



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

PLANNING DIVISION

ZONING BOARD OF APPEALS MEMBERS

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DANIELLE EVANS
ELAINE SEVERINO (ALT.)
JOSH SAFDIE (ALT.)

Case #: ZBA # 2008-61-R1-3/2012
Site: 369-371 Beacon Street
Date of Decision: April 18, 2012
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: April 26, 2012

ZBA DECISION

Applicant Name:	Makrigiannis Fuel, LLC
Applicant Address:	209 Western Avenue, Cambridge, MA 02139
Property Owner Name:	Makrigiannis Fuel, LLC
Property Owner Address:	209 Western Avenue, Cambridge, MA 02139
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145

Legal Notice: Applicant and Owner Makrigiannis Fuel, LLC, seeks a revision to a Special Permit with Site Plan Review (ZBA 2008-61) under SZO §5.3.8 in order to modify the conditions attached to the original Special Permit to include additional conditions related to traffic and engineering items as specified in the Order of Remand from the Massachusetts Land Court dated March 7, 2012.

<u>Zoning District/Ward:</u>	BA zone/Ward 2
<u>Zoning Approval Sought:</u>	§5.3.8
<u>Date of Application:</u>	March 14, 2012
<u>Date(s) of Public Hearing:</u>	April 18, 2012
<u>Date of Decision:</u>	April 18, 2012
<u>Vote:</u>	4-0

Appeal #ZBA 2008-61-R1-3/2012 was opened before the Zoning Board of Appeals at Somerville City Hall on April 18, 2012. 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.



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DESCRIPTION:

The proposed project, a four story, 35 room hotel with a restaurant, gained approval through an awarded Special Permit with Site Plan Review in January of 2010 from the Zoning Board of Appeals. This approval was appealed by an abutter (also referred to as the “Plaintiff” from this point forward) to the project to the Massachusetts Land Court. The outcome of that appeal is that the parties involved in the appeal have filed a Joint Motion for the issuance of a court order remanding the case to the Zoning Board of Appeals for further proceedings to consider whether to add certain conditions to the originally approved Special Permit with Site Plan Review. The Order of Remand contains two requirements. The first is that the Applicant update and revise the original Special Permit application filed with the Zoning Board of Appeals on behalf of the Beacon Street Hotel to reflect that the present owner of the subject property is Makrigiannis Fuel, LLC, to include a drainage plan, and to include the dimensions of the proposed mechanical room located on the roof of the proposed building. The Applicant has fulfilled this first requirement of the Order of Remand. It should be noted here that in the Order of Remand, the Applicant referred to in this decision is referred to as the “Proponent”. In the remainder of this the words “Applicant” and “Proponent” shall be interchangeable. This is most evident in the proposed decision updated list of conditions attached to the approved Special Permit with Site Plan Review which is discussed below.

The second requirement of the Order of Remand was that the Zoning Board of Appeals “schedule a public hearing for the purposes of considering whether the subject special permit decision shall be modified to include the following conditions related to traffic and engineering:

Traffic:

- a. The proposed hotel parking garage shall be valet parking only;
- b. The proponent shall monitor the pedestrian activity post opening pursuant to the recommendations of McMahon’s peer review and may install a crosswalk, or other similar mitigation elements that may be permissible to MA DOT, should pedestrian crossing volumes warrant; and
- c. Pursuant to the detour and construction staging plan provided by the Applicant to McMahon, the Applicant will temporarily install pedestrian crossing sign(s) in the roadway where the temporary crosswalks are located, unless objected to by MA DOT, until construction is completed and the temporary crosswalks are removed.

Engineering:

- a. Garage Fan: The proponent shall install a weather hood on the proposed garage fan. The proponent shall provide an updated plan indicating the size and location of this hood to the Planning Staff for review and approval prior to the start of construction;
- b. Cooling Towers: The proponent shall install the two proposed cooling towers as close as possible to the center of the building’s roof. The proponent shall provide an updated plan indicating the location of the cooling towers to the Planning Staff for review and approval prior to the start of construction;
- c. Heat Pumps: The proponent shall install the two, 25-Gallon per Minute heat pumps as close to the roof deck as possible (as low as possible). The proponent shall provide an updated plan indicating the location of the heat pumps to Planning Staff for review and approval prior to the start of construction;
- d. Prior to the start of construction, the proponent shall provide the Plaintiff and the ZBA with the construction schedule and shall provide any revisions thereto as they are available.”

