

**Millis Zoning Board of Appeals  
June 27, 2017  
Veterans Memorial Building  
Room 130  
Meeting opened at 7:30 pm**

**BOARD MEMBERS PRESENT:**

Chairman Don Roman, Peter Koufopoulos, and Joseph Coppola (Substituting for member Don Skendernian).

**Public Hearing: Ellen Realty Trust:**

**730 Main Street:**

The Chairman called the continue hearing to order at 7:30PM.

The petitioner Ellen Rosenfeld and Dan Merrikin were present.

The petitioner is seeking the following:

1. Variance from Section VI.E and table 2 to allow less than 75% of the required minimum lot area to be outside of the watershed protection district or wetlands.
2. Variance from Section II definitions: parking space to allow parking spaces to be 9' wide by 18' deep.
3. Special permit from Section XI.4 to allow the following with the DEMA Zone A flood plain; construction of a building, parking area, driveway, stormwater management facilities and appurtenant work.

The plans and additional information was reviewed.

A motion was made by Peter Koufopoulos, seconded by Skip Coppola to grant a variance from Section VI.E and Table 2 of the Zoning Bylaw (the "Bylaw") to allow the Property to have 36% of the minimum required lot area be outside of the Watershed Protection District, Flood Plain District or wetlands where 75% is required. The vote was 3-0-0 in favor.

A motion was made Peter Koufopoulos, seconded by Skip Coppola to grant a variance from Section II, Definitions: Parking Space of the Zoning By-Laws to allow proposed parking spaces to be 9 feet wide by 18 feet deep in lieu of the Bylaw requirements for 9 feet wide by 21 feet deep. The vote was 3-0-0 in favor.

The requirements for the granting of a Variance, as outlined in M.G.L. c. 40 A, Subsection 10, are:

(a)Owing to circumstances relating to the soil conditions, shape, or topography of such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of provisions of the By-Law would involve substantial hardship, financial or otherwise, to the petitioner, and

(b) Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such By-law.

The Millis Zoning Board of Appeals finds:

**FINDINGS:**

1. The Property is constrained by the existence of flood plain and wetland areas. In combination with the proposed 24' parking aisle, the proposed parking space sizes are reasonable and appropriate for the intended use and will allow the applicant to minimize work in the flood plain and wetland areas.
2. The Board makes the following findings relative to the requirements of a Variance:
  - a. This Property has unique conditions relative to its location within a Zone A flood plain with no specific designated 100-year flood elevation and certain specific topographic conditions, which do not generally affect the I-P2 zoning district. These conditions are not the result of actions taken by the applicant subsequent to the adoption of the Bylaw.
  - b. Because the slightly smaller parking space size will allow the applicant minimize work in flood plain and wetlands areas, the Board finds that the proposed development is not substantially detrimental to the public good, and will not nullify or substantially derogate from the intent or purpose of the Bylaw.
  - c. The applicant suffers from hardships, which derive from the soil conditions and topography on the Property. Said soil condition and topography, which create the wetland and flood plain conditions, are unique. A literal enforcement of the Bylaw would require the applicant to disturb more wetlands and flood plain than is reasonably necessary for the intended use.

A motion was made by Peter Koufopoulos, seconded by Skip Coppola to grant a SPECIAL PERMIT from Section XI.4 of the Zoning By-Laws to allow the following work within a FEMA Zone A flood plain; construction of a building, parking areas, driveway, stormwater management facilities and appurtenant work. The vote was 3-0-0 in favor.

The requirements for the granting of a Special Permit, as outlined in M.G.L. c. 40 A, Subsection 6 are (a) Pre-existing non-conforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority designated by ordinance or by-law, and (b) That such change or alteration shall not be substantially more detrimental than the existing non-conforming use to the neighborhood.

**FINDINGS:**

1. The site is comprised of two adjacent parcels in common ownership, which have existed since 1974. The westerly parcel is assessed as a buildable lot. It meets all dimensional requirements except for the upland area. The easterly parcel is assessed as an unbuildable parcel. It does not meet the frontage and upland area requirements of the Bylaw.
2. The applicant proposes to combine both parcels into a single, larger lot for the purposes of this development and to treat the cumulative land as a single lot for development

purposes. As discussed in this decision, both parcels shall be considered to comprise the development site (the “Property”). The Property is the subject of the relief granted herein.

