2017 WL 3480440
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Massachusetts Land Court,
Department of the Trial Court.
Middlesex County.

MONOGRAM RESIDENTIAL 22 WATER STREET PROJECT OWNER, LLC, Plaintiff,
v.
Constantine ALEXANDER, et al., as they are members of the City of Cambridge Board of Zoning Appeal, Defendants.

16 MISC 000631 (MDV)
|
August 14, 2017

DECISION

Michael D. Vhay, Justice

***1** A developer designed and obtained permits for a complex urban redevelopment project. That developer sold the unbuilt project to another developer, the project's current owner. The current owner claims to have been unaware that the original developer had promised zoning officials that decorative lights wouldn't be installed atop the project. The owner did so anyway, after getting the green light from a municipal building commissioner who may have been unaware of the original developer's promise. This ensuing zoning appeal asks, among other things, when does a developer's promise ripen into an enforceable permit condition.

The facts that are material to this dispute, which is before the Court on the parties' cross-motions for summary judgment, are undisputed. In February 2010, Catamount Holdings LLC applied to the Planning Board of the City of Cambridge for four special permits (the "Special Permits"). They included a project-review special permit (a "Review permit") and a planned-unit-development special permit (a "PUD permit"). Catamount sought the permits in order to build a 392–unit residential complex, one arranged into four building "elements." Three of the elements exceeded twelve stories. The complex was completed in 2016 and it occupies a 2.4–acre site at 22 Water Street in Cambridge.

22 Water Street lies in what the Cambridge Zoning Ordinance (the "Ordinance") calls the North Point PUD–6 District. Industrial uses and railroad yards once dominated the district, but a City master plan calls for it to become (in Catamount's words) "a lively community of residents, living and working in proximity to public transportation and also enjoying a variety of parks, and public spaces."

General Laws c.40A, § 9 is the source of the City's power to grant special permits. Review permits (governed by § 19.20 of the Ordinance) are the original flavor of § 9 permits, those used by municipalities as a means of regulating preordained exceptions to the uses allowed as of right in a zoning district. *See Y.D. Dugout v. Zoning Bd. of Appeals of Canton*, 357 Mass. 25, 29–31 (1970) (discussing role of special permits under the long-replaced Zoning Act, St. 1954, c.368). PUD permits (governed by Article 12.00 and, for PUDs in the North Point PUD–6 District, § 13.70 of the Ordinance) are a relatively more recent invention, one introduced by the current Zoning Enabling Act, St.1975, c.808. The current eighth paragraph of c.40A, § 9 defines a PUD by reference to its plot size (large) and its proposed mix of uses. Section 9 allows the granting of a PUD special permit if the special-permit granting authority (the "SPGA"; in this dispute, the Cambridge Planning Board) finds the development "to be sufficiently advantageous to render it appropriate to grant special permission to depart from the normal requirements of the district...."

The authors of a chapter on special permits in the Massachusetts Zoning Manual remark that "[t]The great latitude allowed by the PUD provision[s of § 9] ... permits a SPGA to participate in the design process in order to ensure that every aspect of the resulting project is compatible with its neighborhood and is consistent with public policy." Christopher Foster et al., "Special Permits," Massachusetts Zoning Manual 8–19 (MCLE 5th Ed., 2d Supp. 2015). The authors could have been describing the robust process found in Article 12.00 of the Ordinance. That process starts with a non-mandatory "pre-application conference," followed by the filing of a "Development Proposal," followed by public hearings, followed by submission of a "Final Development Plan," followed by yet more public hearings, and concluding with a decision. But the same authors who praise the broad sweep of § 9's PUD–permitting provisions warn that the process carries a hazard:

> ***2** The multitude of details covered by a PUD special permit makes it likely that modifications will be required in the course of design and construction of a PUD. Unfortunately, no provision is made in the Zoning Act for amendments to PUD special permits. Consequently, such amendments are subject to the same principles that govern changes in decisions granting other types of special permits and variances.

Massachusetts Zoning Manual at 8–19.

And that's what happened here. When it applied for its special permits, Catamount submitted an application. The parties didn't file that document as part of the summary-judgment record, but §§ 12.34 and 19.24 of the Ordinance required that it contain a "Planning Board Special Permit Application Form ... [and] all required plans and narrative statements." Among the required narratives is one described in § 19.24(1)(4) of the Ordinance, a discussion of the applicant's "Architectural Screening Equipment for Mechanical Equipment." This decision will call that discussion the "Screening Narrative."

