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**TOWN OF DEDHAM  
PLANNING BOARD**

**CERTIFICATE OF ACTION  
APPLICATION FOR MINOR SITE PLAN REVIEW**



**Applicant:** John Aplin, Trustee of Aplin Realty Trust  
**Subject Property:** 331 Whiting Avenue, Dedham, MA  
**Property Owner:** John Aplin, Trustee of Aplin Realty Trust  
**Date:** August 25, 2017

**PROJECT SUMMARY**

John Aplin, Trustee of Aplin Realty Trust (hereinafter referred to as the "Applicant"), proposes to redevelop the real estate known and numbered as 331 Whiting Avenue, Dedham, MA (hereinafter referred to as the "Subject Property"). Specifically, the Applicant proposes to demolish the four (4) existing commercial buildings on the Subject Property and to construct one (1) new commercial building with associated parking and outdoor storage area (in addition, an existing two-family house on the Subject Property will remain). The Subject Property is utilized by the Applicant as a landscaping business and contractors' yard. These uses (and the intensity of the same) will remain the same. The Project is subject to Minor Site Plan Review by the Dedham Planning Board pursuant to Section 9.5.2 of the Dedham Zoning By-Law.

**BACKGROUND AND FINDING OF FACTS**

1. The Subject Property is owned by John Aplin, Trustee of Aplin Realty Trust.
2. The Subject Property, shown on Dedham Assessors' Map 128 Lots 105, contains approximately 22,291 square feet of land with approximately 57.68 feet of frontage on Whiting Avenue.

3. According to the Zoning Map for the Town of Dedham, the Subject Property is located in the General Residence (GR) Zoning District.
4. The Subject Property is currently occupied by four (4) commercial buildings and a two-family house.
5. According to the Property Record Card maintained by the Dedham Board of Assessors, the two-family house and a number of the commercial buildings were built in 1900 (other structures were built in 1940 and 1955).
6. Since at least 1981, the Applicant has utilized the property for a landscaping business and/or contractors' yard. For many years prior thereto, the Subject Property was utilized for various commercial purposes including as a contractors' yard.
7. The Subject Property and the uses thereon are pre-existing nonconforming in several respects. Pursuant to Table 1 (Principal Use Table) of the Dedham Zoning By-Law, commercial uses (with minor exception) are not allowed in the GR Zoning District. However, in addition to a 2-family dwelling, the Subject Property is occupied by four (4) commercial buildings used as a landscape business and contractors' yard. Pursuant to Table 2 (Table of Dimensional Requirements) of the Dedham Zoning By-Law, lots in the GR Zoning District require a minimum lot frontage and minimum lot width of 90 feet, a minimum side yard of 10 feet, and a minimum rear yard of 20 feet. However, the Subject Property has frontage and lot width of only 57.68 feet. In addition, at least one of the commercial buildings has a side yard setback of only 5 feet and a rear yard setback of 2.7 feet, and the 2-family dwelling has a side yard setback of only 5 feet.
8. The four (4) existing commercial buildings contain approximately 4,952 square feet (per the records maintained by the Dedham Board of Assessors). The Applicant proposes to demolish the four (4) existing commercial structures and to construct one (1) new commercial building containing approximately 5,850 gross square feet of floor area (5,500 net square feet) with associated parking and outdoor storage. In addition, the existing two-family house will remain on the Subject Property.
9. The Applicant will continue to utilize this building for his landscaping business and as a contractors' yard. The Applicant is not proposing any change of the use or intensity of the same.
10. Given the pre-existing nonconforming structures and uses at the Subject Property, the Project required relief from the Dedham Zoning Board of Appeals ("ZBA"). In a decision dated April 19, 2017, the ZBA approved and granted the Applicant:
  - a) Special permits to change, alter, extend, and/or reconstruct nonconforming uses and structures on a nonconforming lot with frontage and lot width of approximately 57.68 feet.
  - b) Special permits for the demolition of four (4) nonconforming commercial buildings used for a landscaping business and contractors' yard and construction of a new commercial building with associated parking and outdoor storage.
  - c) Variances for construction of a new commercial building with a side yard setback of 5 feet.

