



## Attachment C

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### DECISION OF THE

### ZONING BOARD OF APPEALS

### ANDOVER, MASSACHUSETTS

(Space above reserved for Registry of Deeds)

(Space below reserved for Town Clerk)

**Decision Number:** Z-14-144

**Date Application Filed:** October 1, 2014

**Applicant:** Salvatore N. Lupoli  
354 Merrimack Street  
Lawrence, MA 01843

**Premises Affected:** Land & buildings at 321-329 Lowell Street  
Located in Zoning District LS (Limited Service)  
Town Assessor's Map 151, Lots 19, 20, 21, 22, 23  
Essex North Registry of Deeds Book 13001, Page 128 & Book 13895, Page 117

<b>Owner of Record:</b>	321-325 Lowell Street:	327-329 Lowell Street
	323 Lowell St. Realty, LLC	Salvatore N. Lupoli
	354 Merrimack Street	354 Merrimack Street
	Lawrence, MA 01843	Lawrence, MA 01843

**Relief Requested:** Variances from the requirements of Article VIII, §4.1.2, §5.1.5.2.b & §5.3.4; Special Permit under Article VIII, §3.1.3; and for modification of Decision No. 3978

**Public Notice:** Notice published in the Andover Townsman on October 23 & 30, 2014, and notice sent by mail, postage prepaid, to all interested parties pursuant to the provisions of Massachusetts General Laws.

**Public Hearing(s) held:** November 6, 2014

**Decision of the Board:** Special Permit under Article VIII, §3.1.3, §3.1.3.C.9 and §3.1.3.C.15 and Variances from the requirements of Article VIII, §4.1.2, §5.1.5.2.b and §5.3.4 GRANTED, with conditions. Modifications to Decision No. 3978 GRANTED.

**Members participating:** Brown, Magenheim, McDonough, Oltman, Wilson

**Date of Decision:** January 9, 2015

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TOWN OF ANDOVER, MASS

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## I. FACTS PRESENTED AT THE PUBLIC HEARING

A public hearing was held in Room A, 3<sup>rd</sup> Floor, Town Offices, 36 Bartlet Street, Andover, MA on Thursday, [insert date]. Present were: David W. Brown, Chair; Neil D. Magenheimer, Clerk; Carol C. McDonough, Member; Elizabeth Oltman, Lisa Rechisky and Tara Wilson, Associate Members. In the absence of members Phillip Boness and Kate Bargnesi the Chair designated Associate Members Oltman and Wilson to sit in their place, and designated Associate Member Rechisky to sit as alternates for the case.

Appearing before the Board on behalf of the Petitioner were Salvatore N. Lupoli of The Lupoli Companies as the Applicant, Rick Friberg, P.E. of TEC, Inc. the professional engineer of record for the proposed development, and Douglas E. Hausler, Esq., of Lampert, Hausler & Rodman, P.C., attorneys for the Applicant.

The Applicant is seeking relief to allow construction of the second phase (known as "Tower II") of the Andover Medical Center located at 321-329 Lowell Street, Andover, MA. "Tower I" of the development at the premises is in final stages of construction and is scheduled to open in early December. Tower I contains approximately 30,000 square feet and approved Zoning Board of Appeals for special permits and variances from certain dimensional requirements in the Board's Decision No. 3978, filed on May 14, 2012. It is used for medical offices and treatment rooms. "Tower II" is the second phase of the development, and would also consist of a 30,000 square foot building to be used for professional offices, medical treatment rooms and related medical services.

Tower II is being constructed at a separate time because the additional land was acquired by the Applicant after the approval of and commencement of construction for Tower I. The land for Tower II was acquired from the Massachusetts Department of Transportation in 2013-2014. It is a land-locked parcel having an area of approximately 44,914 square feet, bounded by the Applicant's property containing Tower I to the east, the Hamilton Green apartment complex to the north, and the northbound on-ramp to I-93 with a curved boundary to the southwest. The proposed Tower II will be sited so that its northern wall is aligned with the north wall of the existing Tower I, resulting in a building setback of 42 feet from the northerly lot line at the point where Tower II joins Tower I. The proposed Tower II building would cross the existing property line so as connect with Tower I and allow internal circulation between the two buildings. In all other respects the building conforms to the setback requirements of the By-law. Parking spaces for the new building will largely be arranged perpendicularly to the lot lines along the perimeter of the property, essentially extending the parking layout previously approved for Tower I.

