



CITY OF SOMERVILLE, MASSACHUSETTS
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Case #: ZBA 2015-106
Site: 278-280 Elm Street
Date of Decision: February 3, 2016
Decision: Petition Approved with Conditions
Date Filed with City Clerk: February 17, 2016

ZBA DECISION

Applicant Name:	NLP 280 Elm Street Davis Square, LLC
Applicant Address:	399 Boylston Street, 5 th Floor, Boston, MA 02116
Property Owner Name:	Urban Equity Development Company
Property Owner Address:	3 Crenshaw Lane, Andover, MA 01810
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145

<u>Legal Notice:</u>	Applicant, NLP 280 Elm Street Davis Square, LLC, and Owner, Urban Equity Development Company, seek a Special Permit with Design Review to establish a fast order food establishment under SZO §7.11.2.1.a and a Special Permit to not provide required parking per §9.5 & 9.13a.
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<u>Zoning District/Ward:</u>	CBD zone/Ward 6
<u>Zoning Approval Sought:</u>	§7.11.2.1.a, §9.5 & §9.13.a
<u>Date of Application:</u>	December 3, 2015
<u>Date(s) of Public Hearing:</u>	1/20 & 2/3/16
<u>Date of Decision:</u>	February 3, 2016
<u>Vote:</u>	5-0

Appeal #ZBA 2015-106 was opened before the Zoning Board of Appeals at Somerville City Hall on January 20, 2016. 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 proposal is to change the use to a fast order food establishment, Oath Pizza. The first floor is 1,100 square feet and the basement, which will be used for storage and food prep is 500 square feet. There will be 16 seats and 4 to 5 employees at peak shift. One parking space will be provided for the store manager behind the building. No other exterior alterations are proposed except for a change in signage. Signage for the restaurant will be located in the sign band where the sign for Singer was location. Also a blade sign is proposed at the corner of the building above the sign band.

FINDINGS FOR SPECIAL PERMIT (SZO §7.11.2.1.a & 9.13a):

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 order to establish a fast order food establishment a Special Permit with Design Review is required per Somerville Zoning Ordinance (SZO) §7.11.2.1.a. Since there will be no alterations to the structure the district standards and guidelines in §5.2.4 and §6.1.5 do not apply.

The applicant is seeking parking relief for 4 spaces under SZO §9.13. The restaurant use has a higher parking requirement (§9.5) when considering the gross square footage of the restaurant (14.5 spaces) versus the requirement using the number of employees and seats (8 spaces). Section 9.4 allows a nonconforming site for parking to reduce the parking requirement based on the parking requirement for the last use and take half of the result to determine the new requirement. The last use was a retail space that required 2.7 parking spaces. There is also a 20 percent reduction in parking required per §9.6.3 due to the proximity to the Davis Square Red Line Station for the old and the new use. Considering these calculations the requirement is for 4.5 spaces and one will be provided behind the building for an employee.

SZO §9.13 allows for sites with nonconforming parking to apply for a Special Permit to modify parking requirements if the total number of spaces is less than six. In considering a special permit under §9.13 of the SZO the Applicant must be able to demonstrate that granting the requested special permit would not cause detriment to the surrounding neighborhood through any of the criteria as set forth under SZO §9.13, which are 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.

The proposal is located in the heart of Davis Square where there is a lot of foot traffic, public transportation, on-street parking and municipal parking lots. Not providing four parking spaces for a restaurant that will serve pizza by the slice necessitating quick trips will not cause detriment to traffic volumes, congestion or the number of available on-street parking. The Applicant has submitted a parking study with information sufficient information to make this determination.



A condition of approval will be that the Applicant provide four parking meters that accept coins and credit cards to the City. With this traffic mitigation, increased metered parking space turnover rates should occur.

The applicant is required to provide one bicycle parking space. There is space in the basement for employee's bikes. At the neighborhood meeting the Applicants agreed to purchase bike racks to provide patrons bicycle parking on the sidewalk. Purchasing two bike racks that will be placed in the vicinity of the store will be a condition of approval.

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.

The proposal is consistent with the purpose of the district, which is, "[t]o 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."

In considering a special permit under §9.13 of the SZO the SPGA may grant such a special permit only when consistent with the purposes set forth in Section 9.1. With the amount of foot traffic and pass-by trips in Davis Square, the proposal to not provide additional parking space meets the intent of the purpose of §9.1.

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 signage proposed along the sign band on the building maintains the existing "signage line" and respects the character, scale, and locations of adjacent signs and awnings. The blade sign should be moved down so that it is 8 feet above the sidewalk. This will orient the sign to pedestrians as blade signs typically are intended for pedestrian view. The background of the signs should not glow, only the letters so that the signs are not overly bright.

The storefront windows should not be blocked by more than 30 percent so that pedestrians have an interesting view into the restaurant.

6. Fast food establishments: *In special permit applications for fast-order, take-out or automobile oriented food service establishments, there shall be establishment of a need for such a facility in the neighborhood or in the City, and impacts on traffic circulation, parking and visual, physical, or historical characteristics of the particular location shall not be detrimental.*

This pizza establishment is providing a different kind of experience by using super-efficient ovens to cook craft pizza in 90 seconds.

7. Housing Impact: *Will not create adverse impacts on the stock of existing affordable housing.*

The proposal does not involve housing.

8. 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.

The proposal will fill an existing storefront with an active use that will contribute to the enhancement goal for the center of Davis Square.

9. **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 home ownership housing that are affordable to households with low or moderate incomes, as defined by HUD, for different sized households and units.*

Housing is not part of this application.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans , Elaine Severino and Josh Safdie. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit. 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 1600 sf pizza shop with 1 parking space. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/Plng.									
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>Dec 3, 2015</td> <td>Initial application submitted to the City Clerk’s Office</td> </tr> <tr> <td>Dec 2, 2015</td> <td>Modified plans submitted to OSPCD (Z-OATH-3 Signage,)</td> </tr> <tr> <td>Dec 16, 2015</td> <td>Modified plans submitted to OSPCD (floor plans – basement & 1st level)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	Dec 3, 2015	Initial application submitted to the City Clerk’s Office	Dec 2, 2015	Modified plans submitted to OSPCD (Z-OATH-3 Signage,)	Dec 16, 2015	Modified plans submitted to OSPCD (floor plans – basement & 1 st level)
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Dec 16, 2015	Modified plans submitted to OSPCD (floor plans – basement & 1 st level)											
Any changes to the approved (site plan or elevations/use) that are not <i>de minimis</i> must receive SPGA approval.												
Traffic & Parking												
2	Applicant shall provide 4 IPS Parking Meters which will accept coins and credit cards and are programmable to the City.	CO	T&P									
3	Applicant shall purchase two inverted U-shaped “powderhouse” bicycle racks, or another type deemed appropriate by city staff, and deliver them to the City to be installed in the vicinity of 280 Elm St.	CO	Plng.									
Miscellaneous												



4	Approval is for the fast food use for the Applicant, NLP 280 Elm Street Davis Square, LLC. A future tenant of this space for the fast order food use would have to come back to the ZBA for special permit approval in order to operate in this location.	Cont.	Plng.	
5	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				
6	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
Signage				
7	Signage shall be of similar size, location, and character to that shown in the elevation diagrams except that the blade sign shall be installed so that there is 8 feet clearance below it. Final signage design shall be subject to Planning Staff approval.	CO/Cont.	Plng.	
8	Windows shall not be blocked by more than 30% to allow for views into the restaurant.	CO/Cont.	Plng.	
Final Sign-Off				
9	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:

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 _____