- d) Special permits for the continued use of the Subject Property for a landscaping business and contractors' yard with associated parking and outdoor storage.
  - e) Special permits for construction and maintenance of retaining walls in excess of 4 feet in height; provided, however, no retaining wall shall be in excess of 6 feet in height.
  - f) Special permits for the continued use of a two-family dwelling on the same lot as commercial uses which dwelling has a side yard setback of 5 feet.
11. On June 5, 2017, the Applicant submitted the following to the Planning Board (hereinafter referred to collectively as the "Application"):
- 1. "Form X: Application for Site Plan Review" with Project Narrative
  - 2. Plan sets entitled "Proposed Site Redevelopment, 331 Whiting Avenue, Assessor's Parcel 128-105, Dedham, Massachusetts," consisting of the following:
    - A. Cover Sheet
    - B. Existing Conditions, dated December 29, 2016, by R.E. Cameron & Associates, Inc., 681 Washington Street, Norwood, MA.
    - C. Sheet C1 - Site Layout Plan, dated May 30, 2017, by Henderson Consulting Services, P.O. Box 626, Lexington, MA.
    - D. Sheet C2 - Grading & Utility Plan, dated May 30, 2017, by Henderson Consulting Services
    - E. Sheet C3 - Site Preparation Plan, dated May 30, 2017, by Henderson Consulting Services
    - F. Sheets C4 - C6 - Construction Details Plans, dated May 30, 2017, by Henderson Consulting Services
    - G. Sheet L1 - Landscaping Plan, dated May 29, 2017, by Kattman Corporation, 24 Water Street, Suite 7, Holliston, MA
    - H. Sheet PH1 - Photometric Lighting Plan, dated May 30, 2017, by Vincent A. Dilorio, Inc., 89 Access Road, Suite 18, Norwood, MA
  - 3. Application for Abutters List
  - 4. Filing Fee in the amount of \$1,000.
  - 5. Peer Review Consultant deposit in the amount of \$1,075.
12. The Application was reviewed by the Planning Board and the Planning Director, and was determined to satisfy all of the submittal requirements for Minor Site Plan Review under Section 9.5 of the Dedham Zoning By-Law.
13. In accordance with Section 9.5.6 of the Dedham Zoning By-Law, upon receipt of the Application and above materials, the Planning Board distributed copies of the aforesaid plans and reports to, and otherwise solicited comments from, various Town of Dedham boards, departments, and officials. In addition, the Planning Board referred the matter McMahon Associates for peer review. (All reports and documents relating to this matter are listed on Exhibit A attached hereto and incorporated herein by reference.)
14. On or about July 5, 2017, McMahon Associates issued an initial peer review report on the Project. This initial peer review report identified twenty-one (21) issues or concerns. On or about August 1, 2017, the Applicant filed a written response to the initial peer review

report, and provided revised drawings and supporting documentation addressing the issues raised by the peer reviewer.

