



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
**JOSEPH A. CURTATONE**  
**MAYOR**

MICHAEL F. GLAVIN  
EXECUTIVE DIRECTOR

PLANNING DIVISION

**ZONING BOARD OF APPEALS MEMBERS**

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**Case #: ZBA 2014-70**  
**Site: 81 Park Street**  
**Date of Decision: October 15, 2014**  
**Decision: Petition Approved with Conditions**  
**Date Filed with City Clerk: October 24, 2014**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Bread Trust, LLC
<b>Applicant Address:</b>	29 Orris Street, Melrose, MA 02176
<b>Property Owner Name:</b>	Jean K. Peabody and Clayton S. Peabody
<b>Property Owner Address:</b>	11 Gleason Street, Watertown, MA 02472
<b>Agent Name:</b>	Joseph P. Hanley, Esq., McDermott Quilty & Miller LLP
<b>Agent Address:</b>	131 Oliver Street, 5 <sup>th</sup> Floor, Boston, MA 02210

Legal Notice: Applicant, Bread Trust LLC c/o Marco Hunter-Melo & Nathan Bice, and Owners, Jean K. Peabody and Clayton S. Peabody, seeks a Special Permit (SZO §5.1) for a change of a nonconforming use from a service station to a restaurant (7.11.10.2.a) with operations, in part or in whole, conducted outside an enclosed building. Also, a Special Permit is sought to alter the nonconforming structure within the nonconforming yards (§4.4.1). A Variance is sought to reduce the parking required by approx 50 spaces (§9.5). RB zone. Ward 2.

<u>Zoning District/Ward:</u>	RB zone/Ward 2
<u>Zoning Approval Sought:</u>	§5.1, §7.11.10.2.a, §4.4.1 & §9.5
<u>Date of Application:</u>	July 17, 2014
<u>Date(s) of Public Hearing:</u>	9/17 & 10/15/14
<u>Date of Decision:</u>	October 15, 2014
<u>Vote:</u>	5-0

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Appeal #ZBA 2014-70 was opened before the Zoning Board of Appeals at Somerville City Hall on September 17, 2014. 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 two hearings of deliberation, the Zoning Board of Appeals took a vote.

### **DESCRIPTION:**

The current proposal is to change the use of the property to a restaurant. The building will remain and will be renovated to accommodate the restaurant. The existing canopy will be rebuilt and converted into an interior dining room with a new foundation. A 173 square foot addition will be built in the parking lot area for a walk-in cooler. There will be a covered walkway from the restaurant to the renovated garage, which will function as office space.

A rooftop garden will be built on top of the building and there will be an exterior stair for employees only on the parking lot side of the building. There will be a one-way gate at the bottom of the stairs. Outdoor seating will be located at grade along Park Street.

The restaurant will employ 35-45 people in total with a maximum of 14-16 employees during peak hours. There will be 126 seats – 110 interior and 16 seasonal outdoor seats. The hours of operation will be Monday through Friday from 5pm to 1am and 11am to 1am on Saturday and Sunday.

There will be five parking spaces onsite.

### **FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1, §5.1, §7.11.10.2.a) TO ALTER NONCONFORMING STRUCTURE & ESTABLISH A RESTAURANT:**

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 current uses of the site are the following, which are non-conforming uses in the Residence B zoning district:

§7.11.11.1.a – Motor vehicle sales and service of new vehicles, or vehicles taken in exchange therefore, when conducted on the same lot and in conjunction therewith the repair of motor vehicle engines within a building

§7.11.11.5.a – Motor vehicle maintenance and minor repairs limited to engine tune-up, lubrication and installation of replacement parts, adjustment or replacement of brakes or tires, washing and polishing, but not including engine overhaul, body work or painting

A nonconforming use may be changed to another nonconforming use only by special permit (SZO §5.1) authorized by the SPGA, provided that the SPGA finds that such change is not substantially more detrimental to the neighborhood than the existing nonconforming use. In judging detriment, the SPGA may consider, without limitation, impacts upon the following: traffic volumes, traffic congestion, type of traffic, change in traffic patterns and access to the site, adequacy of municipal water supply and sewer capacity, noise, odor, glare, scale, on-street parking, shading, visual effects and neighborhood character.



