



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2016-156
Site: 513B Medford Street
Date of Decision: January 18, 2017
Decision: Petition Approved with Conditions
Date Filed with City Clerk: January 23, 2017

ZBA DECISION

Applicant Name:	Arthur A. Misiaczuk
Applicant Address:	87 West Glow Street #1, Dorchester, MA 02122
Property Owner Name:	Eleftherios Miaris
Property Owner Address:	65 Willow Street, Woburn, MA 01801
Agent Name:	N/A

<u>Legal Notice:</u>	Applicant, Arthur A. Misaczuk, and Owner, Eleftheros Miaris, seek a Special Permit with Design Review under SZO §7.11.10.2.1.a to change the use to a fast food deli establishment.
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<u>Zoning District/Ward:</u>	NB zone/Ward 5
<u>Zoning Approval Sought:</u>	§7.11.10.2.1.a
<u>Date of Application:</u>	December 21, 2016
<u>Date(s) of Public Hearing:</u>	January 18, 2017
<u>Date of Decision:</u>	January 18, 2017
<u>Vote:</u>	5-0

Appeal #ZBA 2016-156 was opened before the Zoning Board of Appeals at Somerville City Hall on January 18, 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 proposal is to establish a fast order food establishment in the vacant space, the middle storefront, which was last used as a restaurant (Petsicos). The Applicant is proposing a fast order/take out delicatessen shop called Big Belly Deli. There will be no other work to the exterior of the structure other than the Applicant replacing the face on the awning with signage for his proposed deli. The Certificate of Occupancy for the former Petsicos was for a maximum of 12 seats. Big Belly Deli is also proposing 12 seats with hours of operation from 10 a.m. to 12 a.m. seven days a week.

FINDINGS FOR SPECIAL PERMIT WITH DESIGN REVIEW (SZO §5.1 and 7.11.10.2.1.A):

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."*

The use falls into §7.11.10.2.1.a for a fast order food establishment with no drive-up service, including franchises, sub shops, pizza shops and the like, which requires a special permit with design review in a Neighborhood Business zoning district.

Section 6.1.4.b includes standards and guidelines for the Neighborhood Business districts for all development that requires a special permit with design review. The standards are to step back the fourth story of a building and locate parking behind the building or below street level. Since the building is one-story and there is no parking on site, the standards do not apply. There will be no changes to the current storefront except for the replacement of the awning face. The size of the proposed sign will be the same of the existing sign, which complies with the SZO. There is an existing wall sign above the storefront for a former business (Chester Fried Chicken), which has been conditioned to be removed.

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 I, 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 promote the health, safety, and welfare of the inhabitants of the City of Somerville; 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 consistent with the purpose of the Neighborhood Business district, which is, "To establish and preserve areas for small-scale retail stores, services and offices which are located in close proximity to residential areas and which do not have undesirable impacts on the surrounding neighborhoods." A fast-order food establishment fits the goal of establishing and preserving areas for small-scale retail stores, services, and offices that are located in close proximity to residential areas and do not have undesirable impacts on the surrounding neighborhoods.



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."*

For Special Permits with Design Review approval, the proposal needs to comply with the design guidelines for business zones in §5.1.5. This proposal, as conditioned, meets the applicable guidelines: the building maintains a strong building presence along the primary street edge, the store entrances are differentiated by being recessed from the rest of the street elevation that create modulations in the façade, the roof is flat, which is a typical type for commercial buildings in the area, the building is an encouraged material (brick and glass), there is no parking on-site and therefore driveways do not break the street wall, and finally there are no transformers, heating or cooling systems or similar equipment or dumpsters that are visible from the right of way.

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.*

Impacts of Proposal (Environmental): There will be adverse environmental impacts as a result of the proposal.

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.*

Impacts of Proposal (Circulation): Staff finds that no additional traffic flow or off-street parking demand will increase as a result of the proposed use.

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.*

A restaurant, Petsicos, has operated in this location for approximately four years. The Applicant is proposing to occupy the space with a fast-order food establishment, Big Belly Deli. There are other fast food restaurants in the neighborhood that will help create a cluster of similar uses, which can improve their success by creating a hub of activity. The need for a fast-order food establishment should be balanced with the benefit of filling a vacant storefront in a Square that is in need of more private commercial investment.

The use will not create negative impacts on the traffic circulation as no new parking will be created and the use does not require more parking than the last use. The appearance of the storefront will not change greatly from its current state. The sign on the awning will be replaced as shown in the diagram submitted with the Application.

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

There will be no impact on the existing stock of affordable 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 enhance Magoun Square by filling a vacant storefront and add to the many food options that existing in the neighborhood.

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 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 fast-order food establishment. 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>December 21, 2016</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>December 21, 2016</td><td>Plans submitted to OSPCD (floor plan, basement plan, and awning rendering)</td></tr></table>				Date (Stamp Date)	Submission	December 21, 2016	Initial application submitted to the City Clerk’s Office	December 21, 2016	Plans submitted to OSPCD (floor plan, basement plan, and awning rendering)
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Any changes to the approved use that are not <i>de minimis</i> must receive SPGA approval.										
2	Signage will be limited to that shown in the rendering.	CO/Cont.	Plng.							
3	The wall sign for the former “Chester Fried Chicken” shall be removed.	CO	Plng.							
4	There shall be no more than twelve seats within the proposed fast-order establishment.	Ongoing	Plng. / ISD							
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	The storefront windows should not be blocked by more than 30% by interior storage, signage or window coverings.	CO	Plng							
6	Approval is for the fast food use for the Applicant, Big Belly Deli. 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.	Perpetual	ISD							
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:

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

Attest, by the Administrative Assistant:

Dawn M. PereiraCopies 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 _____