Catamount's project received a preliminary conditional approval from the Planning Board in April 2010. That approval carried recommendations for modification of the project. Per § 12.35.2 of the Ordinance, the conditional approval obligated Catamount to submit a Final Development Plan, one complying with § 12.36 of the Ordinance. Section 12.36 says this about that plan (italics in original): "*Final Development Plan.* The purpose of the Final Development Plan shall be to set forth in final form the specifics of the proposed development proposal and to allow review for any additional items not present in the Development Proposal." Section 12.36.4 further provides:

> The Planning Board shall make the decision to approve or disapprove the application for a Special Permit to construct a Planned Unit Development no later than ninety (90) days after the public hearing concerning the [application.] ... If the Planning Board grants the Special Permit with conditions, the conditions must be agreed to in writing by the developer before the Special Permit is granted. The Planning Board shall make its final decision in writing.... If the Planning Board makes no decision within the specified time limit, then the Final Development Plan shall be considered approved and the Special Permit to construct a PUD shall be deemed granted.

In accordance with §§ 12.35.2 and 12.36 of the Ordinance, Catamount submitted to the Planning Board Volumes 1 and 2 of a document dated June 1, 2010, entitled "PUD Special Permit Final Development Plan." The volumes contained not only drawings, layouts and specifications, but also project narratives, evidence of property ownership, related project approvals, an acoustical analysis, and a traffic memorandum. It also contained, in its Section 7.0, what Catamount called a "Planning Board Special Permit Application Form."

Section 7.2 of the Final Development Plan contains Catamount's final version of the Screening Narrative. The Narrative is a tad over one page, double-spaced. This case centers on a single sentence that closes the Narrative, a sentence that's in the same typeface and font as the rest of the Narrative:

> There will be no up lighting or other lighting of the screens or roof of the building.

On June 15, 2010, the Planning Board issued a final decision (the "2010 Decision") granting Catamount the Special Permits. On July 8, 2010, in accordance with c.40A, § 11, the Planning Board filed with the City Clerk the 2010 Decision and all of the plans to which the Decision refers.

***3** No one appealed the 2010 Decision. It contains twelve conditions, and as § 12.36.4 of the Ordinance demands, a Catamount representative signed the 2010 Decision "agree[ing] to the conditions attached to this Decision...." Only the first two conditions are pertinent to this dispute. Condition # 1 states:

> All use, building construction, and site plan development shall be in substantial conformance with the Final Development Plan, Volumes 1 and 2, dated June 1, 2010, along with any other supplemental documents submitted to the Planning Board as referenced above. Appendix 1 [of the 2010 Decision] summarizes the dimensional features of the Project as approved.

Condition # 2 is longer; the Court will discuss it later.

As the Massachusetts Zoning Manual predicts, soon after getting the Special Permits, Catamount wanted to make changes. Catamount chose to obtain approval of those changes via § 12.37 of the Ordinance. Section 12.37 states (italics in original):

> *Amendments to Final Development Plan.* After approval of the Final Development Plan by the Planning Board, the developer may seek amendments to the Final Development Plan, only if he encounters difficulties constructing the PUD which could not have reasonably been foreseen, such as with terrain or soil conditions or other complications.

Sections 12.37.2 and 12.37.3 of the Ordinance divide such amendments into "minor" and "major" ones. The changes that Catamount sought (twice) were "minor," and the Planning Board approved them as such. Both amendments repeated the gist of Condition # 1: both are "[s]ubject to the condition that all use, building construction, and site development plans shall be in substantial conformance with the Final Development Plan approved on June 15, 2010, except where such plan is amended by the design modifications set forth in the [amendment] Application Documents...." Neither minor amendment approved changes to the project's rooftops or their lighting.

In December 2012, ten months after the Planning Board approved the second Plan amendment, Catamount sold the as-yet unbuilt project to plaintiff Monogram Residential 22 Water Street Project Owner, LLC. Monogram started construction.

Fourteen months after buying the project, Monogram sought and obtained what it considered to be approval from the City's Community Development Department ("CDD") of the first of six things that affected the project's design. The parties dispute the significance of those approvals, which the Court will discuss in greater detail later. In any event, none of the six approvals addressed the project's rooftops or their lighting.

