



CITY OF SOMERVILLE, MASSACHUSETTS
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Case #: ZBA 2014-63-E1-8/2015
Site: 260 Beacon Street
Date of Decision: September 16, 2015
Decision: Extension Approved
Date Filed with City Clerk: September 28, 2015

ZBA DECISION

Applicant Name:	Ben Rogan
Applicant Address:	98 Winchester Street, Medford, MA 02155
Property Owner Name:	Highland CBD 260 Beacon, LLC
Property Owner Address:	98 Winchester Street, Medford, MA 02155
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145

Legal Notice: Applicant, Ben Rogan, and Owner, Highland CBD 260 Beacon, LLC, seeks a time extension per SZO §5.3.10 & MGL Ch 40a for a Variance (§5.5) from the 12 parking spaces requirement (§9.5). This is part of a previous Special Permit with Site Plan Review to establish 17 residential units (§7.11.1.c), in a new mixed-use building with 3 approx 1,000 sf commercial units and a Special Permit to establish a shared driveway (§9.13.b & §9.13.c).

<u>Zoning District/Ward:</u>	RC zone/Ward 2
<u>Zoning Approval Sought:</u>	§5.3.10, §5.5, §9.5, §7.11.1.c & §9.13.b & §9.13.c
<u>Date of Application:</u>	August 11, 2015
<u>Date(s) of Public Hearing:</u>	September 16, 2015
<u>Date of Decision:</u>	September 16, 2015
<u>Vote:</u>	5-0

Appeal #ZBA 2014-63-E1-8/2015 was opened before the Zoning Board of Appeals at Somerville City Hall on September 16, 2015. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L. c. 40A, sec. 11 and the Somerville Zoning Ordinance. After one hearing of deliberation, the Zoning Board of Appeals took a vote.



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DESCRIPTION:

The site has an approved project under Case # ZBA 2014-63 and the proposal is to extend the timeframe of approval. The approval was to demolish the building and construct a 3-story mixed use building with 3 commercial spaces on the ground floor totaling 2,905 square feet and 17 residential units. There will be a shared driveway with the proposed development at 266 Beacon Street. The shared driveway will lead to 24 parking spaces located under the building. Four of these spaces will be accessed directly from the driveway and will be used for the retail portion of the building or for those who need to park in an accessible space. One of the spaces is a guest parking spot located at the end of the driveway. The remaining number of spaces is 19 for the 17 residential units.

The building will have a contemporary design. There will be storefront systems with a large amount of glazing. The residential above will be clad with fiber cement panels, wood clapboards and there will be large casement windows. The units will be approximately 1,500 square feet – 2 will be 3-bedrooms, 14 will be 2-bedrooms and 2 will be 1-bedrooms. Twelve units are two-story units with the bedrooms on the second floor. On the third floor of the building will be a roof garden along the middle of the building, which will be visible from a bedroom and study in each unit. The roof garden will include skylights to bring light to the second floor corridor.

A Special Permit was granted for a shared driveway that allows for a driveway to straddle the lot line and serve a parking space on two or more lots. A Special Permit with Site Plan Review was granted to establish 17 residential units. Finally, a variance was granted to reduce the number of parking spaces required by 11 spaces.

EVALUATION & FINDINGS FOR EXTENSION:

Massachusetts General Law Chapter 40A states:

“If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period.”

The original variance was approved on September 17, 2014 and filed with the City Clerk on September 24, 2014. With this approval the extension will last until March 24, 2016.

In SZO §5.3.10 good cause for an extension of a special permit shall be determined by the SPGA, and only upon a finding of demonstrated hardship (e.g. financing problems, labor strike, bad weather conditions, or act of God) and that there has been good faith effort to overcome the hardship and expedite progress. In the case of a variance extension, the same findings should be evaluated.

Demonstration of Hardship

SZO §5.3.10 cites four examples of “hardship”: financing problems, labor strike, bad weather conditions, and act of God.

The Applicant experienced a hardship on account of tenants not vacating properties. There is a shared driveway for 260 and 266 Beacon Street as part of a combined site plan for the development of both properties. The tenants at 260 Beacon Street, which was a methadone clinic, did not vacate in a timely fashion and a long civil eviction was necessary. The tenant at 260 Beacon Street did not vacate until late in June of 2015. The tenant also held up the owner from demolishing the building in order to perform environmental testing. The testing will begin immediately.

The Board finds that the Applicant encountered issues that constitute hardship which prevented the commencement of construction under the permit.



Good Faith Effort to Overcome Hardship and Expedite Progress

The Applicants have followed the legal steps to evict the tenant and have applied for building permits. They received an interior demolition permit on August 24, 2015 and foundation permit on August 27, 2015. They are working towards receiving a building permit for the structure. The approval would only allow for a short timeline to start construction on the site.

Based on the above, the Board finds that the Applicant is making good faith efforts to overcome the demonstrated hardships and the permitting for the construction will need to happen in an expeditious manner in order for the approval to remain valid.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans , Elaine Severino and Josh Safdie. Upon making the above findings, Richard Rossetti made a motion to approve the request for an extension of Special Permit #2014-63 to March 24, 2016. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **APPROVE** the request.



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Richard Rossetti, *Clerk*
Danielle Evans
Elaine Severino
Josh Safdie

Attest, by the Administrative Assistant:

Dawn M. Pereira

Copies of this decision are filed in the Somerville City Clerk's office.
Copies of all plans referred to in this decision and a detailed record of the
SPGA proceedings are filed in the Somerville Planning Dept.

CLERK'S CERTIFICATE

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 3.2.10.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on _____ in the Office of the City Clerk, and twenty days have elapsed, and

FOR VARIANCE(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ any appeals that were filed have been finally dismissed or denied.

FOR SPECIAL PERMIT(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

Signed _____ City Clerk Date _____