15. On July 25, 2017, the Applicant's engineer met with the Planning Director and Dedham Fire Chief William Spillane to review the Project relative to emergency vehicle access to the Subject Property. By email of August 17, 2017, Chief Spillane indicated that he is satisfied with such access.
16. On or about August 15, 2017, McMahon Associates issued a second peer review report indicating that 16 of the 21 issues had been resolved. On or about August 18, 2017, the Applicant filed a written response to this second peer review report, and provided additional revised drawings and supporting documentation addressing the issues raised by the peer reviewer.
17. On or about August 21, 2017, McMahon Associates issued a third peer review report indicating that 20 of the 21 issues had been resolved. At that time, the only unresolved issue was the peer reviewer's request that Applicant update the detail sheets to include van accessible pavement marking and sign details. On or about August 22, 2017, the Applicant submitted the revised plans as requested.
18. The Planning Board reviewed and considered the Project and Application at its regularly scheduled meeting on August 24, 2017. Relative to said meeting, the Planning Board caused the required written notice of said meeting to be mailed to abutters to the Subject property as required by Section 9.5.6 and caused the required notice of said meeting to be posted as required by State Law and Town By-Law.
19. Present at the meeting were Planning Board Members John Bethoney, Chairman, Ralph I. Steeves, Vice Chairman, Robert D. Aldous, Clerk, Michael A. Podolski, Esq., and James E. O'Brien IV. Also present at the meeting on behalf of the Planning Board were Planning Director Richard J. McCarthy, Jr., and Steven Findlen from McMahon Associates.
20. The Applicant was represented at the meeting by Peter A. Zahka, II, Esq., Law Offices of Peter A. Zahka, II, P.C., 12 School Street, Dedham, MA. Also present at said meeting were the Applicant, John Aplin, and the Project Engineer, Scott Henderson, P.E.
21. At the meeting, the Applicant and his representatives were provided an opportunity to make a full presentation. This was followed by questions and comments from the Planning Board, Planning Director Richard McCarthy, and peer reviewer Steven Findlen of McMahon Associates.
22. At said meeting, the Applicant also submitted a memorandum requesting the following **WAIVERS** from the provisions of the Dedham Zoning By-Law:
  - (a) A **WAIVER** from the number of required parking spaces set forth in Section 5.1.4 of the Dedham Zoning By-Law to allow the Subject Property to be served by 11 parking spaces instead of the required 15 parking spaces. *[Rationale: This Project is not a change to or an increase in the intensity of the existing use of the Subject Property. Given the nature of the business, "customers" rarely visit the Subject Property. The Applicant has submitted the requested information to the McMahon Associates*

regarding the number of employees, vehicles, equipment, etc., and the peer reviewer is in agreement that the 11 parking spaces proposed adequately serve the Subject Property. Furthermore, there are an additional four "spaces" interior to the building that are not included in the total number of parking spaces.]

- (b) A **WAIVER** from the aisle width requirement set forth in Section 5.1.7.2 of the Dedham Zoning By-Law to allow aisle widths of 18.7 feet instead of the required 24 feet. *[Rationale: Given the nature of the business, "customers" rarely visit the Subject Property. The area where the aisle width is so reduced is utilized by employees only. Per the request of the peer reviewer, the parking spaces in this area have been designated and signed as "employee only."]*
  - (c) A **WAIVER** from the interior landscape requirement of Section 5.2.2.2 of the Dedham Zoning By-Law to allow the interior landscaping to be 6.3% instead of the required 15%. *[Rationale: The Applicant is increasing the interior landscaping from 1.6% to 6.3%. In addition, the commercial use of the Subject Property is to the rear and is screened by the dwelling on the front property, retaining walls, and fences. Given the use of the Subject Property, additional interior landscaping will conflict with vehicles and equipment.]*
  - (d) A **WAIVER** from the perimeter landscape requirement set forth in Section 5.2.2.3 of the Dedham Zoning By-Law. *[Rationale: The southern and western property lines of the Subject Property have no perimeter landscaping but have retaining walls and fences. Furthermore, the western property line abuts another commercial property. It is noteworthy that the Applicant is actually planting (with permission) on the abutting properties to the south and east.]*
  - (e) A **WAIVER** from the scale of the site plan as set forth in Section 9.4.4.1 of the Dedham Zoning By-Law to allow the site plan to have a scale of 1":20' instead of the required 1":40". *[Rationale: The Subject Property is adequately shown on the plan scale utilized.]*
  - (f) A **WAIVER** from the traffic impact and access study requirement set forth in Section 9.5.5 of the Dedham Zoning By-Law. *[Rationale: At the outset, it is submitted that the Project is subject to Minor Site Plan Review and no traffic study is required. It is noteworthy that the Project involves the demolition of four (4) existing commercial buildings with a gross floor area of 4,952 sf (according to the Dedham Board of Assessors) and replacing the same with a single new building with a gross floor area of 5,850 sf. This represents an increase in floor area of only 898 sf. In addition, since the Applicant is not changing the use or the intensity of the use at the Subject Property, a traffic impact and access study serves no legitimate purpose. A previous traffic study was conducted on this street in connection with the new mixed use building at 408 Whiting Avenue. Subsequent to that project the Town installed two speed bumps on Whiting Avenue. It should also be noted that the Planning Board's peer reviewer did require the Applicant to study and take action to assure adequate "site distance".]*
23. While this was not a public hearing, the Planning Board provided abutters with an opportunity to be heard on this matter. Edward and Mary Mahoney, of 337 Whiting

