



CITY OF SOMERVILLE, MASSACHUSETTS
ZONING BOARD OF APPEALS
JOSEPH A. CURTATONE, MAYOR

MEMBERS

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

Case #: ZBA #2009-03
Site: 100 Fellsway West
Date of Decision: August 19, 2009
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: August 31, 2009

ZBA DECISION

Applicant Name:	Electro Sales, Inc.
Applicant Address:	100 Fellsway West, Somerville, MA 02145
Property Owner Name:	Craig Corporation
Property Owner Address:	100 Fellsway West, Somerville, MA 02145
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145

Legal Notice: Applicant: Richard Berg seeks a Special Permit under SZO §4.4.1 to expand a non-conforming structure within a required front yard setback and a Special Permit with Site Plan Review (SZO §7.11.1.c) to convert from a factory/industrial use to a mixed commercial and residential use in order to construct a 19 unit residential building with approximately 5000sf of office space. BB zone. Ward 4.

<u>Zoning District/Ward:</u>	BB zone/Ward 4
<u>Zoning Approval Sought:</u>	§4.4.1 & §7.11.1.c
<u>Date of Application:</u>	February 4, 2009
<u>Date(s) of Public Hearing:</u>	3/18, 4/1, 4/15, 5/6, 5/20, 6/3, 6/24, 7/15, 8/5 & 8/19/09
<u>Date of Decision:</u>	August 19, 2009
<u>Vote:</u>	5-0

Appeal #ZBA 2009-03 was opened before the Zoning Board of Appeals at Somerville City Hall on March 18, 2009 and re-advertised and opened again on August 5, 2009. 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.

DESCRIPTION:

The Applicant is proposing a two phase project that would ultimately include 54 residential units and approximately 5000 sf of office space. The current application is for phase I of the project and a condition of approval will be

incorporated to require the applicant to apply for a special permit for the second phase prior to receiving a building permit for the first phase. Details of the second phase are currently being finalized with the City.

Phase I: The first phase of the development would contain 19 residential units and 5,000 sf of ground floor office space within an approximately 25,000 g.s.f building at the 100 Fellsway West address. The existing two-story masonry structure would be demolished and a new four story wooden structure would be built on the existing foundation. There would be 13 parking spaces located beneath the structure in the existing basement and a total of 60 spaces on the lot to serve the residential, office and existing warehouse use.

In addition, the applicant would demolish the structure at 356 Mystic Avenue in order to allow for windows for the new units, landscaping, parking and improved traffic circulation on the lot. Through negotiations with the HPC, the applicant has agreed to improve and stabilize the remaining structure at 360 Mystic Avenue and to construct the infrastructure for both phases of the project at the inception. The site plan features above and below ground parking, green space and a traffic circulation pattern that allows access and egress on Fellsway West and egress along Mystic Avenue.

Phase II: The second phase of the project will be submitted separately and required as a condition of approval of phase I. During this phase the corrugated steel structure at 95 Wheatland would be demolished (separate action by the HPC will be required to authorize the demolition). The existing structure at 360 Mystic Avenue would be fully restored and linked to a new residential wing constructed in a similar factory style. The new structure would maintain the 46 ft height of the existing structure and incorporate an elevator tower between the existing structure and new construction. The applicant is proposing 35 units within the completed structure and an additional 40 parking spaces. When completed there will be a total of approximately 100 parking spaces on the property.

FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1 & §7.11.1.c):

In order to grant a special permit and special permit with site plan review, the SPGA must make certain findings and determinations as outlined in §5.1.2 and §5.2.5 of the SZO. This section of the report goes through §5.1.4 and §5.2.5 in detail.

1. Information Supplied: The Board finds that the information provided by the Applicant conforms to the requirements of §5.1.2 and §5.2.5 of the SZO and allows for a comprehensive analysis of the project.

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 with site plan review.” As conditioned, the proposal would comply with these standards.