These proposed additional conditions have been added to the list of conditions below as Conditions # 27 – 33. Pursuant to the parties’ joint motion for a remand order, the Plaintiff shall dismiss his complaint in this action upon the filing of a Zoning Board of Appeals decision adopting the traffic and engineering conditions outlined above.



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FINDINGS FOR SPECIAL PERMIT REVISION (SZO §5.3.8):

In order to grant a Revision to a Special Permit, the SPGA must make certain findings and determinations as outlined in §5.1.4 of the SZO. This section of the report goes through §5.1.4 in detail.

The following findings are relevant to the proposed addition of the seven (7) conditions pertaining to traffic and engineering mitigation items as laid out in the Order of Remand from Massachusetts Land Court dated March 7, 2012 to the original Special Permit with Site Plan Review approval.

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

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."

The proposal complies with the standards for issuing a revision to the Special Permit with Site Plan Review approval. The final Certificate of Occupancy has not yet been issued, notice has been given for the public hearing, and since no construction has begun at the site with regard to this proposed project, the proposal, to this point, is otherwise in accordance with the originally approved plans and conditions.

3. Consistency with Purposes: The Applicant has to ensure that the project "is consistent with (1) the general purposes of this Ordinance as set forth in Article 1, and (2) the purposes, provisions, and specific objectives applicable to the requested special permit which may be set forth elsewhere in this Ordinance, such as, but not limited to, those purposes at the beginning of the various Articles."

The proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to promoting "the health, safety, and welfare of the inhabitants of the City of Somerville; to provide for and maintain the uniquely integrated structure of uses in the City; to lessen congestion in the streets; to protect health; to secure safety from fire, panic and other dangers; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; and to preserve and increase the amenities of the municipality."

The proposal of including the additional conditions to the Special Permit with Site Plan Review approval is also consistent with the purpose of the district (6.1.6. BA – Commercial Districts), which is, "To establish and preserve business areas bordering main thoroughfares that are attractive to a wide range of uses, including retail business and services, housing, government, professional and medical offices, and places of amusement. While it is anticipated that most users will arrive by motor vehicle, it is intended that the area should be safe for and conducive to pedestrian traffic."

It should also be noted here that the proposal of including the additional conditions to Special Permit with Site Plan Review approval is also consistent with the specific district standards and guidelines which are as follows:

- 1) "Give preference to locating on-site, off-street parking at the rear of the lot, behind the building or below street level, providing vehicular access from either a side street or alley where possible.
- 2) Give preference to providing landscaping along the primary street edge."

4. Site and Area Compatibility: The Applicant has to ensure that the project "(i)s designed in a manner that is compatible with the characteristics of the built and unbuilt surrounding area, including land uses."

The proposed additional conditions relating to traffic items will help to reduce traffic congestion and the potential for traffic accidents on the site or in the surrounding area, as well as mitigate potential pedestrian-



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vehicle conflicts. The proposed additional conditions related to the engineering items will help to reduce the impact of construction activities on the surrounding area and of the mechanical equipment that will be located at the hotel when the project is complete. Specifically, the additional engineering conditions will help to control or prevent the amount of excessive noise, level of illumination, glare, dust, smoke, or vibration coming from the project which could be higher than levels now experienced from uses permitted in the surrounding area. These additional conditions will also help to keep the mechanical equipment from greatly impacting the streetscape, neighborhood fabric, and existing views in the area by regulating the location of the equipment on the proposed structure.

5. Adverse 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.

No adverse environmental impacts are anticipated from this proposal. The proposed additional conditions related to the engineering items will help to reduce the impact of construction activities on the surrounding area and of the mechanical equipment that will be located at the hotel when the project is complete. Specifically, the additional engineering conditions will help to control or prevent the amount of excessive noise, level of illumination, glare, dust, smoke, or vibration coming from the project which could be higher than levels now experienced from uses permitted in the surrounding area. Therefore, the inclusion of these proposed additional conditions from the Order of Remand would not appear to have any adverse environmental impacts.

6. Vehicular and Pedestrian Circulation: The circulation patterns for motor vehicles and pedestrians which would result from the use or structure will not result in conditions that create traffic congestion or the potential for traffic accidents on the site or in the surrounding area.