Avenue, appeared at the meeting and voiced their concerns with the Project. They also submitted a petition signed by six other residents who share these concerns. Specific concerns/comments included (a) the planting of the arborvitaes on the side and back of the Subject Property, (b) the lighting that will be used in the evening to illuminate the area, and (c) the operational hours of the work force.

24. In response, the Applicant agreed to: (a) plant addition arborvitaes along the eastern property line, (b) to the extent practical, to conduct business-related activities inside the new building to between the hours of 8:00 a.m. and 6:30 p.m. (except for emergencies and during snow plowing operations) and none on Sundays (except for emergencies and snow plowing activities). In addition, it was noted that a lighting plan/polar diagram has been submitted and reviewed by the Planning Board and peer reviewer.

### **DECISION**

1. At the meeting duly held on August 24, 2017, after discussion, the Planning Board, consisting of John Bethoney, Chairman, Ralph I. Steeves, Vice Chair, Robert D. Aldous, Clerk, Michael A. Podolski, Esq., and James E. O'Brien IV, voted unanimously (5-0), to approve and grant the following **WAIVERS**:
  - (a) A **WAIVER** from the number of required parking spaces set forth in Section 5.1.4 of the Dedham Zoning By-Law to allow the Subject Property to be served by eleven (11) parking spaces instead of the required fifteen (15) parking spaces.
  - (b) A **WAIVER** from the aisle width requirement set forth in Section 5.1.7.2 of the Dedham Zoning By-Law to allow aisle widths of 18.7 feet instead of the required 24 feet.
  - (c) A **WAIVER** from the interior landscape requirement of Section 5.2.2.2 of the Dedham Zoning By-Law to allow the interior landscaping to be 6.3% instead of the required 15%.
  - (d) A **WAIVER** from the perimeter landscape requirement set forth in Section 5.2.2.3 of the Dedham Zoning By-Law.
  - (e) A **WAIVER** from the scale of the site plan as set forth in Section 9.4.4.1 of the Dedham Zoning By-Law to allow the site plan to have a scale of 1":20' instead of the required 1":40".
2. At the meeting duly held on August 24, 2017, the Planning Board determined that the Project was subject to Minor Site Plan Review and a traffic report and access study is not required. Therefore, a waiver from the requirement of submitting a traffic and impact report is not needed.
3. At the meeting duly held on August 24, 2017, after discussion, the Planning Board, consisting of John Bethoney, Chairman, Ralph I. Steeves, Vice Chair, Robert D. Aldous, Clerk, Michael A. Podolski, Esq., and James E. O'Brien IV, voted unanimously (5-0), to approve the Application for Site Plan Review on the following terms and **CONDITIONS**:

