

(SEAL)

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

MIDDLESEX, SS

10 MISC. 422703-(JCC)

_____)
SETH GOODMAN,)
Plaintiff)
)
V.)
)
BEACON STREET HOTEL)
and)
HERBERT F. FOSTER, JR.,)
ORSOLA S. FONTANO, RICHARD ROSSETTI,)
T.F. SCOTT DARLING, III, ESQ.,)
DANIELLE FILLIS, ELAINE SEVERINO,)
JOSH SAFDIE, as they are members)
of the CITY OF SOMERVILLE)
ZONING BOARD OF APPEALS,)
Defendants.)
_____)

ORDER OF REMAND

The Parties having filed a Joint Motion for the issuance of a court order remanding this matter to the Defendant Zoning Board of Appeals (“ZBA”) for further proceedings to consider whether to add certain conditions to its January 26, 2010 decision granting the Beacon Street Hotel a special permit, it is hereby **ORDERED** that the matter is remanded to the ZBA for further proceedings in accordance with the following requirements:

1. Within 60 days following the date of this Order of Remand, the special permit application originally filed with the ZBA on behalf of Beacon Street Hotel, shall be updated and revised to:
 - (1) reflect that the present owner of the subject property is Makrigiannis Fuel, LLC; (2) include a

drainage plan; and (3) include the dimensions of the proposed mechanical room located on the roof of the proposed building.

2. Upon receipt of the revised and updated special permit application, the ZBA shall forthwith schedule a public hearing for the purposes of considering whether the subject special permit decision shall be modified to include the following conditions related to traffic and engineering:

Traffic:

- a. The proposed hotel parking garage shall be valet parking only;
- b. The proponent shall monitor the pedestrian activity post opening pursuant to the recommendations of McMahon's peer review and may install a crosswalk, or other similar mitigation elements that may be permissible to MA DOT, should pedestrian crossing volumes warrant; and
- c. Pursuant to the detour and construction staging plan provided by the Applicant to McMahon, the Applicant will temporarily install pedestrian crossing sign(s) in the roadway where the temporary crosswalks are located, unless objected to by MA DOT, until construction is completed and the temporary crosswalks are removed.

Engineering:

- a. Garage Fan: the proponent shall install a weather hood on the proposed garage fan. The proponent shall provide an updated plan indicating the size and location of this hood to the Planning Staff for review and approval prior to the start of construction;
- b. Cooling Towers: the proponent shall install the two proposed cooling towers as close as possible to the center of the building's roof. The proponent shall provide an updated plan indicating the location of the cooling towers to the Planning Staff for review and approval prior to the start of construction;
- c. Heat pumps: the proponent shall install the two, 25-Gallon per Minute heat pumps as close to the roof deck as possible (as low as possible). The proponent shall provide an updated plan indicating the location of the heat pumps to Planning Staff for review and approval prior to the start of construction;
- d. Prior to the start of construction, the proponent shall provide the Plaintiff and the ZBA with the construction schedule and shall provide any revisions thereto as they are available.


3. The ZBA shall publish, post and send notices concerning the public hearing on the revised special permit application, in accordance with the requirements provided in G.L. c. 40A, §11.

4. Prior to voting on the revised special permit application, the ZBA shall have the drainage plan reviewed by the City Engineer.

5. Within fourteen (14) days after the ZBA decision on the revised application is filed with the City Clerk, the ZBA shall file a copy of that decision with this court.

And it is further ORDERED that the court shall retain jurisdiction over this matter, including any appeals which may be taken from the ZBA's decision following the remand. Pursuant to the parties' joint motion for a remand order, the Plaintiff shall dismiss his complaint in this action upon the filing of a ZBA decision adopting the traffic and engineering conditions outlined above. In the event the Plaintiff is aggrieved because the ZBA decision does not adopt said conditions, Plaintiff need not initiate a new lawsuit appealing said decision but shall, within twenty (20) days of the filing of the decision with the City Clerk, file with this court and serve upon all other parties a proper motion for leave to amend the pleadings to assert a right of judicial review of the decision following remand, with the form of the proposed amendment annexed to said motion, and within the same twenty (20) days shall file with the City Clerk written notice of having filed such motion in the Land Court, accompanied by true copies of the moving papers.

SO ORDERED.

 By the court (Cutler, J.)

Attest:

Deborah J. Patterson, Recorder

Dated: March 7, 2012

A TRUE COPY
ATTEST:


RECORDER