The proposed inclusion of the three additional traffic conditions to the Special Permit with Site Plan Review approval will help to reduce traffic congestion and the potential for traffic accidents on the site or in the surrounding area. By requiring the parking garage in the hotel to be valet parking only, employees of the hotel who are familiar with parking vehicles in the garage will be the only ones maneuvering cars there, reducing the likelihood of accidents occurring in the garage. The other two traffic related conditions speak to mitigating potential pedestrian-vehicle conflicts in the area through the implementation of traffic calming measures such as crosswalks and pedestrian crossing signs. These conditions should also help to reduce the potential for traffic accidents on the site or in the surrounding area during construction and after the opening of the hotel and restaurant.



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DECISION:

Present and sitting were Members Herbert Foster, Richard Rossetti, Danielle Evans and Elaine Severino with Susan Fontano absent and Scott Darling recused. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit. Danielle Evans seconded the motion. Wherefore the Zoning Board of Appeals voted **4-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes																		
1	Approval is for the construction of a 19,318 nsf, 35 room hotel and restaurant. This approval is based upon the following application materials and the plans submitted by the and/or its Agent:		Plng.																			
	<table border="1"> <thead> <tr> <th>Date</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>11/3/08</td> <td>Initial application submitted to the City Clerks Office</td> </tr> <tr> <td>1/22/09 (12/15/09)</td> <td>A4 - Shadow Study</td> </tr> <tr> <td>3/30/09 (12/15/09)</td> <td>Proposed Beacon Street Signing and Striping Plan (Pickup/Dropoff)</td> </tr> <tr> <td>8/3/09 (12/15/09)</td> <td>Plans submitted to OSPCD (A0-A3)</td> </tr> <tr> <td>12/15/09 (12/15/09)</td> <td>Elevation</td> </tr> <tr> <td>March 9, 2012 (April 2, 2012)</td> <td>Permit Site Utility Plan (Sheet 1 of 2)</td> </tr> <tr> <td>March 9, 2012 (April 2, 2012)</td> <td>Permit Construction Details (Sheet 2 of 2)</td> </tr> <tr> <td>October 4, 2011 (April 18, 2012)</td> <td>Conceptual HVAC Plans – One and Conceptual HVAC Plans - Two</td> </tr> </tbody> </table>				Date	Submission	11/3/08	Initial application submitted to the City Clerks Office	1/22/09 (12/15/09)	A4 - Shadow Study	3/30/09 (12/15/09)	Proposed Beacon Street Signing and Striping Plan (Pickup/Dropoff)	8/3/09 (12/15/09)	Plans submitted to OSPCD (A0-A3)	12/15/09 (12/15/09)	Elevation	March 9, 2012 (April 2, 2012)	Permit Site Utility Plan (Sheet 1 of 2)	March 9, 2012 (April 2, 2012)	Permit Construction Details (Sheet 2 of 2)	October 4, 2011 (April 18, 2012)	Conceptual HVAC Plans – One and Conceptual HVAC Plans - Two
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Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive ZBA approval.																						
2	The Applicant shall install signage to be approved by Planning Staff that clearly demarcates the below grade parking access area and the pick up and drop off area, including a time limitation.	CO	Plng																			
3	All new utility lines shall be placed underground in accordance with the SZO and the policies of the Superintendent of Lights and Lines.	CO	ISD																			



4	The Applicant shall establish the existing foundation conditions of structures abutting the subject property, if desired by the abutting owners, and at 757 Somerville Avenue. The Applicant shall repair any damage as a result of hotel construction.	CO	ISD	
5	All deliveries shall be made to the loading dock below street grade and shall not occur between the hours of 7pm and 7am Monday thru Friday or between the hours of 7pm and 9am on Saturday and Sunday.	Perpetual	ISD	
6	Delivery trucks shall be limited to mid-sized vehicles and shall at no time occupy the pick up and drop off area.	Perpetual	ISD	
7	The seating area for the restaurant shall be closed to the general public from 11pm to 6am.	Perpetual	ISD	
8	Public access to the landscaped plaza area directly from the sidewalk shall be maintained. The plaza shall have direct handicapped access from the public way.	Perpetual	ISD	
9	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.	Demolition Permitting	ISD	
10	Landscaping shall be installed and maintained in compliance with the American Nurserymen's Association.	Perpetual	Plng. / ISD	
11	The Applicant shall provide a "Drainage Plan" and an "Inspection and Maintenance Plan" for the drainage system. This report shall be prepared and stamped by a registered professional civil engineer and approved by the Engineering Staff and/or city consultant.	Building Permit	Eng.	
12	The Applicant, 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 any storm water systems, ensuring they are clean, well kept and in good and safe working order.	Perpetual	ISD	
13	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 of concrete subject to DPW approval.	CO	DPW	
14	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	
15	To the maximum extent feasible Applicant will utilize strategies during demolition and construction to mitigate dust and control air quality, to minimize noise and to implement a waste recycling program for the removed debris.	During Demolition & Construction	OSE/ISD	



