

April 8, 2022

Application for Plan/Permit Revision

Applicant: Kenneth Spera

Case No. ZBA 2018-118

Site: 292 Beacon Street

Date of Decision: November 7, 2018

Date Filed with City Clerk: November 15, 2018

(Appealed 12/4/2018 and Appeal ended 7/7/20)

Applicant Kenneth Spera ("Spera") seeks Plan/Permit Revision for the above referenced ZBA Decision. Specifically, Spera seeks relief for the following:

1. A one-year extension of the expiration date for the Variance granted by the ZBA 2018-118 Decision ("Decision") which expires 6/15/2022;
2. Approval of the Revised Site Plan submitted herein that adds a 6.2 x 10 feet Common Area along the North West property border in order to have a continuous walkway along that entire border, and;
3. Approval of the 8 x 16 feet Exclusive Use Area for Unit 1 adjacent to the current building as depicted on the Revised Site Plan.

In further support of these requests Spera states the following:

I. Extension of the Expiration Date of the Variance

Spera engaged in communications with the City of Somerville last year to determine the expiration dates for the time period of the Special Permit and Variance due to the appeal of this ZBA Decision (See Middlesex Superior Court Action No. 18-3470) appealed December 4, 2018 (resolved via settlement and dismissal July 7, 2020) and due to the COVID related tolling in the City of Somerville. As a result of these communications, it was determined that the Variance lapses on June 15, 2022 and Special Permit lapses June 15, 2023. See email attached hereto as Exhibit A dated June 28, 2021 from Matthew Zaino.

Spera seeks a one year extension of the Variance with a new lapse date of June 15, 2023. Spera requests the extension as it continues to be difficult to mobilize and submit an application for a building permit due to COVID related delays with vendors and professionals necessary to submit an application. The appeal of this Decision ended in the height of the COVID shut down and has proven difficult for Spera to take any action to further this development at this property. Spera now is in the process of assigning his rights pursuant to this Decision and the new developer has conditioned the transfer on receiving additional time to mobilize pursuant to the terms of the Variance granted in order to submit a building permit application.

There is no objection to this request by Beacon Street Equity, LLC the entity that appealed the Decision.

Wherefore, Spera requests a one year extension of the Variance with a new lapse date of June 15, 2023.

II. Addition of Common Area for a Continuous Walkway

The Revised Site Plan submitted herein adds a 6.2 x 10 feet Common Area along the Northwest property border in order to have a continuous walkway along that entire border. This is a request of the new developer and agreed to by the current Beacon Court Condominium Trust. This will assure continuity of the passage way along this property line for the proposed Phase II units. The addition of this common area does not impede any parking use by the existing Unit One owner in the driveway behind the existing building labeled on the Revised Site Plan.

Wherefore, Spera requests that the addition of the 6.2 x 10 feet Common Area along the Northwest property border as depicted in the Revised Site Plan be allowed.

III. Unit 1 Exclusive Use Area

Spera requests approval of the 8 x 16 feet Exclusive Use Area for Unit 1 adjacent to the existing building as depicted in the Revised Site Plan. The area is currently crushed stone and will remain open. This Exclusive Use Area does not increase pervious surfaces or create any obstructions. The driveway measured from the edge of the Exclusive Use Area is 12.5 feet wide creating no obstruction in the driveway.

This revision is the result of a settlement agreement between the parties in the zoning appeal of this Decision. It was a material term of the settlement agreement as the Unit 1 Owner/Appellant wanted exclusive use of this area with any possible Phase II development. Ideally, the Unit 1 Owner being a commercial property would like to use this area for a daytime customer parking space. Such a use would be consistent with other businesses on the street and be for short intervals during business hours. Such use would not obstruct the driveway as depicted. Further, giving exclusive control and enforcement of this area to a commercial unit owner would prevent any residents or guests from any potential Phase II development from using this area for longer term parking.

Wherefore, Spera requests approval of the 8 x 16 feet Exclusive Use Area for Unit 1 adjacent to the current building as depicted in the Revised Site Plan.

Thank you for your attention to this matter. Please contact me with any questions.

Very truly yours,



Richard M. Mucci

EXHIBIT A

From: Matthew Zaino amzaino@somervillema.gov
Subject: RE: ZBA Decision 2018-118 & Tolling
Date: June 28, 2021 at 9:47 AM
To: Richard Mucci rich@muccilegal.com
Cc: Nicholas Antanavica nantanavica@somervillema.gov, David Shapiro DSHAPIRO@somervillema.gov



Hi Rich,

Thank you for providing your analysis.

It looks like you are counting the tolling from the court case and COVID twice (3/10/20 – 7/7/20), giving an additional ~4months which I think is incorrect.

A simpler way to look at it as: time was tolled during the court case, then when the court case was over, time was tolled during the remaining time of COVID. In this case, no time has accrued until the end of COVID. That means two years from 6/15/21 for the SP (6/15/23) and one year from 6/15/21 for the variance (6/15/22) for lapsing.

Let me know if you disagree with this and why and we can look at it further.

Thank you,
Matt

From: Richard Mucci [mailto:rich@muccilegal.com]
Sent: Monday, June 28, 2021 8:55 AM
To: Matthew Zaino
Cc: Nicholas Antanavica; David Shapiro
Subject: Re: ZBA Decision 2018-118 & Tolling

Hi Matt

Thank you for your response. Here is how I calculate the expiration dates based on the ISD June 10, 2021 memo and please let me know if I am correct:

Special Permit ZBA Decision 2018-118 11/15/2018 appealed 12/4/2018 and approval in good standing 3/10/2020, appeal ends 7/7/20 so Special Permit to end 7/7/2022 + 462 tolling days = new expiration date is 10/12/2023

Variance ZBA Decision 2018-118 11/15/2018 appealed 12/4/2018 and approval in good standing 3/10/2020, appeal ends 7/7/20 so variance to end 7/7/2021 + 462 tolling days = new expiration date is 10/12/2022

Let me know if I am correct. Thank you.

Rich Mucci

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