



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

PLANNING DIVISION

ZONING BOARD OF APPEALS MEMBERS

HERBERT F. FOSTER, JR., *CHAIRMAN*
ORSOLA SUSAN FONTANO, *CLERK*
RICHARD ROSSETTI
T. F. SCOTT DARLING, III, ESQ.
DANIELLE EVANS
ELAINE SEVERINO (ALT.)
JOSH SAFDIE (ALT.)

Case #: ZBA #2008-01-R0410B

Site: 308 Beacon Street

Date of Decision: May 19, 2010

Decision: *Petition Approved with Conditions*

Date Filed with City Clerk: May 26, 2010

ZBA DECISION

Applicant Name:	Harris-Beacon, LLC
Applicant Address:	111 Forest Avenue, Newton, MA 02465
Property Owner Name:	Harris-Beacon, LLC
Property Owner Address:	111 Forest Avenue, Newton, MA 02465
Agent Name:	Adam Dash, Esq.
Agent Address:	48 Grove Street, Suite 304, Somerville, MA 02144

<u>Legal Notice:</u>	Applicant and Owner, Harris-Beacon LLC seek a time extension (SZO §5.3.10) to Special Permit #2008-01 for a multi-unit residential development.
----------------------	---

<u>Zoning District/Ward:</u>	RC zone/Ward 2
<u>Zoning Approval Sought:</u>	§5.3.10
<u>Date of Application:</u>	March 30, 2010
<u>Date(s) of Public Hearing:</u>	May 19, 2010
<u>Date of Decision:</u>	May 19, 2010
<u>Vote:</u>	5-0

Appeal #ZBA 2008-01-R0410B was opened before the Zoning Board of Appeals at Somerville City Hall on May 19, 2010. 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 hearing 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:

On July 9, 2008, the applicant was granted two Special Permits to alter a non-conforming structure under §4.4.1 and to establish a 6-unit dwelling under 7.11.1.c on a RC-zoned site containing 6,364 sf.

The applicant is requesting a Special Permit Extension in order to extend the life of the original approval until July 9, 2011.

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 taken several steps in order to “expedite progress” of the project’s construction.

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 other obstacles related to obtaining a permit may be considered a hardship.

The Applicant has been unable to obtain permits necessary to begin construction under the original approval. The applicant is claiming that securing the financing for the project was a hardship in the current financial environment. In addition, since the approval of the project in July of 2008 a new edition of the building code has come into effect, which has required some alterations to the plans to meet the new code. There were also alterations and negotiations that needed to be made with the modular company to meet modular specs. The modular construction was requested by the neighbors to reduce the construction time and any impacts on the neighborhood. The applicant is claiming that the delay caused by having to redesign portions of the building was a hardship.

The Board finds the past year and a half to have been a challenging environment for obtaining any kind of financing including construction loans. The problems in banking have been widely publicized and this development is one of many that have had financing issues. The Board finds that the redesign due to changes in the building code would constitute a hardship that would lead to the delay in obtaining a building permit as plans would need to be adjusted accordingly.

Good Faith Effort to Overcome Hardship and Expedite Progress

The applicant, in a good faith effort to overcome these hardships, has obtained the financing as of late January 2010 and redesigned plans that address the revised building code and maintain the modular building construction technique that the neighbors and the applicant wish to employ. These revised plans will need to be approved by the Zoning Board as a revision to the special permit and will be submitted to the Board with a Staff recommendation in the coming weeks.



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

www.somervillema.gov



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

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Scott Darling. Upon making the above findings, Susan Fontano made a motion to approve the request for the special permit extension to July 9, 2011. Scott Darling seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **APPROVE** the request.



Attest, by the Zoning Board of Appeals:

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

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 _____



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

www.somervillema.gov

