



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
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PLANNING DIVISION

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**Case #: ZBA # 2013-34**  
**Site: 70 Prospect Street**  
**Date of Decision: June 5, 2013**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: June 6, 2012**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Douglas Beudet
<b>Applicant Address:</b>	14 Ibbetson Street, Somerville, MA 02143
<b>Property Owner Name:</b>	Emily Trust c/o Laurel Shuman, Trustee
<b>Property Owner Address:</b>	19 Locust Street, Suite # 3, Burlington, MA 01803
<b>Agent Name:</b>	Richard G. Di Girolamo, Esq.
<b>Agent Address:</b>	424 Broadway, Somerville MA 02145

Legal Notice: Applicant Douglas Beudet and Owner Emily Trust, received a Special Permit with Site Plan Review under SZO §6.1.22.D.1 to construct a new five story building and a Special Permit to establish 14 residential units in the building under SZO §7.13.E. The building will also include approx. 1,500 square feet of retail and 14 at-grade parking spaces. The current application is to seek a Variance from the side yard setback requirements under SZO §8.5.H, §6.1.22.G.5 and parking design standards under §6.1.22.G.6. CCD-55 zone. Ward 2.

<u>Zoning District/Ward:</u>	§6.1.22.D.1, §7.13.E, §8.5.H, §6.1.22.G.5 & §6.1.22.G.6
<u>Zoning Approval Sought:</u>	CCD-55 zone/Ward 2
<u>Date of Application:</u>	April 30, 2013
<u>Date(s) of Public Hearing:</u>	June 5, 2013
<u>Date of Decision:</u>	June 5, 2013
<u>Vote:</u>	5-0



Appeal #ZBA 2013-34 was opened before the Zoning Board of Appeals at Somerville High School Cafeteria on June 5, 2013. 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 (1) hearing(s) of deliberation, the Zoning Board of Appeals took a vote.

### **DESCRIPTION:**

The proposal is to demolish the structure on the lot and build a five-story mixed-use building totaling approximately 21,000 square feet including the basement space. The ground floor will include two retail spaces that total 1,296 square feet, 3480 square foot garage, and 766 square feet of common area. The remaining four floors will contain 14 residential units that range in size from 938 to 1217 square feet. There will be 10 parking spaces in an at-grade garage and 4 spaces at-grade outside. The curb cuts on Webster Avenue and the one on Prospect Street will be closed. A new curb cut will be required on Prospect Street.

#### *Commercial Space*

Two tenants will occupy the 1,296 gross square feet of commercial space. One of the retail spaces will be 951 square feet on the first floor and in the basement there will be 698 square feet of storage and two bathrooms. The other space is 346 square feet. Entrances to the retail spaces will be along Webster Avenue. Either of these spaces could be converted to an "Eating and Drinking" use (SZO §7.13 Use Cluster D); however, the parking requirement for a restaurant of any size would need to be met as the requirement for this use is higher than it is for Retail and Service

#### *Residential Units*

The residential entrance and lobby will be on Prospect Street. The lobby is also accessible from the parking garage. There will be fourteen residential units ranging in size from 938 to 1217 square feet with an average of 1044 square feet. Two of the units will be designated with an affordability restriction in perpetuity as required by Somerville Zoning Ordinance Article 13, Inclusionary Housing. Nine of the residences will have balconies.

#### *Sidewalk Depth*

The building will sit on or close to the property line. The width of the sidewalk is approximately 8 feet around the site. One of the newly installed street trees on Prospect Street will be transplanted to make space available for the proposed curb cut location. Five new street trees are proposed along Webster Avenue. The sidewalk along Webster Avenue and a portion of the sidewalk along Prospect Street will be replaced.

#### *Site & Landscaping*

Landscaping will consist of a ten-foot landscape buffer along the back of the property and five street trees along Webster Avenue. The vegetation will include a mix of shrubs and ground cover. A patio is proposed next to the small retail space and a berm is proposed in the back corner to retain runoff with an emergency overflow system. The parking area will be made of concrete unit pavers.

There will be a cedar wood ship-lap fence that will be 48 inches tall along the parking area on Prospect Street so that it will be completely opaque and will screen the cars along the street. The fence will be located 6 inches behind the property line with 12 inches of planting room including the space below the board fence) for some vine plantings proposed to be Virginia Creeper. A retaining wall will be constructed along a portion of the rear property line.

There will be trellises on the stair towers and on the rooftop planter. The plant proposed here is an extremely hardy honeysuckle vine. The Landscape Architect stated that this plant can grow to 40 feet and has fragrant flowers. Typically a three gallon pot has a plant that is about 3 feet high. It would grow about 10 feet during the first growing season.

#### *Parking & Traffic*



There will be a total of 14 parking spaces onsite. Ten parking spaces will be in the at-grade garage and 4 will be outside. The spaces will be accessible via a new curb cut on Prospect Street and the three existing curb cuts will be closed. There will be 4 ring bike racks for 8 bikes on concrete pavers behind the building.