The existing auto-related use is proposed to become a restaurant with operations, in part or in whole, conducted outside an enclosed building, §7.11.10.2.a. The applicants have designed the building and created an operations plan to address impacts and concerns voiced thus far. The Board finds that the restaurant use is not substantially more detrimental than the neighborhood than the existing garage/auto dealership. Below are a list of the some of the concerns and the plan to address the concerns. The plans and conditions, if approved, will require that these items occur.

- Privacy fence on Morgan Street – existence and material
  - There will be a 3 feet 6 inch wood privacy fence that sits in a planting bed with vines.
- Trash location, pick-up, rodent control
  - The dumpsters will be located between the exterior walk-in refrigerator and the freestanding garage so that trash pickup will happen from within the parking lot and not in the late night hours. Casella Resource Solutions will pick up trash and recycling between 7am and 5pm.
  - The property will be bated by a professional pest control company.
  - Restaurant deliveries will take place between 8AM and 5PM and only through the parking lot.
- Mechanical equipment location and screening
  - There will be a wood privacy fence around the parking lot and on the rear of the roof as noted in the plan. The height and span will be compliant with the city and state regulations.
  - Mechanical equipment will be new and code compliant. All reasonable efforts will be made to locate equipment as far away from neighbors as possible on existing building.
  - The applicants still need to determine the specific choice of equipment and their locations. They have provided the following documentation:
    - Structural engineer's detailed analysis, design and recommendations
    - MEP engineer's detailed analysis, design and recommendations
    - Contractor's evaluation and recommendations
    - Maryann Thompson Architects' design and recommendations.
- Parking
  - There will be 5 spaces in the lot. The applicants were not able to secure the off-site parking lot at 263 Beacon Street and the valet services are not willing to operate here with low expectancy for utilization of the service. With the updated parking study provided that indicates that similar restaurants that are similarly located adjacent to residential neighborhoods did not have a negative impact, no additional off-site parking is requested at this time.
  - The Restaurant owner will offer a subsidy toward MBTA Charlie Cards as an incentive for each employee.
  - The Restaurant owner will provide and encourage bicycle usage with dedicated on-site storage.
- Smoking area
  - There will be a designated smoking area under the stair that is in the parking lot. Smoking on other parts of the lot will not be allowed. Management and staff will actively enforce this policy as well as post signs to inform our guests. If there are complaints, a small enclosure/fence if feasible and code compliant, will be constructed to order to further mitigate any potential noise.
- Noise control
  - The areas directly bordering the building openings (windows and doors) are part of the dining room. These are the quietest areas of the restaurant so they will have minimal impact on the surrounding residences. These areas are reserved for dining only. The majority of the windows in the dining room face the park space of the Academy of Arts & Sciences across the street and not residences. The bar area is self-contained and does not border any open windows or doors. The dining and entry area act as an additional buffer for any potential bar noise.
  - TVs will be used for sporting events and without sound.
  - A canopy will be over the restaurant entrance to attenuate the sounds of customers entering and exiting.
  - The restaurant will operate with low-level ambient background music only and will not feature any live entertainment.



- Once dinner service concludes all dining areas will be closed, including outdoor seating.
- Congregating outside will not be allowed.
- The rooftop seating will only be used for private events.
- Lighting
  - The lighting fixture at the northern corner of the restaurant has been removed from the plan.
- Retaining the tree at 73 Park Street
  - This tree will be conditioned to be retained.
- Material of the walkway roof
  - The roof material was changed from corrugated metal to asphalt shingles.

The dimensions of the building are in the table below. A Special Permit is sought to alter the nonconforming structure within the nonconforming yards (§4.4.1).