3. Purpose of the District: The Applicant has to ensure that the project “is consistent with the intent of the specific zoning district as specified in Article 6”.

The purpose of the Commercial Residential District (BB) district is “to establish and preserve general commercial high density residential areas consisting of multi-family developments, shopping centers, commercial strips and automobile related establishments where customers reach individual businesses primarily by automobile.” The proposed phase I, which includes a high density residential development of 19 units and 5000 sf of office space, is consistent with the intent of the BB zone.

The Board recognizes that the property should support more than 19 units given its size, location and the condition of the structures on the lot. Phase II of this proposal will seek approval for an additional 35 units.

4. Site and Area Compatibility: The Applicant has to ensure that the project “(i)s designed in a manner that is compatible with the existing natural features of the site and is compatible with the characteristics of the surrounding area, and that the scale, massing and detailing of the buildings are compatible with those prevalent in the surrounding area”.

There has been much design input from City Staff, Historic Preservation and the Design Review Committee to maximize compatibility with the area, the traditional use and historic structures that will remain on the lot. The proposed two phased development resembles a mill complex that takes key design elements from the existing historically significant structure at 360 Mystic Avenue. Design elements that have been adapted and incorporated into the new buildings include the low angled gable roof, the clapboard façade materials, overhanging eaves with dentil blocks, and the consistent pattern of windows along the facades.

The scale and massing, though larger than the residential structures to the west, maintains the existing character of the lot. In addition, The Board finds the massing of the proposed buildings to benefit the residential neighborhood by increasing the buffer between those neighborhoods and Interstate 93 immediately to the east. The Board finds that this structure as viewed from the park will create an appealing divide between the more industrial Century Bank building and the elevated highway and the lower scale residential structures.

Though the proposed building at 100 Fellsway would be taller than the existing building, The Board finds that the improved design, use of façade materials and increased landscaping would create a structure more compatible with the character of the area than the existing structure. The non-conforming setback of the existing structure would be increased though the addition of two floors (3 and 4) and The Board finds that this increase would not have a detrimental effect on the neighborhood because of the improved design.

5. Functional Design: The project must meet “accepted standards and criteria for the functional design of facilities, structures, and site construction.”

The project would meet accepted standards and criteria for the functional design of facilities, structures, and site construction. Traffic and Parking has reviewed the proposal for traffic circulation and congestion levels and believe that as designed any effect on traffic would be minimal. Other City departments have reviewed the proposal and no issues related to the functional design of the facility have been brought to the attention of the Board.

6. Impact on Public Systems: The project will “not create adverse impacts on the public services and facilities serving the development, such as the sanitary sewer system, the storm drainage system, the public water supply, the recreational system, the street system for vehicular traffic, and the sidewalks and footpaths for pedestrian traffic.”

The Board has not been alerted to any potential impacts on the sewer, storm drainage or water supply systems. Engineering will review construction drawings prior to the issuance of any building permits and any outstanding issues would be addressed at that time. The lot currently has no pervious surfaces, so it is anticipated that the increase in landscaping proposed for this site will reduce the flow of storm water into the drainage system. As previously discussed the street system for vehicular traffic would not be adversely impacted. As a condition of approval for this application all sidewalks and pedestrian paths affected by construction would need to be replaced.

7. 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.”

Environmental impacts would be limited to the increased emissions from the added cars to the area. Given that the lot is adjacent to Mystic Avenue, Interstate 93 and McGrath Highway, The Board finds that any environmental impacts from the proposed use would be almost undetectable. Due to the residential nature of the project The Board does not anticipate other environmental impacts. The proposed non-medical office use would only allow activities that would not produce an adverse environmental impact, such as administrative, professional or clerical activities as per the SZO definition.

8. Consistency with Purposes: “Is consistent with: 1) the purposes of this Ordinance, particularly those set forth in Article 1 and Article 5; and 2) the purposes, provisions, and specific objectives applicable to the requested

special permit with site plan review which may be set forth elsewhere in this Ordinance, such as, but not limited to, those at the beginning of the various sections.”