The project is located on a uniquely-shaped lot impacted by the existing on-ramp to Interstate 93. That shape restricts the amount of developable area when the goals of the project's design are considered: incorporating existing internal vehicular travel paths; reducing existing dead-end parking lanes; minimizing site excavation and fillings; and incorporating design and architectural elements that create the impression of a single-use building sharing utilities, hallways, elevators, and other physical building components. The project will provide the number of parking spaces required by the By-law for the proposed use, taking into consideration the addition of 26 treatment rooms and the peak number of employees per shift, storage areas, and record-keeping areas of the two facilities. The Applicant contends that the narrow and irregular shape of the lot imposes hardship on the allowable building envelope while also trying to maintain design compatibility with the initial phase of the project.



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The Applicant is requesting relief from the parking space setback requirement to allow spaces along the northerly edge of the property to be 4 feet from the property line, where 5 feet is required under §5.1.5.2.b. This is to allow clearance for the drive aisle at the rear of the building. Mr. Friberg explained that the hardship is due to emergency egress at the rear of the building, allowing a buffer so occupants wouldn't step directly into the drive aisle. The bylaw requires a 24 foot wide aisle and 16 foot deep parking spaces, thus a 4 foot setback is needed to maintain the drive aisle width. The Applicant is also requesting a variance from the requirements of §5.3.4, which requires all parking areas in the LS district to be enclosed by a landscaped buffer that is at least 12 feet wide. Attorney Hausler explained that strict compliance with this section would significantly inhibit traffic flow on site. Mr. Friberg noted that §5.3.4 is unique to the Limited Service District.

The Applicants have spoken with representatives of the Hamilton Green Apartments, the abutter to the north, who voiced no concerns and were not present at the hearing. Mr. Friberg informed the Board that the traffic light at the entrance to the complex from Lowell Street is scheduled to be installed prior to occupancy of the Andover Apts. at Rolling Green. It will be operational in the fall of 2015.

In addition to the written application, the following documents and materials were received by the Board and considered at the public hearing:

- Schematic site plan titled "327-329 Lowell Street," prepared by TEC, Inc., dated October 28, 2014.
- "Layout & Materials Plan, 327-329 Lowell Street, Drawing C-3" prepared by TEC, Inc. dated 9/30/2014.
- "Planting Plan, 327-329 Lowell Street, Drawing L-1" prepared by TEC, Inc. dated 9/30/2014.
- "Existing Conditions Plan of Land," prepared by Otte & Dwyer, Inc., dated August 25, 2014.
- Building elevation drawings titled "Medical Office Building – Tower II, Andover, MA" prepared by db2|ARCHitecture, dated September 29, 2014 (2 pages).
- Letter of Support from Lampert, Hausler & Rodman P.C., dated September 30, 2014.
- "Memorandum re: Medical Office Building Tower II – Lowell Street, Andover, Massachusetts," prepared by TEC, Inc., dated September 30, 2014.
- Copies of previous Zoning Board decisions affecting the premises: Nos. 3721 & 3978.

One member of the public spoke briefly at the hearing, expressing support for the project. No one else appeared before the Board to speak either for or against the petition. The Board voted unanimously to waive a viewing of the premises and to close the public hearing. The Board then proceeded to deliberate the matter.

## II. FINDINGS AND DECISION OF THE BOARD

The site is located within the Limited Service (LS) district. The proposed use of the premises as professional offices and a medical clinic are permitted upon issuance of a Special Permit from this Board pursuant to §3.1.3.C.15 (business, professional or administrative office) and §3.1.3.C.9 (medical center or clinic). The Applicant has also requested variances from the dimensional requirements of three sections of the Zoning By-law:

- Minimum side & rear yard depth requirements in the LS District (§4.1.2).
- Minimum setback of parking spaces from property lines (§5.1.5.2.b).
- Minimum landscape buffer for parking areas in the LS District (§5.3.4)



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Additionally the Applicant has requested modifications to the Board's Decision No. 3978 as may be necessary to allow the proposed additional development on the combined properties.

