

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

LAND COURT DEPARTMENT  
CIVIL ACTION NO. \_\_\_\_\_

ONE LEDGEMONT, LLC

Plaintiff,

v.

CAROLYN C. WILSON, MARTHA C. WOOD,  
DAVID G. WILLIAMS, LEO P. MCSWEENEY,  
and JEANNE K. KRIEGER, as they all are or  
were Members of the Town of Lexington Zoning  
Board of Appeals, TOWN OF LEXINGTON  
ZONING BOARD OF APPEALS, and 95  
HAYDEN, LLC,

Defendants.

13 MISC 476506



One Ledgemont LLC

**COMPLAINT PURSUANT  
TO G.L. C. 40A, § 17**

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INTRODUCTION

This is an appeal pursuant to G.L. c. 40A, §17 by plaintiff One Ledgemont, LLC ("Plaintiff"), of the decision (the "Decision") of the defendant Town of Lexington Zoning Board of Appeals ("the Board") approving an application for a Special Permit with Site Plan Development and Use Plan requested by defendant 95 Hayden, LLC ("Applicant") to construct a multistory office building, associated subsurface garage parking, surface parking, two additional loading docks, and related improvements. Along with work to be conducted on Applicant's property, the Decision also approved and essentially required improvements to be made on Plaintiff's property without consent or authorization from Plaintiff. Although Applicant has certain easement rights with respect to Plaintiff's property, these easement rights do not permit most of the activities on Plaintiff's property which were approved and essentially

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required by the Decision such as the installation of parking spaces, which the Board found were necessary to provide the proposed new building with sufficient parking. In addition, the scope of work approved by the Decision is based on various plans submitted by Applicant that contain conflicting improvements on Plaintiff's property. Therefore, the Decision should be annulled pursuant to G.L. c. 40A, § 17.

### PARTIES, JURISDICTION, AND VENUE

1. Plaintiff One Ledgemont, LLC is a limited liability corporation organized and existing under the laws of Massachusetts, with a principal place of business at 177 Milk Street, Boston, Massachusetts. Plaintiff owns the property located at 124-128 Spring Street, Lexington, Massachusetts, commonly referred to as One Ledgemont Center ("One Ledgemont").

2. Upon information and belief, the names and mailing addresses of the defendant members of the Lexington Zoning Board of Appeals are:

Carolyn C. Wilson, 33 Oak Street, Lexington, Massachusetts;

Martha C. Wood, 51 Gleason Road, Lexington Massachusetts;

David G. Williams, 1433 Massachusetts Avenue, Lexington, Massachusetts;

Leo P. McSweeney, 435 Lincoln Street, Lexington, Massachusetts; and

Jeanne K. Krieger, 44 Webster Road, Lexington, Massachusetts.

3. Defendant Town of Lexington Zoning Board of Appeals is a duly constituted municipal body with a usual place of business at 1625 Massachusetts Avenue, Lexington, Massachusetts, and pursuant to the Lexington Zoning Bylaw is the permit granting authority in the Town of Lexington.

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4. Upon information and belief, defendant 95 Hayden, LLC, is a Massachusetts limited liability corporation with an address of c/o Hobbs Brook Management, LLC, 225 Wyman Street, Waltham, Massachusetts. Applicant owns the property at 95-99 Hayden Avenue, Lexington, Massachusetts, commonly referred to as Two Ledgemont Center ("Two Ledgemont").

5. Jurisdiction and Venue are proper in this Court pursuant to G.L. c. 40A, § 17.

### FACTS

#### *Background*

6. In 2008, Plaintiff and Applicant's predecessor, Two Ledgemont, LLC, anticipated the construction of a multistory office building, associated subsurface garage parking, surface parking, two additional loading docks, and related improvements (collectively, the "Proposed Three Ledgemont Project") at a real estate development sometimes referred to as Ledgemont Center ("Ledgemont Center").

7. Ledgemont Center currently consists of two abutting properties: Plaintiff's property at One Ledgemont, and Applicant's property at Two Ledgemont.

8. In anticipation of the possible future permitting of the Proposed Three Ledgemont Project, on May 4, 2009, a Preliminary Site Development and Use Plan ("PSDUP") affecting the zoning of Ledgemont Center was approved by Lexington Town Meeting.

#### *The Requested Zoning Relief*

9. On October 12, 2012, Applicant submitted an application to the Board for hearing on the Proposed Three Ledgemont Project.

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10. Applicant sought permits and approval under Chapter 135 of the Code of the Town of Lexington for (a) a Special Permit with Site Plan Review ("SPS") for the Proposed Three Ledgesmont Project; and (b) approval of a Definitive Site Development and Use Plan ("DSDUP").

11. According to the plans submitted to the Board, Applicant sought approval for work related to the Proposed Three Ledgesmont Project, including work on Plaintiff's property consisting of numerous parking spaces, additional landscaping, and relocation of the entrance and exit to the Plaintiff's parking garage.

12. The plans submitted by Applicant as part of its application for zoning relief show substantial inconsistencies in the scope of work to be performed by Applicant, such as inconsistencies in the plan for proposed landscaping. These plans were approved by the Board in its Decision.

13. As the owner of One Ledgesmont, Plaintiff did not consent to or authorize the application for the zoning relief affecting Plaintiff's property at One Ledgesmont that Applicant requested and applied for.

14. A hearing was held by the Board on Applicant's application on November 8, 2012. At the hearing, Plaintiff opposed the requested zoning relief and submitted a letter dated November 8, 2012 to the Board, outlining its objections to Applicant's zoning application.

15. On January 24, 2013, the Board issued the Decision. A certified copy of the Decision is attached hereto as Exhibit A.

*Impacts to Plaintiff's Property and Legal Interests*

16. Plaintiff is aggrieved by the Board's Decision granting the SPS and DSDUP Applicant.

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17. The Proposed Three Ledge-mont Project is dependent upon parking and access driveways on One Ledge-mont. This condition was anticipated as a possibility by the 2009 PSDUP approval, which specifically requires that "an easement guaranteeing long-term use" (in the case of parking) or "a binding agreement" (in the case of driveways) "is executed and recorded in the Registry of Deeds for Middlesex County." The required easements or agreements anticipated by the PSDUP have not been executed by Plaintiff or recorded at the Registry.

