



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

PLANNING DIVISION

PLANNING BOARD MEMBERS

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JOSEPH FAVALORO
JAMES KIRYLO
MICHAEL A. CAPUANO, ESQ.

Case #: PB #2011-03 & PB #2011-20

Site: 230 Somerville Avenue

Date of Decision: July 14, 2011

Decision: *Petition Approved with Conditions*

Date Filed with City Clerk: July 27, 2011

PLANNING BOARD DECISION

Applicant Name:	George Moussallem
Applicant Address:	18 Stults Road, Belmont, MA 02478
Property Owner Name:	TYR Realty 2 Trust
Property Owner Address:	18 Stults Road, Belmont, MA 02478
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145

Legal Notice: Applicant George Moussallem and owner Tyr Two Realty Trust seek a special permit under SZO 6.1.22.D.5 to legalize recent alterations to the facade of the structure, in the form of new larger windows.

Applicant and Owner TYR Realty 2 Trust seek a Special Permit under SZO §4.5.1 to change from one non-conforming use to another non-conforming use to establish a light manufacturing use (SZO §7.13.h) for a product assembly business (Cue Acoustics) in an existing structure.

<u>Zoning District/Ward:</u>	CCD-55 district. Ward 2.
<u>Zoning Approval Sought:</u>	§6.1.22.D.5
<u>Date of Application:</u>	November 8, 2010
<u>Date(s) of Public Hearing:</u>	1/6, 1/20, 2/3, 2/17, 3/3, 3/17, 4/7, 4/21, 5/5, 5/19, 6/9, 6/23 & 7/14/11
<u>Date of Decision:</u>	July 14, 2011
<u>Vote:</u>	5-0



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Appeal #PB 2011-03 was opened before the Planning Board at Somerville City Hall on January 6, 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 two hearings of deliberation, the Planning Board took a vote.

DESCRIPTION:

Cue Acoustics has been operating in the space for a few months. Cue is a company that assembles radios, speakers and software. Most are sold on-line, and there is not regular customer activity at the site. The space that they use includes a research and development area, office area, and a small assembly area. A small display area is in the second floor office area. The owner of the building is seeking to legalize this use and establish a certificate of occupancy for the tenant. The owner is also seeking to legalize the window work completed prior to the arrival of Cue Acoustics.

FINDINGS FOR SPECIAL PERMIT (SZO §4.5.1):

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §5.1.4 of the SZO. This section of the report goes through §5.1.4 in detail.

1. Information Supplied: The Staff finds that the information provided by the Applicant conforms to the requirements of §5.1.2 of the SZO and allows for a comprehensive analysis of the project with respect to the required Special Permit.
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."

The Staff finds that the proposal will allow a viable business to continue to operate in this location. That business conducts light assembly work, but this type of work is not incompatible with the standards of the ordinance. Staff is concerned that this work should not expand from the existing location nor should it expand in noise, scope or neighborhood impact. Staff has recommended conditions to address these concerns. The exterior design changes are a net improvement to the building, although they should have applied for the appropriate special permit prior to construction. Since meeting with the owner, he has been making progress towards bringing the entire building into compliance with zoning regulations.

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."

Staff finds this use to be consistent with the purposes of the ordinance. This use was not allowed in the CCD-55 zoning district, because of a concern that manufacturing activities could be incompatible with the vision for the future of these areas. Nonetheless, since the CCD-55 zoning has passed, a number of small businesses that would provide high-quality jobs doing research combined with unique craft manufacturing have been interested in working in the CCD zoning districts. Cue Acoustics is using the site for light assembly of a high-technology project which has been developed in Somerville. The majority of the space inside of the building is used for office and research activities, yet the primary activity of the company is the assembly of radio components, speakers and software. Therefore, while the work must be classified in the industrial use cluster, this work essentially involves one employee with a screwdriver. There is no adverse impact of the activity on the neighborhood, the company operates no differently than an office or research use on the site, and they are providing local employment at a location in close proximity to Union Square. For these reasons, despite not meeting the use requirements of the CCD-55



district, the application is consistent with the purpose of both the general purpose of the ordinance, and the specific purpose of the CCD-55 zoning district.

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.”

No additional exterior changes are planned at this time. The owner, in the past, upgraded the front façade, and this is an improvement over the way it has looked in the past. The activity to occur in the building is compatible with the surrounding area, as it is confined to the portion of the building furthest from residential neighbors, and it has minimal exterior impacts. There is a concern that any expansion or change in this activity would become incompatible, and therefore staff recommends conditions to address this situation.

DECISION:

Present and sitting were Members Kevin Prior, Elizabeth Moroney, Joseph Favaloro, James Kirylo and Michael Capuano. Upon making the above findings, Elizabeth Moroney made a motion to approve the request for a special permit. Michael Capuano 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	Approval is for the establishment of a light manufacturing use for small craft manufacturing of radios, speakers and software products and the updated windows on the façade of the structure:	BP/CO	Plng.									
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>(11/8/10)</td><td>Initial application submitted to OSPCD</td></tr><tr><td>Updated 9/30/10</td><td>Plans and elevations submitted to OSPCD (A1.01 and A1.02)</td></tr><tr><td>January 2011</td><td>Application and information about completed window designs</td></tr></table>				Date (Stamp Date)	Submission	(11/8/10)	Initial application submitted to OSPCD	Updated 9/30/10	Plans and elevations submitted to OSPCD (A1.01 and A1.02)	January 2011	Application and information about completed window designs
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January 2011	Application and information about completed window designs											
Any changes to the approved use that is not <i>de minimis</i> must receive ZBA approval.												
2	The use Special Permit is granted only for the craft manufacturing of radio equipment, speakers and software products and for associated research and office space. Other uses under SZO 7.11h shall require modification of this special permit by the Planning Board.	Cont.	ISD									



3	The use Special Permit is granted only for the existing establishment (Cue Acoustics), and shall not be transferrable to other individuals or businesses that may operate in or lease the space. The use Special Permit shall expire if Cue vacates the structure, and further uses under 7.11h of the SZO shall require re-establishment by special permit by the Planning Board.	Cont.	ISD	
4	The use Special Permit establishes a use for the 7,600 square feet of space leased to Cue as indicated on the submitted plan, with shared access to the loading dock area. This decision does not impact or establish any allowed use in the remainder of the structure.	Cont.	ISD	
5	The use Special Permit is limited to craft manufacturing and therefore any change in the manufacturing process for Cue Acoustics that creates any noise, dust, vibration, fumes, odors, gases, smoke, vapors outside of the structure or creates any hazards to safety or health are not permitted under this special permit	Cont.	ISD	
6	Parking shall not be permitted on the sidewalk, and the applicant shall delineate a parking space or spaces in the front of the building that allows for parking but does not impact the sidewalk. The applicant shall submit to the Planning Staff a plan that shows the parking spaces that have been identified, and shall work with staff on placing landscaping in planters in any area in front of the building that is not used for parking. The location and design of these planters shall be delineated on a plan and reviewed and approved by Planning Staff.	Final sign off	Plng.	
7	By exercising this special permit, the applicant and tenant shall agree to submit to an inspection by the Inspectional Services Division (ISD) upon approval of the permit and four additional inspections over the 24 month period after the approval of the permit, to ensure that all conditions and code issues have been met. The applicant shall abide by all building and safety code concerns including but not limited to updating gas service if required by ISD.	At sign-off and 24 months after	ISD	
8	Applicant shall secure all required permits for air conditioning units, correct any design deficiencies noted by ISD and pay appropriate fees. Applicant shall provide the required noise barrier around the air conditioning and heating units on the roof and pay triple building permit fees. Applicant may be granted a 45 day temporary Certificate of Occupancy upon approval of this application, but cannot receive a final Certificate of Occupancy until this work is complete, and fees are paid.	Prior to issuance of final certificate of occupancy	ISD	
9	Manufacturing activity within the building shall be limited to the business hours of the occupants. Garage door/loading docks shall not be used between the hours of 8pm and 7am.	Cont	ISD	



10	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final sign-off on the building permit to ensure the proposal has been completed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	Plng.	
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Attest, by the Planning Board:



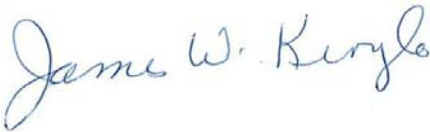
Kevin Prior, Chairman



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.



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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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