



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
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PLANNING DIVISION

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**Case #: ZBA 2015-79-R1-11/16**  
**Site: 191 Beacon Street/81 Park Street**  
**Date of Decision: January 4, 2017**  
**Decision: Petition Approved with Conditions**  
**Date Filed with City Clerk: January 9, 2017**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Well Built Construction Company, Inc.
<b>Applicant Address:</b>	17 Jeffreys Neck, Ipswich, MA 01938
<b>Property Owner Name:</b>	Beacon/Park, LLC
<b>Property Owner Address:</b>	11 Jeffries Neck, Ipswich, MA 01938
<b>Agent Name:</b>	Richard G. DiGirolamo, Esq.
<b>Agent Address:</b>	424 Broadway, Somerville, MA 02145

Legal Notice: Applicant, Well Built Construction Company, Inc., and Owner, Beacon/Park, LLC, seek a revision to a Special Permit under SZO §5.3.8 to replace decks with balconies, install a fence, landscape features, and noise screening devices, and designate space for trash storage within the commercial units.

<u>Zoning District/Ward:</u>	RA zone/Ward 2
<u>Zoning Approval Sought:</u>	§5.3.8
<u>Date of Application:</u>	November 23, 2016
<u>Date(s) of Public Hearing:</u>	January 4, 2017
<u>Date of Decision:</u>	January 4, 2017
<u>Vote:</u>	5-0

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Appeal #ZBA 2015-79-R1-11/16 was opened before the Zoning Board of Appeals at Somerville City Hall on January 4, 2017. 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.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143  
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**DESCRIPTION:**

In May 2016, a Special Permit was granted by the Zoning Board of Appeals (ZBA) (Zoning Case #: ZBA 2015-79) to substantially modify a nonconforming structure, by replacing an existing garage with three residential units and a small commercial unit. The approval was to demolish the 340sf wood frame garage that is currently in disrepair, and to substantially modify the currently nonconforming brick service station. By modifying the nonconforming structure, and preserving a portion of it, the applicant is able to propose a structure that fronts Beacon Street along the entirety of the site, which would buffer the residential neighborhood from the traffic on Beacon Street, and provide space for a generous amount of landscaping in the rear of the property to further soften the impact of the new development on the abutting properties. The proposed mixed-use structure is three stories tall, and includes three residential units of three bedrooms each on the second and third floors, and a small space at the ground floor for commercial uses, and a flex space for one of the units that would work for a small office or home occupation. The required parking for the residential units is located inside the ground floor of the building and is accessed via a pervious asphalt driveway in the rear of the structure.

The Decision of the ZBA was appealed in Land Court by a direct abutter. The developer, Well Built Construction Company, Inc., and the direct abutter reached a settlement agreement and the Land Court ordered that the case be remanded back to the ZBA to approve of minor modifications outlined in the settlement agreement, which include replacing decks with balconies, installing a fence, landscape features, and noise screening devices, and designating space for trash storage within the commercial units.

**FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1):**

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §5.1.4 of the SZO. This section of the report goes through §5.1.4 in detail.

1. Information Supplied:

The Board finds that the information provided by the Applicant conforms to the requirements of §5.1.2 of the SZO and allows for a comprehensive analysis of the project with respect to the required Special Permits.

2. Compliance with Standards: *The Applicant must comply "with such criteria or standards as may be set forth in this Ordinance which refer to the granting of the requested special permit."*

Pursuant to the previously approved Special Permit, the ZBA found that the existing nonconforming front yard setback and the existing nonconforming side yard setback were going to be reduced. Also, the existing nonconforming rear yard would become conforming. The ZBA found that the alterations proposed would not be substantially more detrimental to the neighborhood than the existing structure/use.

The revised alterations to the structure that are proposed, and were agreed to in the settlement agreement, will not affect any of the nonconforming aspects of the existing structure. Therefore, in considering a special permit under §4.4 of the SZO, the Board finds that the alterations/use proposed would not be substantially more detrimental to the neighborhood than the previously approved structure/use.

3. Consistency with Purposes: *The Applicant has to ensure that the project "is consistent with (1) the general purposes of this Ordinance as set forth in Article I, and (2) the purposes, provisions, and specific objectives applicable to the requested special permit which may be set forth elsewhere in this Ordinance, such as, but not limited to, those purposes at the beginning of the various Articles."*

The proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to promote the health, safety, and welfare of the inhabitants of the City of Somerville; to provide for and



maintain the uniquely integrated structure of uses in the City; to lessen congestion in the streets; to protect health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to conserve the value of land and buildings; to adequately protect the natural environment; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality.

