



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

PLANNING DIVISION

***ZONING BOARD OF APPEALS MEMBERS***

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ELAINE SEVERINO (ALT.)  
JOSH SAFDIE (ALT.)

**Case #: ZBA # 2011-06**  
**Site: 65 Beacon Street**  
**Date of Decision: April 6, 2011**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: April 14, 2011**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Beacon Court Realty Trust
<b>Applicant Address:</b>	365 Broadway, Everett, MA 02149
<b>Property Owner Name:</b>	Beacon Court Realty Trust
<b>Property Owner Address:</b>	365 Broadway, Everett, MA 02149
<b>Agent Name:</b>	Richard G. DiGirolamo, Esq.
<b>Agent Address:</b>	424 Broadway, Somerville, MA 02145

<b><u>Legal Notice:</u></b>	Applicant & Owner Beacon Court Realty Trust seeks a Special Permit with Site Plan Review under §7.11.1(c) and §13.5 for density bonus for affordable housing to convert an office building into 15 units of two-bedroom housing with two commercial units on the first floor. The Applicant & Owner also seek a special permit under §4.4.1 to alter a nonconforming structure.
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<b><u>Zoning District/Ward:</u></b>	RC zone/Ward 2
<b><u>Zoning Approval Sought:</u></b>	§7.11.1.c, §13.5 & §4.4.1
<b><u>Date of Application:</u></b>	January 10, 2011
<b><u>Date(s) of Public Hearing:</u></b>	3/16 & 4/6/11
<b><u>Date of Decision:</u></b>	April 6, 2011
<b><u>Vote:</u></b>	5-0

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Appeal #ZBA 2011-06 was opened before the Zoning Board of Appeals at Somerville City Hall on March 16, 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 two hearings of deliberation, the Zoning Board of Appeals took a vote.



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## **DESCRIPTION:**

The Applicant proposes to convert the upper three levels of the building to provide 15 two-bedroom residential units, each around 1000-1100 square feet, which are intended to be sold as condominiums. The proposal also includes two small (approx 875 sf) commercial spaces that can be used as small office or retail establishments. These establishments will be on the first floor on each side of the front entry to provide more activity along Beacon Street while providing a welcoming streetscape in front of the building.

The underground garage will be used to supply all parking for the residents of the 15 units. The surface parking under the building at grade will be used for visitor parking, and parking for the commercial units. Some of the rear parking will be converted to a planting / sitting area.

Exterior changes are limited to a redesign of the first floor front façade to accommodate commercial units along the street, adjustment of the front entry way and front landscaping, addition of the landscape area in the rear parking area, and removal of three windows on the side façades to address the interior unit layout.

The initial building occupies 55% of the lot, and sits on a concrete pad supporting the underground garage that covers more lot area than just the building. Therefore, the removal of some parking in the rear will allow for some outdoor activity area. A portion of this area is still under the building, but some is open to the air. But, because this area sits on the pad of the parking garage below, landscaping is limited to planters in boxes, as there is no soil to support landscaping below.

The building will have no height or area increases. Exterior modifications are limited to the Beacon Street façade at the first level to introduce storefronts and a signboard/overhang and to provide an approach to front entrances which complies with MAAB requirements.

## **FINDINGS FOR SPECIAL PERMIT (SZO §7.11.1.c and 13.5):**

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §5.1.4 of the SZO. This section of the report goes through §5.1.4 in detail.

1. Information Supplied: The Board finds that the information provided by the Applicant conforms to the requirements of §5.1.2 of the SZO and allows for a comprehensive analysis of the project with respect to the required Special Permits.
2. Compliance with Standards: The Applicant must comply “with such criteria or standards as may be set forth in this Ordinance which refer to the granting of the requested special permit.”

In considering this case, the applicant has an existing structure that complies with all dimensional requirements except for landscape requirements, and the applicant is seeking special permit with site plan review. The submitted design complies with residential dimensional requirements except for the existing landscaping deficiency, and meets requirements for lot area per unit with the bonus units under SZO Section 13.5.

3. Consistency with Purposes: The Applicant has to ensure that the project “is consistent with (1) the general purposes of this Ordinance as set forth in Article 1, and (2) the purposes, provisions, and specific objectives applicable to the requested special permit which may be set forth elsewhere in this Ordinance, such as, but not limited to, those purposes at the beginning of the various Articles.”

The proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to conserving the value of land and buildings and encouraging the most appropriate use of land throughout the City. The property is located in a Residence C (RC) zoning district. The purpose of



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the district is “to establish and preserve a district for multi-family residential and other compatible uses which are of particular use and convenience to the residents of the district.”

The residential units and small commercial establishments complies with the intent of having multifamily residential and related uses in the area and the design generally supports a walkable neighborhood.

While the Board remains concerned about any application that moves commercial property into residential use, this particular case is unique, and therefore is consistent with the purpose of the ordinance and the goals of the city. In this case:

- The property is not in a location that is targeted in the long term for serving as an office center. It is in the middle of a residential community where first-floor commercial development is typical, but residential use is more consistent with surrounding uses.
- The applicant is retaining first floor commercial uses and designing them in a way that allows the structure to be more interactive with the pedestrians on the street than the existing design.
- The structure retains a residential look, and is located on a corner lot typical of the location of multi-family residential structures that transition between mixed-use arterial streets and neighborhood residential streets. The structure works well as a residential building.

4. Site and Area Compatibility: The Applicant has to ensure that the project “(i)s designed in a manner that is compatible with the characteristics of the built and unbuilt surrounding area, including land uses.”

The project is compatible with the characteristics of the surrounding area. The building has a residential character that was a part of its original design, so it would complement the surrounding residential neighborhood. The proposed project enhances the first floor of the building, without making any substantial changes to the rest of the structure. While the structure could benefit from a more significant façade update, it will remain compatible with the neighborhood by remaining in its current state, and all proposed renovations to allow for ground-floor commercial uses will enhance the appearance of the building.

5. Adverse environmental impacts: The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.

No such impacts are anticipated.

6. Vehicular and pedestrian circulation: The circulation patterns for motor vehicles and pedestrians which would result from the use or structure will not result in conditions that create traffic congestion or the potential for traffic accidents on the site or in the surrounding area.

The site will continue to have the same vehicular circulation as exists today. Two new pedestrian entrances, for the first floor commercial units, will be established along Beacon Street. The residential use will generate less traffic than the commercial activity previously on the site, and there will be no new safety concerns from this conversion.

#### **ADDITIONAL FINDINGS (SZO §13.5)**

In determining if the applicant is entitled to the bonus units under Section 13.5 the bonus application must meet the following standards: The additional affordable units provided shall continue to be offered at the rate of not less than fifty percent (50%) affordable to lower income range households and the remainder affordable to moderate income range households, as stipulated in Section 13.3.4. Any bonus may be awarded only by the SPGA, and shall not exceed twenty percent (20%) of the number of units normally permissible under the lot area per dwelling unit



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requirements of Article 8 and Article 16 of this Ordinance. This incentive shall not apply in Residence A or Residence B zoning districts.

In addition, the findings below must be met:

- a. The affordable units provide housing to households with children: The applicant is proposing two bedroom units in this project. All three affordable units will be two bedroom units. While most two bedroom market rate units do not support families with children, an affordable two-bedroom unit can be and probably will be able to support a family with one or two parents and at least one child. The applicant will work with housing staff to address this issue when marketing the units.
- b. The affordable units provide rental units: The development is a development of condominium units, and the applicant does not intend to retain and rent any affordable units. Therefore, the current plan is to put the affordable units up for sale. In order to address this finding, the planning and housing staff is requiring the applicant to offer the opportunity for any or all of the affordable units to be sold to a local non-profit that manages affordable housing so that the affordable units could be managed as affordable rental units.
- c. Analysis of the financial feasibility of the project demonstrates that award of bonus market-rate unit(s) will in part finance the affordable unit(s) such that there need not be full reliance on public subsidies to support rent payments for the affordable unit(s), regardless of whether such subsidies are available: The applicant does not intend to pursue rental subsidies for the affordable units.
- d. The proposed development site plan is designed in its site location, proportions, orientation, materials, landscaping and other features as to provide a stable and desirable character, complimentary and integral with the site's natural features and neighborhood context: The site plan has been designed to address the circumstances of the site conditions and the existing building and therefore complement the neighborhood context. As the structure has been located in this neighborhood for many years, the site is generally surrounded by residential properties, and the existing structure which appears residential will continue to be compatible with the neighborhood.
- e. Such development is generally consistent with the purposes of the Somerville Zoning Ordinance, and the density increase or relaxation of zoning standards has no material detrimental effect on the character of the neighborhood: The project otherwise meets the requirements of the SZO, it is allowed by special permit in the RC district, and the relaxation of the standards merely allows this already-completed structure to be filled with a number and size of units that will work for this building.
- f. The proposed development is consistent with relevant municipal plans and objectives: The project assists with the need for affordable housing, ensures that this structure remains occupied, and continues a commercial presence on the first floor of Beacon Street. This strategy is consistent with plans and objectives for housing in the City of Somerville.

