



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2016-64-E1-7/18
Site: 350 Mystic Ave
Date of Decision: August 8, 2018
Decision: Petition Approved with Conditions
Date Filed with City Clerk: August 22, 2018

ZBA DECISION

Applicant & Owner Name: Craig Corporation
Applicant & Owner Address: 100 Fellsway West, Somerville, MA 02143
Agent: Richard DiGirolamo
Agent Address: 424 Broadway, Somerville, MA 02145
Alderman: Jesse Clingan

Legal Notice: Applicant and Owner, Craig Corporation, seeks, under SZO §5.3.10, to extend by one year, a Special Permit with Site Plan Review (SPSR) previously granted in September, 2016 for the construction of a mixed-use building with ground floor commercial and upper story residential use. Prior approval included a Special Permit to increase the number of dwelling units under §7.11.1c. The Applicant also seeks a Variance under SZO §5.5 and §4.4.1 for rear yard setback. BB zone. Ward 4.

<u>Zoning District/Ward:</u>	BB zone. Ward 4.
<u>Zoning Approval Sought:</u>	§5.3.10, §7.11.1c, §5.5 and §4.4.1
<u>Date of Application:</u>	June 28, 2018
<u>Date(s) of Public Hearing:</u>	August 8, 2018
<u>Date of Decision:</u>	August 8, 2018
<u>Vote:</u>	5-0

Appeal #ZBA 2016-64-E1-7/18 was opened before the Zoning Board of Appeals in the Aldermanic Chambers, Somerville City Hall, 93 Highland Ave, Somerville, MA. 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. On August 8, 2018, the Zoning Board of Appeals took a vote.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
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I. DESCRIPTION:

There are two parts to the Applicant's proposal:

- A. Extension of previously-approved Special Permits (ZBA approval granted September, 2016, case # ZBA 2016-64)
- B. Re-application for an expired Variance (ZBA granted original variance in September, 2016, case #ZBA 2016-64)

A. Special Permit Extension:

Under Massachusetts law, the expiration date of (a) special permit(s) may be extended for up to one year, one-time only. On September 7, 2016, Craig Corporation, Owner and Applicant for 350 Mystic Avenue, was granted the following special permits:

- Special Permit with Site Plan Review (SPSR) to construct a mixed-use building with ground floor commercial and upper story residential units
- Special Permit to increase the number of dwelling units to 17 (with one affordable)

The Applicant for 350 Mystic Avenue, Craig Corporation, seeks a one-year extension of their special permits due to the circumstances described later in this decision. It should be noted that, since the special permits have not yet expired, the Applicant is still only required to provide one unit of affordable housing. Had the special permits previously granted for this property already expired, the Applicant would have been required to provide the full 20% of affordable housing required of SPSR development projects as outlined in Article 13 of the SZO. The original approvals for the 350 Mystic project were granted prior to Article 13 being adopted by the City. Therefore, the "old" affordable housing requirements under which this project was permitted by the ZBA in 2016 still apply.

B. Variance:

M.G.L. Chapter 40A, the Zoning Act, does not allow the expiration date of variances to be extended. A variance was granted to Craig Corporation for the 350 Mystic project for a non-conforming rear yard setback. This variance was granted in September, 2016 along with the SPSR and special permit described in item "A" above.

As part of the August 8, 2018 hearing, the Applicant requests that the ZBA review the original application for a variance for the rear yard setback and formally vote to approve this variance once again. There have been no changes to the project proposal, including the part of the proposal necessitating a variance, since the ZBA rendered its original approvals on September 7, 2018.

II. FINDINGS FOR EXTENSION OF SPSR & SPECIAL PERMIT

In SZO §5.3.10 good cause for an extension of a special permit 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.