18. There are certain easements in place between One Ledge-mont and Two Ledge-mont, but they do not permit most of the construction activities and use of Plaintiff's property required by the Decision in order for the Proposed Three Ledge-mont Project to be developed.

19. In addition, portions of the work approved and required by the Decision are to take place on Plaintiff's property despite the fact that Plaintiff did not join in the application or request the approvals. In particular, the Decision authorizes Applicant to construct numerous parking spaces, add landscaping, modify the parking garage, and relocate the entrance and exit to the garage at One Ledge-mont. Plaintiff has not, and does not, authorize or consent to any work under the SPS or DSDUP to be performed on its property beyond areas presently subject to easement, if any.

20. The Board's Decision approving the SPS and the DSDUP also appears to be dependent upon Plaintiff relinquishing its easement rights in the area of the proposed new building. Plaintiff has never agreed to relinquish such rights.

21. The Board's Decision is in direct contradiction to Plaintiff's express withholding of consent and authorization.

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22. The Proposed Three Ledgeмонт Project will have an adverse effect on Plaintiff's property at One Ledgeмонт, which will adversely affect its operations and the property value.

23. The Decision constitutes an unauthorized encumbrance on One Ledgeмонт, and will impact the property value of One Ledgeмонт and adversely affect Plaintiff's property rights and legal interests.

24. The Decision of the Board granting a Special Permit with Site Plan Development and Use Plan to Applicant is not supported by the evidence, exceeds its authority, is arbitrary or capricious, constitutes an impermissible encumbrance on the title to Plaintiff's Property, and is otherwise not in accordance with the law, and should be annulled.

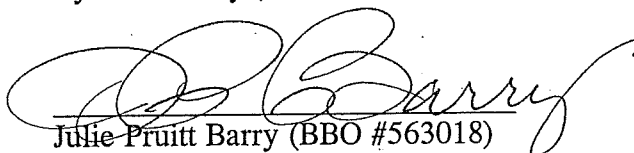
PRAYER FOR RELIEF

Plaintiff requests that this Court:

- Annul the Board's Decision pursuant to G.L. c. 40A, § 17 granting a Special Permit with Site Plan Development and Use Plan to Applicant; and
- Issue such other and further relief as this Court deems just and proper.

ONE LEDGEMONT, LLC

By its attorneys,



Julie Pruitt Barry (BBO #563018)

*jpbarry@nutter.com*

Jean L. R. Kampas (BBO #676308)

*jkampas@nutter.com*

Nutter McClennen & Fish, LLP

Seaport West

155 Seaport Boulevard

Boston, MA 02210

(617) 439-2000

Dated: February 12, 2013

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*Town of Lexington*  
Board of Appeals

Tel: (781) 862-0500 x207

Fax: (781) 861-2780

TO: Hobbs Brook Management LLC  
225 Wyman Street  
Waltham, MA 02451

Attorney John Farrington  
One Militia Drive, Suite 7  
Lexington, MA 02421

RE: 95 Hayden LLC

FROM: Dianne Cornaro, Zoning Board of Appeals Clerk

RE: RECORDING OF DECISION(S) for 95-99 Hayden Avenue

This is to notify you that a Special Permit with Site Plan Development and Use in accordance with Section(s) 135-42F and 135-14 of the Code of the Town of Lexington (Zoning By-Law) was Approved at a hearing held on November 8, 2012.

The decision was filed with the Town Clerk on January 24, 2013.

In accordance with M.G.L. c. 40A sec. 11, when twenty days have elapsed from the time of filing the decision in the Office of the Town Clerk, and no appeal has been filed with the Town Clerk, you are required to obtain a 21-day letter to record the CERTIFIED decision at the Registry of Deeds. The special permit and/or variance IS NOT EFFECTIVE until the decision has been recorded at:

Registry of Deeds  
Southern Middlesex District  
208 Cambridge Street  
Cambridge, MA 02141  
Tel.: (617) 679-6300

In order to facilitate this process please call the Town Clerk's office at (781) 862-0500 x270 with your request for this document at least 48 hours in advance of the date you wish to obtain the letter.

*Dianne Cornaro*  
Dianne Cornaro, Administrative Clerk  
Zoning Board of Appeals  
Town of Lexington

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*Town of Lexington*  
Board of Appeals

Carolyn C. Wilson, Chairman  
Jeanne K. Krieger  
Leo P. McSweeney, Clerk  
David Williams  
Martha C. Wood, Vice-Chair

Tel: (781) 862-0500 x207  
Fax: (781) 861-2780

January 24, 2013

Ms. Donna M. Hooper  
Town Clerk  
Lexington MA 02420

Re: 95-99 Hayden Avenue, Map 17, Lot 22  
95 Hayden LLC, c/o Hobbs Brook Management LLC  
Special Permit with Site Plan Development and Use

Dear Ms. Hooper:

Attached please find the decision of the Board of Appeals made after a public hearing on November 8, 2012.

The Board of Appeals, voted to approve the Special Permit with Site Plan Development and Use Plan.

Very truly yours,

Dianne Cornaro  
Clerk, Board of Appeals

Enc.

CC: Hobbs Brook Management LLC  
225 Wyman Street  
Waltham, MA 02451

Attorney John Farrington  
One Militia Drive, Suite 7  
Lexington, MA 02421

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**SPECIAL PERMIT WITH SITE PLAN REVIEW-  
FINDINGS OF FACT AND DECISION**

Subject Property: 95-99 Hayden Avenue and 124-128 Spring Street

Property Owners: 95 Hayden LLC, c/o Hobbs Brook Management, LLC  
and One Ledgeмонт LLC, c/o Beal Companies LLC

Applicant: 95 Hayden LLC, c/o Hobbs Brook Management, LLC

Meeting Date: November 8, 2012

Town of Lexington Assessor  
Map and Lot Numbers: Map No. 17, Lot No. 22 (95-99 Hayden Avenue)  
Map No. 18, Lot No. 2B (124-128 Spring Street)

Town of Lexington Zoning Board of Appeals  
1625 Massachusetts Avenue, Room G-5  
Lexington, Massachusetts 02420  
Telephone: 781-862-0500 x 207  
Fax: 781-861-2780

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### Administrative History:

On October 12, 2012, the Town of Lexington Zoning Board of Appeals (the "ZBA," "Board" or the "Special Permit Granting Authority" or the "SPGA") received an application for a hearing on property located at 95-99 Hayden Avenue and 124-128 Spring Street in Lexington Massachusetts. Hobbs Brook Management, LLC (the "Applicant"), submitted the application. The Applicant requested the zoning relief, listed below in the Zoning Request section of this Decision.

