



CITY OF SOMERVILLE, MASSACHUSETTS
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Case #: ZBA 2012-68-E-4/2015
Site: 77-83 North Street
Date of Decision: June 10, 2015
Decision: Extension Approved with Conditions
Date Filed with City Clerk: June 18, 2015

ZBA DECISION

Applicant Name:	Peter Stefanou
Applicant Address:	19 Conwell Avenue, Somerville, MA 02144
Property Owner Name:	Peter Stefanou
Property Owner Address:	19 Conwell Avenue, Somerville, MA 02144
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145

Legal Notice: Applicant and Owner, Peter Stefanou, seeks a time extension (SZO §5.3.10) for Special Permit ZBA 2012-68 to greatly alter a nonconforming commercial structure under SZO §4.4.1 to construct two, three-story, semi-detached townhouses and associated parking.

<u>Zoning District/Ward:</u>	RB Zone/Ward 7
<u>Zoning Approval Sought:</u>	§5.3.10 & §4.4.1
<u>Date of Application:</u>	March 24, 2015
<u>Date(s) of Public Hearing:</u>	5/6, 5/20 & 6/10/15
<u>Date of Decision:</u>	June 10, 2015
<u>Vote:</u>	4-0

Appeal #ZBA 2012-68-E-4/2015 was opened before the Zoning Board of Appeals at Somerville City Hall on May 6, 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 two hearings of deliberation, the Zoning Board of Appeals took a vote.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
(617) 625-6600 EXT. 2500 • TTY: (617) 666-0001 • FAX: (617) 625-0722
www.somervillema.gov

DESCRIPTION:

The application is for a time extension for the Special Permit that was issued on March 6, 2013. The following is a description of the approved project. The proposal is to demolish most of the existing structure and build a semidetached townhouse with a total net square footage of 3,004 sf. The two units will be mirror images of each other. There will be a living room, kitchen/dining room, three bedrooms, three bathrooms and a basement for mechanical equipment. Each unit will have an approximately 200 sf balcony on the third story in the front of the townhouse overlooking North Street. The materials will be Hardie plank with different exposures for the first and second floors and Hardie panels on the third floor.

The site will include landscaping and parking spaces. There will be four parking spaces located at the corner of North Street and Conwell Avenue. There will be a prefabricated black metal fence around the parking area. A new tree will be planted in the landscape area along Conwell Avenue. There will be a curb cut on North Street which will require moving a street tree in order to locate the curb cut in an effective location.

The Applicant made the following changes in the plan since the set dated October 22, 2013. The revised set is dated February 12, 2013. The revised plans were shown at a community meeting on February 21, 2013.

- Building moved back 3 feet
- Front entrances moved to street elevation
- Rear entry moved to the side elevations
- Rear entry porches reduced to a single landing
- 24 inch Segmental wall added at the rear and parts of the side elevations to allow for the grade level to slope up toward the back of the property
- 4 Parking spaces pervious pavement area reduced to “compact” size although spaces are typically the standard size (9 feet by 18 feet) with the space where the front end of the car and open car doors overhang is landscaping
- 4 Parking spaces changed to pervious paving
- Shrubs added around parking area
- Landscape plan added

EVALUATION & FINDINGS FOR EXTENSION:

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.

The original special permit was approved on March 6, 2013 and recorded on March 19, 2013.

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 in the ability to get a contractor onboard to build the project and in securing financing. The Applicants contacted eleven contractors to get quotes for the project. They did not hear back from the majority of businesses and the few that did get back to them were not satisfactory to the Applicants. Details from the Applicant regarding these exchanges are attached.

The Applicants contacted two banks to receive financing. Details from the Applicant regarding the specific of negotiations are attached. A loan was secured; however additional financing is needed to cover the cost of the development.

The Zoning Board of Appeals finds that the Applicant encountered issues that constitute hardship and lack of response from contractors which prevented the commencement of construction under the permit.

Good Faith Effort to Overcome Hardship and Expedite Progress

The Applicant submitted a timeline of the action taken to move forward with the construction of this project. This timeline is attached to support this request. The timeline includes the following:

- contacted eleven contractors
- met with two banks
- received demolition approval from the Somerville Historic Preservation Commission and Fire Prevention Bureau
- met with NStar DigSafe twice
- commissioned and received an asbestos and contaminants report for the structure

Based on the above, the Zoning Board of Appeals finds that the Applicant is making good faith efforts to overcome the demonstrated hardships and move forward with the project. The Applicant indicated that he plans to start construction within the next year which will improve the state of the site that is in great disrepair.



DECISION:

Present and sitting were Members Orsola Susan Fontano, Danielle Evans , Elaine Severino and Josh Safdie with Richard Rossetti absent. Upon making the above findings, Danielle Evans made a motion to approve the request for a Special Permit. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals voted **4-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes				
1	<p>Approval is for the time extension until March 6, 2016 to construct two residential units in a semidetached townhouse with 4 parking spaces. This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>Jul 23, 2012</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> </tbody> </table> <p>Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	Jul 23, 2012	Initial application submitted to the City Clerk's Office	BP/CO	ISD/PIng.	
Date (Stamp Date)	Submission							
Jul 23, 2012	Initial application submitted to the City Clerk's Office							
2	The Applicant/Owner shall substantially demolish the structure, keeping only the portion of the building required by ISD to retain its nonconforming status, within 90 days of the expiration of the appeal of the ZBA decision of the time extension approval, or the time extension approval of the Special Permit shall lapse.	Within 90 days of recording decision	ISD/PIng.					
3	If construction has not commenced by December 1, 2015 the Applicant/Owner shall fill the site level to grade, plant it with grass, and maintain it to City standards. (weather permitting) If the condition is not met the time extension of the Special Permit shall lapse.	Dec 1, 2015	ISD/PIng.					



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Danielle Evans
Elaine Severino
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 _____