Demonstration of Hardship

The Applicant submitted the following information as part of their application to support of their application to extend their special permit by one year:

“As grounds thereof for the request of a time extension for the Special Permit # ZBA 2016-64, the applicant Craig Corporation’s President, Richard C. Berg suffered several medical issues for the past eighteen (18) months, which included a hospital stay of 205 days. Due to the illness M. Berg was unable to get the necessary financing for this project to move forward.”

Good Faith Effort to Overcome Hardship and Expedite Progress

Based on the above, the Board finds that the Applicant’s efforts to obtain financing for this project were hampered due to significant health issues including an extended hospital stay. The Board notes that prior to the approvals being granted for this project in September, 2016, the Applicant and his then-team worked with then-alderman, Tony LaFuente, to hold meetings gathering community input. Moreover, the permissions granted for the 17-unit mixed-use building reflect the second phase of a two-phase project that has been under some type of historic or ZBA review and discussion for at least the last 5 years.

The Board is in favor of granting a one-year extension for the SPSR and special permit originally granted for this project. This portion of Mystic Avenue is in need of this project being brought to completion, the lot improved, the new residential and affordable units brought online, and a quality occupant of the first-floor commercial space up and running.

III. FINDINGS FOR VARIANCE UNDER §5.5 & §4.4.1

- A. *Explain any special circumstances affecting the land or structure (related to soil conditions, shape or topography) that are unusual and do not affect other properties AND any hardship that results from these special circumstances.***

Applicant statement: *“The land at 350 Mystic Avenue is contaminated per the LSP Report as submitted. The active plan to remediate this soil will begin after approvals of this application are complete. Additionally, the original structure housed on this site was damaged by fire, became structurally challenged and for safety reasons was there after ordered to be lifted by the City of Somerville Inspectional Services Department.”*

Board: The Planning Department received and reviewed the environmental report affirming the contamination of the site.

- B. *Explain if and how the variance is the minimum approval necessary to grant reasonable relief to the owner AND results in a reasonable use of the land or structure.***

Applicant statement: *“The relief requested is the minimum approval necessary to grant reasonable relief and results in reasonable use of the land in order to maintain a streetscape on both Mystic Avenue and Wheatland Street as did the original structure as evidence by the existing foundation which still remains on the site. The mixed use application is reasonable use of this property.”*

Board: The Board finds that construction of a new building along the existing foundation line of the historic factory building formerly on this site keeps the Wheatland Streetscape dimensionally

consistent with its historic use. By drawing the Mystic Avenue façade of this building to the street, the proposed building is in keeping with the goals of the BB district which includes providing mixed-use, multi-transport amenities to the district. The Board further finds that the mixed-use proposal provides this area of the BB district with much-needed residential units, upgraded commercial space and intensity of use that is desirable in a BB zone. This amount of relief – the rear yard setback – is the minimal amount necessary to make this a viable project.

C. Explain if and how the granting of the variance will be in harmony with the Somerville Zoning Ordinance AND will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Applicant statement: *“The relief requested when granted will be in harmony with the SZO and will not be injurious to the neighborhood because the application intends to create both market-rate and affordable units while cleaning up a contaminated site while bringing commercial/retail uses to its entire first floor benefiting the City and especially the immediate neighborhood. Further, the project adds to Mystic Avenue as a major thoroughfare.”*

Board: The Board finds that the addition of 1 affordable and 16 market-rate residential units of varying bedroom count is in keeping with the goals of the SZO. Additional residential units that depend on a variety of transportation uses – vehicular, bike, ambulatory, and public transit – is needed and encouraged in this portion of the BB zone which is in need of improvement. The Planning Staff, together with the ZBA, will guide the business use for the commercial space in order to ensure that leases/occupants provide a benefit to Somerville as a whole, the residents on the property and the surrounding neighborhood. Prior to its current state of containing a residential building and a dirt lot, the parcel in question, was a depressed site, at best. The proposal will provide much-needed improvements to this area of the city.

