



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2013-89
Site: 9 & 39 Medford Street
Date of Decision: January 8, 2014
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: January 16, 2014

ZBA DECISION

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| Applicant Name: | Berkeley Investments, Inc. |
| Applicant Address: | 121 High Street, Boston, MA 02110 |
| Property Owner Name: | Medford Freezer Realty, Inc. |
| Property Owner Address: | 42 Grove Street, Winchester, MA 01890 |
| Agent Name: | Adam Dash, Esq. |
| Agent's Address: | 48 Grove Street, Suite 304, Somerville, MA 02144 |

Legal Notice: Applicant, Berkeley Investments, and Owner, Medford Freezer Realty, Inc., received a Special Permit with Site Plan Review under SZO §6.5.D.5 to alter an existing façade including signage & 7.13.E to establish 100 residential units including artist live/work space. The applicant was approved under SZO §9.17.2.B for modification of the parking/loading standards. Article 13 Inclusionary Housing applies. The current application is to seek a Variance for dimensional requirements in Table §6.5.F including minimum frontage, tapering height, upper level setback, upper level maximum floor plate, minimum FAR, usable open space §6.5.G.8 including a payment in lieu of usable open space §6.5.G.9.

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| <u>Zoning District/Ward:</u> | TOD 100 zone/Ward 2 |
| <u>Zoning Approval Sought:</u> | §6.5.D.5, §7.13.E, §9.17.2.B, §6.5F, §6.5.G.8 & §6.5.G.9 |
| <u>Date of Application:</u> | December 3, 2013 |
| <u>Date(s) of Public Hearing:</u> | January 8, 2014 |
| <u>Date of Decision:</u> | January 8, 2014 |
| <u>Vote:</u> | 5-0 |



Appeal #ZBA 2013-89 was opened before the Zoning Board of Appeals at Somerville City Hall on January 8, 2014. 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.

DESCRIPTION:

The proposal is to renovate the existing building to allow for 100 residential units including 5 artist live-work spaces, a gallery, fitness center, roof deck, green roof, and one level of garage parking. The existing 1-story loading dock additions will be demolished. There will be a 1-story addition added to the top of the building to make the building 8 stories. The building will have a new metal panel façade with an aluminum window system.

After renovations, the buildings will be 108,382 gross square feet. There will be 13 studios, 63 one-bedrooms, and 24 two-bedroom units including 5 artist live/work spaces. The first floor will have a lobby, lounge, fitness center, and gallery as well as the artist live/work spaces. Floors 2-7 have 14 residential units each. The eighth floor will have 11 penthouse units, 8 of which have balconies. The roof deck will be accessible to the entire building.

The building can accommodate 16 parking spaces underneath the building. There will be 65 surface spaces at 9 Medford Street and the remaining 19 spaces at 39 Medford Street. The parking spaces at 39 Medford Street will be redefined with landscaped parking islands.

There will be a privately owned outdoor space that will be accessible to the public from the sidewalk at 9 Medford Street. The site plan defines access from the sidewalk to the entrance of the building while giving residents and the public an area to sit and relax. The park includes seating and planting areas, a hedge to block views of Twin City Plaza, and a pergola to draw people into the park.

The site will comply with the pervious and landscaped area required. The usable green space will be in the public park. The parking areas have islands of trees and groundcover. There is also a green roof on the top of the building that residents will be able to see from the roof deck.

The building and park will have new signage. There will be a sign stating the building's name on the front canopy of the building. The park signage will be on both sides of the angled concrete entrance wall.

FINDINGS FOR VARIANCE (SZO §6.5.F & §6.5.G.8):

In order to grant a variance for §6.5.F including minimum frontage, tapering height, upper level setback, upper level maximum floor plate, minimum FAR, under SZO Table §6.5.F and usable open space per SZO §6.5.G.8 (including a payment in lieu of usable open space §6.5.G.9) the SPGA must make certain findings and determinations as outlined in §5.5.3 of the SZO.

1. There are "special circumstances relating to soil conditions, shape or topography of land or structures which especially affect such land or structures but not affecting generally the zoning district in which it is located, causing substantial hardship, financial or otherwise."

