



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

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ELIZABETH MORONEY
JERRY AMARAL, (ALT.)

Case #: PB 2014-14
Site: 75 Mystic Avenue
Date of Decision: May 22, 2014
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: May 29, 2014

PLANNING BOARD DECISION

Applicant Name:	The Home Depot
Applicant Address:	75 Mystic Avenue, Somerville, MA 02145
Property Owner Name:	Stephen Babrow
Property Owner Address:	150 East 69 th Street, New York, NY 10021
Agent Name:	N/A

<u>Legal Notice:</u>	Applicant, The Home Depot Somerville MA, and Owner, Stephen Bobrow, seek a Special Permit with Site Plan Review (SPSR) to be able to revise SPSR # 91.49 and PB 2013-09 to allow for outside display of garden plants in the parking lot for one year. Zone ASMD. Ward 1.
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<u>Zoning District/Ward:</u>	ASMD zone/Ward 1
<u>Zoning Approval Sought:</u>	Revision to SPSR#91.49 & PB #2013-90
<u>Date of Application:</u>	April 7, 2014
<u>Date(s) of Public Hearing:</u>	May 22, 2014
<u>Date of Decision:</u>	May 22, 2014
<u>Vote:</u>	5-0

Appeal #PB 2014-14 was opened before the Planning Board at the Visiting Nurse Association on May 22, 2014. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L.



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c. 40A, sec. 11 and the Somerville Zoning Ordinance. After one hearing of deliberation, the Planning Board took a vote.

DESCRIPTION:

Since the Circuit City building is still vacant, the applicants are seeking approval to continue the sale of the plants in the parking lot of Circuit City. The plants would be on brick and block tables with steel trays and on pallets. The plants would be sold from 6am to 10pm Monday through Saturday and from 8am to 8pm on Sundays.

FINDINGS FOR SPECIAL PERMIT (SZO §5.2):

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §5.2 of the SZO. This section of the report goes through §5.2 in detail with the findings that relate to this application.

1. Information Supplied: The Board finds that the information provided by the Applicant conforms to the requirements of §5.2.3 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."

SZO section 5.3.8 states, "[u]pon the issuance of a Certificate of Occupancy for a development, revision rights shall lapse, and further development or use changes shall be subject to the zoning applicable at that time." Since the Certificate of Occupancy was issued for the site, the Applicants must apply for a new Special Permit with Site Plan Review to change condition 4 of the Special Permit with Site Plan Review (PB 2013-08) issued in May of 2013 to allow for outdoor display of plants in 2014.

All of the uses in the Zoning Ordinance Use Table are to be conducted within an enclosed building with the exception that temporary outdoor display of products and merchandise during operating hours is allowable. Condition 2 of the original Special Permit with Site Plan Review for this site further limited outdoor operations and storage. This application, as conditioned, would allow for temporary outdoor display of plants. Allowing this practice as conditioned would comply with the City standard and limit the Applicant to a location, timeframe, and material that would not be contradictory to the spirit of the original condition. The original condition was intended to avoid having outdoor storage of materials that would be an eyesore on the site and could remain for indefinite periods of time. No new zoning violations would be triggered as a result of the plant displays.

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 as the outdoor display/sale area can support the business without negative impacts, and the temporary parking lot sale area is currently underutilized due to the vacant retail space. The proposal does not conflict with the purpose of the Assembly Square Mixed-Use District, which is to encourage the best of use of the area physically, economically, environmentally and socially.

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 for additional temporary sale in the parking lot is designed in a manner that is compatible with the surrounding area. The material on display in the parking lot will be limited to plants, which are visually appealing and will add color and greenery to the large paved area that is currently not utilized. The timeframe for the outdoor sale of plants is only conditioned until there is a new tenant of Circuit City so that the tenant could utilize the full parking area.

The surrounding area is in a transitional period with new construction planned including the Orange Line MBTA station, large-scale mixed-use development, and a self-storage, café and community space at 50 Middlesex Avenue. Assembly Square Drive, located behind the site was recently renovated for utility installation and roadway improvements. This site is visible from both Mystic Avenue and the highway.

The proposed temporary display of plants in the parking lot is not proposed to negatively impact the area. Since the Circuit City space is vacant, the parking spaces are not needed for this building. Also, the material on display will be limited to plants, which are visually appealing.

5. 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 display tables will be located in the parking spaces at the edge of the Circuit City parking lot to minimize conflict between vehicles and pedestrians. There is an abundant number of parking spaces at the site especially with the Circuit City space vacant and therefore occupying approximately 20 parking spaces is not anticipated to create traffic congestion or increase the potential for traffic accidents.

Inspectional Services did receive a complaint that the accessible spaces in front of Circuit City were being used for the flower displays. These spaces are not marked on the previously approved site plan as the area where the outdoor displays will be located. A condition of approval will emphasize that the approval is based on the display area that is marked on the site plan.

