



CITY OF SOMERVILLE, MASSACHUSETTS
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Case #: ZBA 2013-75-E1-7/2015
Site: 1119-1133 Broadway
Date of Decision: August 19, 2015
Decision: Petition Approved with Conditions
Date Filed with City Clerk: August 24, 2015

ZBA DECISION

Applicant Name:	Shree Ganesh Realty Trust, c/o Laxmi Pradhan, Trustee
Applicant Address:	1274 Broadway, Unit 32, Somerville, MA 02144
Property Owner Name:	Shree Ganesh Realty Trust, c/o Laxmi Pradhan, Trustee
Property Owner Address:	1274 Broadway, Unit 32, Somerville, MA 02144
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145
<u>Legal Notice:</u>	Applicant and Owner, Shree Ganesh Realty Trust, Laxmi Pradhan, Trustee, seeks a time extension SZO §5.3.10 & mgl ch 40a for Variances (§5.5) for lot area per dwelling unit (§8.5.B), floor area ratio (§8.5.E), and number of parking spaces (§9.5). This is part of a previous Special Permit with Site Plan Review to add 8 new units and a build an additional floor to the structure.
<u>Zoning District/Ward:</u>	BB zone/Ward 1
<u>Zoning Approval Sought:</u>	§5.3.10, §5.5, §8.5, §8.5.E & §9.5
<u>Date of Application:</u>	July 9, 2015
<u>Date(s) of Public Hearing:</u>	August 19, 2015
<u>Date of Decision:</u>	August 19, 2015
<u>Vote:</u>	5-0

Appeal #ZBA 2013-75-E1-7/2015 was opened before the Zoning Board of Appeals at Somerville City Hall on August 19, 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 2013-73 and the proposal is to extent the timeframe of approval. The approval was to add 8 residential units to the two-story building, making it three stories. There will be 8 one-bedrooms, 4 two-bedrooms and 2 three-bedrooms. The 3-bedroom units will be the affordable units. Also, one of these 3-bedroom units will be made accessible by converting the small office and a portion of the storage space on the ground floor to residential with a LULA to access the rest of the unit on the second floor. The accessible unit will have its own entrance directly off of the sidewalk.

The existing vertical metal siding and shutters on the bays of the building will be removed and replaced with azek panels that match the design of the bays on the three-story building. The same off-white brick located on the second floor will be used for the façade of the third story. The cornice on the building will be similar in style and dimension to the existing three story building.

There will be no parking onsite. The lot at 8 Curtis Street that currently provides parking for the following users will be available for residents of 1119-1133 Broadway. Technically the spaces cannot be counted as required spaces because parking on a separate lot is not allowed in the RA district. SZO, §9.13.d states that, “[i]n any business, commercial or industrial district, required parking spaces may be located on a separate lot, which may be in separate ownership, within a zoning district in which the principal use served by the remote parking is a permitted use.” The mixed use building is not an allowed use in the RA district and therefore a special permit to “park on a separate lot” is not possible. However, the preexisting use as a parking lot for tenants of 1119-1133 Broadway allows for this practice to continue.

Below is a table of the users of the 17 spaces in early 2014.

Owner	3 cars	Due to renovation
Restaurant	2 cars	At will
Out of State plate	4 cars	Temporary Rental
Dentist	2 cars	Parking till 2pm
Liquor	1 car	At will
Laundry	1 car	At will
Convenience Store	1 car	At will
Tenant	3 cars	Lease

The Zoning Board asked for the current usage of the parking lot and the following was provided:

3 Residential Tenants (1 tenant is moving at the end of August /new tenant will not have a car)	3 cars	Lease
Dentist (Hours of Operation: M-W 9am-5pm, Th-Sa 9am-2pm, Sun closed)	3 cars	Lease



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 August 20, 2014. If approved, the extension will last until February 20, 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 the funding source being in Nepal, which suffered a devastating earthquake in April of 2015. The Applicants were required to pay a down payment of 30% of the amount financed. Their bank is located in Nepal and they were not able to obtain the funds for the conditions of financing.

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’s attorney submitted a letter stating that the Applicant is working with East Boston Savings Bank to get further approval for financing. The attorney also stated that the Applicants are eager to get the project underway. 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 Anne Brockelman with Josh Safdie absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a time extension. 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

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 _____

