



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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PLANNING DIVISION

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Case #: ZBA # 2012-83
Site: 219-221 Elm Street
(a/k/a 376, 387-391 Summer St & 217 Elm St)
Date of Decision: October 17, 2012
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: October 24, 2012

ZBA DECISION

Applicant Name:	Painted Burro, Inc.
Applicant Address:	c/o Pizzeria Posto, 187 Elm Street, Somerville, MA 02144
Property Owner Name:	Lavery Family Trust
Property Owner Address:	255 Bent Street, Cambridge, MA 02141
Agent Name:	Adam Dash, Esq.
Agent Address:	48 Grove Street, Suite 304, Somerville, MA 02144
<u>Legal Notice:</u>	Applicant Painted Burro, Inc. and Owner Lavery Family Trust, seek a Special Permit with Design Review under SZO 7.11.10.1.1.c to establish a restaurant use between 5,000 and 9,999 gross square feet and a Special Permit under SZO §4.4.1 to modify the storefront, including window openings, of the existing nonconforming structure.
<u>Zoning District/Ward:</u>	CBD zone/Ward 6
<u>Zoning Approval Sought:</u>	§7.11.10.1.1.c & §4.4.1
<u>Date of Application:</u>	September 20, 2012
<u>Date(s) of Public Hearing:</u>	October 17, 2012
<u>Date of Decision:</u>	October 17, 2012
<u>Vote:</u>	5-0

Appeal #ZBA 2012-83 was opened before the Zoning Board of Appeals at Somerville City Hall on October 17, 2012. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by



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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.

DESCRIPTION:

The Applicant, who owns and operates the existing 80 seat Painted Burro restaurant, intends to connect the two storefronts and expand the Painted Burro into the Spike's storefront space, which will be renovated. The newly expanded restaurant will have 4,058 square feet of street level space, 4,058 square feet of basement level space, and 110 total seats. The expanded restaurant will have 35 employees and continue the Painted Burro's current hours of operation which are seven days a week from 5:00 PM until 1:00 AM. The proposal would take the existing bar area of the Painted Burro restaurant and move it into the space where Spike's is currently located. The front portion of the Painted Burro would then be used for 16 new dining seats. The existing Spike's space would then be renovated to contain the new bar with 14 seats, 16 new dining seats, and an additional bathroom, all at the street level. All of the windows along the streetscape would also be replaced with end fold windows which could be opened and stacked inside. This would allow for an open air dining atmosphere along the streetscape when the weather permits. The lower panels of the façade would either be filled solid or consist of glass, but this will be determined at a later time. The Applicant would also like to replace the existing Spike's signage with new signage associated with the Painted Burro, however, the design and size of this signage also still needs to be determined.

FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1 & §5.1.4):

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 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."

In considering Special Permits under §4.4.1, §5.1.4, §7.11.10.1.1.c, and §5.1.5 of the SZO, the Board finds that the alterations proposed to the façade and the expansion of the restaurant into the adjacent storefront space would not be substantially more detrimental to the neighborhood than the existing structure or use. The proposed new end fold windows that will allow for an open air dining experience will help to enhance the pedestrian streetscape along Elm Street/Summer Street and in Davis Square in general. During the warmer months these particular storefronts may experience a slight increase in noise generation along the streetscape as the restaurant windows will likely be open, but this type of activity fits directly into the atmosphere of the Davis Square area. These changes will maintain the vibrancy of the streetscape and the high quality pedestrian environment in the Davis Square area.

The proposal is also designed to be compatible with the characteristics of the surrounding area and is consistent with the district standards and guidelines for developments within the CBD as laid out in SZO §6.1.5.B as follows:

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

The existing building and proposed changes will maintain completeness of the streetwall along Elm Street/Summer Street. The Applicant is not proposing any changes as part of this project that would alter this situation at the site.

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 changes to the façade of the building will maintain and even enhance the existing continuous storefront situation at the property. The project will expand a popular restaurant in Davis Square and enhance the pedestrian streetscape experience by implementing end fold windows along the entire storefront space. This will allow for an open air dining experience and will increase the streetscape vibrancy along Elm Street/Summer Street. The proposal will continue to maintain an interactive sidewalk and pedestrian friendly environment.

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 project does not propose to change the massing of the existing building. The proposed changes to the structure will further enhance the pedestrian environment by implementing end fold windows along the entire storefront space. This will allow for an open air dining experience and will increase the streetscape vibrancy along Elm Street/Summer Street and in the surrounding Davis Square neighborhood.

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 Applicant is not proposing any changes to the existing parking situation at the site. The existing 26 space on-site parking lot is located behind the building and is accessed off of Grove Street. Additionally, in January of 1991, the property received a 10 space parking Variance from the Zoning Board of Appeals (ZBA 1990-85).