DECISION:

Present and sitting were Members Kevin Prior, Elizabeth Moroney, Joseph Favaloro, James Kirylo and Gerard Amaral with Michael Capuano absent. Upon making the above findings, Kevin Prior made a motion to approve the request for a Special Permit. James Kirylo seconded the motion. Wherefore the Planning Board 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 display of items for sale along the front of the store between the main entrance and the end of the garden center, and also includes temporary outdoor display of garden plants in approx 20 parking spaces in the 65 Mystic Ave parking lot. This approval is part of a 1991 Special Permit with Site Plan Review for 127,156 gross sf retail building materials store (7.11.9.9.1.c), a 20,086 gross sf retail garden center (7.11.9.8.2.c), and a 34,519 gross sf general retail merchandise or department store (7.11.9.2.c). Approval does not include a supermarket use since no information was presented in the application relative to such a use and its associated impacts, and therefore no positive determination has been made for a supermarket use as is required by SZO §5.2. This approval is based upon the complete application information for the original 1991 approval for this site, as amended, as well as the following application materials and the plans submitted by the Applicant: <table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>April 7, 2014</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>Aug 1991 with 20 parking spaces indicated for location of planting display</td><td>Plans submitted to OSPCD (site plan)</td></tr></table> Any changes to the approved site plan that are not <i>de minimis</i> must receive SPGA approval.	Date (Stamp Date)	Submission	April 7, 2014	Initial application submitted to the City Clerk’s Office	Aug 1991 with 20 parking spaces indicated for location of planting display	Plans submitted to OSPCD (site plan)	BP/CO	Plng.	
Date (Stamp Date)	Submission									
April 7, 2014	Initial application submitted to the City Clerk’s Office									
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2	Outdoor storage or outdoor operations, in part or whole, are prohibited from the building materials retail store and for the general retail merchandise/department store except as allowed for the seasonal displays of products and merchandise, which can be located between the main entrance and the end of the garden center, as shown in the attached site plan. ADA compliant access along the sidewalk and access to accessible parking spaces shall be maintained at all times.	Tenant occupies space	Plng. / ISD							

3	The sale of the plants and other seasonal items display outside shall occur inside of the building.	Perpetual when allowed	Plng. / ISD	
4	The applicant shall be allowed to display and sell garden plants in the parking lot at 65 Mystic Avenue as shown on the attached plan during the 2014 season. This provision shall expire when the building at 65 Mystic Avenue is occupied.	Until 11/1/13	Plng. / ISD	
5	Trash and materials to be recycled shall be removed from the parking lot and stored in an enclosed area.	Perpetual	Plng. / ISD	
6	The existing landscaped areas shall be improved by July 1, 2011 by: re-grading of islands, upgrading the mulch, cutting back/removing dead shrubs and trees, planting additional shrubs in the two large front islands, maintaining the snow damaged areas. Landscaping shall be improved by July 1, 2012 as follows: the trees and large shrub containment shall be pruned. Final sign-off of 2011 and 2012 landscape improvements shall be subject to review and approval by Planning Staff. Maintenance/improvements to the landscaping shall be conducted on an annual basis. Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards.	Perpetual	Plng. / ISD	4 bushes and 2 dogwood trees will be installed by 4/9/12. Dead shrubs were pruned & removed. Landscaping was graded and refreshed last year and should be every spring
7	Designate and utilize the 11 spaces within the rear loading/service area (adjacent to Assembly Square Drive) as employee parking.	Perpetual	Plng. / ISD	
8	The dense planting of evergreens at the rear loading bay area shall be maintained.	Perpetual	Plng. / ISD	
9	There shall be a minimum of 53,000 sf of landscaped area on the site. The Developer shall work with the Planning Staff and take every effort to increase the landscaped area beyond this to the extent possible.	Perpetual	Plng. / ISD	
10	The trees planted on the median in New Road are essentially provided in lieu of on-site landscaped area and the Developer shall be responsible for maintenance of these off-site plantings as if located on its own site. The maintenance agreement that the Developer and the City created shall continue to be valid.	Perpetual	Plng. / ISD	
11	The bicycle rack shall be secured in a fixed location to be reviewed and approved by Planning Staff.	Perpetual	Plng. / ISD	Rack is to the left of the middle entrance.

12	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.	Perpetual	ISD	
13	The Owner shall not impede closing of the curb cut along Sturtevant Street by New Road.	Closing of curb cut	DPW	
14	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 Planning Board:



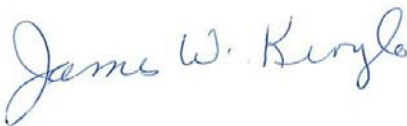
Kevin Prior, Chairman



Elizabeth Moroney



Joseph Favaloro



James Kerylo



Gerard Amaral

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 _____

