



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

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Case #: ZBA 2016-121
Site: 46 Mount Vernon Street
Date of Decision: December 7, 2016
Decision: Petition Denied
Date Filed with City Clerk: December 19, 2016

ZBA DECISION

Applicant Name:	True-Healing Health Services, Inc.
Applicant Address:	46 Mt. Vernon Street, Somerville, MA 02145
Property Owner Name:	Tim Fang
Property Owner Address:	46 Mt. Vernon Street, Somerville, MA 02145
Agent Name:	N/A

<u>Legal Notice:</u>	The Applicant, True-Healing Health Services, Inc., and Owner, Ting Fang, seek a special permit under SZO §7.11.4.f to operate an accessory office for acupuncture, massage, herbal medicine, and other holistic therapies within a primary residence.
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<u>Zoning District/Ward:</u>	RB zone/Ward 1
<u>Zoning Approval Sought:</u>	§7.11.4.f
<u>Date of Application:</u>	September 23, 2016
<u>Date(s) of Public Hearing:</u>	December 7, 2016
<u>Date of Decision:</u>	December 7, 2016
<u>Vote:</u>	5-0

Appeal #ZBA 2016-121 was opened before the Zoning Board of Appeals at Somerville City Hall on December 7, 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.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
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DESCRIPTION:

The proposal is to occupy approximately 600 square feet of the first floor as an accessory office for acupuncture, massage, herbal medicine, and other holistic therapies within the primary residence. The therapy area is proposed to occupy the foyer, study, and living room with access to a half-bathroom of unit #1 on the first floor. The Applicant/Owner initially stated to have five therapists living and working there and see 8-40 patients per day between 10am-6pm seven days a week. Planning Staff recommends a condition that there be no more than two therapists operating on the premises between the hours of 10am-6pm Monday through Saturday with no more than two customers on the premises at a time.

FINDINGS FOR SPECIAL PERMIT (SZO §7.11.4.f):

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."*

To establish an accessory office within a primary residence of a recognized professional including that of one performing acupuncture, massage, herbal medicine, and other holistic therapy under SZO §7.11.4.f a Special Permit is required provided that the parking requirements of Article 9 are met. The existing lot does not have sufficient parking spaces to meet the requirements of Article 9 and is currently nonconforming in that respect.

There are currently three parking spaces on the lot; two of which are in the two-car garage and one parallel space off to the right of the driveway. Although the parking plan shows two spaces to the right there is not at least 20 feet of maneuvering space in front of space #3; therefore only the two spaces in the garage and space #4 are recognized as parking spaces for zoning purposes. Four parking spaces are currently required and as a result of this proposal five parking spaces will be required. Pursuant to SZO §9.4.1 if a nonconforming lot in respect to parking is changed to a different type of use for which a different number of parking spaces is required the following shall apply: if the new use is calculated to require one (1) more parking space or less than the existing (or previous) use, then no additional parking shall be required.

The definition for an Accessory Use under SZO §2.2.3 states such accessory use shall occupy a portion of the structure for a purpose incidental to and customarily found in connection with the permitted principal use, which is a two-family dwelling. The Applicant's original submittal was to have five therapists working on the site seven days a week with 8-40 patients expected per day. The Board believes that having that many therapists and having approximately 40 clients per day would not meet the definition of accessory use. Also, the high traffic of clients in and out throughout the day seven days a week would cause significant traffic impacts on the residential neighborhood and also cause the business operation to overshadow the primary residential use of the site and the neighborhood. The Board believes that as conditioned with the limit of two therapists working Monday – Saturday 10am – 6 pm and having no more than two customers on the premises at a time, the definition of Accessory Use under SZO §2.2.3 would be met.



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 Board did not find that 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 provide for and maintain the uniquely integrated structure of uses in the City; and to preserve and increase the amenities of the municipality.

Also, the Board did not find the proposal is consistent with the purpose of the district, which is, "to establish and preserve medium density neighborhoods of one-, two- and three-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts."

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."*

Surrounding Neighborhood: The surrounding neighborhood is comprised of single-, two-, three-, and multi-family dwellings. There are no known accessory businesses in this neighborhood.

Impacts of Proposal (Design and Compatibility): There is no known exterior construction that will impact the design and compatibility of the site.

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

There is no impact to the affordability of the housing units onsite.



DECISION:

Present and sitting were Members Richard Rossetti, Danielle Evans, Elaine Severino, Josh Safdie and Anne Brockelman with Susan Fontano recused. Upon making the above findings, Danielle Evans made a motion to deny the request for a Special Permit. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **DENY** the request.



Attest, by the Zoning Board of Appeals:

Richard Rossetti, *Acting Chairman*
Danielle Evans
Elaine Severino
Josh Safdie
Anne Brockelman (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 _____