- a) Subject to the **CONDITIONS** contained herein, the Project shall be substantially constructed in accordance with the Record Plans listed on Exhibit B attached hereto and incorporated herein by reference.
- b) The number of trees proposed to be planted along the eastern property line as shown on the Record Plans shall be increased to the extent determined reasonable and appropriate by the Applicant's landscape architect,.
- c) While a traffic and access report is not required for the Project, the Applicant will have a copy of the report for the Project at 331 Whiting Avenue, Dedham, MA, placed in the file for reference purpose.
- d) To the extent reasonably practicable (and except for emergencies and snow plowing operations), the Applicant will conduct business activities inside the new building between the hours of 8:00 a.m. and 6:30 p.m, and none on Sundays.
- e) The Applicant's dumpsters located on the Subject Property shall be screened by opaque screening, which is constructed and maintained in strict compliance with all Dedham Zoning Bylaws and all Board of Health Regulations.
- f) Members of the Planning Board and the Planning Director shall be permitted access to the Project site during construction with proper notification to the Applicant subject to applicable safety requirements as established by the Applicant or its Contractor. Proper notification shall be through the construction process or shall be through the emergency call number of the Applicant's representative in case of emergency or off-hours situations.
- g) The Applicant agrees that, no later than one year from the Certificate of Occupancy, it shall file a written report with the Planning Director detailing the progress of the Project, compliance with all terms and conditions of this certificate, and the expected completion date. The Planning Board reserves the right to require the Applicant to appear before the Planning Board to further discuss and review compliance with this Certificate of Action.
- h) The Planning Director will be contacted by the Applicant upon completion of the Project to verify that the Project has been completed in full compliance with the specifications of the modified plan as submitted and approved in this Certificate of Action prior to any occupancy permit being issued, including a certification by the Applicant's engineer that the Project has been constructed according to said plans. A compliance letter will be issued forthwith once found to be properly completed.
- i) A copy of the final and approved Order of Conditions issued by the Dedham Conservation Commission and/or any Superseding Order, as the case may be, with all appeals resolved or otherwise terminated, shall be submitted to the Planning Board and shall be incorporated herein by reference.

- j) Prior to the issuance of the final certificate of occupancy for the Project, the Applicant shall complete the landscaping improvements, as shown on the approved landscaping plan or provide the Planning Board with a performance bond for same.
- k) During construction of the Project, the Applicant shall conform to all local, state and federal laws regarding noise, vibration, dust, and blocking of Town roads. Exterior construction of the Project shall not commence on any weekday before 7:00 a.m. and shall not continue beyond 6:00 p.m. except for certain operations such as concrete finishing and emergency repairs. Exterior construction shall not commence on Saturday before 8:00 a.m. and shall not continue beyond 6:00 p.m. with the same exceptions. The Building Commissioner may allow longer hours of construction in special circumstances, provided that such activity normally is requested in writing by the Applicant except for emergency circumstances, where oral communication shall be followed by written confirmation. There shall be no exterior construction on any Sunday or state or federal legal holiday. Hours of operation shall be enforced by the Dedham Building Commissioner and Police Department.
- l) All invoices generated by the Board's peer reviewers shall be paid prior to the issuance of any building permits or occupancy certificates.
- m) All municipal taxes and fees shall be paid in full and all taxes accounts shall be in good standing prior to the issuance of any building permit.