The applicants have submitted a study evaluating the impact of the proposed development on traffic and access in the area including traffic volumes, site distance analysis, parking counts, and intersection capacity analysis. The study concludes that the additional vehicle-trips that will be generated at the project site are low, the proposed driveway location will have safety benefits relative to the location of the existing curb cuts, and there is sufficient on-street parking to capture additional parking needs for the retail component of the project. The Traffic and Parking Department's comments in the Comments Section below include a detailed response to the study.

#### *Building Design*

The building is a flat iron building with a distinctive base, middle and top for the rounded portion of the building marked by cornices. The materials of the building will primarily be nichiha panels in the form of brick for the main body of the building, hardie clapboards on the stair towers and azek panels for the rounded portion of the building. The ground floor contains storefront systems for the two retail spaces. The garage façade contains space for murals to be installed along it. The upper stories of the building have balconies to add interest to the building. The rear portion of the building is three stories to comply with the required dimension in the district. There are two stair towers on the Prospect Street side of the building and one will be approximately five feet taller than the parapet of the building to screen the rooftop mechanical equipment.

#### *Lighting and Signage*

Details about the exterior lighting are not included in the plans at this time. Signage locations are shown above the doors of the retail spaces. Review and approval of the specifications of the lighting scheme and materials of the signage will be a condition of approval and if additional signage locations are desired, a new special permit will be required.

#### *Trash/Utilities*

There is a room for trash and recycling that is accessed from the outdoor parking area for all of the uses on-site.

The mechanical equipment for the building will be located on the roof and surrounded by a solid material on top of the stair tower to screen it.

The transformer will be located in the rear yard along Webster Avenue.

3. Nature of Application: This project is the second significant proposal before the Planning Board under the CCD-55 zoning district. The CCD-55 district was created (originally as the "CCD" district) as a part of the Union Square rezoning study in 2009. The district was approved and applied in the Union Square area in April of 2009. Additional refinements were made when the zoning was applied to Broadway in Winter Hill and East Somerville in February 2010.

Generally the massing and uses capture the intentions of the CCD-55 district in a single Union Square development site with some exceptions where variances are required due to the shape of the lot. The building reflects the intention to provide for 55-foot buildings with a step down towards the residential neighborhood on the southeast side, provides adequate parking without developing excessive parking within this urban neighborhood, and encourages retail storefronts that will engage the pedestrian while improving the impact of the block. The project also provides on-site affordable housing.

The Planning Board approved a Special Permit with Site Plan review for development of the site on April 18, 2013; however, variance approval is required for the project to move forward. Since the Zoning Board of Appeals (ZBA) is the granting authority for variances, a separate hearing with the ZBA is required.

#### *Variances*



The application before the Zoning Board of Appeals is for the following variances.

The Applicant is seeking a variance from the side yard setback and height requirements when abutting a residential district under SZO §8.5.H and §6.1.22.G.5. The regulation is as follows: “The minimum side or rear yard setback of a property abutting a residential district line (RA, RB, RC) shall be 20 feet from the district line with the outermost 10 feet fee of the setback to consist exclusively of vegetative landscaping. The building shall have a 15 foot Upper Level Setback at a Tapering Height of 35 feet from the property line abutting the residential district. The building shall be designed so that its massing is concentrated along the commercial corridor and away from properties in residential zoning districts to the extent possible.”

The building complies with the setback from the southern property line abutting the neighbor on Webster Avenue but does not comply with the setback from the southwestern property lines abutting the neighbor on Prospect Street. The site plan (sheet A101.1) shows the southwest corner of the building that does not satisfy this requirement. The building is setback a few feet from the property line and will be taller than the 35 foot height limit within 35 feet of the residential district. Also, the landscape buffer will not extend to the southwestern property line.

The Applicant is also seeking a variance from the parking design standards under §6.1.22.G.6. The standard states: “Parking and loading areas shall be hidden from view from public ways. They may be located at the side or rear of a lot or in concealed structures and shall be suitably screened both visually and acoustically from the street and abutters (sufficient to conform to the City’s Noise Ordinance during operation). Any views into parking structures shall be minimized through use of landscaping or architectural treatment.”

This triangularly shaped lot has two fronts and no side yards. The parking is concealed behind the structure along Webster Avenue but there are four parking spaces that would be visible from Prospect Street. The proposal includes a four foot ship-lap wood fence with climbing plant planted along it. The parking area will be constructed of concrete pavers.

### **FINDINGS FOR VARIANCE (SZO §5.5.3):**

In order to grant a variance for side yard setback requirements under SZO §8.5.H, §6.1.22.G.5 and parking design standards under §6.1.22.G.6 the SPGA must make certain findings and determinations as outlined in §5.5.3 of the SZO.