Notices of a public hearing were sent by mail, postage pre-paid, to individuals listed on the Town of Lexington Certified Abutter's list for the property located at the project site.

On October 25, 2012 and November 1, 2012 notice of the hearing was duly advertised in the *Lexington Minuteman*, a newspaper of general circulation in the Town of Lexington.

On November 8, 2012, Martha C. Wood, acting Chair, duly called the hearing to order. Also sitting for the hearing were Leo P. McSweeney, David G. Williams, Jeanne K. Krieger, and associate member Ralph D. Clifford. Edward D. McCarthy, associate member was present for the hearing. The board took testimony on the matter. The hearing was duly closed. The Board made the findings of fact and decisions as recorded in this Decision.

Staff present for the hearing: David L. George, Zoning Administrator and Dianne Cornaro, Zoning Board Clerk.

Attorney John Farrington, presented the application for the Applicant. Also, present, on behalf of the applicant were: Kevin Gammons General Council of Hobbs Brook Management, LLC; Maurice "Skip" Sullivan, from Bingham McCutchen, LLP; Dominic Rinaldi and Charles Kalaskis from the BSC Group; Joseph Glosky, project architect; and Gary Larson, Landscape, Architect.

Prior to the hearing, the parties listed in Attachment C reviewed the application and supporting materials.

### Zoning Requests:

The Applicant seeks permits and approval under Chapter 135 of the Code of the Town of Lexington (the "Bylaw"), as amended through March 2011, for the following:

(a) A Special Permit with Site Plan Review (the "SPS") for certain new uses, and other site improvements, pursuant to § 135-12 (in accordance with § 135-13 and § 135-14C) and the Preliminary Site Development and Use Plan (the "PSDUP") approved for the site by an act of May 4, 2009 Town Meeting; and

(b) approval of the Definitive Site Development and Use Plan (the "DSDUP") as consistent with the PSDUP; inclusive of revisions, pursuant to § 135-42B and § 135-42F.

## Findings:

The Town of Lexington Zoning Board of Appeals (ZBA), having received the Board of Appeals Application for Hearing, viewed the site, conducted a public hearing and reviewed all the submitted evidence, finds that:

## General

1. 95 Hayden LLC, c/o Hobbs Brook Management, LLC is the petitioner for the above listed zoning requests and is the Applicant and owner of property located at 95-99 Hayden Avenue in the Town of Lexington. Said property is more particularly described in a deed recorded in the Middlesex South District Registry of Deeds dated Book 59615, Page 289.
2. One Ledgemont LLC, c/o Beal Companies LLC, is the owner of property located at 124-128 Spring Street in the Town of Lexington. Said property is more particularly described in a deed recorded in the Middlesex South District Registry of Deeds in Book 47908, Page 230.
3. 95-99 Hayden Avenue and 124-128 Spring Street are collectively known as Ledgemont Center (the "Site")
4. The Site is located in a zoning district classified under the Town of Lexington Zoning Bylaw as CD-14, Planned Commercial Development.
5. The Site was rezoned from CRO (Regional Office) to CD-14 by May 4, 2009 Lexington Town Meeting action.
6. Lexington Town Meeting approved the required PSDUP for the Site May 4, 2009.
7. The Site is subject to the Planned Commercial District CD-14 Zoning District Regulations.
8. CD rezoning petitions are applicant sponsored. The 2009 petition was brought by Beal Companies, LLP, the then owner of the entire Site.
9. Land ownership, within the Site, may be transferred, the terms and conditions of the PSDUP, DSDUP, and the SPS remaining in effect for the subsequent property owners.
10. Presently located on the 124-128 Spring Street parcel ("Parcel A" or "Ledgemont One") are five multistory office/lab buildings with 183,901 sq. ft. area. The lot area is 11.25 acres. The lot frontage is approximately 900 ft.
11. Presently located on the 95-99 Hayden Avenue parcel ("Parcel B" or "Ledgemont Two") is a multistory office building with 158,190 sq. ft. area. The lot area is 24.97 acres. The lot frontage is approximately 1800 ft.

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12. The Site is improved with buildings, parking, landscaping, lighting, and infrastructure improvements.
13. The Applicant seeks to construct a multistory building with approximately 162,000 sq. ft. area on Parcel B. Other improvements would also be made to Parcel B, including for landscaping, lighting, and stormwater management as approved for the rezoning of the Site. The proposed new building includes a 400 parking space garage under the building and two additional loading docks.
14. The neighborhood context of the Site is as follows:

The Site is located in the southern section of the town and is adjacent to other commercially zoned parcels and residentially zoned lots. To the north of the site are lots located in the RS (One-Family Dwelling) and RO (One-Family Dwelling) residential zoning districts and town owned land.

To the east of the Site is property located in the RO residential zoning district, the CD-9 and CD-8 commercial planned development zoning districts, and the CRO commercial zoning district.

To the south of the Site is property located in the CRO commercial zoning district and the RO residential zoning district.

To the west of the Site is property located in the CD-10 commercial zoning district.

The Site is also accessible from Spring Street, running north/south, and Hayden Avenue running east/west.

The Site is adjacent to Route 2 highway access.

**Special Permit with Site Plan Review § 135-42F Findings (Consistency of the DSDUP with the PSDUP)**

Note: The text of certain applicable sections of the Bylaw are set forth below in italics. The basis for each finding and determination with respect to the proposed project is set forth following each subsection of the Bylaw in non-italicized type.