The Affordable Housing Implementation Plan (AHIP) was signed by the Housing Division staff and the applicant before the hearing. As conditioned, the applicant, Planning Division staff and Housing Division staff will ensure that the findings above that are necessary to comply with SZO §13.5 are carried through.



**DECISION:**

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Scott Darling and Josh Safdie with Herbert Foster absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a special permit. Scott Darling seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes								
1	Approval is to alter a nonconforming structure to convert the existing structure for 15 residential units and two commercial units, with associated landscaping and site improvements. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	Plng.									
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>Jan 10, 2011</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>February 24, 2011</td><td>Modified plans submitted to OSPCD marked DRC 02/24/11 including 15 residential units</td></tr><tr><td>March 3, 2011</td><td>Revised front entrance plans as presented to DRC on 3/24/11</td></tr></table>				Date (Stamp Date)	Submission	Jan 10, 2011	Initial application submitted to the City Clerk's Office	February 24, 2011	Modified plans submitted to OSPCD marked DRC 02/24/11 including 15 residential units	March 3, 2011	Revised front entrance plans as presented to DRC on 3/24/11
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March 3, 2011	Revised front entrance plans as presented to DRC on 3/24/11											
Any changes to the approved site plan, or elevations that are not <i>de minimis</i> must receive SPGA approval.												
2	Any transformers and/or other mechanical equipment should be located as not to impact landscaped areas and shall be fully screened.	Electrical permits &CO										
3	Applicant shall submit material and color samples for elements of the new front façade. Applicant shall also adjust the front façade plan to remove and update the front door and related glass panels. Plans and materials for this detail shall be reviewed and approved by Planning Staff and the DRC.	BP	Plng.									
4	Applicant shall submit material and color samples for the replacement windows and the replacement feature that blocks the covered window openings in the side facades. These materials shall be reviewed and approved by Planning Staff.	Building Permit	Plng.									
5	The applicant shall complete a landscape plan for the planter area that includes landscaping in planter boxes and seating for at least eight people on benches or at tables. The applicant shall submit this landscape plan to Planning Staff for review and approval	BP	Plng.									



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6	The applicant shall work with the OSPCD Housing Division Staff to ensure conformance with the provisions of SZO §13.5 in implementing the AHIP. No certificate of occupancy shall be issued until the Housing Division has confirmed that the Condominium Documents have been approved and the Developer has agreed to a form of Deed Rider for the Affordable Unit(s).	Perpetual	Housing Division / Plng.	
7	All construction materials and equipment must be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P	
8	To the extent possible, all exterior lighting must be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	Plng.	
9	The Applicant shall at his expense replace any existing equipment (including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheel chair ramps, granite curbing, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity. All new sidewalks and driveways must be constructed to DPW standard.	CO	DPW	
10	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
11	Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards.	Perpetual	Plng. / ISD	
12	The Applicant, its successors and/or assigns, shall be responsible for maintenance of both the building and all on-site amenities, including landscaping, fencing, lighting, parking areas and storm water systems, ensuring they are clean, well kept and in good and safe working order.	Perpetual	ISD	
13	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	Plng.	
14	Prior to the erection of any signage, the Applicant shall work with Planning staff to design signage that meets Planning staff's approval to ensure the coordination of sign placement and design for the two store fronts.	BP for sign	Plng.	



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Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Acting Chairman*  
Richard Rossetti, *Acting Clerk*  
T.F. Scott Darling, III, Esq.  
Danielle Evans  
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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