#### **A. Special Permit under §3.1.3**

The Board finds that use of the premises for the proposed medical clinic and professional offices will not substantially derogate from the intent of the Zoning By-law. The development will add medical services that complement the medical walk-in clinic that is part of Tower I and did not previously exist within the Town. The proposed use contributes to the well-being of the community and has little if any impact on the surrounding neighborhood given that Tower II abuts an interstate highway and the previously-approved Tower I. The character of the existing neighborhood is unaffected, and the plan provides for increased and improved internal traffic flow and safety, including parking with a project that addresses and protects natural environment such as air, water quality, noise, storm water runoff and architectural aesthetic components. There are existing utilities and public services available to meet the needs of the project. Thus, the Board finds the proposed use as a medical clinic and professional offices satisfies the criteria for a Special Permit under Article VIII, §3.1.3, §3.1.3.C.9 and §3.1.3.C.15.

Accordingly, the Board votes unanimously to grant a Special Permit under Article VIII, §3.1.3 (specifically, §3.1.3.C.9 and §3.1.3.C.15) to allow the use of the premises as a medical clinic and professional offices, subject to the conditions set forth below.

#### **B. Variance from the minimum side & rear yard depth requirements in the LS District (§4.1.2).**

The Board finds that the size and shape of the Locus in the context of the previously-approved Tower I building are factors contributing to the hardship associated with setback requirements. A literal enforcement of the yard depth requirements in the LS District, applied solely to the additional parcel that will house Tower II, would reduce the allowable building footprint to a point that would effectively render the property unbuildable. Furthermore, it makes little sense to require area separations between the two buildings when the medical personnel and patients using those buildings will require internal access through different parts of the buildings. Although the Applicant refers to the buildings as "Tower I" and "Tower II," as though they were two separate and distinct buildings, The Board finds that, when the second phase is completed, the entire complex is best viewed as one building, with combined hallways and shared utilities serving the two phases.

The Board finds that legally combining the parcels housing Phase I and Phase II of the development would significantly reduce the non-complying nature of the overall project with respect to the yard depth requirements. Under Decision No. 3978, the allowed west side setback was reduced to 5 feet and the setback of the northeast corner of the Tower I building was allowed to be 31' to the north and 30' to the east side abutting the Hamilton Green Apartments. Under the current proposal the northeast corner of the Tower I building remains the point closest to the property lines; combining the two parcels would eliminate any nonconformity boundary between the two parcels. The Board finds that this constitutes a significant improvement over the significant non-conformities allowed previously by variance. The Board therefore votes unanimously to require that the parcels be legally combined as a condition of its approval.

The location and design of Tower II also reduces any need for substantial earth moving due to the topography within the site and allows for clearer parking and travel lanes within the site, consistent with the conditions associated with Phase I. The design and location of the second tower creates a seamless transition by



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incorporating linked parking areas and travel areas for vehicular flow within the entire site. The Board finds that the location of the building creates safety benefits over the previously-approved project by eliminating two existing dead end driveways and creating a circular flow of traffic in both directions throughout the site. The Board further finds that the narrow and irregular shape of the property gives rise to a substantial hardship that does not generally affect the LS District as a whole, and that relief may be granted without substantial detriment to the public good and without derogating from the intent and purpose of the Zoning By-law.

Accordingly, the Board votes unanimously to grant a variance from the requirements of Article VIII, §4.1.2 to allow reduction of the minimum side and rear yard depth requirements, subject to the conditions set forth below.