The odd shape of the lot with a trapezoidal property line is a special circumstance that does not affect other properties in the zoning district that is causing a hardship as well as the existing building that is being substantially rehabilitated. The frontage is not able to expand because abutters are not interested in selling their properties. In addition, MassDOT is maintaining the rail corridor as a link between North and South Station. The upper level setbacks, tapering heights, and maximum floor plate requirements cannot be used on the existing floors. If the requirements are used on the added floor, the floor would not have any usable floor area.



The usable open space is not being met because of the existing building and parking requirements. The Applicant has committed to making a payment in lieu of open space for the 1,085 square feet of shortage. Payments in Lieu of open space are required to be approved by the SPGA. As a condition of this report, a payment will be made to a stabilization fund and used by the City for acquisition, design, and construction of public open space.

2. “The variance requested is the minimum variance that will grant reasonable relief to the owner, and is necessary for a reasonable use of the building or land.”

Since the existing building is being reused, the project does not comply with the required tapering height, upper level setback, upper level maximum floor plate, and minimum FAR. Unlike other TOD-100 projects, this property has setbacks on every side which minimizes the need for tapering heights and upper level setback to make the building appear smaller and less overwhelming from the streetfront. The minimum FAR cannot be reached without applying for parking relief since the existing structure can only accommodate 1 level of garage parking because of the concrete structure. The relief is the minimum amount necessary without requiring demolition of the existing building.

3. “The granting of the variance would be in harmony with the general purpose and intent of this Ordinance and would not be injurious to the neighborhood or otherwise detrimental to the public welfare.”

The building form and design, except for the tapering height, upper level setback, upper level maximum floor plate, and minimum FAR, meet the design standards and guidelines for a Transit Oriented District. The dimensional relief will not be injurious to the neighborhood as the reuse will replace an industrial use, the building will not increase shadows on the residential neighborhood, and the residential use will help create a mixed use neighborhood.

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Elaine Severino. Upon making the above findings, Susan Fontano made a motion to approve the request for a Special Permit. Richard Rossetti 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 Compliance | Verified (initial) | Notes | | | | | | | | | | |
|-----------------------------------|---|--------------------------|--------------------|------------------|--|------------------|--|-----------------|---|------------------|--|---------|-----------|--|
| 1 | <p>Approval is for a Variance for dimensional requirements in Table §6.5.F including minimum frontage, tapering height, upper level setback, upper level maximum floor plate, minimum FAR, usable open space §6.5.G.8 including a payment in lieu of usable open space §6.5.G.9. This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table border="1" data-bbox="248 537 886 1650"> <thead> <tr> <th data-bbox="248 537 570 569">Date (Stamp Date)</th> <th data-bbox="570 537 886 569">Submission</th> </tr> </thead> <tbody> <tr> <td data-bbox="248 569 570 669">December 3, 2013</td> <td data-bbox="570 569 886 669">Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td data-bbox="248 669 570 1127">December 3, 2013</td> <td data-bbox="570 669 886 1127">Modified plans submitted to OSPCD (Cover Sheet, 2-Existing Condition. 3-Demo & Erosion Control Plan, 4-Construction/ Layout Plan, 5-Grading & Drainage Plan, & 6-Utility Plan, 7-Details 1, 8-Details 2, 9-Landscape Plan & 10-Detail Landscape Layout Plan , 11- 14A-Landscape Site Details, 21-Roof Plan, 25-Shadow Analysis, 26 & 27- Renderings)</td> </tr> <tr> <td data-bbox="248 1127 570 1434">October 8, 2013</td> <td data-bbox="570 1127 886 1434">Modified plans submitted to OSPCD (14- Photometric Plan, 15- Existing Conditions/Demo, 16- Basement FP, 17-First FP, 18-Second FP, 19-Third to Seventh FP, 21-Roof Plan, 25-Building Shadow Analysis)</td> </tr> <tr> <td data-bbox="248 1434 570 1650">October 31, 2013</td> <td data-bbox="570 1434 886 1650">Modified plans submitted to OSPCD (20-Penthouse FP, 22-East Elev, 23-Northwest & West Elev, 24-North & South Elev, 26a-Rendering, 28- Rendering)</td> </tr> </tbody> </table> <p>Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive SPGA approval.</p> | Date (Stamp Date) | Submission | December 3, 2013 | Initial application submitted to the City Clerk's Office | December 3, 2013 | Modified plans submitted to OSPCD (Cover Sheet, 2-Existing Condition. 3-Demo & Erosion Control Plan, 4-Construction/ Layout Plan, 5-Grading & Drainage Plan, & 6-Utility Plan, 7-Details 1, 8-Details 2, 9-Landscape Plan & 10-Detail Landscape Layout Plan , 11- 14A-Landscape Site Details, 21-Roof Plan, 25-Shadow Analysis, 26 & 27- Renderings) | October 8, 2013 | Modified plans submitted to OSPCD (14- Photometric Plan, 15- Existing Conditions/Demo, 16- Basement FP, 17-First FP, 18-Second FP, 19-Third to Seventh FP, 21-Roof Plan, 25-Building Shadow Analysis) | October 31, 2013 | Modified plans submitted to OSPCD (20-Penthouse FP, 22-East Elev, 23-Northwest & West Elev, 24-North & South Elev, 26a-Rendering, 28- Rendering) | CO / BP | ISD/PIng. | |
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| Affordable Housing/Linkage | | | | | | | | | | | | | | |