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 façade of the building of a maximum twenty-five (25) feet in width.

The Applicant is not proposing any changes to the existing parking situation at the site. The existing 26 space on-site parking lot is located behind the building and is accessed off of Grove Street. Additionally, in January of 1991, the property received a 10 space parking Variance from the Zoning Board of Appeals (ZBA 1990-85).

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; to provide for and maintain the uniquely integrated structure of uses in the City; to lessen congestion in the streets; to conserve the value of land and buildings; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality."

The proposal is also consistent with the purpose of the district (6.1.5. CBD - Central Business Districts), 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."

The proposal is designed to be compatible with the characteristics of the surrounding area and land uses. The proposal is also consistent with the district standards and guidelines for developments within the CBD as laid out in SZO §6.1.5, which is outlined in Section 2, Finding 2 above.



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.

No adverse environmental impacts are anticipated from this proposal. No new glare, smoke, vibration, nor emissions of noxious materials nor pollution of water ways or ground water nor transmission of signals that interfere with radio or television reception are anticipated as part of the project. There may be a small, if any, increase in noise as the restaurant is proposing to replace all of their existing windows with new end fold style windows that stack on the inside of the space. This will allow for the Painted Burro to open their windows when nice weather permits. When these windows are open, there may be a slight increase in noise along the Elm Street/Summer Street streetscape, but several other businesses in Davis Square already have this style of window for their storefront spaces. The structure itself will remain a one-story building used for commercial purposes.

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.

The Applicant is not proposing any changes to the existing parking situation at the site. There is a 26 space off-street parking lot behind the structure that has been and will continue to serve the parking needs of the storefronts on this block at night. The proposed expansion of the restaurant will add the same number of seats that were in the previous fast order food establishment space (Spike's Junkyard Dogs), and therefore the parking requirement for the expanded use is the same as when the spaces were operating as two separate uses. As is already the case, the trips the restaurant generates will be offset by the storefront's proximity to alternate modes of transportation (Red Line, MBTA Bus Service, taxis, Tufts Shuttle Bus, Community Path, etc.) and the multiple public parking lots located nearby the establishment. Additionally, in January of 1991, the property received a 10 space parking Variance from the Zoning Board of Appeals (ZBA 1990-85).

FINDINGS FOR SPECIAL PERMIT with DESIGN REVIEW (SZO §5.1.5 & §7.11.10.1.1.c)

In order to grant a Special Permit with Design Review, the SPGA must make certain findings and determinations as outlined in §5.1.5 of the SZO. This section of the report goes through §5.1.5.A in detail, which pertains to the design guidelines for business zones.

The Special Permit with Design Review requires the SPGA to make positive determinations with the design guidelines in SZO §5.1.5.A. The proposal conforms to the criteria of this section of the SZO as follows:

1. Maintain a strong building presence along the primary street edge, continuing the established streetwall across the front of the site so as to retain the streetscape continuity; however, yards and setbacks as required by Article 8 shall be maintained.

The existing building completes the streetwall along Elm Street/Summer Street. The Applicant is not proposing any changes to the streetwall as part of this proposal that would alter this situation at the site. The proposed changes to the façade of the building will maintain the existing continuous storefront situation at the property and along Elm Street/Summer Street.

2. Differentiate building entrances from the rest of the primary street elevation, preferably by recessing the entry from the plane of the streetwall or by some other articulation of the elevation entrance.

The Applicant will not be altering the existing entrance into the Painted Burro or to the added Spike's retail space. Both of these entrances are currently slightly recessed and will function as entryways into the newly expanded



restaurant. One entrance will take patrons directly into the bar area and the other will provide access directly into the dining area.

3. Make use of the typical bay widths, rhythms and dimensions prevalent in buildings adjacent to the site, especially in new construction or substantial redevelopment.

As part of the proposal the Applicant will be maintaining the typical bay width, rhythm, and dimensions of the storefronts in the existing building. The physical storefront setup for the building will not be greatly altered with the exception of the implementation of the end fold windows along the front facade. The existing entrance doors are currently slightly recessed from the Elm Street/Summer Street streetscape, separating them from the pedestrian way, and the Applicant is not proposing any changes to these elements of the façade.

4. Clearly define these bay widths, rhythms and dimensions, making them understandable through material patterns, articulations and modulations of the façades, mullion design and treatment, etc.

As part of the proposal the Applicant will be maintaining the typical bay width, rhythm, and dimensions of the storefront in the existing building. The vertical architectural detail elements of the building will all be maintained as part of this proposal which will help to maintain definition of the bay widths. The new end fold windows that will be implemented will be installed in between these vertical architectural elements. The existing entrance doors are currently slightly recessed from the Elm Street/Summer Street streetscape, separating them from the pedestrian way, and the Applicant is not proposing any changes to these elements of the façade.