15. *Special permit application. The application for an SPS under this section (§ 135-42F(1), in accordance with § 135-42B) shall comply with § 135-12 (See section below) and shall be accompanied by:*

- a. *A copy, certified by the Town Clerk, of the PSDUP plan approved by Town Meeting.*

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The Board finds the Applicant submitted, with its filing, a copy of the required PSDUP certified by the Town Clerk. See Attachment A.

b. *DSDUP as described in § 135-14.*

The Board finds the applicant submitted with its filing a copy of the DSDUP developed in accordance with § 135-14. See Attachment A of this Decision, listed below.

16. *Special permit provisions. The Board may grant a SPS (pursuant to § 135-42F(2)) for the development of a tract of land in the CD District subject to the following provisions:*

a. *The ZBA makes a determination that the development conforms substantially to the PSDUP approved by Town Meeting and is consistent with the considerations set forth in § 135-12.*

The Board finds that based on a site view, testimony taken at the hearing, and evaluation of the plans submitted with the petition, that the development conforms substantially to the PSDUP approved by Town Meeting and is consistent with the considerations set forth in § 135-12. See also § 135-12 Findings section below.

b. *The SPS incorporates, by reference, the DSDUP filed with the application for the SPS.*

The Board finds that based on the submittal materials listed in Attachment A, the SPS has been incorporated by reference in the DSDUP filed with the application for the SPS.

c. *The ZBA may allow any or all of the uses specified in the plan approved by Town Meeting but no others.*

The Board finds the authorized uses on the premises shall consist of those permitted uses as specified within the PSDUP except as otherwise conditioned. See PSDUP, Section II: Types of Uses Permitted.

d. *The Board may, in its discretion, permit revisions from the PSDUP approved by Town Meeting provided they do not conflict with the provisions of the text of such plan. Such revisions shall generally be limited to the location of the building(s) and changes in the site plan.*

The Board finds that minor changes to the site have occurred in accordance with this section.

The revisions include the following:

- East Elevation—structural framing change, building bump out removed;

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- East Elevation-- landscape changes related to change in elevation;
- Extension of the Conservation Restriction and Trail Easement;
- Access driveway and parking space realignment;
- Updated stormwater management design;
- Location of the emergency access turnaround.

Atty. John Farrington letter to the Board, dated October 12, 2012.  
See also, the letter from BSC Group to the Town of Lexington Conservation Commission, dated October 16, 2012.

See Attachment A including DSDUP.

- e. *The SPS shall require that any land designated as common open space on the approved plan shall be either conveyed to the Town or protected by an easement granted to the Town.*

There is an existing conservation restriction and trail easement on the property as shown on the plan entitled, "Site Construction Plan, Sheet C-5" prepared by BSC Group, dated October 12, 2012. The Applicant shall grant or modify an easement to permit the extension of the conservation restriction and trail easement, subject to conditions. See Conditions section, below.

- f. *The Special Permit with Site Plan Review decision may contain such additional conditions as the Board of Appeals finds will serve the public interest*

See Conditions section, below.

#### **Special Permit with Site Plan Review § 135-12 Findings**

17. *Pursuant to § 135-42F(1), the SPS may be granted provided the SPS application complies with § 135-12B (in accordance with § 135-13 and § 135-14C).*

The Board finds the SPS application, for proposed improvements on Parcel B, and the accompanying DSDUP are in compliance with § 135-12B(1) and (2) of the By-Law as follows:

*§ 135-12B(1): Prior to granting a SPS, the ZBA shall make a finding and determination that the proposed development of the site, under § 135-12B(1):*

- a. *Complies with such criteria or standards as may be set forth in the section of this bylaw which refers to the granting of the requested special permit with site plan review.*

The Board finds the subject application complies with §135-42(F) of the Lexington Zoning Bylaw which refers to the granting of a SPS review for the CD zoning districts. The Development conforms substantially to the

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PSDUP approved by May 4, 2009 Town Meeting vote. The application is consistent with the requirements set forth in §135-12, listed below.

- b. *Is designed in a manner that is compatible with the existing natural features of the site and is compatible with the characteristics of the surrounding area.*

The Board finds the proposed development has been designed in a manner that is compatible with the existing natural features of the site and is compatible with the surrounding area.

Slope and ledge issues affect the lot. The site is located in a hilly and wooded area. The proposed building on Parcel B would blend with the existing terrain as shown on the plans submitted with the application. The proposed building would be part of an office/research and development campus and would be located approximately 250 ft. from the nearest residential structure. The proposed structure would be buffered from the residential area by landscaping improvements made to the site as well as building design features intended to blend the building with the existing area. Parking associated with the building would be primarily located in a garage attached to the proposed building. Additionally, the proposed structure would be located adjacent to a conservation area, which will be extended. Uses of the building would remain similar to existing uses occurring elsewhere at Ledgesmont Center.

As a result, the benefits to the Town will substantially outweigh any potential negative impacts. Where such negative impacts may exist, conditions will be imposed on the permit to mitigate against such impacts. The proposed project is an appropriate use of the site and is expected to be a considerable asset to the community and its economic development.

The proposal provides for the development of a mix of office and life sciences research, manufacturing, and related industries consistent with the types of preferred uses in the Hayden Avenue area and consistent with the Town's Comprehensive plan.

See: Attachment A; DSDUP; and Sheets C-2 and C-3, entitled, "Existing Conditions Plan of Land," prepared by BSC Group, dated October 12, 2012;

Also, Sheet C-10, entitled, "Site Analysis Map," prepared by BSC Group, dated October 12, 2012; Sheet L-1, entitled, "Landscape Plan," prepared by Warner Larson, Landscape Architects, dated October 12, 2012; and

The Memorandum of Understanding (the "MOU") between the Beal Companies, LLP (on behalf of its affiliates, One Ledgesmont LLC and Two Ledgesmont LLC) and the Town of Lexington, Massachusetts, dated March 19, 2009.