DECISION:

Extension of SPSR and Special Permits under §5.3.10 AND Variance under §5.5 and §4.4.1

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Elaine Severino, Danielle Evans, Anne Brockelman, and Pooja Phaltankar. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit extension and a Variance. Elaine Severino seconded the motion. The Zoning Board of Appeals voted **5-0** to **APPROVE** the requests. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
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1	Approval is for the construction of mixed-use building with 1 affordable unit, 16 market-rate residential units and 12,000 square feet of commercial space. This approval is based upon the following application materials and the plans submitted by the Applicant:	CO / BP	ISD/Plng.											
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>May 13, 2016</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>August 30, 2016</td><td>Modified plans submitted to OSPCD</td></tr><tr><td>June 28, 2018</td><td>Applicant for SPSR and SP time extension and application for Variance submitted to City Clerk’s Office.</td></tr><tr><td>July 24, 2018</td><td>Variance statement submitted to OSPCD</td></tr></table>				Date (Stamp Date)	Submission	May 13, 2016	Initial application submitted to the City Clerk’s Office	August 30, 2016	Modified plans submitted to OSPCD	June 28, 2018	Applicant for SPSR and SP time extension and application for Variance submitted to City Clerk’s Office.	July 24, 2018	Variance statement submitted to OSPCD
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Any changes to the approved (site plan or elevations/use) that are not <i>de minimis</i> must receive SPGA approval.														
Affordable Housing/Linkage														
2	Affordable Housing Implementation Plan (AHIP) should be approved by the OSPCD Housing Division and executed prior to issuance of Building Permit. Affordable units shall be provided on-site.	BP	Housing											
3	Written certification of the creation of affordable housing units, any fractional payment required, or alternative methods of compliance, must be obtained from the OSPCD Housing Division before the issuance of a Certificate of Occupancy (C.O.). No C.O. shall be issued until the OSPCD Housing Division has confirmed that the Affordable Housing Restriction has been approved and recorded and the developer has provided the promised affordable units on-site.	CO	Housing											
4	No Certificate of Occupancy shall be issued until the OSPCD Housing Division has confirmed that: (for Condominium Projects) the Condominium Documents have been approved and the Developer has agreed to a form of Deed Rider for the Affordable Unit(s), or (for Rental Projects) the Developer has agreed to and executed a Memorandum of Understanding for Monitoring of the Affordable Unit(s).	CO	Housing											
5	Additional requirements for projects with current tenants: A Tenant Relocation Plan should be approved by the OSPCD Housing Division and executed prior to issuance of Building Permit.	BP	Housing											

6	Additional requirements for projects converting to condominiums or removing rental units from the market: If a rental unit is going to be removed as a result of this project, it must comply with City of Somerville Code of Ordinances Chapter 7, Article IV, Condominium Conversion and Removal of Rental Units prior to issuance of Building Permit. No Building Permit shall be issued until the OSPCD Housing Division has confirmed compliance.	BP	Housing	
7	Linkage payments will be required to be paid to the Somerville Housing Trust Fund before a CO is issued.	CO	Plng.	
Pre-Construction				
8	The Applicant must contact the Engineering Department to obtain a street address prior to a building permit being issued.	BP	Eng	
9	All departments, including Engineering, Parking & Traffic, Lights & Lines, etc. must review and approve plans prior to the issuance of a building permit.	BP	Eng/ISD/ Lights and Lines,P& T	
10	The Applicant shall complete the Site Plan Review Checklist and supply the information to the Engineering Office. The plans must comply with the City's Stormwater Management Policy.	BP	Eng.	
11	New sanitary connection flows over 2,000 GPD require a removal of infiltration and/or inflow by the Applicant. This will be achieved by submitting a mitigation payment, established by the City Engineers Office, to the City based on the cost per gallon of I/I to be removed from the sewer system and a removal ratio of 4:1. If a different ratio of removal or mitigation payment amount is adopted by the Board of Aldermen prior to the Applicant receiving a Certificate of Occupancy, payment will be adjusted to the BOA rate. The Applicant shall work with Engineering and meet this condition before a certificate of occupancy is issued.	CO	Eng.	