5. Provide roof types and slopes similar to those of existing buildings in the area.

The Applicant is not proposing to make any changes to the roof type or slope on the existing building as part of their proposal.

6. Use materials and colors consistent with those dominant in the area or, in the case of a rehabilitation or addition, consistent with the architectural style and period of the existing building. Use of masonry is encouraged, but not considered mandatory.

The Applicant is not proposing to make substantial alterations to the existing structure outside of implementing new end fold windows along the entire storefront space. This will allow for an open air dining experience and will increase the streetscape vibrancy along Elm Street/Summer Street. The proposal will continue to maintain an interactive sidewalk and pedestrian friendly environment. These end fold windows will bring consistency and continuity across the entire Painted Burro restaurant façade. Additionally, the Applicant would like to add new signage on the façade of the expanded portion of the restaurant to bring further continuity across the storefront. The exact logo, design, and size of this signage is still being determined and therefore the Board has included a condition that whatever new signage ends up being proposed on or above the expanded space be subject to Planning Staff review and approval before a Building Permit is issued for the signage. This proposed signage would also need to conform to §12 of the SZO and tie into the architectural style of the existing building and business.

7. When parking lots are provided between buildings, abutting the primary street and breaking the streetwall, provide a strong design element to continue the streetwall definition across the site, such as a low brick wall, iron works or railing, trees, etc.

The Applicant is not proposing any changes to the existing parking situation at the site. The existing 26 space on-site parking lot is located behind the building and is accessed off of Grove Street. Additionally, in January of 1991, the property received a 10 space parking Variance from the Zoning Board of Appeals (ZBA 1990-85). The Applicant is not required to provide any additional parking on-site as part of this proposed use expansion.

8. Locate transformers, heating and cooling systems, antennae, and the like, so they are not visible from the street; this may be accomplished, for example, by placing them behind the building, within enclosures, behind screening, etc.

The Applicant is not proposing to relocate or add any new transformers, heating and cooling systems, antennae, or the like to the existing structure.

9. Sites and buildings should comply with any guidelines set forth in Article 6 of this Ordinance for the specific base or overlay zoning district(s) the site is located within.

The proposal is consistent with the guidelines set forth for developments within the CBD district as laid out in SZO §6.1.5. Please see Section 2, Finding 3 in the text above for detailed response.



DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Josh Safdie. Upon making the above findings, Susan Fontano made a motion to approve the request for a Special Permit. Richard Rossetti 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 a Special Permit with Design Review under SZO 7.11.10.1.1.c to establish a restaurant use between 5,000 and 9,999 gross square feet and a Special Permit under SZO §4.4.1 to modify the storefront, including window openings, of the existing nonconforming structure. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/Plng.													
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>(September 20, 2012)</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>(October 1, 2012)</td><td>Site Plan</td></tr><tr><td>(October 1, 2012)</td><td>Existing Painted Burro (Existing Floor Plan)</td></tr><tr><td>(October 1, 2012)</td><td>Proposed Combined Spaces (Proposed Combined Floor Plan)</td></tr><tr><td>(October 1, 2012)</td><td>Carroll Design Studio Rendering Sheets (Sheets 1, 2, and 3)</td></tr></table>				Date (Stamp Date)	Submission	(September 20, 2012)	Initial application submitted to the City Clerk’s Office	(October 1, 2012)	Site Plan	(October 1, 2012)	Existing Painted Burro (Existing Floor Plan)	(October 1, 2012)	Proposed Combined Spaces (Proposed Combined Floor Plan)	(October 1, 2012)	Carroll Design Studio Rendering Sheets (Sheets 1, 2, and 3)
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Any changes to the approved floor plans, elevations, or use that are not <i>de minimis</i> must receive SPGA approval.																
2	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													
3	The Applicant or Owner shall meet the Fire Prevention Bureau’s requirements.	CO	FP													
4	The Applicant shall at his expense replace any existing equipment (including, but not limited to street sign poles, signs, etc.) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity and the installation or dismantling of outdoor seating. All new sidewalks and driveways must be constructed to DPW standard.	CO	DPW													



5	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	Plng.	
6	New signage for the Painted Burro restaurant on or above the old Spike's Junkyard Dogs storefront space (a/k/a 217 Elm Street) shall be subject to review and approval by Planning Staff before the issuance of a Building Permit. Signage style, lighting, graphics, and colors for this newly added space should relate to the theme and signage of the existing Painted Burro restaurant.	Prior to BP for Signage	Plng.	
7	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 Zoning Board of Appeals:

Herbert Foster, *Chairman*
Orsola Susan Fontano, *Clerk*
Richard Rossetti
Danielle Evans
Josh Safdie (Alt.)

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 _____