16	The underground fuel tanks on this site must be removed under the supervision of the Fire Prevention Bureau and in accordance with DEP regulations. Permits will be required for these removals. If any unanticipated tanks are found during excavation, all work on-site must immediately cease and the Somerville Fire Department must be contacted.	CO	FP	
17	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 and the Board of Health shall also be notified.	CO	OSE / BOH	
18	The Applicant shall submit an exterior site lighting plan to be approved by Planning Staff that demonstrates sufficient lighting for public surveillance. The exterior lighting intensity shall have little to no effect on the properties surrounding the facility.	CO	Plng.	
19	The Applicant/developer shall implement green management practices for the hotel. The applicant/developer shall meet with Planning Staff prior to filing with ISD for a building permit and prior to filing with ISD for a final sign off to identify and discuss the sustainable practices to be implemented. Staff approval of these measures is required.	PB	Plng.	
20	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.	CO	Plng.	
21	The Applicant shall provide a cash payment of \$5000 to Traffic and Parking for installation of pavement markings and signs, and shall supply a multi-space parking meter kiosk to be approved by Traffic and Parking.	CO	T&P	
22	The Applicant shall provide the funding for a taxi stand on Somerville Avenue that is satisfactory to Traffic and Parking.	CO	T&P	
23	The Applicant shall be responsible for obtaining any required permits and approvals and for funding the construction of the pick-up and drop-off areas. Construction of the pick-up and drop-off area is subject to DPW approval.	CO	DPW	
24	There shall be no cook tops, stoves or conventional ovens installed in the units.	CO	ISD	
25	The required parking for the restaurant use under Article 9 of the SZO using the calculation based on number of seats and employees shall not exceed four (4) parking spaces as defined by the SZO after allowed reductions for hotel accessory use.	CO	ISD / Plng.	
26	The restaurant shall vent up and away from neighboring residences.	CO	Plng.	



27	The proposed hotel parking garage shall be valet parking only.	Perpetual	ISD	
28	The Proponent shall monitor the pedestrian activity post opening pursuant to the recommendations of McMahon's peer review and may install a crosswalk, or other similar mitigation elements that may be permissible to MA DOT, should pedestrian crossing volumes warrant.	Final Sign Off	T&P/Plng.	
29	Pursuant to the detour and construction staging plan provided by the Applicant to McMahon, the Applicant will temporarily install pedestrian crossing sign(s) in the roadway where the temporary crosswalks are located, unless objected to by MA DOT, until construction is completed and the temporary crosswalks are removed.	During Construction	T&P	
30	Garage Fan: The Proponent shall install a weather hood on the proposed garage fan. The Proponent shall provide an updated plan indicating the size and location of this hood to the Planning Staff for review and approval prior to the start of construction.	BP	Plng.	
31	Cooling Towers: The Proponent shall install the two proposed cooling towers as close as possible to the center of the building's roof. The Proponent shall provide an updated plan indicating the location of the cooling towers to the Planning Staff for review and approval prior to the start of construction.	BP	Plng.	
32	Heat Pumps: The Proponent shall install the two, 25-ton cooling towers as close to the roof deck as possible (as low as possible). The Proponent shall provide an updated plan indicating the location of the heat pumps to Planning Staff for review and approval prior to the start of construction.	BP	Plng.	
33	Prior to the start of construction, the Proponent shall provide the Plaintiff and the ZBA with the construction schedule and shall provide any revisions thereto as they are available.	BP	Plng.	
34	Additional information will be required from the Applicant to support the wastewater portion of the project. Wastewater flow monitoring shall be completed to demonstrate that the sanitary system has capacity for the increase in wastewater flow at the site. Wastewater flow monitoring shall continue through a storm event in order to demonstrate that capacity exists during all conditions. Wastewater flow monitoring shall be conducted at a location to be selected by the Engineering Department and shall be completed prior to issuance of a foundation or building permit.	Foundation Permit	Eng.	



Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*
Richard Rossetti, *Acting Clerk*
Danielle Evans
Elaine Severino (Alt.)

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 _____



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