12	<p>Because of the history of the site and the intended use, the Applicant shall, prior to issuance of any demolition permit and/or any building permit for the project, provide to the Planning Department and the Inspectional Services Division:</p> <p>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</p> <p>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.</p>	Demolition Permit	Plng/ISD	
13	The Applicant shall submit a proposed drainage report, stamped by a registered PE in Massachusetts that demonstrates compliance with the City's stormwater policy.	BP	Eng.	
14	The Applicant must contact the Engineering Department to coordinate the timeline for cutting or opening the street and/or sidewalk for utility connections or other construction. There is a moratorium on opening streets from November 1st to April 1st and there is a list of streets that have additional opening restrictions.	BP	Eng	
15	The Applicant shall conduct a survey of foundations and buildings adjacent to the site and across the street prior to construction and shall address concerns about impact to these structures from project construction.	BP	Eng/ISD/ Plng	
16	The Applicant shall conduct a survey of the houses of the abutting property owners prior to excavation of the site, and document their findings. These findings shall be submitted to the Planning Department as public record. The Applicant then shall survey any damage to the abutting property owner's houses after excavation and reimburse the property owners for any damages.	BP	Eng/ISD/ Plng	
17	The applicant must comply with the: "Policy for new connections to and modifications to existing connections to the municipal sewer and drainage system stormwater management and infiltration/inflow mitigation." The Applicant shall work with Engineering to meet this condition and provide the required fees/mitigation.	BP	Eng.	
Construction Impacts				
18	The applicant shall post the name and phone number of the general contractor at the site entrance where it is visible to people passing by.	During Construction	Plng.	

19	Approval is subject to the Applicant's and/or successor's right, title and interest in the property.	Cont.	Plng.	Deed submitted & application formed signed
20	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 DPW standard.	CO	DPW	
21	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	
22	Construction shall occur from 7:30am – 5:00pm Monday-Friday ONLY. There shall be no construction or construction-related work allowed on the weekends or holidays.	During Construction	ISD	
Design				
23	<u>Applicant shall provide final material samples for siding, trim, windows, and doors to Planning Staff for review and approval prior to construction.</u>	BP	Plng.	
24	Conditions may require modification of the design of the structure in terms of size, but not reducing the allowable floor area ratio by more than twenty percent (20%) and, when applicable for special permit with design review, in terms of materials or other architectural elements in accordance with the design review guidelines of § 5.1.5;	CO	ISD/Planning	
25	All lights shall be downcast and shall not cast light onto abutting properties. Interior-lit signs shall not be permitted.	Perpetual	ISD/Planning	
Site				
26	Landscaping shall be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Plng. / ISD	
27	Landscaping shall be maintained on a regular basis with grass and all shrubbery neatly clipped, all weeds removed, all landscaping beds neatly maintained, any dead botanical material immediately removed and replaced, fencing regularly kept up and any damaged fencing immediately replaced.	Perpetual	ISD/Plng	
28	There shall be a minimum of one tree for each 1,000 sf of required landscaped area under SZO §10.3.	Perpetual	ISD/Planning	
29	The electric, telephone, cable TV and other such lines and equipment shall be placed underground from the source or connection. The utilities plan shall be supplied to the Wiring Inspector before installation.	Installation of Utilities	Wiring Inspector	