At some point during construction, Monogram decided that it wanted to illuminate the screens around the buildings' rooftop mechanical equipment, using decorative light-emitting diode ("LED") lighting. This decision will call that lighting "uplights." Prior to installing the uplights, Monogram did not ask for an amendment to the Final Development Plan, as Catamount did twice before. Monogram also did not approach the CDD with the idea, as Monogram had with other elements of the project's design. Instead, Monogram wrote a letter to the City's Commissioner of Inspectional Services, the City's zoning-enforcement officer. (Article 9.00 of the Ordinance calls him the "Superintendent of Buildings.") That letter, sent in December 2014, stated:

> ***4** Monogram proposes to install roof screen lighting on each of the three existing rooftop screens that are part of the approved project for the 22 Water Street property.... The lighting will be similar to that at other structures in the North Point zoning district. The lighting fixtures ... are designed to minimize impacts on adjacent properties....
>
> Based upon our review of the Cambridge Zoning Ordinance, in the North Point residential district, this type of illumination is allowed "by right" without any further permits or approvals. Section 7.20 (Illumination) of the Ordinance provides that outdoor flood lighting and decorative lighting are prohibited in Residences A, B, and C–1 zoning districts. We found no other provisions of the Ordinance that regulates [sic] the type of illumination proposed.
>
> However, before [proceeding] with the installation, we would like to confirm our interpretation with you pursuant to your authority set forth in Ordinance Section 9.11 and M.G.L. c. 40A, § 7.

The letter did not expressly refer to, nor did it enclose copies of, the 2010 Decision or the twice-amended Final Development Plan. The letter also did not mention

Catamount's statement in the Plan that "[t]here will be no up lighting or other lighting of the screens or roof of the building."

The Commissioner did not reply to the December 2014 letter until May 2015, when he sent Monogram this email: "I have discussed with [CDD] staff, and determined that the lighting as proposed is allowed." Armed with the e-mail, Monogram installed the uplights, but didn't turn them on. Monogram performed the installation pursuant to whatever building permits it had at the time; Monogram did not apply for a building permit that was specific to the uplights.

Beginning in July 2015, Monogram began asking for sign-offs from each of the City departments that play a role in issuing final certificates of occupancy. As part of that process, CDD certified in late 2015 that "all conditions of the Planning Board, as set forth above, have been met to permit the issuance of the requested Occupancy Permit." In late 2015, the City issued a final certificate of occupancy for the project.

In January 2016, Monogram turned on the uplights. Neighbors noticed, and they complained to the City. Someone discovered the Screening Narrative and told the Commissioner. The Commissioner told Monogram that the Special Permits did not authorize uplights. Later he told Monogram that it had to remove them.

Monogram asked the Commissioner for a formal determination that the uplights were lawful. The Commissioner did not respond; under c.40A, § 13, that constituted a constructive denial of Monogram's request. In May 2016, Monogram appealed to the Cambridge Board of Zoning Appeal for review of the denial. The BZA sided with the Commissioner's (implicit) determinations that the uplights violated the Special Permit "and must be removed." Monogram timely appealed the BZA's decision to this Court under c.40A, § 17.

Monogram and the BZA have cross-moved for summary judgment with respect to the BZA's decision. This Court may overturn that decision if it is arbitrary, capricious or unreasonable, or beyond the scope of the BZA's authority. *See MacGibbon v. Board of Appeals of Duxbury*, 356 Mass. 635, 638–39 (1970). Monogram's appeal properly raises four questions: (1) whether the 2010 Decision contains an enforceable prohibition on uplights; (2) if so, whether Monogram "substantially complied" with the 2010 Decision anyway; (3) if not, whether Monogram received other authorization under the Ordinance for the uplights; and (4) whether the BZA's directive to remove the lights was lawful. One might think that there's a fifth question, whether the Planning Board lawfully prohibited installation of uplights (if that's what the 2010 Decision does), given that they are allowed as of right in 22 Water Street's zoning district. It's too late for any court to reach that question. If the 2010 Decision improperly prohibited uplights, c.40A, § 17 required Catamount to challenge that condition within twenty days of the filing of the 2010 Decision with the City's clerk. Monogram thus can't challenge the legality of the condition now. *See Iodice v. City of Newton*, 397 Mass. 329, 333–34 (1986); *Klein v. Planning Bd. of Wrentham*, 31 Mass. App. Ct. 777, 778–79 (1992).