3. The Property lies partially within a Zone A flood plain, which is a flood plain area where FEMA has not conducted a detailed study to determine a flood profile and a discrete 100-year flood elevation.
4. The applicant presented information from FEMA flood profile data for a nearby stream which crosses the Millis Town line 400-500 feet to the west of the Property and discharges into the Great Black Swamp behind the Property. This data indicated that the 100-year flood elevation is 138.9.
5. The applicant presented information from a FEMA LOMA (Letter of Map Amendment) at 1175 Main Street, which stated that the 100-year flood elevation is 138.3.
6. While the applicant noted that the Medway flood profile data is likely to be conservative because it is in a confined channel, whereas the Property lies adjacent to the large, open wetland areas associated with the Great Black Swamp, the Medway FEMA data is the most proximal to the Property. As such, the Board finds that based on the data available, the most likely 100-year flood elevation is 138.9. The Board therefore finds that boundary of the Flood Plain District on this Property is the land below elevation 138.9 (on the NAVD 88 datum).
7. The applicant indicated that the area above elevation 138.9 as shown on the plan is 15,770 s.f., which represents 36% of the minimum lot area of 43,560 s.f. (one acre). The Bylaw requires a minimum of 75% of one acre, or 32,670 s.f., lie outside of wetlands, Flood Plain District or Watershed Protection District. Thus, with only 15,770 s.f. of land outside of the 100-year flood elevation per the above-noted findings, the Property is not buildable unless a variance for the upland area requirement of the Bylaw is granted.
8. The applicant indicated that the proposed development will significantly increase the amount of Bylaw-upland area on the Property (i.e. the amount of land area above elevation 138.9). The proposed condition is expected to increase the Bylaw’s upland area on the Property from 36% of one acre to approximately 56% of one acre. The Board therefore finds that the proposed work will decrease the deviation from Bylaw in this regard and will result in an improvement.
9. The applicant indicated that the proposed development will increase flood storage up to elevation 138.9 by approximately 4,800 c.f. (it is acknowledged and noted that this value may change because of plan revisions requested by other Boards, which have permitting jurisdiction over the proposed development). The Board therefore finds that the proposed development of the land will increase available flood storage on the Property and will not increase flood elevations in or around the Property.
10. The applicant indicated that the Great Black Swamp encompasses approximately 930 acres of land and represents a vast potential storage area for flood waters that will not be adversely affected by the proposed development. The typical ground elevation with the Great Black Swamp is elevation 134-135 while the proposed building elevation will be 141.5 and the parking area elevations will be 140-141.8. Based on these facts in combination with the proposed increase in net flood storage capacity on the Property, the Board finds that the proposed development will increase available flood storage and will not increase flood elevations in or around the Property, therefore meeting the intent of the Bylaw.

11. The proposed development will increase the amount of wetlands on the Property, thereby resulting in environmental benefits.
12. The Board makes the following findings relative to the requirements of a Variance:
  - a. This Property has unique conditions relative to its location within a Zone A flood plain with no specific designated 100-year flood elevation and certain specific topographic conditions, which do not generally affect the I-P2 zoning district. These conditions are not the result of actions taken by the applicant subsequent to the adoption of the Bylaw.
  - b. Because the applicant is not decreasing flood storage capacity or wetland areas and is likely to increase both, the Board finds that the proposed development is not substantially detrimental to the public good, and will not nullify or substantially derogate from the intent or purpose of the Bylaw.
  - c. The applicant suffers from hardships, which derive from the soil conditions and topography on the Property. Said soil condition and topography, which create the wetland and flood plain conditions, are unique. The applicant's family has owned the land since the early 1970s and one of the two parcels has been taxed as a buildable lot. The lot also lies within a Zone A flood plain, where the lack of a FEMA flood study creates ambiguity as to the actual extent of land which may be subject to flooding in a 100-year flood event. Without the benefit of the granted upland area variance, a literal enforcement of the Bylaw would render the Property unbuildable under the Bylaw.
13. The Board makes the following findings relative to the requirements for the granting of a Special Permit:
  - a. The proposed development meets the requirements of Section XI of the Bylaw relative to work in a Zone A flood plain because it will not increase flood elevations due to the net increase in available flood storage volume created by the proposed work.
  - b. The requested use of a commercial building in the I-P2 district is desirable to the public good.
  - c. The requested use will not generate significant quantities of traffic and has access to a major thoroughfare with adequate pedestrian facilities (sidewalk).
  - d. The requested use has access to municipal water and sewer facilities and has a stormwater management system. These systems will not overload any public facilities.
  - e. The proposed use is allowed by special permit from the Planning Board and will be the subject of additional permitting as required.

Therefore, the applicant does meet the requirements necessary for granting of a Special Permit.

**CONDITIONS:**

The relief granted herein (variances and special permits) is based on and subject to the following conditions:

1. The work shall be substantially as shown on a plan entitled "Assessors Parcels 21-49 & 21-52 Main Street, Site Plan of Land in Millis, Massachusetts" prepared by Merrikin Engineering, LLP and dated May 10, 2017. The Board recognizes that the applicant requires

permits from several other Town Boards and that the plan will change. Such changes are allowed provided that parking spaces are no smaller than allowed herein and that there is no net decrease in flood storage below elevation 138.9 on the Property.

2. The applicant shall record a plan pursuant to MGL Chapter 41, section 81X or 81P (ANR or perimeter plan as appropriate) to combine the two parcels that comprise the Property into a single lot.
3. The proposed development shall increase total cumulative available flood storage on the Property up to and including elevation 138.9, pursuant to the findings above as to the most likely extent of the 100-year flood event.

**On a motion made by Joseph Coppola and seconded by Peter Koufopoulos, the Board voted unanimously to close the hearing at 8:00 pm.**

**Adjourn:**

**On a motion made by Peter Koufopoulos and seconded by Don Skenderian, the Board voted to adjourn the meeting at 8:15 pm.**

Respectfully Submitted,

Amy Sutherland

Secretary

Approved July 18, 2017