

**The Commonwealth of Massachusetts**

**TOWN OF LENOX**

Filing fee is due with the petition. If hearing expenses exceed this amount the Zoning Board of Appeals will bill the petitioner.

The undersigned hereby petitions the Town of Lenox Zoning Board of Appeals for:

- ☐ A Special Permit for exception under the provisions of Section \_\_\_\_\_ of the Town of Lenox Zoning By-Law.
- ☐ A Variance from the following provisions of Section \_\_\_\_\_ of the Town of Lenox Zoning By-Law.

To permit the following use or activity (describe proposed use or activity):

*Extension of Special Permit to Front Yard, LLC,  
at 310 Old Stockbridge Rd., filed 7/14/15, appeal  
dismissed Nov. 2, 2017, from Nov. 10, 2022 through  
Nov. 10, 2024. See attached Extension Request.*

For premises:

Owner of Record Front Yard, LLC  
Address 310 Old Stockbridge Rd., Lenox  
Map and Parcel Map 3, Parcel 4  
Zoned as R1-A  
Deed Reference Book 4994 Page 229

*(This information is available from the Assessor's Office or townoflenox.com in the Property Assessments-Online Database section.)*

Petitioner Carl Richard Criventi, Attorney for Petitioner  
*(Your signature here also acknowledges that you agree to pay all hearing expenses relative to this petition.)*

Address (Mailing Address) 1200 17<sup>th</sup> St., Suite 1850, Denver, CO 80202  
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**VIA HAND DELIVERY**

July 22, 2022

Zoning Board of Appeals  
Town of Lenox  
6 Walker Street  
Lenox, MA 01240

RE: **Request for Extension of Special Permit**  
Front Yard LLC, 310 Old Stockbridge Road, Stockbridge and Lenox, MA

Dear Members:

On behalf of my client, Front Yard, LLC ("Front Yard"), I hereby submit this request to the Lenox Zoning Board of Appeals (the "Board") for a two-year extension of the Special Permit first granted to Front Yard by the Board on July 14, 2015 (the "Lenox Special Permit") affecting 310 Old Stockbridge Road ("Elm Court").

The Lenox Special Permit was granted following the grant of a Special Permit by the Town of Stockbridge Selectboard on September 10, 2014 (the "Stockbridge Special Permit") authorizing a renovation and hotel wing addition at Elm Court as a Cottage Era Estate Resort on the Stockbridge portion of the Elm Court property, which comprises 87 acres of the 90-acre estate. Front Yard then filed its application for a special permit with the Lenox Zoning Board of Appeals on December 29, 2014, for access to the Cottage Era Estate Resort through the 3 acre Lenox portion of the property, comprising all of the property's frontage.

Soon after issuance of the Lenox Special Permit a Notice of Appeal was filed on August 3, 2015, with the Massachusetts Land Court pursuant to G.L. c. 40A, Section 17 (the "Appeal"). A decision by the Land Court upholding the Lenox Special Permit and denying the Appeal was not issued until July 17, 2017, which decision was further appealed to the Massachusetts Appeals Court. The appeal to the Appeals Court was subsequently disposed of by Stipulation of Dismissal with prejudice on November 10, 2017.

In May 2016, during the pendency of the Appeal, the Town of Stockbridge Selectboard issued an extension of the Stockbridge Special Permit for a period of two years pending the Appeal, to September 6, 2018. The Stockbridge Selectboard further extended the Stockbridge Special Permit in

July 2018 and 2019 for periods of one year and in September 2020, for a two-year period. Concurrent with this request Front Yard requested an additional two-year extension of the Stockbridge Special Permit.

Section 3.4.6 of the Zoning Bylaw of the Town of Lenox (the "Bylaw"), which pertains to special permits and is titled "Lapse", provides in pertinent part that "[a] special permit shall lapse in two (2) years if a substantial use or construction has not begun under the permit within said two years, except for good cause." The Bylaw is substantially consistent with G.L. c. 40A, Section 9 (the "Statute"), which provides at paragraph 14 that "[z]oning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than three years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause." It is noteworthy that the period of time that must pass prior to lapse under the Statute was only recently extended from 2 years- consistent with the Bylaw, to a 3 year period, by the Legislature, in order to allow additional time to prepare for performance prior to commencement of construction pursuant to a special permit.

The Bylaw does not define or provide what may constitute "good cause". However, good cause has been construed in situations where a legal or practical impediment to the use of a permit exists. See Ware Real Estate, LLC v. Town of Ware, 81 Mass. App. Ct. 1120, fur. app. rev. den. 462 Mass. 1104 (2012) (for text of decision, 2012 WL 751739) (Rule 1:28 Decision)(three year period spent obtaining other necessary approvals supported zoning board's finding of good cause to extend Lapse Period). See also Woods v. Newton, 351 Mass. 98, 103-04 (1966) (under prior version of Zoning Enabling Act, where injunction barred construction under special permit, Lapse Period extended).

Over the course of the past two years, the COVID-19 pandemic has continued to severely impact the commercial construction lending market in nearly all facets. Not only has access to commercial real estate credit (lending) continued to be very limited, primarily because until recently there remained limited ability to generate business income, in turn restricting the availability and flow of credit (loans) from lenders, but in addition the recent and dramatic rising interest rate environment has made the ability to secure feasible loan terms extremely difficult. These detrimental effects of the pandemic have only exacerbated the already exorbitantly high cost of construction materials to levels that were never imagined, further delaying the ability to secure project financing during this period of time. In sum, the pandemic has continued to impact and delay Front Yard's efforts to secure financing for the Elm Court hospitality project. While there is no indication at this time when the market will ease there is hope that a reduction of inflation will reduce construction costs somewhat in the near term. Nevertheless, Front Yard continues to seek various means of project financing in order to bring the proposed project to fruition. Due to the unknown duration of the impacts recited above, Front Yard seeks a 2 year extension of the Lenox Special Permit, which will allow it to continue to more effectively plan, coordinate and of course finance construction of the project by 2024.

For the reasons stated herein, Front Yard requests that the Board grant an extension of the Lenox Special Permit for a period of two years, to on or about November 10, 2024.

Thank you for your assistance with this matter.

Very truly yours,

HELLMAN SHEARN & ARIENTI LLP

  
C. Nicholas Arienti, Esq.

Cc: Joel Bard, Esq.  
Adam Hawthorn, Front Yard, LLC