***5** So now to the first question: does the 2010 Decision contain an enforceable prohibition on uplights? Citing *Lussier v. Zoning Bd. of Appeals of Peabody*, 447 Mass. 531, 535 (2006), Monogram contends that in order for conditions to binding, they must appear in the SPGA's "decision," the document under c.40A, § 9 that usually acts as the "permit" (more about that later).

While *Lussier* involves a variance granted under c.40A, § 10, the courts have extended its reasoning to special permits issued under c.40A, § 9. *See, for example, Franchi v. Salvidio*, 3 LCR 133, 135–136 (1995). But *Lussier* and related cases don't require that a decision recite, verbatim, each and every condition. *Lussier* and other authorities permit SPGAs to impose the most fundamental of conditions—that the permitted project conform to the applicant's "plans"—by reference, provided that the decision is clear about that.[1] The decision also may reference documents other than plans, and make them conditions of the permit, provided again that the SPGA's intentions are clear. *See, for example, Bd. of Selectmen of Stockbridge v. Monument Inn, Inc.*, 14 Mass. App. Ct. 957 (1982) (rescript). A SPGA runs into trouble using "incorporated" items only if it fails to designate them, without ambiguity, as conditions. Hence, in *Boston Outdoor Ventures, LLC v. Aikens*, 20 LCR 421, 427–28 (2012) (Sands, J.), a municipality couldn't enforce, against the beneficiary of a variance for a sign, dimensions in a plan that the variance decision mentioned only under the heading "Evidence and Testimony Presented," but not under a later heading, "Conditions."

Via Condition # 1, the 2010 Decision imposes as a condition on the 22 Water Street project Catamount's promise in the Screening Narrative that the project's buildings would not have uplights. Condition # 1 is clear: "All use, building construction, and site plan development shall be in substantial conformance with the Final Development Plan....." The Decision identifies the "Final Development Plan" as a specific two-volume document. The Ordinance required Catamount to prepare and file that document with the Planning Board before Catamount could receive its Special Permits. That document contains the Screening Narrative and its no-uplights promise. And to make sure that everyone could find the Final Development Plan and its narratives, the Planning Board filed the Plan with the City Clerk in July 2010, as c.40A, § 11 mandates.

***6** Monogram suggests that there is a due-process problem, or other unfairness, in holding it to a promise made by Catamount (and not Monogram) via a single, unremarkable sentence in a two-volume document. Due process generally turns on notice and one's opportunity to be heard. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *see also Mendoza*, 444 Mass. at 205. Both were afforded here. Notice came in the form of Condition # 1 of the 2010 Decision, which expressly incorporates the Final Development Plan by reference. The opportunity to be heard as to the no-uplights condition came during the Planning Board's hearings in advance of the 2010 Decision, and was further afforded under c.40A, § 17, had Catamount wanted to appeal the condition. Monogram offers no authority for the proposition that a purchaser of an already-permitted development must be given a fresh opportunity to challenge a permit condition before the municipality may enforce it.

Monogram's unfairness argument gives the Final Development Plan short shrift. The Plan is not a mere prospectus. The Ordinance dictates that the Plan recite and restate the contents of the owner's special-permit application. Special-permit applications play a powerful role under the Zoning Enabling Act and the Ordinance. The filing of an application fixes the time in which the SPGA must hold a public hearing on the permit request. The hearing deadline, in turn, sets the deadline under § 9 of the Act (as well as Article 12 of the Ordinance) for when the SPGA must render a final decision. But here's the kicker under both § 9 of the Act and § 12.36.4 of the Ordinance: if the SPGA fails to timely act on the application (or, in the case of PUD special permits, if the Planning Board fails to timely act on the Final Development Plan), the application/Final Development Plan *becomes the special permit*. For that reason, it is in the applicant's interest to make the application as complete as possible. *See* Martin R. Healy, "Procedures for Obtaining Variances and Special Permits," Massachusetts Zoning Manual 10–17–18 (MCLE 5th ed. 2010).