As the required findings of Article 5 have been made, and the proposal satisfies the purposes of Article 1, including “to provide for and maintain the uniquely integrated structure of uses in the City” and “to conserve the value of land and buildings” and of Article 6, as already described, the proposal is consistent with the purposes of the SZO.

9. Historic or architectural significance: The applicant must respect Somerville's heritage and actions detrimental to buildings of historic or architectural significance should be minimized and new buildings should be compatible with the buildings or places of historic or architectural significance.

The buildings at 356 and 360 Mystic Avenue have historical significance due to the design, period of construction, construction method and original use of the structures. The significance of the two structures reflects the industrial history of the city, especially with regard to furniture-making.

The Historic Preservation Commission found the structure at 356 Mystic Avenue to be "significant" and "preferably preserved". This structure has also been found by the City to be unsafe and has been marked by the City as dangerous to enter. The applicant proposes to demolish this structure and to locate predominantly landscaping with some parking in the void. The removal of this structure will also enable the new building at 100 Fellsway West to have more windows in the rear of the structure.

The structure at 360 Mystic Avenue was the original manufacturing facility on the site and has the most historic significance on the property. This structure also needs renovation, but is currently in a better condition than the structure at 356 Mystic Avenue.

On June 16, 2009 the Historic Preservation Commission reached a Memorandum of Agreement with the applicant to allow demolition of the building at 356 Mystic Avenue provided that measures are taken to mitigate adverse effects that the demolition may have on 360 Mystic Avenue and 95 Wheatland Street. Under the agreement the applicant must complete, "structural work to stabilize 360 Mystic Avenue and 95 Wheatland Street, and must be completed before the issuance of any demolition or construction permits. The SHPC's signoff on the demolition permit is contingent upon assurance from the City of Somerville Inspectional Services Department (ISD) that all ISD requirements for stabilization of 360 Mystic Avenue and 95 Wheatland Street have been complied with to ISD's satisfaction".

The Board supports this agreement and has incorporated the structural work to be done as a condition of approval in this report.

10. Location of Access: The Applicant must ensure that “the location of intersections of access drives with the City arterial or collector streets minimizes traffic congestion.”

The proposal meets all requirements of the zoning regarding parking and driveway dimensions. Traffic will enter from Fellsway West and exit from Mystic Avenue. No new curb cuts are proposed. The curb cut on Fellsway West will be reduced in size, which will improve pedestrian safety in front of the property.