The proposal is consistent with the purpose of the district, which is, "To establish and preserve medium density neighborhoods of one-, two- and three-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts."

4. Site and Area Compatibility: *The Applicant has to ensure that the project "(i)s designed in a manner that is compatible with the characteristics of the built and unbuilt surrounding area, including land uses."*

*Surrounding Neighborhood*: The surrounding neighborhood contains a mix of residential and commercial uses. The site is located in a pocket of the neighborhood that is primarily residential, but located approximately one tenth of a mile from pockets of commercial uses that are convenient to the neighborhood and help to encourage pedestrian activity in the area.

*Impacts of Proposal (Design and Compatibility)*: The impacts of the proposal will be beneficial to the neighborhood on multiple fronts. First, the massing and location on the site of the proposed structure will help screen the abutting properties from the traffic on Beacon Street. Second, the three units of using proposed will help to improve the aesthetics of the neighborhood over the currently vacant lot that is in disrepair. The project will increase the landscaping and permeability of the site and neighborhood. Lastly, the inclusion of a space for a home office and for a small commercial use on the ground level helps to knit together the streetwall along Beacon Street and to provide space and uses that will be convenient to the neighborhood and its residents.

The Board finds that the impacts of the proposed revisions will also be beneficial. First, a solid cedar fence will be installed along the rear property line and a row of shrubs will be planted that are good for screening. Second, the balconies on the rear of the structure will not protrude into the rear yard as much as the decks. Third, the noise screening devices will help reduce noise from the rooftop air conditioning units.

5. Adverse environmental impacts: *The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.*

*Impacts of Proposal (Environmental)*: No adverse impacts on the surrounding area anticipated as a result of excessive noise, illumination, glare, dust smoke or vibration, or from emissions of noxious materials, or pollution of water ways or ground water, or interference with radio or television signals.

6. Vehicular and pedestrian circulation: *The circulation patterns for motor vehicles and pedestrians which would result from the use or structure will not result in conditions that create traffic congestion or the potential for traffic accidents on the site or in the surrounding area.*

*Impacts of Proposal (Circulation)*: No traffic congestion or potential for accidents are anticipated as a result of this structure.

6. Housing Impact: *Will not create adverse impacts on the stock of existing affordable housing.*

7. SomerVision Plan: *Complies with the applicable goals, policies and actions of the SomerVision plan, including: Preserve and enhance the character of Somerville's neighborhoods.*



This proposal will help protect and promote a diverse, interesting mix of small-scale business in Somerville’s neighborhoods and facilitates transit-oriented neighborhood infill development by creating human-scaled and enhancing the walkable character of Somerville blocks and neighborhoods.

**DECISION:**

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Elaine Severino and Josh Safdie with Anne Brockelman absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes								
1	Approval is for the revision of a previously approved Special Permit to perform minor modifications outlined in the settlement agreement, which include replacing decks with balconies, installing a fence, landscape features, and noise screening devices, and designating space for trash storage within the commercial units. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/PIng.									
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>November 23, 2016</td> <td>Application for Revision submitted to OSPCD</td> </tr> <tr> <td>February 25, 2016</td> <td>Plans originally approved by the ZBA (A-1.2, A-1.3, A-1.4, A-2.1, A-2.2, and A-2.3)</td> </tr> <tr> <td>November 1, 2016</td> <td>Modified plans submitted to OSPCD (A-1.0, A-1.1, A-1.4, A-2.2, and A-2.3)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	November 23, 2016	Application for Revision submitted to OSPCD	February 25, 2016	Plans originally approved by the ZBA (A-1.2, A-1.3, A-1.4, A-2.1, A-2.2, and A-2.3)	November 1, 2016	Modified plans submitted to OSPCD (A-1.0, A-1.1, A-1.4, A-2.2, and A-2.3)
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Any changes to the approved site plan or elevations/use that are not de minimis must receive SPGA approval.												
<b>Pre-Construction</b>												
2	The Applicant will be required to demonstrate that the updated project plans meet the current City of Somerville stormwater policy. Utility, grading, and drainage plans must be submitted to the Engineering Department for review and approval.	BP	Eng.									
3	The Applicant shall submit a proposed grading and drainage plan, stamped by a registered PE in Massachusetts that demonstrates compliance with the City’s stormwater policy.	BP	Eng.									



