



CITY OF SOMERVILLE, MASSACHUSETTS
OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
JOSEPH A. CURTATONE
MAYOR

PLANNING DIVISION

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Case #: ZBA # 2007-11-E1-6/2011
Site: 292 Beacon Street
Date of Decision: July 13, 2011
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: July 27, 2011

ZBA DECISION

Applicant Name:	Ken Spera
Applicant Address:	P.O. Box 189, Still River, MA 01467
Property Owner Name:	Ken Spera
Property Owner Address:	P.O. Box 189, Still River, MA 01467
Agent Name:	N/A

Legal Notice: Applicant & Owner Ken Spera seeks a time extension (SZO §5.3.10) for Special Permit ZBA 2007-11 to replace a nonconforming one-story commercial structure with a larger 2 ½-story, commercial and residential structure.

<u>Zoning District/Ward:</u>	RC zone/Ward 2
<u>Zoning Approval Sought:</u>	§5.3.10
<u>Date of Application:</u>	June 15, 2011
<u>Date(s) of Public Hearing:</u>	July 13, 2011
<u>Date of Decision:</u>	July 13, 2011
<u>Vote:</u>	5-0

Appeal #ZBA 2007-11-E1-6/2011 was opened before the Zoning Board of Appeals at Somerville City Hall on July 13, 2011. 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:

1. Subject Property: The Applicant received special permits in 2007 to redevelop 292 Beacon Street. The property is a 7500 square foot lot on which sits a 3850 square foot flat-roofed wood-frame and masonry building previously used for a VFW hall, auto glass repair, and an auto repair shop. The existing structure is in disrepair and has been cited by the City's Neighborhood Impact Team for multiple violations.

Special Permit 2007-11 under SZO §4.4.1, §4.5.1 allowed for the construction of three ground-floor retail/office units, four two-bedroom residential units, and to change the nonconforming use of the driveway access. Special Permit 2007-50 under SZO §7.11.1.c allowed the use as a four-family dwelling as part of the approved mixed-use structure. The Applicant received a revision in 2008 (2007-11-R0508), which allowed for alterations to the building footprint, modification of façade and landscaping and a revision in 2009 (2007-11-R0609) which allowed for the modification of the height and roofline, the material and trim details, and incorporated phases into the project.

2. Nature of Application:

Section 5.3.10 of the Somerville Zoning Ordinance provides that:

A special permit or a special permit with site plan review shall lapse two years from the granting thereof, or such shorter time as specified in said permit, if a substantial use thereof has not sooner commenced, except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause. Good cause 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. The period of extension of the life of a special permit or special permit with site plan review shall be, at minimum, the time required to pursue or await determination of an appeal, but the maximum extension shall not exceed one (1) year beyond the original permit life.

A permit extension act was passed on November of 2010 that allowed for the automatic extension of development permits in effect or existence between August 15, 2008 and August 15, 2010. Permit Extension Act was created by Section 173 of Chapter 240 of the Acts of 2010 and automatically extend permits for two years beyond its otherwise applicable expiration date. The Special Permit for 292 Beacon Street was effective during this timeframe. Permit #2007-11 would have expired on July 25, 2009 and was extended to July 25, 2011. The Applicant is seeking a one year extension to July 25, 2012.

The dates of filing the decisions with the City Clerk's office are as follows:

- Case # 2007-11 – July 25, 2007
- Case # 2007-50 – November 21, 2007

Revisions - The revisions do not extend the timeframe for construction.

- Case # 2007-11-R0508 – June 10, 2008
- Case # 2007-11-R0609 – July 7, 2009



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FINDINGS FOR SPECIAL PERMIT EXTENSION:

Demonstration of Hardship

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

Issues arose during the demolition and building permit application process. One financing problem was that the bank would not finance the entire project. Another issue was with the interpretation of the building code in the requirement for an architect if the building is greater than 35,000 cubic square feet. In this case, phase I would be less than 35,000 cubic square feet but the building as a whole would be greater than 35,000 cubic square feet. The third issue was with achieving a Certificate of Good Standing for tax bills and water bills.

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 Applicant took the following steps to address the issues listed above.

He applied for and the Zoning Board issued a revision to the permit in July of 2009 to reduce the size of the building and break the project into phases, which the Applicant stated would allow the financing to be possible. When Inspectional Services required the Applicant to have an architect, which after some debate, the Applicant did and the architect stamped the plans. Finally, the Applicant worked with the City to set up a payment plan to the satisfactory of the Treasurer’s Office.

The Applicant also submitted documentation of steps that he has taken to move forward with the application since the revision on July 7, 2009.

- May 2009 to October 2010: Sign-off sheet for application for demolition of structures – complete with signatures from City Departments and other required organizations with dates ranging from May 2009 to October 2010.
- August 24, 2009: Letter from Nstar stating that the electrical service is disconnected and the meters were removed.
- October 6, 2010: Letter from Verizon stating that the phone service has been disconnected
- December 20, 2010: Application for Demolition
- July 2011: Demolition permit issued

Based on the above, the Board finds that the Applicant has made good faith efforts to overcome the demonstrated hardships. The Applicant indicated that he plans to start construction within the next few months which will greatly improve the state of the site that is in great disrepair.



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DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Scott Darling and Josh Safdie with Danielle Evans absent. Upon making the above findings Susan Fontano made a motion to approve the request for the extension of the conditional special permit, with all original conditions, until July 25, 2012. Scott Darling seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **APPROVE** the request.



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Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*
Orsola Susan Fontano, *Clerk*
Richard Rossetti
T.F. Scott Darling, III, Esq.
Josh Safdie (Alt.)

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 _____



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