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- c. *Does not result in the removal of protected trees when the subject of the special permit with site plan review meets any of the circumstances of §120-4, or where such protected trees are proposed to be removed, that the removal is mitigated through replanting or other means.*

The Board finds that a landscaping plan, showing the planting of trees, has been submitted as part of the Applicant's petition. The landscaping plan is sufficient for purposes of complying with CH 120 of the Code of the Town of Lexington, the Tree Bylaw.

See Attachment A; DSDUP; and Sheet L-1, entitled, "Landscape Plan," prepared by Warner Larson, Landscape Architects, dated October 12, 2012.

- d. *Meets accepted design standards and criteria for the functional design of facilities, structures and site construction.*

The Board finds the subject proposal meets the accepted design standards and criteria for the functional design of facilities, structures and site construction. The Applicant submitted plans and documents that detail the following: site preparation, layout, materials, grading and drainage, utilities, lighting, and landscaping. Such plans were designed to meet the standards and criteria of applicable town regulations.

See Appendix A; DSDUP; and Drawings.

- e. *Will not create impacts on the public services and facilities serving the development, such as the sanitary sewer system, the storm drainage system, the public water supply, the street system for vehicular traffic, the sidewalks and footpaths for pedestrian traffic, and, in addition, for residential developments, the recreational facilities, which cannot be accommodated by such services and facilities, or where there is insufficient capacity in such services and facilities, improvements will be made to provide sufficient capacity.*

The Board finds the proposed project will not create any additional adverse impacts on the public services and facilities serving the development. As shown on plans and in documents submitted with the application, additional water and sewer facilities, and stormwater management systems have been designed to accommodate the increase in water and sewer usage associated with the proposed building. Also, the stormwater management systems have been designed to accommodate increase in stormwater runoff created through the additional impervious surface.

Because of the water service improvements, sufficient emergency fire protection services would be maintained for the Site. Adequate drainage



facilities are provided in conformity with applicable regulations and standards.

A storm water design was completed for the proposed modifications to the Site in conformity with applicable regulatory standards. An Order of Conditions, amended November 13, 2012, was issued by the Conservation Commission.

Traffic impacts will be mitigated by a Parking and Transportation Demand Management Plan (PTDM). The Applicant will make financial contributions to the following:

- The Town's Transportation Demand Management/Public Transportation Stabilization Fund;
- The Town's Traffic Mitigation Stabilization Fund; and
- The Lexington Nature Trust Fund.

See: Appendix A; DSDUP; and MOU;

Also, The report entitled "Stormwater Report", prepared by BSC Group, dated October 12, 2012; and

Sheet C-6, entitled, "Utility Plan," prepared by BSC Group, dated October 12, 2012; and

- f. *Will not create adverse impacts, including those that may occur off the site, or such potential adverse impacts will be mitigated in connection with the approved development, so that the development will be compatible with the surrounding area.*

The Board finds that adverse or potentially adverse impacts, including those that may occur off-site will be mitigated in connection with the approved development. As shown on the plans and in information submitted with the application, the development will be compatible with the surrounding area through implementation of the following: 1) A Traffic and Transportation Demand Management Plan; and 2) A Traffic Mitigation Plans. A Traffic Impact Study was also prepared. The study shows the effect of adopting certain traffic mitigation recommendations.

The Traffic and Transportation Demand Management Plan outlines strategies aimed at reducing the number of single occupancy vehicle trips and total vehicle trips to the Site. The plan is also intended to mitigate traffic congestion related to improvements made at the Site. Generally, the plan details site improvements intended to manage internal traffic flow and access to Spring Street and Hayden Road. Other improvements are intended to encourage ride share programs, bicycle use, and public transportation, telecommuting, and staggered work schedules. A Transportation Coordinator will be appointed by the Applicant to oversee

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and coordinate the plan including its reporting requirements.

The Traffic Mitigation Plan outlines physical improvements made to surrounding roads to increase the level of service of nearby intersections. The plan also outlines financial contributions the applicant will make to enhance future traffic operations in the area. The Applicant will make the financial contributions listed in the above finding.

Additionally, the plan includes closure of the garage entrance/exit during afternoon peak hours, site improvements designed to encourage more vehicular access on Hayden Avenue than Spring Street, and meetings by the applicant with the Town's Traffic Mitigation Group.

The Traffic Impact Study evaluates the potential impacts associated with the development on nearby roads. The study reviews existing conditions and future conditions with and without traffic mitigation techniques described above. The study concludes the following:

- No more than 194 incremental vehicle trips to the site during the weekday morning peak period of 7 AM to 9 AM;
- No more than 191 incremental vehicle trips during the weekday afternoon peak period of 4 PM to 6 PM;
- No more than 1,277 incremental trips to the site daily;
- Improved service levels at Marrett Road/Spring Street/Bridge Street due to traffic signal improvements;
- Improved service levels at Spring Street/Concord Avenue, Hayden Avenue/Route 2 Westbound Off-ramp, and Hayden Avenue/Waltham Street, if police control is used at these intersections.

A detailed MOU between the town and the Applicant has been developed. The MOU provides mitigation techniques designed to reduce or eliminate adverse impacts at the Site.

The memo defines certain responsibilities of the Applicant including:

- Financial contributions toward the Town Traffic Stabilization Fund. The intent of the fund is to fund off-site traffic and transportation mitigation improvements and services which may include off-site infrastructure improvements to the surrounding area;
- Grant application assistance by the Applicant to the town for public infrastructure improvements for infrastructure improvements offered by the Commonwealth;
- Circulation improvements such as signage limiting turning movements to Spring Street and Hayden Avenue; and
- Monetary payments to the Town Transportation Demand Management/Public Transportation Stabilization Fund, Town Traffic Mitigation Stabilization Fund, and the Lexington National Trust Fund.

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See: Appendix A; the Traffic Mitigation Plan at Appendix 4 of the DSDUP submittal; the Traffic and Transportation Demand Management at Appendix 3 of the DSDUP submittal; and the Traffic Impact Study, separately bound and included with the submittal; and the MOA.