Dated August 24, 2017

Dedham Planning Board



Robert D. Aldous, Clerk



## **EXHIBIT A**

### **DOCUMENT LIST**

1. Site Plan Review Application “package” under cover letter from Attorney Peter A. Zahka, II, consisting of the following:
  - A. “Form X: Application for Site Plan Review” with Project Narrative
  - B. Plan sets entitled “Proposed Site Redevelopment, 331 Whiting Avenue, Assessor’s Parcel 128-105, Dedham, Massachusetts” consisting of the following:
    - i. Cover Sheet
    - ii. Existing Conditions, dated December 29, 2016, by R.E. Cameron & Associates, Inc.
    - iii. Sheet C1 - Site Layout Plan, dated May 30, 2017, by Henderson Consulting Services
    - iv. Sheet C2 - Grading & Utility Plan, dated May 30, 2017, by Henderson Consulting Services
    - v. Sheet C3 - Site Preparation Plan, dated May 30, 2017, by Henderson Consulting Services
    - vi. Sheets C4 – C6 – Construction Details Plans, dated May 30, 2017, by Henderson Consulting Services
    - vii. Sheet L1 – Landscaping Plan, dated May 29, 2017, by Kattman Corporation
    - viii. Sheet PH1 – Photometric Lighting Plan, dated May 30, 2017, by Vincent A. Dilorio, Inc.
  - C. Application for Abutters List
  - D. Filing Fee in the amount of \$1,000.
  - E. Peer Review Consultant Deposit in the amount of \$1,075.
2. Peer Review Report dated July 5, 2017, from McMahon Associates to Planning Director Richard McCarthy
3. Peer Review - Issues Summary dated July 5, 2017, from McMahon Associates to Planning Director Richard McCarthy
4. Memorandum dated July 10, 2017, from Director of Engineering Jason L. Mammone, P.E., to Planning Director Richard McCarthy
5. Letter with attached plans (Response to Peer Review Report) dated August 1, 2017, from Henderson Consulting Services, LLC, to Planning Director Richard McCarthy
6. Peer Review Report dated August 15, 2017, from McMahon Associates to Planning Director Richard McCarthy
7. Peer Review - Issues Summary dated August 15, 2017, from McMahon Associates to Planning Director Richard McCarthy

8. Email dated August 17, 2017, from Fire Chief William Spillane to Planning Director Richard McCarthy
9. Letter with attached plans (Response to Peer Review Report) dated August 18, 2017, from Henderson Consulting Services, LLC, to Planning Director Richard McCarthy
10. Notice of Non-Advertised Public Hearing
11. Peer Review Report dated August 21, 2017, from McMahon Associates to Planning Director Richard McCarthy
12. Peer Review - Issues Summary dated August 21, 2017, from McMahon Associates to Planning Director Richard McCarthy
13. Email with attached revised plans dated August 22, 2017, from Henderson Consulting Services, LLC, to Planning Director Richard McCarthy
14. Email dated August 22, 2017, from Planning Board Member James E. O'Brien, IV, to Planning Board Members and Planning Director Richard McCarthy
15. Email dated August 23, 2017, from Planning Director Richard McCarthy to Scott Henderson, PE, and Attorney Peter Zahka re: abutter questions
16. Waiver Request Memorandum dated August 23, 2017, from Attorney Peter A. Zahka, II, to Planning Board
17. "Petition on 331 Whiting Ave., Dedham, MA" submitted by abutter at meeting on August 24, 2017

**EXHIBIT B**

**RECORD PLANS**

1. Plan sets entitled "Proposed Site Redevelopment, 331 Whiting Avenue, Assessor's Parcel 128-105, Dedham, Massachusetts," consisting of the following:
  - A. Cover Sheet, dated May 30, 2017, revised through August 24, 2017
  - B. Existing Conditions, dated December 29, 2016, by R.E. Cameron & Associates, Inc.
  - C. Sheet C1 - Site Layout Plan, dated May 30, 2017, revised through August 24, 2017, by Henderson Consulting Services, LLC
  - D. Sheet C2 - Grading & Utility Plan, dated May 30, 2017, revised through August 24, 2017, by Henderson Consulting Services, LLC
  - E. Sheet C3 - Site Preparation Plan, dated May 30, 2017, revised through August 24, 2017, by Henderson Consulting Services, LLC
  - F. Sheets C4 - C6 - Construction Details Plans, dated May 30, 2017, revised through August 24, 2017, by Henderson Consulting Services, LLC
  - G. Sheet L1 - Landscaping Plan, dated May 29, 2017, by Kattman Corporation
  - H. Sheet PH1 - Photometric Lighting Plan, dated May 30, 2017, by Vincent A. Dilorio, Inc.
2. Building Elevation Plan for Baystate Landscaping, dated July 19, 2017, by Priggen Steel, 133 Franklin Street, Wrentham, MA