



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

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Case #: ZBA2002-23-R0109
Site: 343-349 Summer St
Date: February 4, 2009
Recommendation: Approval

PLANNING STAFF REPORT

Applicant Name: Marc Daigle, The Dakota Partners
Property Owner Name: The Dakota Partners, LLC
Property Owner Address: 1264 Main Street, Waltham, MA 02451
Alderman: Gewirtz

Legal Notice: Applicant Marc Daigle & Owner seek a time extension (SZO §5.3.10) to Special Permit #2002-23 for a multi-unit residence.

Zoning District/Ward: CBD at time of approval/ Rezoned to RA / Ward 6
Zoning Approval Sought: Special Permit under SZO§5.3.10
Date of Application: January 12, 2009
Date(s) of Public Hearing: February 4, 2009

PROJECT DESCRIPTION

On July 2, 2002, the applicant was granted a Special Permit with Site Plan Review (SPSR) to establish a 14-unit dwelling on a then-CBD-zoned site containing 16,796 s.f. located at 343-349 Summer Street.

The applicant is requesting a Special Permit Extension of the maximum one year in order to extend the life of the original approval until March 1, 2010.

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 Applicant has submitted documentation of several steps taken in order to “expedite progress” of the project’s construction. The Applicant’s statement is attached, along with a timeline of events.

EVALUATION & FINDINGS

Demonstration of Hardship

SZO §5.3.10 cites four examples of “hardship”: financing problems, labor strike, bad weather conditions, and act of God. In addition to these examples, litigation and other obstacles related to obtaining a permit may be considered a hardship.

In addition to 4 years and 7 months of litigation following an appeal of the SPSR’s issuance, the Applicant has been unable to obtain permits necessary to begin construction under the original approval. Specifically, a prerequisite of construction under the SPSR is the establishment of a fire lane, which, as shown on the plans, requires the removal or relocation of a public shade tree. The Applicant has sought to relocate the shade tree through prescribed channels (request to the Department of Public Works, public hearing to remove the tree, and request to Mayor) but each request has been denied. The Applicant has also sought to establish an alternative fire lane, but was unable to secure an easement over all necessary properties. The Applicant is now in litigation with the City attempting to compel removal of the street tree.

Planning Staff finds that the permitting obstacles to establishing the required fire lane constitute a legitimate hardship to commencing construction under the permit. In addition, Planning Staff finds litigation related to that request to be a hardship. Planning Staff makes no representation that the outcomes of these permit requests and litigation should favor the Applicant, but that they have certainly impeded the Applicant’s ability to obtain building permits and commence construction.

Good Faith Effort to Overcome Hardship and Expedite Progress

As shown in the attached timetable, the Applicant submitted construction drawings for a building permit five months after the appeal was dismissed. Many applicants require more time than this to finalize construction drawings, particularly for projects of similar scale and complexity. Approximately simultaneously, the Applicant proceeded to address other items critical to commencing construction, including continuing to collaborate with the MBTA on details of construction around the shaft, preparing a construction management plan for review and acceptance, and seeking to remove and relocate the public shade tree in order to establish the fire lane. The public shade tree has become a critical impediment to moving forward with the project, and the Applicant is therefore pursuing a remedy that would enable them to proceed with the project.

Based on the above, Planning Staff finds that the Applicant has made good faith efforts to overcome the demonstrated hardships and to expedite progress.

RECOMMENDATION

Planning Staff recommends that the Board **grant the special permit extension to March 1, 2010.**

Evaluation of Actions Taken to Expedite Progress

Date	Action	Outcome	End date
26-Jun-02	SP granted	Filed with Clerk 7/9/02	26-Jun-04
24-Jul-02	Appeal filed by abutter	Dismissed	1-Mar-07
Apr-07	construction drawings begun, collaboration with MBTA	filed for building permits	1-Nov-07
8-Aug-07	initial filing for building permits at ISD	denied; review of "de minimis" changes begun	10-Sep-07
16-Aug-07	DPW meeting on construction management plan: fire lane and tree issues raised	hearing required	15-Nov-07
16-Aug-07	Planning staff review of "de minimis" changes	all changes either deemed <i>de minimis</i> or removed; some changes required additional drawings to be submitted	4-Oct-07
22-Aug-07	written request to tree warden to relocate tree	hearing required	15-Nov-07
13-Nov-07	Construction management plan sent to Ald. Gewirtz	not yet approved	n/a
15-Nov-07	Tree hearing	denied due to written objections	15-Nov-07
4-Dec-07	request to mayor to approve tree removal	denial not overturned	n/a
6-Dec-07	filed for SPSR revision to relocate fire lane	withdrawn after easement not granted over bank property	1/9/2008
Jan-08	filed suit to compel removal of tree	ongoing	