**C. Variance from the 12' wide landscape buffer requirement in the LS District (§5.3.4)**

The Board finds that the shape of the site and the need to blend the proposed Tower II with the existing facility are factors contributing to the hardship associated with meeting this landscape buffer requirement of §5.3.4. The necessary infrastructure to support the proposed building, including improved vehicular and pedestrian circulation, required parking spaces and making best use of the available site area for development, are all limited by the 12 foot landscape buffer requirement. The Board thus finds that strict application of this requirement restricts the Applicant's ability to make the project economically feasible. The Board also finds that a literal enforcement of the landscape buffer requirement would cause hardship on the proposed development of the property due to the severe limitations on size of the building envelope resulting from the unique shape of the lot. The Board further finds that the impact of a reduction of the required 12 foot landscape buffer is mitigated by the presence of the adjacent on-ramp to the interstate highway and the location of the Hamilton Green apartments towards the north of the site. The highway ramp is not subject to potential development and itself provides a substantial buffer from the proposed parking areas.

Again, the Board finds that relief may be granted without substantial detriment to the public good and without derogating from the intent and purpose of the Zoning By-law. Accordingly, the Board votes unanimously to grant a variance from the requirements of Article VIII, §5.3.4 to allow reduction of the minimum landscape buffer requirement, subject to the conditions set forth below.

**D. Variance from the 5' parking space setback requirement (§5.1.5.2.b)**

The variance requested from §5.1.5.2.b relates to the required 5 foot setback for parking spaces. The size and shape of the site are factors contributing to the hardship associated with this requirement. The Board finds that the hardship arises from the need to provide emergency egress from the rear of the building. A buffer strip between the buildings and the drive aisle is necessary so occupants will not be required to step directly into the drive aisle. The bylaw requires a 24 foot wide aisle and 16 foot deep parking spaces, thus a 4 foot setback for the parking spaces on the north side of the building is needed to maintain the drive aisle width.

The Board finds that a literal enforcement of this setback requirement would cause hardship on the proposed development of the property in that it would either negatively affect public safety or impose limitations on the size of the building envelope.

Accordingly, the Board finds that relief may be granted without substantial detriment to the public good and without derogating from the intent and purpose of the Zoning By-law. The Board votes unanimously to grant a

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variance from the requirements of Article VIII, §5.1.5.2.b to allow reduction of the minimum parking space setback requirement, subject to the conditions set forth below.

The Special Permit and variances as described above are granted subject to the following conditions:

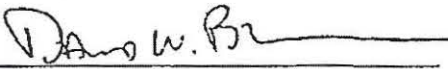
1. The buildings and site improvements shall be constructed in substantial conformity with the submitted "Layout & Materials Plan, 327-329 Lowell Street, Drawing C-3" prepared by TEC, Inc. dated 9/30/2014.
2. Landscaping shall be completed in substantial conformity with the submitted "Planting Plan, 327-329 Lowell Street, Drawing L-1" prepared by TEC, Inc. dated 9/30/2014.
3. The subject properties shall be merged, by instrument recorded at the Essex North Registry of Deeds, prior to the issuance of a Certificate of Occupancy for the building known as "Tower II."
4. Snow from any storm having a snowfall in excess of 6 inches, or any snowfall that cannot be adequately contained on site within the designated snow storage areas, shall be removed from the premises and disposed of in a lawful manner.

#### **Modification of Decision No. 3978**

Because the further development of the site and the construction of the new "Tower II" require changes to the plans originally approved by the Board in Decision No. 3948, the Board votes unanimously to make the following modifications to Decision No. 3978:

1. Condition 1 is modified to read as follows: The buildings and site improvements shall be constructed in substantial conformity with the submitted "Layout & Materials Plan, 327-329 Lowell Street, Drawing C-3" prepared by TEC, Inc. dated 9/30/2014.
2. Condition 1 is modified to read as follows: Landscaping shall be completed in substantial conformity with the submitted "Planting Plan, 327-329 Lowell Street, Drawing L-1" prepared by TEC, Inc. dated 9/30/2014.

Members voting FOR the decision: Brown, Magenheim, McDonough, Oltman, Wilson  
Members voting AGAINST the decision: None

  
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David W. Brown, Chair


DWB/bb



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**CERTIFICATION**

I, Lawrence J. Murphy, Town Clerk of the Town of Andover, Massachusetts do hereby certify that twenty days have elapsed since the above referenced decision of the Board of Appeals, which was filed in the office of the Town Clerk on January 9, 2015, and that no appeal has been filed with the Town Clerk.

  
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Lawrence J. Murphy  
Town Clerk  
Andover, Massachusetts