

CITY OF SOMERVILLE
INTEROFFICE MEMORANDUM

To: Orsola Susan Fontano, Chair

From: Catherine Lester Salchert, Special Counsel

Re: **ZBA Special Permit #2008-65, Request to Modify and Grant First Extension
56 Webster Street (&520 Columbia Street)
Triad Alpha, LLC and Royal Hospitality**

Date: May 8, 2025

The memo addresses legal issues raised in the Applicant's supporting materials for the request to extend and modify the above-referenced Special Permit (also referred to as the SPSR, IP-SPSR). The Applicant requests that the ZBA:

(i) Grant the First Extension (of the initial Special Permit) and (ii) modify Conditions 2 and 3 of the Special Permit to modify the time frame for filing for zoning relief for the future development of the Property and Adjacent Property (56 Webster Street and the adjacent 520 Columbia Street) as a precondition for granting the First Extension.

See page 1 of the Applicant's submittal.¹

SUMMARY: As explained below, the ZBA may find that the original term of the Special Permit has been extended through July 22, 2029. However, the ZBA may not grant the First Extension *unless it first decides* to modify the terms for granting the First Extension of the Special Permit. Notably, it is premature to grant an extension since the original ten (10) year term has not yet expired.

The Special Permit incorporates the tolling provisions of the Development Covenant that state the Special Permit expiration *and "commencement"* of the first extension and second extension are all tolled by the delay in opening the Green Line Extension.

In addition, given that moving the laundry is the ultimate goal of the Applicant and the parties to the Development Covenant, the ZBA may determine in its discretion that modifying the Special

¹ The Application also includes a "related request" regarding the July 16, 2009 Development Covenant, requesting that it be "automatically modified" to incorporate the ZBA's decision on the Applicant's requests before the ZBA. While the ZBA can recommend that the changes to the Special Permit be included in a subsequent amendment to the Development Covenant, the Development Covenant may only be amended by the agreement of the parties including the Applicant and the City.

Permit conditions to include reporting on progress of the move and, or, achieving specific tasks required to move the laundry that are included in the application.

DISCUSSION:

Original Permit Term: Special Permit Condition 2 states that the initial term of the Special Permit is for ten (10) years after the date of the granting of the Permanent Certificate of Occupancy for the expanded laundry building (the “Effective Date”). See page 8 of the Special Permit. Condition 3 provides for two (2) additional one (1) year extensions for a total of twelve (12) years from the Effective Date. The ZBA is required to take into account the criteria listed in Condition 3 in deciding whether or not to support each extension. The Permanent Certificate of Occupancy was granted on May 4, 2014 which thereby became the Effective Date.

Condition 3 of the Special Permit also incorporates a tolling provision contained in a covenant dated July 16, 2009 among the City, Triad Alpha’s predecessor in title and Royal Hospitality, Inc.² (“Development Covenant”). Condition 3 states, in relevant part:

The Applicant may apply to the SPGA for up to two (2) extensions of this SPRS: A first extension for one (1) year which shall expire eleven (11) years from the Effective Date (the “First Extension”); and a second extension for one (1) year which shall expire twelve (12) years from the Effective Date (“Second Extension”) ***unless the application of the force majeure clause in Paragraph 7 of the Development Covenant extends these dates.***

See page 8 of the Special Permit, Condition 3 (emphasis added).

Paragraph 7 of the Development Covenant provides that the original ten (10) year term of the Special Permit shall be tolled for the period of time after December 31, 2018 until the date the Green Line Extension opens for commercial operation and states, in relevant part:

the parties agree that a delay in the anticipated opening of a new Massachusetts Bay Transportation Authority Green Line Station at Union Square beyond December 31, 2018, shall constitute a force majeure, ***which shall toll for a corresponding and equal time (i) the expiration date of the IP-SPSR for the Expansion Project and the commencement dates of the First Extension and the Second Extension;***

See page 4, paragraph 7 of the Development Covenant (emphasis added).

The Applicant’s supporting materials correctly point out that the Special Permit was extended by 1,176 days (or three years, two months and 21 days, calculated from December 31, 2018 to March 21, 2022). Adding 1,176 days to May 4, 2024 results in a new expiration date of approximately July 22, 2027.³ Therefore, the City agrees that the ZBA may find that the original term of the Special Permit has been extended through July 22, 2027 as Applicant has stated.

² ZPF LLC (“ZPF”), Columbia Street Realty, LLC and Royal Hospitality, LLC are also parties.

³ A date calculator adding 1,176 days to May 4, 2024 generated a result of July 24, 2027.

Chapter 238, Section 280 of the Acts of 2024 (“the Act”)

Automatic Two-Year Extension: The Applicant argues that since the Special Permit was in effect during the tolling period as defined by the Act, it is automatically extended for two more years through July, 2029.

The Act provides an additional tolling period for certain development permits in effect during January 1, 2023 through January 1, 2025 (the “tolling period”). Paragraph (b)(1) of Section 280 states:

(b)(1) Notwithstanding any general or special law to the contrary, an approval in effect or existence during the tolling period shall be extended for a period of 2 years in addition to the lawful term of the approval...

See highlighted copy of the Special Act attached.

Section 280 defines approval to include “...any permit... issued or made under... chapter 40 of the General Laws...” and development to include “the enlargement of a building...”. Exceptions in the Act that do not appear to apply. Given the broad wording of the Act and the fact the Special Permit was still in effect during the tolling period of the 2024 Act, the ZBA may lawfully determine that the Special Permit is extended for an additional two-years, thus extending the original term through July 22, 2029.

Request to Grant the First Extension: Based on the plain language of Paragraph 7 of the Development Covenant (force majeure provision), the First Extension does not become operative until after the Expiration Date. As noted above, the Green Line Extension tolling period applies to “*the commencement dates of the First Extension and the Second Extension...*” (Emphasis added.) Therefore, it is premature for the ZBA to grant the First Extension unless the ZBA first decides to modify the terms of the existing Special Permit.

Cc: Zoning Board of Appeals Members

Attachment:

Chapter 238, Section 280 of the Acts of 2024.