

Town of Belmont

PLANNING BOARD

2016 SEP -9 PM 1:25

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

September 9, 2016

Toll Brothers, Inc., in its capacity as contract purchaser of Cushing Village<sup>1</sup>, and on behalf of and with the consent of Smith Legacy Partners, LLC (the purchaser under the Town Agreement<sup>2</sup> and grantee of the Special Permit), submitted a request to the Planning Board on August 31, 2016 for an extension of the Special Permit to July 27, 2017. 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 Planning Board on August 19, 2015 and thereafter by action of the Planning Board on November 17, 2015, December 3, 2015, and again on April 6, 2016. The previous extension granted on April 6, 2016 was further modified to include Toll Brothers, hereinafter referred to as 'the Applicant', as party to a Purchase and Sale Agreement with Smith Legacy Partners, LLC, the grantee of the Special Permit.

On September 6, 2016, at a duly noticed public meeting and after reviewing the Applicant's request, the Planning Board granted the extension as requested, 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 on or before the date required by the applicable Purchase and Sale Agreement with the Town of Belmont.

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<sup>1</sup> The Planning Board granted a Special Permit and Site Plan Review and Waivers pursuant to Section 8 of the Town of Belmont Zoning By-Law, 'the Special Permit', for a mixed-use development, commonly referred to as 'Cushing Village'.

<sup>2</sup> Smith Legacy entered into a Purchase and Sale Agreement, as amended, with the Town of Belmont, 'the Town Agreement', to purchase 116 Trapelo Road, commonly referred to as the Municipal Parking Lot.

- B. Within forty five (45) days following the date of acquisition of the municipal parking lot as described in A. above, the Applicant shall have submitted:
- 1) an application for a demolition permit to the Office of Community Development for the existing structures currently on the property, all in accordance with the Special Permit, and
  - 2) submitted an application to the Office of Community Development for a foundation permit for at least one (1) of the three (3) buildings at Cushing Village.
- C. Within 30 days after receipt of the applicable demolition permits for which application was submitted under B. above, demolition of the applicable structure (s) will commence.

The time for performance by the Applicant or any successor thereto of the benchmarks identified as B. and C. 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.

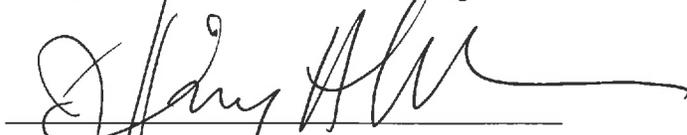
In the event that Applicant has complied with benchmarks A., B. and C. above, then failure of the Office of Community Development to issue a foundation permit in a timely manner in order to allow the Applicant to commence foundation excavation prior to the expiration date of the Special Permit, shall be considered a Force Majeure event and shall extend the expiration date of the Special Permit a reasonable timeframe to allow excavation to commence.

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 above by the time set forth herein, shall authorize the Planning Board, on its own Motion and after written notice to the Applicant and Smith Legacy Partners, LLC (as party to a Purchase and Sale with the Applicant) and an opportunity for the Applicant and Smith Legacy Partners, LLC to appear before the Planning Board, by majority vote to notify the Office of Community Development that the Special Permit has lapsed. Notices to Toll Bros., Inc. shall be addressed to Toll Bros., Inc., 250 Gibraltar Road, Legal – 3W, Horsham, PA, 19044, ATTN: John McDonald, General Counsel.

This Extension supersedes and replaces in whole any and all Extensions and/or modifications previously granted by the Planning Board regarding 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 a mixed use development commonly referred to as Cushing Village.

Submitted on Behalf of the Planning Board,



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Jeffrey A. Wheeler/AICP  
Senior Planner

Dated: September 9, 2016