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Case #: ZBA 2019-66
Site: 25 Ivaloo Street
Date of Decision: August 21, 2019
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: August 27, 2019

ZBA DECISION

Applicant / Owner Name: Tuesday Thomas & Can Keskin
Applicant / Owner Address: 12 Murdock Street, Cambridge, MA 02139
Agent Name: Richard G. DiGirolamo, Esq.
Agent Address: 424 Broadway, Somerville, MA 02145
City Councilor: J.T. Scott

Legal Notice: Applicants and Owners, Tuesday Thomas & Can Keskin seek a Special Permit under §5.3.10 of the SZO to extend a previously-issued special permit (ZBA 2016-145) by one year from the original special permit expiration date. RB zone. Ward 2.

Note: the original case number to which this extension refers, as noted within the body of the decision below, is **ZBA 2016-145**

<u>Zoning District/Ward:</u>	RB zone. Ward 2
<u>Zoning Approval Sought:</u>	SZO §5.3.10
<u>Date of Application:</u>	June 10, 2019
<u>Date(s) of Public Hearing:</u>	August 21, 2019
<u>Date of Decision:</u>	August 26, 2019
<u>Vote:</u>	4-0

Appeal # **ZBA 2019-66** was opened before the Zoning Board of Appeals in the City Council Chambers at Somerville City Hall on January 9, 2019. 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. On August 21, 2019, the Zoning Board of Appeals took a vote.



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I. DESCRIPTION

A. Special Permit Life & Extension

Pursuant to M.G.L. Chapter 40A, Section 5.3.10 of the SZO allows for the Special Permit Granting Authority (in this case, the ZBA) to extend the life of a special permit by up to one year from the original expiration date. In order to do so, the ZBA must make a determination of good cause. To determine good cause, the ZBA must find that the Applicant has demonstrated a hardship in exercising the special permit rights. Examples of hardship include financing problems, labor strike, bad weather conditions, or act of God. The ZBA must also find that the Applicant has demonstrated a good faith effort to overcome the hardship to expedite the process of exercising the special permit.

B. Demonstration of Hardship & Good Faith Effort

On March 1, 2017, the Applicants received special permits with conditions from the ZBA (case # **ZBA 2016-145**) to build a new, single-family residential structure after razing an existing building. In the intervening two-plus years, the Applicants were successfully able to raze the previous structure. However, when the time came for the Applicants to dig and pour the foundation of the new building, they encountered significant geotechnical issues and ancillary problems.

When digging the new foundation, the Applicants first encountered six (6) feet of peat. Beneath this peat layer was two-plus (2+) feet of blue clay. After getting through these topographical challenges but before the foundation could be poured or the foundation hole filled, rainwater pooled in the foundation hole, flooded a neighbor's basement and destroyed their foundation twice.

After resolving myriad issues, when the Applicants recently applied for their building permits this past spring, they discovered that their previously-granted special permits had expired.

In the case of 25 Ivaloo Street, their original special permits expired on March 1, 2019. The Applicants are requesting to extend the expiration of the special permits to March 1, 2020.

The original decision and originally-approved plans are provided.

C. Findings

It is the Board's position that the soil conditions found at 25 Ivaloo are extreme and rare: six (6) feet of peat followed by two (2) feet of blue clay are not conditions commonly encountered in the City. We typically encounter geotechnical problems relative to high water tables, not the conditions discovered at 25 Ivaloo.

Now that the immediate problems on this site and on the neighboring property have been mitigated, the Applicants are ready to undertake construction.

II. DECISION

Present and sitting were Members Orsola Susan Fontano, Elaine Severino, Drew Kane, and Anne Brockelman. Upon making the above findings, the Zoning Board of Appeals voted **4-0** to **APPROVE** the request to extend the special permits to March 1, 2020, which is one year from the original expiration date of the special permits. The original plans and conditions attached to the original approval (ZBA 2016-145) shall continue to apply.

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chair*
Anne Brockelman, *Acting Clerk*
Elaine Severino
Drew Kane, (Alt.)

Attest, by the Planner: _____

Sarah White

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



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_____ 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 _____