- g. *Is consistent with the general purposes of this bylaw as set forth in §135-1 and the more specific objectives and purposes applicable to the requested special permit with site plan review which may be set forth elsewhere in this bylaw, such as, but not limited to, those at the beginning of the various sections.*

The Board finds this SPS/DSDUP application is consistent with the general purposes of the Bylaw, as set forth in §135-1, and the more specific applicable purposes set forth elsewhere in the Bylaw.

See Attachment A; DSDUP; and above findings.

*§ 135-12B(2): Where the Board determines that one or more of the following objectives are applicable to the particular application for a SPS, the Board shall make a finding and determination that the following objectives will be met:*

- a. *That the proposed development will not present a demonstrable adverse impact on the surrounding area resulting from: 1) Excessive noise, level of illumination, glare, dust, smoke or vibration which is higher than levels now experienced from uses permitted in the surrounding area; 2) Emission or discharge of noxious or hazardous materials or substances; 3) Pollution of waterways or groundwater; or 4) Transmission of signals that interfere with radio or television reception.*

With respect to the items listed in a. 1-4 above the Board finds:

The Applicant will mitigate excessive noise by complying with the town's noise bylaw. The Applicant will establish baseline ambient noise level or levels for the entire Site, in accordance with accepted sound engineering methods for establishing such a level or levels. The baseline ambient level or levels shall be established prior to the beginning of construction of the new structure subject to this SPS. The ambient noise levels will serve as basis for determining compliance with the noise bylaw.

The Applicant will mitigate illumination and glare on Parcel B by the following:

- New site lighting will be 'box-type' full cut off and of minimal height and spacing;
- No exterior lighting will be implemented except for lights over egress doors;
- New garage lighting will be full cut off, similar to site lighting.

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- fixtures will be mounted above bottom of garage to minimize impact;
- The garage opening will be screened with landscaping to restrict light spill;
- The garage lighting will be on automatic timers;
- Interior lighting will be controlled by automatic control devices and sensors;
- Mechanical shades will be employed on the East elevation of the proposed building facing the residential neighborhood. The shades will be controlled to close and open within certain times of sunset and sunrise;
- Exterior lighting shall be in compliance with the Zoning Bylaw;
- Lighting for the garage at Two Ledgesmont Center will be retrofitted with full cut-off light fixtures;
- The building shall include a non-reflective surface to reduce glazing on all sides of the proposed building.

The Applicant has designed an all-weather surface parking lot which will minimize dust and be maintained as described in the Stormwater Report. The uses are not expected to develop smoke or vibration. Equipment used for the uses allowed in the DSDUP will be required to be vented per applicable local, state, and federal codes and regulations.

The use is not expected to result in the emission or discharge of hazardous materials or substances. Any storage of hazardous materials will be required to be vented per applicable local, state, and federal codes and regulations.

Storm water utilities, as described above, will be installed at the site, thus mitigating pollution of waterways or groundwater.

There will be no transmission of signals that may interfere with radio or television reception.

See Attachment A; DSDUP; and Conditions section below.

- b. *That the existing land form is preserved in its natural state insofar as practicable, by minimizing grading and the erosion or stripping of vegetation that may result therefrom, particularly from development on steep slopes; by preserving mature trees; and by maintaining man-made features that enhance the land form, such as stone walls, with minimal alteration or disruption.*

The Board finds the existing landform is preserved in its natural state insofar as is practicable. As shown on plans and in documents submitted with the application, minimal grading will occur on site. Site work will occur in accordance with applicable standards, including Conservation Commission regulations. Site work will be mitigated by proper

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sedimentation and erosion controls. Mature trees will be preserved to the maximum extent practicable. Additional landscaping will be planted on Parcel B.

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- c. *That buildings are located: harmoniously with the land form, vegetation and other natural features of the site; effectively for solar and wind orientation for energy conservation; and advantageously for views from the building while minimizing the intrusion on views from other buildings.*

The Board finds the buildings on the Site are located harmoniously with the land form, vegetation, and other natural features of the Site. As shown on plans and in documents submitted with the application, the proposed new building on Parcel B would be located harmoniously on site, blending with the existing structures in the office park campus. Site improvements described in the above findings would be made to the Site, especially on Parcel B. Trees will be removed and replaced as shown on the landscaping plan. Additional landscape buffering will be added in that area between the proposed building and the nearby residential neighborhood.

- d. *That a system of routes for pedestrians, including bicycles with minimal conflicts with vehicles is provided.*

The Board finds a system of routes for pedestrians, including bicycles, has been supplied for Parcel B. These routes provide minimal conflicts with vehicles. As shown on plans and in documents submitted with the application, particularly the Traffic and Transportation Demand Management Plan, supplied with the DSDUP submittal, a 45-bike bicycle rack will be supplied on Parcel B. Internal sidewalks have been added to the Site. There is a sidewalk around the property available for pedestrian use. The Site is adjacent to a signalized intersection with crosswalks. Parcel B has been improved with a parking lot designed to minimize conflict with pedestrians and bicyclists.

- e. *That all measures necessary to minimize soil erosion and to control sedimentation in the disturbed land area of a proposed development are taken, such as, but not limited to, minimizing the velocities of water runoff, maximizing protection of disturbed areas from stormwater runoff, and retaining sediment within the development site as early as possible following disturbances.*

The Board finds that all measures necessary to minimize soil erosion and to control sedimentation, as described above, have been developed by the Applicant.

- f. *The removal or substantial alteration of buildings of historic or architectural significance is minimized and that new uses or the erection of new buildings is compatible with buildings or places of historic or architectural significance.*

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The Board finds that this section is not applicable.

- g. *That the natural character and appearance of the Town is enhanced. Awareness of the existence of a development, particularly a nonresidential development or a higher density residential development, should be minimized by screening views of the development from nearby streets, single family neighborhoods or Town property by the effective use of existing land forms, or alterations thereto, such as berms, and by existing vegetation or supplemental planting.*

The Board finds the natural character and appearance of the Town would be enhanced, as described above.

