



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
**JOSEPH A. CURTATONE**  
**MAYOR**

PLANNING DIVISION

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MICHAEL A. CAPUANO, ESQ.  
DANA LEWINTER (ALT.)

**Case #: PB # 2011-06**  
**Site: 65 & 75 Mystic Avenue**  
**Date of Decision: April 7, 2011**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: April 15, 2011**

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**PLANNING BOARD DECISION**

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<b>Applicant Name:</b>	David Corsetto/Home Depot
<b>Applicant Address:</b>	75 Mystic Avenue, Somerville, MA 02145
<b>Property Owner Name:</b>	Stephen Bobrow
<b>Property Owner Address:</b>	661 Boylston Street, Boston, MA 02116
<b>Agent Name:</b>	N/A

Legal Notice: Applicant, David Corsetto for Home Depot and Owner, Stephen Bobrow seek a Special Permit with Site Plan Review (SPSR) to be able to revise SPSR # 91.49 to allow for outside display of garden plants that will be purchased inside of the building.

<u>Zoning District/Ward:</u>	ASMD zone/Ward 1
<u>Zoning Approval Sought:</u>	§
<u>Date of Application:</u>	March 14, 2011
<u>Date(s) of Public Hearing:</u>	April 7, 2011
<u>Date of Decision:</u>	April 7, 2011
<u>Vote:</u>	5-0

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Appeal #PB 2011-06 was opened before the Planning Board at Somerville City Hall on April 7, 2011. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L. c. 40A, sec. 11 and the Somerville Zoning Ordinance. After one hearing of deliberation, the Planning Board took a vote.



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## **DESCRIPTION:**

The applicant is requesting to change condition number two of the original special permit to allow for temporary outdoor displays of products and merchandise. The products would be limited to the area in front of the building between the main entrance and the end of the garden center.

In addition, the applicant is seeking to temporarily allow for the outdoor display of garden plants that will be purchased inside of the building. The applicants will set up 16 concrete block and board tables in the Circuit City parking lot in approximately 20 parking spaces as shown in dotted area on the site plan below. The plants would be sold from 8am to 8pm and the tables would be staffed by one to eleven associates at various times during the day. Circuit City is no longer in business and the building is vacant so the parking spaces are not being utilized. A tenant is being sought to occupy the space and when this occurs, the outdoor displays in the parking lot will no longer be possible.

## **FINDINGS FOR SPECIAL PERMIT (SZO §5.2):**

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §5.2.5 of the SZO. This section of the report goes through §5.2.5 in detail. The proposal does not impact the structure or the site and therefore many of the required findings are not applicable to this application. The following finds are applicable.

1. Information Supplied: The Board finds that the information provided by the Applicant conforms to the requirements of §5.2.3 of the SZO and allows for a comprehensive analysis of the project with respect to the required Special Permits.
2. Compliance with Standards: The Applicant must comply "with such criteria or standards as may be set forth in this Ordinance which refer to the granting of the requested special permit."

All of the uses in the Zoning Ordinance Use Table are to be conducted within an enclosed building with the exception that temporary outdoor display of products and merchandise during operating hours is allowable. Condition 2 of the original Special Permit with Site Plan Review for this site further limited outdoor operations and storage. This application, as conditioned, would allow for temporary outdoor display of plants and other seasonal items. Allowing this practice as conditioned would comply with the City standard and limit the Applicant to a location, timeframe, and material that would not be contradictory to the spirit of the original condition. The original condition was intended to avoid having outdoor storage of materials that would be an eyesore on the site and could remain for indefinite periods of time. No new zoning violations would be triggered as a result of the plant displays.

3. Consistency with Purposes: The Applicant has to ensure that the project "is consistent with (1) the general purposes of this Ordinance as set forth in Article 1, and (2) the purposes, provisions, and specific objectives applicable to the requested special permit which may be set forth elsewhere in this Ordinance, such as, but not limited to, those purposes at the beginning of the various Articles."

The proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to encouraging the most appropriate use of land throughout the City as the outdoor display/sale area can support the business without negative impacts, and the temporary parking lot sale area is currently underutilized due to the vacant retail space. The proposal does not conflict with the purpose of the Assembly Square Mixed-Use District, which is to encourage the best of use of the area physically, economically, environmentally and socially.

4. Site and Area Compatibility: The Applicant has to ensure that the project "(i)s designed in a manner that is compatible with the characteristics of the built and unbuilt surrounding area, including land uses."



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The outdoor display of the other seasonal merchandise will be limited to the front of the store between the main entrance and the end of the garden center. Display of items for sale outside does not include storage of materials. The trash that often accumulates at the western side of the site should be removed and that area should be maintained. The landscaping at the site was originally proposed to include dense plantings. The dead trees and/or shrubs at the site should be replaced and additional plants should be planted to add color and interest to the planting beds. The site should also be improved by creating a bike rack that is secure.

The proposal for additional temporary sale in the parking lot is designed in a manner that is compatible with the surrounding area. The material on display in the parking lot will be limited to plants, which are visually appealing and will add color and greenery to the large paved area.

5. Vehicular and pedestrian circulation: The circulation patterns for motor vehicles and pedestrians which would result from the use or structure will not result in conditions that create traffic congestion or the potential for traffic accidents on the site or in the surrounding area.

The display tables will be located in the parking spaces at the edge of the Circuit City parking lot to minimize conflict between vehicles and pedestrians. There is an abundant number of parking spaces at the site especially with the Circuit City space vacant and therefore occupying approximately 20 parking spaces is not anticipated to create traffic congestion or increase the potential for traffic accidents. The products in the front of the store are currently on display and do not interfere with access to the store.



**DECISION:**

Present and sitting were Members Kevin Prior, Elizabeth Moroney, Joseph Favaloro, James Kirylo and Michael Capuano. Upon making the above findings, Kevin Prior made a motion to approve the request for a special permit with site plan review. Elizabeth Moroney seconded the motion. Wherefore the Planning Board voted **5-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	<p>Approval is for the display of items for sale along the front of the store between the main entrance and the end of the garden center, and also includes temporary outdoor display of garden plants in approx 20 parking spaces in the 65 Mystic Ave parking lot. This approval is part of a 1991 Special Permit with Site Plan Review for 127,156 gross sf retail building materials store (7.11.9.9.1.c), a 20,086 gross sf retail garden center (7.11.9.8.2.c), and a 34,519 gross sf general retail merchandise or department store (7.11.9.2.c). Approval does not include a supermarket use since no information was presented in the application relative to such a use and its associated impacts, and therefore no positive determination has been made for a supermarket use as is required by SZO §5.2.</p> <p>This approval is based upon the complete application information for the original 1991 approval for this site, as amended, as well as the following application materials and the plans submitted by the Applicant:</p> <table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>Mar 14, 2011</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>Aug 1991 with 20 parking spaces indicated for location of planting display</td><td>Plans submitted to OSPCD (site plan)</td></tr></table> <p>Any changes to the approved site plan that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	Mar 14, 2011	Initial application submitted to the City Clerk's Office	Aug 1991 with 20 parking spaces indicated for location of planting display	Plans submitted to OSPCD (site plan)	BP/CO	Plng.	
Date (Stamp Date)	Submission									
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2	Outdoor storage or outdoor operations, in part or whole, are prohibited from the building materials retail store and for the general retail merchandise/department store except as allowed for the seasonal displays of products and merchandise, which can be located between the main entrance and the end of the garden center. ADA compliant access along the sidewalk shall be maintained at all times.	Tenant occupies space	Plng. / ISD	
3	The sale of the plants and other seasonal items display outside shall occur inside of the building.	Perpetual when allowed	Plng. / ISD	
4	The applicant shall be allowed to display and sell garden plants in the parking lot at 65 Mystic Avenue as shown on the attached plan during the 2011 season. This provision shall expire on November 1, 2011, unless permission is granted by the Planning Board to continue this activity beyond this date.	Until 11/1/11	Plng. / ISD	
5	Trash and materials to be recycled shall be removed from the parking lot and stored in an enclosed area.	Perpetual	Plng. / ISD	
6	The existing landscaped areas shall be improved by July 1, 2011 by: re-grading of islands, upgrading the mulch, cutting back/removing dead shrubs and trees, planting additional shrubs in the two large front islands, maintaining the snow damaged areas. Landscaping shall be improved by July 1, 2012 as follows: the trees and large shrub containment shall be pruned. Final sign-off of 2011 and 2012 landscape improvements shall be subject to review and approval by Planning Staff. Maintenance/improvements to the landscaping shall be conducted on an annual basis. Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards.	Perpetual	Plng. / ISD	
7	Designate and utilize the 11 spaces within the rear loading/service area (adjacent to Assembly Square Drive) as employee parking.			
8	The dense planting of evergreens at the rear loading bay area shall be maintained.			
9	There shall be a minimum of 53,000 sf of landscaped area on the site. The Developer shall work with the Planning Staff and take every effort to increase the landscaped area beyond this to the extent possible.			
10	The trees planted on the median in New Road are essentially provided in lieu of on-site landscaped area and the Developer shall be responsible for maintenance of these off-site plantings as if located on its own site. The maintenance agreement that the Developer and the City created shall continue to be valid.			
11	The bicycle rack shall be secured in a fixed location to be reviewed and approved by Planning Staff.	Perpetual	Plng. / ISD	



12	The Applicant, its successors and/or assigns, shall be responsible for maintenance of both the building and all on-site amenities, including landscaping, fencing, lighting, parking areas and storm water systems, ensuring they are clean, well kept and in good and safe working order.	Perpetual	ISD	
13	The Owner shall not impede closing of the curb cut along Sturtevant Street by New Road.	Closing of curb cut	DPW	
14	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	Plng.	



Attest, by the Planning Board:



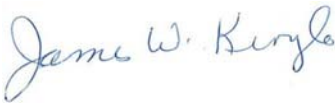
Kevin Prior, Chairman



Elizabeth Moroney



Joseph Favaloro



James Kirylo



Michael A. Capuano, Esq.

Copies of this decision are filed in the Somerville City Clerk's office.  
Copies of all plans referred to in this decision and a detailed record of the  
SPGA proceedings are filed in the Somerville Planning Dept.



### **CLERK'S CERTIFICATE**

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 3.2.10.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds 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.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds 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.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on \_\_\_\_\_ in the Office of the City Clerk, and twenty days have elapsed, and

FOR VARIANCE(S) WITHIN

\_\_\_\_\_ there have been no appeals filed in the Office of the City Clerk, or  
\_\_\_\_\_ any appeals that were filed have been finally dismissed or denied.

FOR SPECIAL PERMIT(S) WITHIN

\_\_\_\_\_ there have been no appeals filed in the Office of the City Clerk, or  
\_\_\_\_\_ there has been an appeal filed.

Signed \_\_\_\_\_ City Clerk Date \_\_\_\_\_



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