A variance is required for the number of parking spaces

Requirements	RB	Existing	Proposal	Permit Required
Min Lot Size	7,500	7,149 sf	7,149 sf	-
Use		Service station / Auto sales	Restaurant with outdoor seating	Special Permit
Min Lot Area/Dwelling Unit	1500 sf	-	-	-
Max Ground Coverage	50%	47%	49%	-
Min Landscaped Area % of lot	25%	1.4%	4.4%	-
Floor Area Ratio (based on nsf)	1.0	0.42	0.45	Special Permit
Max Height	3 stories / 40 ft	1 story / 14.3 ft	1 story / 17.9 ft	Special Permit
Min Front Yard	15' but 10' allowed due to neighboring property setbacks	0.1 ft	0.1 ft	-
Min Side Yard	15'	49.3 ft / 8.4 ft	34.8 ft / 8.4 ft	Special Permit
Min Rear Yard	20'	0.1 ft	0.1 ft	Special Permit
Min Frontage	50'	104 ft Beacon / 70 ft Park	104 ft Beacon / 70 ft Park	-
Pervious Area	35%	1.4%	4.4%	-
Vehicle Parking	whichever is greater: - 0.75 per employee plus 1 per 4 seats (44), or - 1 per 110 gross s.f. (29) Total = 44	7	5	Variance for 44 spaces
Bike Parking	5	0	24	-

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 as a whole is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to providing for and maintaining the uniquely integrated structure of uses in the City and conserving the value of land and buildings.

The proposal is consistent with the purpose of the Residence B district in providing a service that is convenient to the residential neighborhood. The use is more compatible with a residential neighborhood along a main thoroughfare through the City than the existing auto sales and service establishment.

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 form of the building will be retained and repurposed so that the auto-oriented history of the site is obvious in the form of the building but it will be renovated to be an attractive building that will be an amenity for the area. The site has been designed to address concerns such as noise from patrons, deliveries, and trash pickup. The rooftop garden is a unique amenity that will capture stormwater runoff and provide local, healthy food. Despite the zoning district, the site is located on a heavy traveled street. The City is investing resources to install a cycle-track on the street and the private investment in this site will complement the streetscape project.

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

The existing and proposed uses do not involve housing.

6. 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.*

Beacon Street is marked as an area to Enhance and the parcels are marked as Neighborhood Mixed Use on the Future Land Context Map in the SomerVision Map. The proposal will improve the experience along Beacon Street and enhance the vibrancy of the area.

<u>SomerVision Summary</u>	<i>Existing</i>	<i>Proposed</i>
<i>Commercial Sq Ft:</i>	3,014 sf	3,187 sf
<i>Estimated Employment:</i>	2	45

#### **FINDINGS FOR VARIANCE (SZO §5.5 & §9.5) for PARKING:**

A Variance (§5.5) is sought to reduce the parking required by 49 spaces (§9.5). The parking requirement calculation can be found in Section II, number 2, above. In order to grant a variance the Board must make certain findings and determinations as outlined in §5.5.3 of the SZO.

1. *There are "special circumstances relating to soil conditions, shape or topography of land or structures which especially affect such land or structures but not affecting generally the zoning district in which it is located, causing substantial hardship, financial or otherwise."*



**DECISION:**

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Elaine Severino with Brandy Brooks absent. Upon making the above findings, Susan Fontano made a motion to approve the request for a Special Permit and Variance. 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 the establishment of an approx 3,187 sf restaurant with outdoor seats, alteration of the existing structure, and variance for 39 parking spaces. This approval is based upon the following application materials and the plans submitted by the Applicant:	CO / BP	ISD/PIng.									
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>July 17, 2014</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>July 9, 2014</td><td>Modified plans submitted to OSPCD (plot plan)</td></tr><tr><td>Sept 3, 2014</td><td>Modified plans submitted to OSPCD (Existing Site Plan EC0.0 – as amended by Site Plan stamped Oct 9, 2014, Site Plan A0.00, Floor Plan A1.00, Exterior Elevation A2.01, Exterior Elevations A2.02)</td></tr></table>				Date (Stamp Date)	Submission	July 17, 2014	Initial application submitted to the City Clerk's Office	July 9, 2014	Modified plans submitted to OSPCD (plot plan)	Sept 3, 2014	Modified plans submitted to OSPCD (Existing Site Plan EC0.0 – as amended by Site Plan stamped Oct 9, 2014, Site Plan A0.00, Floor Plan A1.00, Exterior Elevation A2.01, Exterior Elevations A2.02)
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Any changes to the approved site plan, elevations or use that are not <i>de minimis</i> must receive SPGA approval.												
Pre-Construction												
2	A full site/civil plan set in conformance with the checklist, stormwater management report as well as compliance with the stormwater management policy must be submitted to this office. Plans and report must be prepared and stamped by a Professional Engineer licensed in the state of MA.	BP	Engineering									
Construction Impacts												
3	The Applicant shall at his expense replace any existing equipment (including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheel chair ramps, granite curbing, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity. All new sidewalks and driveways must be constructed to DPW standard.	CO	DPW									