4	<p>Because of the history of the site and the intended use, the Applicant shall, prior to issuance of any demolition permit and/or any building permit for the project, provide to the Planning Department and the Inspectional Services Division:</p> <p>a) a copy of the Response Action Outcome (RAO) Statement, signed by a Licensed Site Professional (LSP) and filed with DEP, verifying that a level of no significant risk for the proposed residential use has been achieved at the site; or</p> <p>b) if remediation has not reached the RAO stage, a statement signed by an LSP describing (i) the management of oil and hazardous materials/waste at the site, including release abatement measures intended to achieve a level of no significant risk for residential use at the site, treatment and storage on site, transportation off-site, and disposal at authorized facilities, (ii) a plan for protecting the health and safety of workers at the site, and (iii) a plan for monitoring air quality in the immediate neighborhood.</p>	Demolition Permit	Plng/ISD	
5	The Applicant shall submit a proposed drainage report, stamped by a registered PE in Massachusetts that demonstrates compliance with the City's stormwater policy.	BP	Eng.	
6	The Applicant must contact the Engineering Department to coordinate the timeline for cutting or opening the street and/or sidewalk for utility connections or other construction. There is a moratorium on opening streets from November 1st to April 1st and there is a list of streets that have additional opening restrictions.	BP	Eng	
7	New sanitary connection flows over 2,000 GPD require a removal of infiltration and/or inflow by the Applicant. This will be achieved by submitting a mitigation payment, established by the City Engineers Office, to the City based on the cost per gallon of I/I to be removed from the sewer system and a removal ratio of 4:1. If a different ratio of removal or mitigation payment amount is adopted by the Board of Aldermen prior to the Applicant receiving a Certificate of Occupancy, payment will be adjusted to the BOA rate. The Applicant shall work with Engineering and meet this condition before a certificate of occupancy is issued.	BP	Eng.	
8	The Applicant shall develop a demolition plan in consultation with the City of Somerville Inspectional Services Division. Full compliance with proper demolition procedures shall be required, including timely advance notification to abutters of demolition date and timing, good rodent control measures (i.e. rodent baiting), minimization of dust, noise, odor, and debris outfall, and sensitivity to existing landscaping on adjacent sites.	Demolition Permitting	ISD	
<b>Construction Impacts</b>				
9	The applicant shall post the name and phone number of the general contractor at the site entrance where it is visible to people passing by.	During Construction	Plng.	



10	Approval is subject to the Applicant's and/or successor's right, title and interest in the property.	Cont.	Plng.	Deed submitted & application formed signed
11	The Applicant shall at their expense replace any existing equipment (including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheel chair ramps, granite curbing, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity. All new sidewalks and driveways must be constructed to DPW standard.	CO	DPW	
12	All construction materials and equipment must be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P	
<b>Design</b>				
13	Applicant shall provide final material samples for siding, trim, windows, and doors to Planning Staff for review and approval prior to construction. Applicant shall also provide final landscape plan and 6' fence design for approval.	BP	Plng.	
14	An exterior light and electrical receptacle is required for the first (or all) level of the porch and an electrical receptacle is required for the second level (if there is no access to the ground).	Final sign off	Wiring Inspector	
<b>Site</b>				
15	Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Plng. / ISD	
16	The electric, telephone, cable TV and other such lines and equipment shall be placed underground from the source or connection. The utilities plan shall be supplied to the Wiring Inspector before installation.	Installation of Utilities	Wiring Inspector	
17	All new sidewalks will be installed by the Applicant in accordance with the specifications of the Highway Superintendent. Specifically, all driveway aprons shall be concrete;	CO	Plng.	
18	No trash or refuse of any kind shall be stored outside of the building. This condition shall be included in the condominium documents.	CO	Plng. / ISD	
19	The landscaping area north of the Project's driveway as shown on the Plans as revised by this Revision shall be restricted to the plantings and landscaping elements shown on the Plan, and shall only be used for the purposes of landscaping as shown on the Plans.	CO / Perpetual	Plng. / ISD	
20	The parking spaces and garage spaces in the Project shall only be used by the residents of the units in the Building, and shall not be rented, sold, or otherwise transferred to non-residents.	Perpetual	Plng. / ISD	
<b>Public Safety</b>				



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21	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
22	Any transformers should be located as not to impact the historic building or landscaped area, and shall be fully screened.	Electrical permits & CO		
23	Notification must be made, within the time period required under applicable regulations, to the Massachusetts Department of Environmental Protection (DEP) if there is any release of oil, hazardous materials, or regulated hazardous substances at the site. The City's OSE office, Fire Department and the Board of Health shall also be notified.	At time of release	OSE/FP/BOH	
24	The suspected underground fuel tanks on this site must be removed under the supervision of the Fire Prevention Bureau. Permits will be required for these removals.	CO	FP	
<b>Final Sign-Off</b>				
25	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	Plng.	



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 \_\_\_\_\_