1. There are “special circumstances relating to soil conditions, shape or topography of land or structures which especially affect such land or structures but not affecting generally the zoning district in which it is located, causing substantial hardship, financial or otherwise.”

#### *Setback Requirements*

The triangular shape of the lot with a jagged rear property line is a special circumstance that does not affect other properties in the zoning district that is causing a hardship. The land area of the site is not able to expand as the Applicant has stated that the residential abutters are not interested in selling their properties. Setting the building back 20 feet from the jagged rear property line and providing an upper level setback along this line would cause the building to have unusable interior layout. The building is already below the floor area ratio that is allow (2.4 proposed versus 3.0 allowed) and reducing the massing more would create a development that is unfeasible financially and not desired in this prominent location.

#### *Parking Design Standards*

The triangular shape of the lot with a jagged rear property line is a special circumstance that does not affect other properties in the zoning district that is causing a hardship. The land area of the site is not able to expand as the Applicant has stated that the residential abutters are not interested in selling their properties. The Architect



submitted schemes to show why underground parking was not pursued at the site due to the shape of the lot. The schemes show that there is only room for between 7 and 10 parking spaces underground and the Applicant would not build the project without providing one on-site parking space for at least nights and weekends for each of the 14 residential units. Because underground parking for 14 spaces is not viable, the spaces are at grade. Ten spaces fit in the building but the form and function of the building and setback requirements prevent the addition 4 parking spaces from being located inside of the building. Also, this site has two streets that are considered major corridors, Webster Avenue and Prospect Street, and no side or rear yard where parking is permitted in this district.

2. “The variance requested is the minimum variance that will grant reasonable relief to the owner, and is necessary for a reasonable use of the building or land.”

#### *Setback Requirements*

The Applicant has designed a building that meets the setback and stepback requirements along the Webster Avenue side of the property but does not meet the setback and stepback requirements for the Prospect Street side of the building. The variance is the minimum necessary to achieve a usable interior floor plan in a building that is not proposed to be the largest possible in terms of floor area ratio for this site. Also, the building will be setback farther than the existing building which sits within a few feet of the rear property line.

#### *Parking Design Standards*

Since the property does not have a true side or rear yard, locating four parking spaces in a parking lot along Prospect Street is a minimum relief that will allow for reasonable use for the land. A redevelopment of this parcel is desired since it is currently underutilized with a small structure and undesirable auto-rental business. Providing 14 parking spaces at grade with screening to accommodate a mixed use building with some ground floor retail will produce an appropriately scaled, desirable building and uses on the site that is difficult to develop. A smaller structure with less parking requirements would not produce the urban form or activity level desired for this prominent location in Union Square.

3. “The granting of the variance would be in harmony with the general purpose and intent of this Ordinance and would not be injurious to the neighborhood or otherwise detrimental to the public welfare.”

#### *Setback Requirements*

The building form and design, except for the setback and parking locations, meets the design standards and guidelines for a Corridor Commercial District. The neighbor will have a taller building close to them than the existing structure; however, the structure will be comprised of a stair tower and open decks approximately 15 feet from the edge of the house, which is a common condition in the City. Also the appearance of the site will be greatly improved. The distance to the residential district will not impact shadows as the proposed building will not cast a shadow on these residential abutters because of their orientation to the south of the proposed site.

#### *Parking Design Standards*

The parking areas have been screened to limit the impact to pedestrians along the street and meet the spirit of the requirement to minimize views into parking structures through use of landscaping or architectural treatment. The Applicants have proposed murals on the Webster Avenue façade and a wood ship-lap fence along the Prospect Street façade to screen parking from the street and concrete block pavement treatment to improve the appearance of the parking area.



**DECISION:**

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Danielle Evans, Elaine Severino, and Brandy Brooks. Upon making the above findings, Orsola Susan Fontano made a motion to approve the requests for Variances. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals voted **(5-0)** to **APPROVE** the request. Note: There are conditions attached to the Special Permit with Site Plan Review approval for this proposal.

The approval was based upon the following application and plans:

Date (Stamp Date)	Submission
October 30, 2012 – complete February 28, 2013	Initial application submitted to the City Clerk’s Office
July 24, 2012	plans submitted to OSPCD (plot plan)
4/18/13	Modified plans submitted to OSPCD (A00 Cover Sheet, A100 basement level, A101.1 Site Plan, A101 Ground Floor, A102 Second Floor Plan, A103 Third Floor Plan, A104 Fourth Floor Plan, A105 Fifth Floor Plan, A106 Roof Plan, A300 Elevations, A301 Building Elevations, A900 Perspective Views, A901 Area Plans), Landscape Plan



Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*  
Orsola Susan Fontano, *Clerk*  
Danielle Evans  
Elaine Severino  
Brandy Brooks (Alt.)

Attest, by the Senior Planner:

\_\_\_\_\_  
Lori Massa

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 \_\_\_\_\_