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Fillis and Scott Darling. Upon making the above findings, Susan Fontano 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	Verified (initial)	Notes
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		Compliance												
1	Approval is to construct 19 residential units and 5000sf of first floor office space on the 100 Fellsway West address of MBL 69-E-1 (Phase I of a two phased project). This approval is based upon the following application materials and the plans submitted by the Applicant and/or its contractor:	BP/CO	ISD / Plng.											
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>(2/4/09)</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>6/16/09 (7/9/09)</td><td>Plans submitted to OSPCD for Phase I: mechanical study</td></tr><tr><td>7/30/09 (7/30/09) 6/25/09 (7/14/09)</td><td>Plans submitted to OSPCD for Phase I: Alt-03 Elevations/Renderings Alt-02 Elevations (dimensions only)</td></tr><tr><td>7/31/09 (7/31/09)</td><td>Plans submitted to OSPCD for Phase I: Site Plan A-010</td></tr></table>				Date (Stamp Date)	Submission	(2/4/09)	Initial application submitted to the City Clerk’s Office	6/16/09 (7/9/09)	Plans submitted to OSPCD for Phase I: mechanical study	7/30/09 (7/30/09) 6/25/09 (7/14/09)	Plans submitted to OSPCD for Phase I: Alt-03 Elevations/Renderings Alt-02 Elevations (dimensions only)	7/31/09 (7/31/09)	Plans submitted to OSPCD for Phase I: Site Plan A-010
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Any changes to the approved plans or use must receive ZBA approval.														
2	The applicant shall file an application for zoning approval for Phase II of the development in accordance with the renderings and site plan submitted to OSPCD dated June 16, 2009 prior to the issuance of the first Certificate of Occupancy for 100 Fellsway West.	First CO	Plng.											
3	The applicant shall construct infrastructure for both Phase I and Phase II as shown in site plan A-010, including all applicable water, sewer, duct and drainage work to the satisfaction of Inspectional Services.	CO	Plng/ISD											
4	The applicant shall complete structural work to stabilize 360 Mystic Avenue and 95 Wheatland Street to the satisfaction of Inspectional Services before the issuance of any demolition or construction permits.	Demolition or building permits	ISD											
5	Applicant shall work with Planning Staff and Traffic and Parking to develop appropriate control measures to ensure automobiles do not cut through the lot from Mystic Avenue to Fellsway West.	CO	Plng./T&P											
6	The Applicant shall work with Planning Staff to locate and screen (with fencing and/or vegetation) from the public way any proposed transformer.	Building Permit	Plng											
7	The Applicant shall install six bicycle parking spaces which could be satisfied by three inverted U-shaped racks.	CO	Plng											
8	No commercial signage on 100 Fellsway West shall be visible from Interstate 93 or Mystic Avenue. Signage visible from Fellsway West shall be approved by Planning Staff.	Cont.	Plng											
9	A code compliant fire alarm and suppression system shall be installed at 100 Fellsway West.	CO	FP											
10	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	Cont.	ISD											

	systems, ensuring they are clean, well kept and in good and safe working order.			
11	Any fencing installed on the site shall not be chain link.	CO	Plng.	
12	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 meet DPW standards.	CO	DPW	
13	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	
14	The applicant shall provide notice of intent to strictly comply with applicable State and Federal regulations regarding air quality including without limitation continuous dust control during demolition and construction.	CO	Plng/OSE	
15	The applicant shall develop a demolition plan in consultation with the City of Somerville Inspectional Services Division. Full compliance with proper demolition procedures shall be required, including timely advance notification to abutters of demolition date and timing, good rodent control measures (i.e. rodent baiting), minimization of dust, noise, odor, and debris outfall, and sensitivity to existing landscaping on adjacent sites;	Demolition Permitting	ISD	
16	Because of the history of the site and the intended residential use, the Applicant shall, prior to issuance of any foundation permit and/or any building permit for the project, provide to the Planning Division and the Inspectional Services Division: a) a copy of the Response Action Outcome (RAO) Statement, signed by a Licensed Site Professional (LSP) and filed with DEP, verifying that a level of no significant risk for the proposed residential use has been achieved at the site; or b) if remediation has not reached the RAO stage, a statement signed by an LSP describing (i) the management of oil and hazardous materials/waste at the site, including release abatement measures intended to achieve a level of no significant risk for residential use at the site, treatment and storage on site, transportation off-site, and disposal at authorized facilities, (ii) a plan for protecting the health and safety of workers at the site, and (iii) a plan for monitoring air quality in the immediate neighborhood.	Building Permits	ISD/Plng.	
17	To the maximum extent feasible applicant will utilize strategies during construction to mitigate dust and control air quality, to minimize noise and to implement a waste recycling program for the removed debris.	During Construction	OSE/ISD	
18	Notification must be made, within the time period required under applicable regulations, to the Massachusetts Department of Environmental Protection (DEP) if there is any release of oil, hazardous materials, or regulated hazardous substances at the site. The City's OSE office, Fire Department and the Board of Health shall also be notified.	CO	OSE/FP/BOH	

19	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final sign-off on the building permit to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	PIng	
20	Fencing for the entire property shall be constructed of wood or Staff approved wood-like materials at the completion of Phase II.	Cont.	PIng.	

Attest, by the Zoning Board of Appeals:

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

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 _____