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| 2 | An 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 | ISD/ 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 | ISD/ Housing | |
| 4 | No Certificate of Occupancy shall be issued until the OSPCD Housing Division has confirmed that the Developer has agreed to and executed a Memorandum of Understanding for Monitoring of the Affordable Unit(s). | CO | Housing | |
| 5 | The five first-floor units shall be designated as affordable units (in addition to 10 other units scattered through the building, to reach 15% as required by zoning). The first-floor units shall be permitted to be live-work uses. The applicant and the Housing Division shall develop a selection and marketing process to designate and provide these units for tenants certified as artists, and their families. When any of these units becomes vacant, there shall be a designated time period for which these units would only be available to designated artists and the applicant shall not lease these units to any other tenants until such time period has elapsed. The Housing Division shall establish this time period and leasing process in the Affordable Housing Restriction. | CO | Housing | |
| Pre-Construction | | | | |
| 6 | The Applicant will be required to demonstrate that the updated project plans meet the current City of Somerville stormwater policy. Utility, grading, and drainage plans/report must be submitted to the Engineering Department for review and approval. | BP | Eng. | |
| 7 | 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 | |
| 8 | The LEED Gold application must be submitted to USGBC within 90 days of the Certificate of Occupancy. | 90 Days Post C of O | <u>Plng</u> | |
| 9 | The project shall be certified to a minimum of LEED Gold within a year of the Certificate of Occupancy. Failure to comply with this condition subjects the Owner to enforcement under SZO §3.1.8. | Post Construction | Plng / ISD | |
| Construction Impacts | | | | |



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| 10 | 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. | |
| 11 | 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 | |
| 12 | 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 | |
| Design | | | | |
| 13 | The Applicant shall provide an on-site mock up of exterior materials prior to the installation of any exterior materials for DRC review and Planning Staff review and approval. | During Construction | Plng. | |
| 14 | Applicant shall provide final material samples for siding, trim, windows, and doors to Planning Staff for review and approval prior to construction. | BP | Plng. | |
| 15 | An electrical receptacle is required for each deck (if there is no access to the ground). | Final sign off | Wiring Inspector | |
| Site | | | | |
| 16 | Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards in perpetuity. | Perpetual | Plng. / ISD | |
| 17 | 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 | |
| 18 | The pergola will be landscaped with a climbing species. Landscape plan will be submitted to Planning Staff for review and approval. | CO | Plng. | |
| 19 | The Applicant will install a new sidewalk as shown on the plans as well as on the west side of Medford Street from the Somerville line to Warren Street including the depth of the first parcel on Warren Street (MBL 114-B-4). The sidewalks shall be completed immediately following the City's scheduled road work in 2014. In the alternative, the Applicant can pay the City based upon a construction cost estimate provided to the applicant by the City Engineer. | After Medford Street Repaving | Plng. | |
| 20 | Applicant will supply 100 bicycle parking spaces in the garage. The exterior guest spaces can be satisfied with a u-shaped type bicycle rack. | CO | Plng. | |