Here's why it is fair to hold Monogram to all of Catamount's promises in the Final Development Plan, even the terse ones. Suppose that uplights weren't allowed at 22 Water Street without a special permit. Suppose that Catamount submitted a fifteen-volume Final Development Plan that said, in a single sentence, that the project *would* have uplights. Suppose further that the Planning Board failed to act on the application and that no one was able to overturn the constructive grant on appeal. Under the Act and the Ordinance, Catamount (and now Monogram) would have the right to install and operate uplights, solely on account of five or six words in a fifteen-volume application. The saw about the goose and the gander applies here: if an applicant offers an express promise in a special-permit application that can become, as a matter of law, the municipality's approval for the project, the municipality likewise may enforce that promise, if it expressly incorporates the application as a condition of a special permit.

Now to the second question in this case. Monogram argues that 22 Water Street is in "substantial conformance" with the Final Development Plan, notwithstanding the installation of uplights, as 22 Water Street generally adheres to the Final Development Plan. In Monogram's eyes, that's all that Condition # 1 requires.

Monogram's reading of Condition # 1 might be correct if it read, "The project shall be in substantial conformance with the Final Development Plan." But Condition # 1 actually says: "All use, building construction, and site plan development shall be in substantial conformance with the Final Development Plan...." Condition # 1 has three subjects—"use," "building construction," and "site plan development"—and mandates that "all" of those subjects be "in substantial conformance with the Final Development Plan." "All" typically means "all." *Hollinger Inc. v. Hollinger Int'l, Inc.*, 858 A.2d 342, 377

(Del.Ch.2004), cited favorably in *Bogertman v. Attorney Gen.*, 474 Mass. 607, 620 (2016).

***7** The phrasing of Condition # 1 suggests that "substantial conformance" is to be determined as to each subject of Condition # 1. Condition # 1's term "building construction" includes the installation of Monogram's uplights, and the Condition's term "use" includes the operation of those lights. Since the installation and the operation of uplights violate the Final Development Plan's promise not to include uplights at all, the installation and operation of uplights do not "substantially conform" with the Final Development Plan.

Now to the third question: did Monogram obtain other sufficient approval under the Ordinance for the uplights? Monogram contends that Condition # 2 allows CDD to approve project components that do not change building dimensions or relocate building features, and that the Commissioner's May 2015 e-mail (prompted by the December 2014 letter from Monogram) represents such an approval for the uplights. It is also undisputed that on six occasions (four times before the December 2014 letter, and twice after), CDD approved various things that altered the project's design: the addition of "sails" to the buildings' exterior, front-entry details, elimination of a light pole, installation of a monument sign, and a change to the species of a tree specified for a multi-use path on the site. Monogram argues that the addition of uplights is as insignificant as the other changes that CDD approved.

The parties don't examine whether, in connection with any of the six other CDD approvals, CDD ended up allowing anything that represented a substantial change from the Final Development Plan. And Monogram's argument has two other factual problems. First, while Monogram contends that Condition # 2 gives *CDD* design-change powers, Monogram addressed its December 2014 letter to the *Commissioner.* As will be seen in a moment, Condition # 2 doesn't give the Commissioner any approval powers. Second, even if the Commissioner had some sort of design-approval power under Condition # 2, the December 2014 letter doesn't mention Condition # 2. The letter thus could not have put the Commissioner on notice that Monogram was seeking relief under that condition.

But the bigger problem with Monogram's argument is that Condition # 2 doesn't give CDD authority to approve anything. Condition # 2 states:

> The project shall be subject to continuing design review by the Community Development Department (CDD). Before issuance of each Building Permit for the project, the CDD shall certify to the Superintendent of Buildings that the final plans submitted to secure the Building Permit are consistent with and meet all conditions of this Decision. As part of the CDD's administrative design review of the project and prior to any certification to the Superintendent of Buildings, the Department shall present to the Planning Board for its review subsequent to this approval the progress on the design of the building and any associated site plan improvements. It is expected that the Department will make such a presentation to the Board as the choices of building and site details and materials are being finalized and on a second occasion when the Building Permit set of plans nears completion.

Condition # 2 merely makes the project subject to CDD "design review." That review allows CDD to certify to the Commissioner that the project's building-permit plans "meet all conditions" of the 2010 Decision. The review also facilitates CDD presentations to the Planning Board "on the progress on the design of the building and any associated site plan improvements." Both duties stem from §§ 12.42 and 13.710 of the Ordinance, which require the Planning Board or its designees to monitor "projects" in the North Point PUD district and their "performance."

