

Town of Belmont

PLANNING BOARD

2015 DEC -4 PM 12:15

EXTENSION FOR

A SPECIAL PERMIT WITH DESIGN AND SITE PLAN REVIEW AND WAIVERS

PURSUANT TO SECTION 8
(Cushing Square Overlay District)
OF THE TOWN OF BELMONT ZONING BY-LAW

December 4, 2015

The Applicant, Smith Legacy Partners, LLC, submitted a request on November 10, 2015, for a six (6) month extension of the Special Permit and Site Plan Review and Waivers granted pursuant to Section 8 of the Town of Belmont Zoning By-Law for the construction of mixed use development commonly known as Cushing Village. The Applicant subsequently modified its request to a request for a one (1) year extension. The Special Permit for this development was previously granted on July 27, 2013 after a duly noticed public hearing and previously extended by action of the Belmont Planning Board on August 19, 2015 and subsequently by action of the Belmont Planning Board on November 17, 2015. This Extension modifies the Extension granted November 17, 2015.

On December 3, 2015, at a duly noticed public meeting and after reviewing the Applicant's request, the Board granted an extension for a one (1) year period beginning December 3, 2015, except that the Planning Board may terminate the Special Permit prior to the expiration of said extension if the Applicant fails (subject to extension for Force Majeure, as provided in the following paragraph) to achieve each of the specific benchmarks in the development of Cushing Village as follows:

- A. The Applicant shall complete the acquisition of the municipal parking lot by the recording of the deed for the Town of Belmont on or before December 18, 2015.
- B. The Applicant shall have commenced demolition of the existing structures currently upon the property subject to the Special Permit on or before January 15, 2016.
- C. The Applicant shall obtain a foundation permit from the Office of Community Development and commence excavation of the area for the foundation of at

least one (1) of the three (3) buildings at Cushing Village on or before February 1, 2016.

- D. The Applicant shall commence the pouring of a foundation for at least one (1) of the three (3) buildings at Cushing Village on or before April 15, 2016 and shall provide written confirmation of same to the Planning Board.
- E. The Applicant shall submit to the Planning Board Definitive Site and Building Plans as referred to in Section 12(C)(i) of the Special Permit for at least one (1) of the buildings on or before February 1, 2016.

The time for performance by the Applicant or any successor thereto of the benchmarks identified as B, C, D and E above shall be extended by any period of time for which that performance or satisfaction shall have been delayed due to any cause beyond the Applicant's reasonable control, such as any act of God, inclement weather, labor dispute, any delay in the issuance of any permits, licenses or authorizations by the Town of Belmont, unusual transportation failure, inability to obtain labor, equipment or materials, any material casualty to the property as described in the Special Permit, civil commotion, riot, mob violence, insurrection, malicious mischief, sabotage, rebellion, terrorism, enemy action, hostilities, war or invasion (but not including any insolvency, financial condition or inability to obtain financing) ("Force Majeure"). If the Applicant or any successor believes or intends to assert that any period of time has been extended due to Force Majeure, the Applicant shall provide prompt written notice to the Planning Board of such occurrence and provide periodic updates as to the status of such Force Majeure event or events and the anticipated time the Applicant will be able to comply with such benchmarks.

The Applicant shall provide a written certification to the Planning Board upon achieving each of the specified benchmarks which certification shall be conclusively deemed accurate and accepted by the Planning Board absent written objection by the Planning Board to the Applicant within 30 days of such certification.

Subject to the foregoing, the failure of the Applicant to achieve any of the benchmarks referred to in Sections A-E above by the time set forth herein, shall authorize the Planning Board, on its own Motion and after written notice to the Applicant and Wells Fargo Bank, N.A. (as senior secured lender) and SBNP SIA LLC (as the mezzanine lender) (each, a "Lender") and an opportunity for the Applicant and each Lender to appear before the Planning Board, by majority vote to notify the Office of Community Development, that the Special Permit has lapsed. Notices to the Wells Fargo Bank, N.A.

shall be addressed to Wells Fargo Bank, N.A., 101 Federal Street, Boston, MA 02110, Attn: Loan Administrator, Loan No. 1013847 and notices to SBNP SIA LLC shall be addressed to SBNP SIA LLC, % Cornerstone Real Estate Advisers LLC, One Financial Plaza, Hartford, Connecticut 06103, Attention: Paralegal, Finance Group, Loan No. 15607.

Notwithstanding the foregoing, in the event that either Lender exercises remedies available to such Lender due to a default by the Applicant in its obligations to such Lender, and such Lender provides prompt written notice to the Planning Board of the exercise of any such remedies, the benchmark dates set forth in Sections B, C, D and E above shall no longer be applicable (even if such benchmark date has previously passed).

Submitted on Behalf of the Planning Board,



Jeffrey A. Wheeler, AICP
Senior Planner
Dated: December 4, 2015