- h. *That open space on the site, particularly such common open space and usable open space as may be required by this bylaw, is located and designed so as to increase the visual amenities for the surrounding area as well as for the occupants of the development.*

The Board finds that open space, as described above, has been developed. As shown on plans and in documents submitted with the application, the project has been designed to minimize the creation of additional impervious surface areas and to enhance pedestrian interconnectivity between the existing buildings at the site and to the surrounding neighborhood. An existing conservation and trail easement will be modified to improve trail access over the Site.

- i. *That the scale, massing and detailing of buildings are compatible with those prevalent in the surrounding area, without specifying any particular architectural style.*

The Board finds the scale, massing, and detailing of buildings is compatible with those prevalent in the surrounding area. As shown on the plans and in documents submitted with the application, the proposed structure would be located in an office campus setting. Ledgemont Center consists of several buildings. The adjacent CD zoning districts are similarly situated as Ledgemont Center.

- j. *That construction on the site conforms to good design practice for features such as parking and loading, grading, landscaping, drainage, utilities, and lighting.*

The Board finds the site conforms to good design practice for parking and loading, grading, landscaping, drainage, utilities and lighting based on the plans and reports submitted with the application.

- k. *That there is easy access to buildings and the grounds adjoining them, for operations by fire, police, medical and other emergency personnel and*

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equipment.

The Board finds there is sufficient access around the Site for emergency personnel and equipment. The Site is located on two major town roads. The Site can be accessed from either Spring Street or Hayden Avenue. Fire apparatus may efficiently access the Site. The site would be improved to support emergency vehicle access with the inclusion of an emergency access lane adjacent to the Spring Street entrance to the Site. This access would serve the proposed building. A new water service will be added for fire department use.

*That there is improved access to, or the development of additional links and connections to, a Town system of public facilities such as conservation areas, recreation facilities, footpaths or bicycle paths, streets or utility systems.*

The Board finds the access/development of links, as described above, has been provided. The site is within walking distance to the town owned conservation land.

- m. *That the location of intersections of access drives with the Town's arterial or collector streets minimize traffic congestion.*

The Board finds the location of intersections of access drives with the Town's arterial and collector streets minimizes traffic congestion.

- n. *That electric, telephone, cable TV and other such lines and equipment are either placed underground or are as inconspicuous as possible; that support facilities such as storage, refuse disposal, utility buildings and structures for recreational activities are located and screened, to form as effective a visual screen of them as possible.*

The Board finds that this is an existing Site and that new building would use existing infrastructure for electric, telephone, cable and other lines. To the extent that such infrastructure is located above ground, the infrastructure may be maintained in its current location.

- o. *That no development shall cause downstream properties, watercourses, channels, or conduits to receive stormwater runoff from a proposed development at a higher peak flow rate, or to receive other unreasonable impacts, than would have resulted from the same storm event occurring over the site of the proposed development in its natural undeveloped condition.*

The Board finds the development shall not cause downstream properties, watercourses, channels, or conduits to receive stormwater runoff, as described above. As shown on plans and in documents submitted with the application, the Applicant has provided a Stormwater Management Plan

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for the long term maintenance and operation of the stormwater management systems. The Conservation Commission approved the plan and issued an Order of Conditions. The Engineering Division reviewed the plan.

- p. *That adequate water quality standards are promoted giving due regard to the conservation of surface and ground waters for the protection of fish and wildlife, recreational purposes and the use of such water for public water supply in communities which are downstream, by requiring that adequate pollution abatement controls be incorporated into the drainage design of the proposed development.*

The Board finds that adequate water quality standards would be promoted, as described above. As shown on plans and in documents submitted with the application, the project has been designed to meet applicable water quality standards as outlined on the Massachusetts DEP Stormwater Management Guidelines and adequate pollution abatement controls have been incorporated into the drainage design of the proposed development.

#### Decisions

The Board granted the zoning relief listed below, in accordance with Chapter 185 of the Code of the Town of Lexington—the Zoning Bylaw:

(a) A Special Permit with Site Plan Review for certain new uses, and other site improvements, pursuant to § 135-12 (in accordance with § 135-13, and § 135-14C) and the Preliminary Site Development and Use Plan approved for the Site by an act of May 4, 2009 Town Meeting—Motion by Leo P. McSweeney and seconded by Jeanne K. Krieger, with Board vote 5-0. The approval was granted subject to conditions listed below.

(b) Approval of the Definitive Site Development and Use Plan, inclusive of revisions, as consistent with the Preliminary Site Development and Use Plan, pursuant to § 135-42(B) and § 135-42(F)— Motion by Ralph D. Clifford and seconded by Jeanne K. Krieger, with Board vote 5-0.

#### Conditions:

1. The Applicant shall comply with the terms of the March 19, 2009 Memorandum of Understanding, in its entirety, between Beal Companies, its successors and assigns, and the Town of Lexington, Massachusetts;
2. The Applicant shall submit to the Building Commissioner a Construction Management Plan prior to the start of any work related to the construction of the new structure subject to this SPS.
3. The Applicant shall hire, at its own expense, a professional sound engineering



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company to establish baseline ambient noise level or levels for the entire site, in accordance with accepted sound engineering methods for establishing such a level or levels. The baseline ambient level or levels shall be established prior to the beginning of construction of the new structure subject to this SPS. The Owner shall submit to the Building Commissioner such baseline ambient noise levels.

4. The Applicant shall submit a Noise Compliance document for the entire Site to the Building Commissioner prior to the issuance of a Certificate of Occupancy Permit for the new structure subject to this SPS.

5. The Applicant shall execute a Grant of Conservation Restriction to the Conservation Commission in a form acceptable to the Commission, Town Counsel, and the Commonwealth's Executive Office of Energy and Environmental Affairs, Division of Conservation Services, for land to remain in its natural state with required trail easement allowing public access prior to the issuance of the Certificate of Occupancy Permit for the new structure subject to this SPS.

6. The Applicant shall seek a Special Permit if facility is to be used for a medical office.

7. The Applicant shall establish the proper easement rights, if any are necessary, to carry out the terms of the SPS and the DSDUP. Such proof of easement rights shall be in a form to the satisfaction of the Building Commissioner, as advised by Town Counsel.