30	All new sidewalks will be installed by the Applicant in accordance with the specifications of the Highway Superintendent. Specifically, all driveway aprons shall be concrete;	CO	Plng.	
31	Loading and unloading of commercial goods and related items shall be limited to specific times of day so as to limit the impact on abutting properties and on-site residents.	CO	Plng.	
32	No dumpsters shall be present outside of the parking garage.	CO	Plng.	
33	Bike storage spaces shall be provided outside.	CO	Plng.	
34	Snow plowed from the premises and sidewalk shall be moved off-site.	Cont.	ISD.	
35	Any and all businesses that may exist in the BB zone under SZO 7.11 Table of Permitted Uses must first be reviewed and approved by the Special Permit Granting Authority and Planning Staff prior to lease signing and occupancy of the commercial space located at 350 Mystic Avenue.	Cont.	ISD/Plng/ ZBA	
36	Applicant shall work with Planning Staff on wall, landscaping, and trees to camouflage and buffer the Wheatland properties abutting the project location.	CO	ISD/Plann ing	
Traffic & Parking				
37	A loop detector shall be installed warning pedestrians and vehicular traffic of vehicles entering and exiting the parking garage.	Perpetual	ISD/Plann ing/Traffi c & Parking	
Miscellaneous				
38	Conditions may require limitation of the occupancy and method or time of operation, so as to minimize any adverse impacts the proposed use and operation may have on the surrounding neighborhood;	Perpetual	ISD/Plann ing	
39	Conditions may place limits on time frames (limiting uses to a certain number of years or time of year, be made personal to an applicant's ownership (SP), or unlimited as to time. IN ALL EVENTS TIME LIMITATIONS SHOULD BE SPECIFICALLY STATED.	Perpetual	ISD/Plann ing	
40	Conditions may reference the need of the applicant to obtain other permits or approvals.	Perpetual	ISD/Plann ing	
41	For developments with 7 or more residential units or commercial development, the Owner/Applicant is required to hire a private company to remove trash and recycling on a regular basis. Trash and recycling shall be stored in the trash room and the trash bins/dumpster(s)/recycling shall be brought outside to the requisite pickup site only on the night before trash/recycling pickup day and then shall be returned to the trash room after the trash/recycling has been picked up.	Perpetual	ISD/Plann ing	
42	Applicant shall add one handicapped-accessible unit to the new construction.	BP/CO	ISD/Plann ing	
43	Applicant shall ensure that the garage has enough head clearance for a handicapped-accessible van.	BP/CO	ISD/Plann ing	

44	The parking area shall be re-striped	CO	ISD/Plng	
45	Granting of the applied for use or alteration does not include the provision for short term rental uses, such as AirBnB, VRBO, or the like. Separate approvals are needed for the aforementioned uses.	Ongoing	ISD / Plng.	
Public Safety				
46	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
47	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.	At time of release	OSE/FP/B OH	
48	<i>Compliance with Noise Control Ordinance.</i> Prior to the issuance of a Certificate of Use and Occupancy Permit for the installation of the wireless telecommunications facility, the Applicant shall submit to the Inspectional Services Division, with a copy to the Zoning Board of Appeals, a sound level measurement certified as accurate by a professional acoustician and shall perform such sound level measurements six months after issuance of the certificate of occupancy, with subsequent sound level measurements annually on or before the anniversary date of the original six month measurement to document that all of the Applicant's installed equipment complies and continues to comply with the decibel level standards established by the City of Somerville, Noise Control Ordinance. The Applicant shall provide the results of such measurements and certify that the facility complies with the decibel level standards established by the City of Somerville, Noise Control Ordinance, with a copy to the Zoning Board of Appeals.	Perpetual	ISD	
49	All exterior lighting shall be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	Plng.	
50	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	
51	Per Somerville fire safety regulations, grills, barbecues, chimineas and the like are NOT permitted on decks or porches.	Perpetual	FP/ISD	
Signage				
52	Signage will be limited in size and location to that shown in the elevation diagrams and lighting after 10p.m. facing residential property will be turned down or off.	CO/Cont.	Plng.	
53	Planning Staff shall review and approve all signage, including, but not limited to, its design, size and location prior to its installation.	Perpetual	ISD/Plng	
Final Sign-Off				



54	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	Plng.	
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Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Richard Rossetti, *Clerk*
Elaine Severino
Daniel Evans
Anne Brockelman (*Alt.*)

Attest, by City Planner: _____

Sarah White

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 _____