***8** CDD's limited design-review duties are in keeping with the Ordinance and c.40A, § 9. After all, the Ordinance has a mechanism for approving amendments to Final Development Plans. It's found in § 12.37 of the Ordinance, and Catamount twice used it for Plan changes. Section 12.37 gives the Planning Board, the SPGA that approves Final Development Plans, the power to amend those plans. Other substantial amendments to special-permit conditions require notice and a public hearing, and must meet the same substantive standards as the original

permit. *See Barlow v. Planning Bd. of Wayland,* 64 Mass. App. Ct. 314, 318–321 (2005). Requests for minor deviations from the permit may not merit that treatment, *see id*, but here the major-versus-minor decision is left to the Planning Board. *See* Ordinance, § 12.37.1. The Board could not, and did not, hand off that responsibility to a department such as CDD. *See Chambers*, 40 Mass. App. Ct. at 765–766.

The Court thus holds that the City did not give Monogram permission under the Ordinance to install and operate uplights as a byproduct of the parties' communications about those lights in 2014 and 2015. With that, it appears that the Zoning Manual's prediction about project changes in PUDs is correct: adding uplights, in the face of a promise in the Screening Narrative (incorporated into the 2010 Decision) that they wouldn't be installed or used, requires an approval from the Planning Board. The BZA thus correctly upheld the Commissioner's (implicit) determination that the Special Permits do not allow uplighting of 22 Water Street, and hence the Ordinance does not allow them at 22 Water Street either.

Now to the final question, that of remedies. In its decision, the BZA upheld the Commissioner's directive that the uplights "must be removed." The undisputed facts don't support that order. After all, Monogram installed the lights only after checking with the Commissioner, who (after five months of deliberation) told Monogram that he'd consulted CDD staff and determined that the lights were fine. While those communications (plus whatever may have happened among City zoning and planning officials before, during, and after) do not estop the City from enforcing the Ordinance and the Special Permits, *see Ferrante v. Bd. of Appeals of Northampton*, 345 Mass. 158, 163 (1962); *Outdoor Advertising Bd. v. Sun Oil Co. of Penn.*, 8 Mass. App. Ct. 872, 873 (1979), *Chambers* holds that under these circumstances, the City must give Monogram a "reasonable opportunity to obtain any permit necessary" to put all or some of the uplights to "a use permitted as of right or by special permit...." *Chambers*, 40 Mass. App. at 769.

It is undisputed that, but for Catamount's promise (incorporated into the 2010 Decision) that no uplights would be installed, the Ordinance allows installation and use of LED illumination systems as of right in 22 Water Street's zoning district. An amendment of the 2010 Decision addressing its restriction on uplights could cause Monogram's lights to conform with the Ordinance. A denial of a request for an amendment is subject to judicial review, and may be overturned if that denial is based on legally untenable or arbitrary or capricious grounds. *See Apple Associates, Inc. v. Bardeen*, 16 LCR 3, 6 (2008) (Piper, J.).

For these reasons, the Court DENIES Monogram's motion for summary judgment and ALLOWS the BZA's motion for summary judgment in part. The Court AFFIRMS the BZA's decision to the extent it upholds the Commissioner's conclusion that uplights are not allowed under the Ordinance and the Special Permits. The Court VACATES the BZA's decision to the extent it upholds the Commissioner's order that Monogram remove the uplights. The BZA must give Monogram a reasonable opportunity to bring the lights into conformity with the Ordinance and the Special Permits. The Court will address the specifics of that opportunity in the accompanying judgment.

***9** Judgment shall enter accordingly.

All Citations

Not Reported in N.E.3d, 2017 WL 3480440

Footnotes

1 *See Lussier*, 447 Mass. at 536 ("[w]hen a variance is granted for a project 'as shown by ... plans' ... the variance requires strict compliance with the plans"); *Mendoza v. Licensing Board of Fall River*, 444 Mass. 188, 205 (2005) (variance case; "Purchasers of property...are not expected or required to look behind the face of recorded variance decisions to ascertain their effective scope, *unless those decisions expressly incorporate other plans or records by reference.*") (emphasis added); *Chambers v. Bldg. Inspector of Peabody*, 40 Mass. App. Ct. 762, 767 (1996) (site plan incorporated into special permit becomes part of the special permit); *see also* c.40A, § 11 (requiring SPGA to deliver to successful permit applicant certification that "copies of the decision *and the plans referred to in the decision* have been filed with the planning board and city or town clerk") (emphasis added).

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