4	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	
5	The Applicant must contact the Engineering Department to coordinate the timeline for cutting or opening the street and/or sidewalk for utility connections or other construction. There is a moratorium on opening streets from November 1st to April 1st and there is a list of streets that have additional opening restrictions.	Opening the street	Engineering / Highway	
<b>Design</b>				
6	The Applicant shall install a wood privacy fence around the parking lot and rear yard. The space between the subject property's garage and garage at 5 Morgan Street may not include a fence but shall be cleaned of debris and overgrown vegetation. There shall be a fence on the rear of the roof as noted in the plan. The height and span will be compliant with the city and state regulations.	BP	Plng.	
7	Mechanical equipment will be new and code compliant. All reasonable efforts will be made to locate equipment as far away from neighbors as possible on existing building.	CO	Plng. / ISD	
8	Smoking shall be limit to the designated smoking area under the stair that is in the parking lot. Smoking on other parts of the lot will not be allowed. Management and staff shall actively enforce this policy as well as post signs to inform our guests. If there are complaints, a small enclosure/fence if feasible and code compliant, will be constructed in order to further mitigate any potential noise.	Continuous	ISD	
9	The material of the walkway roof shall be asphalt shingles.	CO	Plng.	
<b>Site</b>				
10	The electric, telephone, cable TV and other such lines and equipment shall be placed underground from the source or connection. The utilities plan shall be supplied to the Wiring Inspector before installation.	Installation of Utilities	Wiring Inspector	
11	Applicant will screen the dumpster with fencing that blocks any view of the dumpster itself.	CO	Plng.	
12	Applicant will supply at least 16 bicycle parking spaces, which can be satisfied with 8 U-type bicycle rack.	CO	Plng.	
13	Trash and recycling pickup shall only occur between 7am & 5pm.	Continuous	ISD	
14	Restaurant deliveries shall only occur between 8am and 5pm and only through the parking lot.	Continuous	ISD	
15	Care shall be taken to preserve the tree at 73 Park Street during construction.	CO	ISD	
<b>Traffic &amp; Parking</b>				
16	The Restaurant owner shall offer a subsidy toward MBTA Charlie Cards as an incentive for each employee.	CO and Continuous	Planning	
<b>Miscellaneous</b>				





17	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	
18	Approval is for the restaurant use for the Applicant, Bread Trust LLC, Marco Hunter-Melo and Nathan Bice. A future tenant of this space for the restaurant use would have to come back to the ZBA for special permit approval in order to operate in this location.	Cont.	ISD	
19	The property will be bated by a professional pest control company on a regular basis. Proof of receipt or other document shall be submitted upon request.	Cont.	ISD	
20	The TV in the restaurant will not emit sound.	Continuous	ISD	
21	The restaurant will operate with low-level ambient background music only and will not feature any live entertainment.	Continuous	ISD	
22	Once dinner service concludes all dining areas will be closed, including outdoor seating.	Continuous	ISD	
23	Congregating outside will not be allowed.	Continuous	ISD	
24	The Applicant shall purchase and deliver to Traffic & Parking 10 single spaced parking meters with the capacity to accept both coin and credit cards and are consistent with the current parking meter fleet in Somerville.	Continuous	ISD	
<b>Public Safety</b>				
25	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
26	Notification must be made, within the time period required under applicable regulations, to the Massachusetts Department of Environmental Protection (DEP) if there is any release of oil, hazardous materials, or regulated hazardous substances at the site. The City's OSE office, Fire Department and the Board of Health shall also be notified.	CO	OSE / FP / BOH	
27	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.	
<b>Signage</b>				
28	Signage will be limited in size and location to that shown in the elevation diagrams.	CO/Cont.	Plng.	
<b>Final Sign-Off</b>				
29	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  
Elaine Severino

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.
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**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 \_\_\_\_\_