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| 21 | The Applicant will work with MassDOT on meadow implementation on the south (9 Medford) side of the railroad tracks. If agreeable to MassDOT, the Applicant will pursue best practices to implement the meadow seed mix proposal in order to minimize weed growth (e.g., proper site preparation and timing of installation). This condition is subject to the approval of MassDOT and/or the MBTA. | CO | Plng. | |
| 22 | The Applicant will work with MassDOT to create a curbed sidewalk extension within the public right-of-way for both sidewalks on Medford Street. This condition is subject to the approval of MassDOT and/or the MBTA and the City of Somerville. | CO | Plng. | |
| 23 | Applicant will work with the City to develop the long term maintenance agreement and/or covenant for the Useable Open Space as required in Article 17 of the SZO. The agreement shall specify the requirements for public access and private maintenance of useable open space in the plan, as required by the SZO. The applicant shall build out and maintain all of the open space and allow public access to all of the useable open space in the plan as required by the SZO. The applicant will submit 100% construction plans for open space to the City for review and approval. | CO | Plng | |
| Traffic & Parking | | | | |
| 24 | The Applicant will provide a Monthly MBTA LinkPass (subway and local bus) to any employee (half-time or more) of the building owner or property manager. Passes are non-transferable. If an employee does not want a T pass, then the Applicant is not in violation for not purchasing said pass. | CO | Plng. | |
| 25 | The Applicant will provide new pedestrian warning signs (to be installed to current MUTCD standards) at the existing pedestrian crossing at South and Medford Street. The signs will be placed on the existing flashing beacon as well as in advance of the pedestrian crossing at the intersection of South and Medford Street. | CO | Plng / T & P | |
| 26 | The applicant will offer 2 parking spaces to car-sharing companies. The spaces shall be maintained for a car sharing company unless the applicant can prove to the Planning Staff that no car share company is willing to use the spaces. | CO | Plng. | |
| Miscellaneous | | | | |
| 27 | 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 systems, ensuring they are clean, well kept and in good and safe working order. | Cont. | ISD | |
| 28 | The applicant shall work with the Somerville Arts Council to develop a plan for use of the arts amenity space. The plan shall be provided for review and approval by Planning Staff. | CO | Plng | |
| Public Safety | | | | |
| 29 | The Applicant or Owner shall meet the Fire Prevention Bureau's requirements. | CO | FP | |



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| 30 | Any transformers should be located as not to impact the landscaped area, and shall be fully screened. | BP | Plng/ISD | |
| 31 | To the extent possible, all exterior lighting must be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties. | CO | Plng. | |
| 32 | 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 | |
| Signage | | | | |
| 33 | Signage will be limited to the signage shown on the elevations/ landscape details. Signage plans shall be submitted to Planning Staff for review and approval. Signage lighting after 10p.m. facing residential property will be turned down or off if deemed necessary by Planning Staff. | CO/Cont. | Plng. | |
| Final Sign-Off | | | | |
| 34 | The Applicants and the City, shall work with the advocates for the Grand Junction rail trail and the MBTA to explore the possibility of using all or part of the open space payment for building the Grand Junction path. | CO | Plng. | |
| 35 | The Applicant shall seek to provide a strategy to ensure that adequate off site open space is provided to offset for the needed Usable Open Space variance. | BP | Plng | |
| 36 | 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. | |
| 37 | The Applicant will make a payment of \$94,774.75 to comply with the payment in lieu of open space to the City per SZO §6.5.G.9. | BP | Plng | |
| 38 | The development shall not preclude the construction of the Grand Junction Path. | CO | Plng. | |



Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*
Orsola Susan Fontano, *Clerk*
Richard Rossetti
Danielle Evans
Elaine Severino

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 _____

