



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
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**Case #:** ZBA 2007-11-E1 (6/2011)

**Date:** July 7, 2011

**Recommendation:** Approval

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**PLANNING STAFF REPORT**

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**Site:** 292 Beacon Street

**Applicant Name:** Ken Spera

**Applicant Address:** PO Box 189, Still River MA 01467

**Property Owner Name:** same

**Agent Name:** none

**Alderman:** Maryann Heuston

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.

Zoning District/Ward: RC / 2

Zoning Approval Sought: Extension to Special Permit SZO §5.3.10

Date of Application: June 15, 2011

Dates of Public Hearing: Zoning Board of Appeals July 13, 2011

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**I. PROJECT 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



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(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

## **II. EVALUATION & FINDINGS FOR 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.

Planning Staff 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 satisfaction 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. The documents are attached to support this request.

- 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, Planning Staff 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.

### **III. RECOMMENDATION**

Planning Staff recommends that the Board grant the extension of the conditional special permit, with all original conditions, until July 25, 2012.