the conditions of this permit prior to making application for building permit have been completed and recommend that an application for a building permit for the units indicated below may be granted:

Engineering Department/Town Engineer _____

Department of Public Works/DPW Director _____

Planning Office/City Planner _____

Conservation Commission/Agent _____

Police Department _____

Fire Department _____

Compliance with Conditions of the Amesbury Planning Board Decision prior to Issue of Certificate of Occupancy

SIGN-OFF FORM (PB200602-OCCUPANCY)

(IMPORTANT: IT IS THE RESPONSIBILITY OF THE PERSON SEEKING CERTIFICATE OF OCCUPANCY TO GET THE SIGN OFF FROM EACH OF THESE DEPARTMENTS. THE TOWN WILL NOT BE HELD RESPONSIBLE FOR LACK OF ACTION ON THAT PERSON'S BEHALF)

The following Town Department/Town Officials, by signing below, agree that the conditions of this permit from the start of construction to prior to issue of occupancy permit have been completed and recommend that the Certificate of Occupancy be granted for the units indicated on this form.

Engineering Department/Town Engineer _____

Department of Public Works/DPW Director _____

Planning Office/City Planner _____

Conservation Commission/Agent _____

Police Department _____

Fire Department _____