8. Approvals granted by this Decision are made only for the scope of work and uses as shown on the plans or in information materials submitted with the application, except as may be otherwise conditioned by this Decision. Any subsequent modifications to the Site, in whole or part, may require Board action in accordance with § 135-42F(4).

#### Attachments:

#### Attachment A: Material Submitted for Review and Approval by Applicant

##### Material Submitted for Review with Application:

The petitioner submitted the following information with the application:

Application on official Board form; October 12, 2012 letter from Attorney John M. Farrington in support of the application; DSDUP including Exhibits A to C, Appendices 1 to 10, and Project Plan set consisting of 15 sheets; and the Traffic Impact Study; and Stormwater Report.

##### Additional Information received prior to or at the hearing:

1. November 1, 2012 cover letter from BSC Group with the following:

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- a. Reduced size 11" x 17" Definitive Site Development and Use Plan (DSDUP), 15 sheets, plans originally submitted as full size sheets;
  - b. Copies of four building renderings;
  - c. Memo from BSC Group documenting the applicability of the 2008 Traffic Study to the project.
- November 2, 2012 letter from JCG Architecture, LLC regarding modification made to the east elevation of the proposed building;
3. November 5, 2012 letter from JCG Architecture, LLC providing answers to questions raised in staff's November 2, 2012 memo to the Board;
  4. Plan entitled, "Site Construction Plan, Sheet C-5" prepared by BSC Group, dated December 22, 2008 and revised April 17, 2009. The plan shows the building footprint and site layout approved in the PSDUP for Parcel B;
  5. Plan entitled, "Landscape Plan, Sheet L-1," prepared by Warner Larson and BSC Group, dated December 22, 2008 and revised April 17, 2009. The plan shows the landscaping approved in the PSDUP for Parcel B; and
  6. Plan entitled, "Landscape Plan, Sheet L-1," prepared by Warner Larson and BSC Group, dated October 12, 2012 and revised November 05, 2012. The plan shows the snow removal areas on Parcel B designated as dashed ovals and the direction of snow removal.
  7. October 16, 2012 letter from BSC Group to the Conservation Commission, via Building Division. This letter lists revisions to the site plan that have been developed since the PSDUP.
  8. November 8, 2012 PowerPoint presentation consisting of 9 sheets.

**Attachment B: Audience Comment and Related**

Information received at the hearing from the audience:

November 8, 2012 letter from Attorney Michael Burke, representing One Ledgemont Center, to the Board.

The following audience members had questions and concerns they presented to the Board:

Richard Canale of 29 Shade Street and a member of the Planning Board spoke on behalf of the Planning Board.  
Attorney Michael Burke representing 1 Ledgemont  
Bijan Khosraviant of 11 Woodcliffe Road  
Daniel Koerber of 23 Woodcliffe Road

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No one spoke in support of the petition.

The following audience members spoke in opposition to the petition:

1. Attorney Michael Burke representing 1 Ledgeмонт Center.
2. Bijan Khosraviant of 11 Woodcliffe Road.
3. Daniel Koerber of 23 Woodcliffe Road

**Attachment C: Town Departments Reviewing Applicant's Materials or Supplying Material to the ZBA**

**Town Departments:**

Prior to the hearing, the petition and supporting data were reviewed by the Building Commissioner, Conservation Administrator, Town Engineer, Board of Selectmen, the Zoning Administrator, the Planning Director, and the Historic Districts Commission Clerk.

**Materials Supplied by Town Departments:**

1. November 2, 2012 Zoning Administrator memo to the Board;
2. November 8, 2012 Zoning Administrator memo to the Board;
3. October 30, 2012 comments revised November 13, 2012 from the Conservation Administrator to the Board;
4. November 7, 2012 Conservation Administrator comments to the Board;
5. Undated comments from the Building Commissioner;
6. November 15, 2012 comments from the Engineering Division to the Board.

**Comments other Town Boards:**

November 8, 2012 comments from the Planning Board.

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LEXINGTON BOARD OF APPEALS' DECISION:

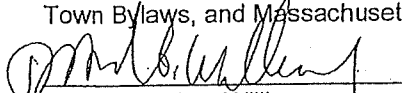
Hearing: November 8, 2012

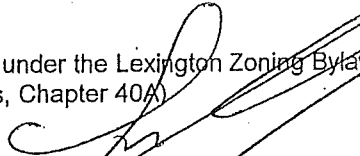
This constitutes the record of the decision of the Lexington Board of Appeals relative to:

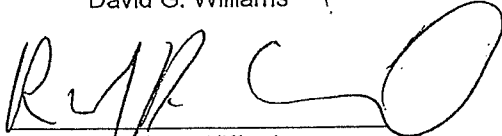
Subject Property: 95-99 Hayden Avenue

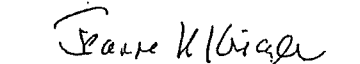
Petitioner/s: 95 Hayden LLC, c/o Hobbs Brook Management LLC

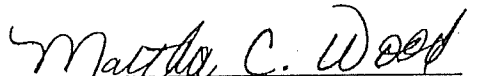
BOARD OF APPEALS OF LEXINGTON (acting under the Lexington Zoning Bylaw, Lexington General Town Bylaws, and Massachusetts General Laws, Chapter 40A)

  
David G. Williams

  
Leo P. McSweeney

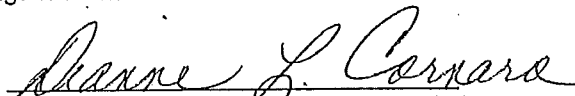
  
Ralph D. Clifford

  
Jeanne K. Krieger

  
Martha C. Wood, Acting Chairwoman

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I, Dianne L. Cornaro, Department Clerk of the Board of Appeals, certify that copies of the decision have been filed with the Lexington Town Clerk.

  
Dianne L. Cornaro, Administrative Clerk

No variance, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the city or town clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, or that if it is a variance which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the petition for the variance accompanied by the certification of the city or town clerk stating the fact that the permit granting authority failed to act within the time prescribed, and no appeal has been filed, and that the grant of the petition resulting from such failure to act has become final, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located 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.

A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located 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. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant.