



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2017-04
Site: 100 Dover Street
Date of Decision: March 15, 2017
Decision: Petition Approved with Conditions
Date Filed with City Clerk: March 20, 2017

ZBA DECISION

Applicant Name:	New Day Properties, LLC
Applicant Address:	100 Dover Street, Somerville, MA 02144
Property Owner Name:	Dennis Serrano
Property Owner Address:	100 Dover Street, Somerville, MA 02144
Agent Name:	Peter Quinn, AIA
Agent Address:	259 Elm Street, Suite 301, Somerville, MA 02144

<u>Legal Notice:</u>	Owner/Applicant, New Day Properties LLC, seeks a Special Permit under 5.1 for converting a non-conforming auto body repair shop to a conforming non-medical office use and parking relief under §9.13 of the SZO.
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<u>Zoning District/Ward:</u>	CBD zone/Ward 6
<u>Zoning Approval Sought:</u>	§5.1 & §9.13
<u>Date of Application:</u>	December 29, 2016
<u>Date(s) of Public Hearing:</u>	3/1 & 3/15/17
<u>Date of Decision:</u>	March 15, 2017
<u>Vote:</u>	5-0

Appeal #ZBA 2017-04 was opened before the Zoning Board of Appeals at the Visiting Nurse Association on March 1, 2017. 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 Zoning Board of Appeals took a vote.



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DESCRIPTION:

The application requests a change of use from the existing non-conforming auto-body use to a conforming non-medical office. The change in use is an improvement for the neighborhood but changes the demands for parking - parking relief for 3 spaces is required.

FINDINGS FOR SPECIAL PERMIT WITH DESIGN REVIEW (SZO §5.1.5):

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 and 5.1.5 in detail.

1. Information Supplied:

The Board 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 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."**Nature of Application: 6.1.5. CBD - Central Business Districts*

Section 4.4.1 states that "[l]awfully existing nonconforming structures other than one- and two-family dwellings may be enlarged, extended, renovated or altered only by special permit authorized by the SPGA in accordance with the procedures of Article 5. The SPGA must find that such extension, enlargement, renovation or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming building.

In making the finding that the alteration will not be substantially more detrimental, the Board considered additional impacts upon the following:

- traffic volumes and congestion will not be significantly impacted as the office use will likely have more employees using transit – bus and train – rather than automobiles.
- adequacy of municipal water supply and sewer capacity is appropriate as Davis Square is one of the City's areas to be enhanced per the SomerVision Comprehensive Plan.
- noise, odor, and scale will be lessened as the change in use will be quieter and not involve potentially hazardous materials, or not affected as the scale of the building will not be altered.

All developments within the CBD district that require a special permit with design review should comply with the following guidelines to the highest degree practicable.

1. Across the primary street edge, the building should complete the streetwall.

The existing building will remain in its current location at the back of the sidewalk.

2. At the street level, provide continuous storefronts or pedestrian arcade which shall house either retail occupancies, or service occupancies suitably designed for present or future retail use.

The proposed office use does not require continuous storefronts but all existing windows and door openings will remain and the garage doors replaced with aluminum storefront windows.

3. Massing of the building should include articulation which will blend the building in with the surrounding district. At the fourth floor, a minimum five-foot deep setback is recommended.

The mass of the building is not changed from the existing one-story structure.



4. Locate on-site, off-street parking either at the rear of the lot behind the building or below street level; parking should not abut the street edge of the parcel.

The surface parking lot abuts the street edge of the parcel minimally and was approved as part of a previous application.

5. Provide access to on-site, off-street parking from either a side street or alley. Where this is not possible, provide vehicular access through an opening in the street level facade of the building of a maximum twenty-five (25) feet in width.

The on-site parking is accessed via an existing curb cut on Dover Street. Neither the building or the parking, including the curb cut, will be altered in any way.

In considering a special permit under §4.4 or 4.5 of the SZO, the Board finds that the alterations and use proposed would not be substantially more detrimental to the neighborhood than the existing use and will be an improvement.

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 promoting the health, safety, and welfare of the inhabitants of the City of Somerville; providing for and maintaining the uniquely integrated structure of uses in the City; providing adequate light and air; encouraging the most appropriate use of land throughout the City; and to preserving and increasing the amenities of the municipality.

The proposal is consistent with the purpose of the district, which is, "to preserve and enhance central business areas for retail, business services, housing, and office uses and to promote a strong pedestrian character and scale in those areas. A primary goal for the districts is to provide environments that are safe for and conducive to a high volume of pedestrian traffic, with a strong connection to retail and pedestrian accessible street level uses."

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."*

This property is in the Davis Square neighborhood at the boundary of the CBD zone where it abuts a residential RB zone. The building is a mostly single story structure of concrete masonry units with a partial second story clad in vertical metal siding. The building immediately opposite on Dover Street is also one-story but all the surrounding structures are two- to three- stories tall – including the adjacent residential buildings.

The changes to the Dover Street façade are appropriate for the use change. Any significant redesign of the building is not necessary at this time as this property is a prime location for redevelopment. As the Davis Square neighborhood plan is created over the next year, the Applicant/Owner anticipates having an active role in determining what maybe more appropriate for the property and neighborhood in the future.

5. Adverse environmental impacts: *The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.*

The proposed office use will be quieter and more environmentally friendly to the neighborhood than the auto body shop. Any potential emissions or run-off will be greatly reduced and the possibility of hazardous material release is



eliminated so there are improvements for the City and the neighborhood, rather than adverse impacts, from this change of use.

6. **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.*

In considering a special permit under §9.13 of the SZO the SPGA may grant such a special permit only when the Applicant can demonstrate that granting the requested special permit would not cause detriment to the surrounding neighborhood through any of the criteria as follows:

- 1) increase in traffic volumes;
- 2) increased traffic congestion or queuing of vehicles;
- 3) change in the type(s) of traffic;
- 4) change in traffic patterns and access to the site;
- 5) reduction in on-street parking;
- 6) unsafe conflict of motor vehicle and pedestrian traffic.

This change of use will alter the traffic on and off the site for the betterment of the area. The proposed office use is unlikely to generate as much vehicle movement, as the existing auto body shop, and therefore reduce possible conflicts with pedestrians and cyclists in the Davis Square area. A non-medical office in this location provides employment opportunities that can be accessed by alternate means of transportation – transit (bus and rail), pedestrian, and bicycle – that will reduce the need for automobile access. The request for a reduction in required number of parking spaces is appropriate for this location, however a bike rack should be added for two bicycle parking spaces to facilitate alternate modes of travel.

6. **Housing Impact:** *Will not create adverse impacts on the stock of existing affordable housing.*
There is no residential use on this site, existing or proposed, so there will be no impact on the affordable housing stock.

7. **SomerVision Plan:** *Complies with the applicable goals, policies and actions of the SomerVision plan, including the following, as appropriate: Preserve and enhance the character of Somerville's neighborhoods, transform key opportunity areas, preserve and expand an integrated, balanced mix of safe, affordable and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups; and, make Somerville a regional employment center with a mix of diverse and high-quality jobs. The areas in the SomerVision map that are designated as enhance and transform should most significantly contribute towards the SomerVision goals that are outlined in the table below. The areas marked as conserve are not expected to greatly increase the figures in the table since these areas are not intended for large scale change.*

<u><i>SomerVision Summary</i></u>	<u><i>Existing</i></u>	<u><i>Proposed</i></u>
<i>Dwelling Units:</i>	0	0
<i>Affordable Units:</i>	0	0
<i>Commercial Sq. Ft.:</i>	8315 total	3026 new office
<i>Estimated Employment:</i>	unknown	unknown
<i>Parking Spaces:</i>	11 vehicle	11 vehicle & 2 bicycle
<i>Publicly Accessible Open Space:</i>	0	0

8. **Impact on Affordable Housing:** *In conjunction with its decision to grant or deny a special permit for a structure of four or more units of housing, the SPGA shall make a finding and determination as to how implementation of the project would increase, decrease, or leave unchanged the number of units of rental and homeownership housing that are affordable to households with low or moderate incomes, as defined by HUD, for different sized households and units.*

There is no residential use on this site, existing or proposed, so there will be no impact to housing units for households of low or moderate income, as defined by HUD.



DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Elaine Severino and Josh Safdie with Pooja Phaltankar absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit with Design Review. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals 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 non-medical office use and renovations for the Tenant A space only. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/ Planning							
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>December 29th, 2016</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>February 24th, 2017</td><td>Plan Set labeled “ZBA Rev. 3”</td></tr></table>				Date (Stamp Date)	Submission	December 29 th , 2016	Initial application submitted to the City Clerk’s Office	February 24 th , 2017	Plan Set labeled “ZBA Rev. 3”
	Date (Stamp Date)				Submission					
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February 24 th , 2017	Plan Set labeled “ZBA Rev. 3”									
Any changes to the approved elevations and use that are not <i>de minimis</i> must receive SPGA approval.										
Pre-Construction										
2	The Applicant shall complete the Site Plan Review Checklist and supply the information to the Engineering Office. The plans must comply with the City’s Stormwater Management Policy.	BP	Engineering							
3	The Applicant must contact the Engineering Department to coordinate the timeline for cutting or opening the street and/or sidewalk for utility connections or other construction. There is a moratorium on opening streets from November 1st to April 1st and there is a list of streets that have additional opening restrictions.	BP	Engineering							
4	The Applicant shall develop a demolition plan in consultation with the City of Somerville Inspectional Services Division. Full compliance with proper demolition procedures shall be required, including timely advance notification to abutters of demolition date and timing, good rodent control measures (i.e. rodent baiting), minimization of dust, noise, odor, and debris outfall, and sensitivity to existing landscaping on adjacent sites.	Demolition Permitting	ISD							
Construction Impacts										
5	The applicant shall post the name and phone number of the general contractor at the site entrance where it is visible to people passing by.	During Construction	Planning							
6	Approval is subject to the Applicant’s and/or successor’s right, title and interest in the property.	Cont.	Planning	Deed submitted & application form signed						



7	The Applicant shall at their expense replace any existing equipment (including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheel chair ramps, granite curbing, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity. All new sidewalks and driveways must be constructed to DPW standard.	CO	DPW	
8	All construction materials and equipment must be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P	
Site				
9	Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Planning/ISD	
10	The electric, telephone, cable TV and other such lines and equipment shall be placed underground from the source or connection. The utilities plan shall be supplied to the Wiring Inspector before installation.	Installation of Utilities	Wiring Inspector	
11	Applicant will supply 4 bicycle parking spaces, which can be satisfied with 2 inverted-U type bicycle rack.	CO	Planning	
12	Snow plowed from the development shall be limited to an on-site storage area.	Cont.	ISD	
Traffic & Parking				
13	The existing curb cuts at the former garage doors will be closed by the developer and IPS parking meters will be installed following approval by the City's Traffic Commission.	BP	T&P/DPW	
14	Construction plans for the installation of the curb cut and resurfacing of the sidewalk must be approved by and completed per DPW standards.	CO	T&P/DPW	
Miscellaneous				
15	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.	Cont.	ISD	
Public Safety				
16	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
17	Notification must be made, within the time period required under applicable regulations, to the Massachusetts Department of Environmental Protection (DEP) if there is any release of oil, hazardous materials, or regulated hazardous substances at the site. The City's OSE office, Fire Department and the Board of Health shall also be notified.	At time of release	OSE/FP/BOH	
18	To the extent possible, all exterior lighting must be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	Planning	



19	The Applicant shall provide notice of intent to strictly comply with applicable State and Federal regulations regarding air quality including without limitation continuous dust control during demolition and construction.	CO	Planning /OSE	
Signage				
20	Signage will be limited in size and location to the requirements of SZO Article 12 and lighting after 10p.m. facing residential property will be turned down or off.	CO/Cont.	Planning	
Final Sign-Off				
21	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	Planning	



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Richard Rossetti, *Clerk*
Danielle Evans
Elaine Severino
Josh Safdie

Attest, by the Administrative Assistant:

Dawn M. Pereira

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 _____

