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Case #: ZBA 2015-39
Site: 14 Tyler Street
Date of Decision: November 18, 2015
Decision: Petition Denied
Date Filed with City Clerk: December 1, 2015

ZBA DECISION

Applicant Name:	Claudia Murrow
Applicant Address:	23 Park Street, #2, Somerville, MA
Property Owner Name:	JWF, Inc.
Property Owner Address:	23 Park Street, Somerville, MA
Agent Name:	N/A

<u>Legal Notice:</u>	Applicant, Claudia Murrow, seeks an Administrative Appeal per SZO §3.1.9, 3.2, and 3.2.3 from a decision from the Inspectional Services Division regarding the Certificates of Occupancy at 14 Tyler Street, Owner, JWF, Inc. IA Zone. Ward 2.
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<u>Zoning District/Ward:</u>	IA zone/Ward 2
<u>Zoning Approval Sought:</u>	§3.1.9, §3.2 & §3.2.3
<u>Date of Application:</u>	June 19, 2015
<u>Date(s) of Public Hearing:</u>	9/16, 10/7, 10/21, 11/4 & 11/18/15
<u>Date of Decision:</u>	November 18, 2015
<u>Vote:</u>	5-0

Appeal #ZBA 2015-39 was opened before the Zoning Board of Appeals at Somerville City Hall on September 16, 2015. 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.



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DESCRIPTION:

Claudia Murrow, of 23 Park Street, is an abutter to the property at 14 Tyler Street. The property at 14 Tyler Street is the subject of the appeal. Claudia Murrow alleges that the Certificate of Occupancy dated January 29, 2014 for the for profit school for instruction in arts, skills and vocational training was wrongly granted and should be rescinded and revoked because of the following:

1. The use was not classified appropriately - the use at 14 Tyler Street for the business, AirCRAFT Aerial Arts, is a fitness facility or gym and not a 'school for instruction in arts', which is the use on the Certificate of Occupancy (TCO).
2. A change in use from a private gymnasium to a public use requires the facility to be accessible.

Background:

1. Subject Property: Situated between Union Square and Wilson Square, the project site consists of four lots that form a 39,393 square foot property that runs from the intersection of Tyler Street and Properzi Way, through to Park Street, and bounded on the south by the MBTA Commuter Rail tracks. Currently there is a two-story, metal and concrete block building on the property that is part of the Ames Safety Envelope Company complex. The building contains 30,480 gross square feet and a 435 square foot mezzanine on its interior.

In March of 1944, the Zoning Board of Appeals granted relief to allow the construction of a building at 10 Tyler Street. In May of 1971, the Zoning Board of Appeals granted relief to allow the Applicant at that time to construct an addition to the existing building at 26-32 Park Street, which included rear yard setback and parking relief.

2. History: The space in question received a Certificate of Occupancy on January 29, 2014 for a gymnasium. The application for the Certificate was for a gym with the zoning use specified as Somerville Zoning Ordinance (SZO) §7.11.6.3.A, "commercial health, exercise, racquet, weight reduction, bowling or similar facility". The last use of this space was a gym for the Ames Envelope employees' use and was not open to the general public.

The business that currently occupies the space is AirCRAFT Aerial Arts. As posted on their website the business "...offer[s] instruction to students of all levels, from experienced aerialists to absolute beginners. Whether you're looking to get into shape, refine a routine, or indulge that childhood fantasy of running away with the circus, AirCRAFT has a class for you!"

Inspectional Services was conducting inspections of the Ames Buildings for various new tenants that were occupying the complex and found that the zoning use of the space was in fact a for profit school for instruction in arts and skills (SZO §7.11.8.9.a) and made a correct to the Certificate of Occupancy. This use is allowed in the Industrial A zoning district. The Use Group for building code did not change. The application for the Certificate of Occupancy and the Certificates of Occupancy are attached.

In Claudia Murrow's appeal of the use of the space at a different facility at 44 Park Street, she identified correctly that the zoning use of the space at 14 Tyler Street was in fact the same as the use at 44 Park Street. The Zoning Board upheld ISD's determination that the use of the space at 44 Park Street was correctly identified as a for profit school for instruction in the arts at the June 24, 2015 hearing.



Findings:

1. Role of the ZBA: In an administrative appeal hearing, the ZBA hears appeals of the decision of the Superintendent of Inspectional Services. The process for such appeals is set out in MGL 40A, Section 8 and Section 3.2 of the SZO. An appeal may be taken by any person aggrieved by an order or decision of the Superintendent of Inspectional Services. The ZBA must determine whether to affirm the ISD decision or overturn it and why.

The ZBA believes that Claudia Murrow has status as an aggrieved party in this circumstance and that appeal is properly before the Board.

2. Analysis of the Appeal: Claudia Murrow has raised two arguments in support of her appeal. A discussion of the arguments is below.

a) *The use was not classified appropriately - the use at 14 Tyler Street for the business, Aircraft Aerial Arts, is a fitness facility or gym and not a 'school for instruction in arts', which is the use on the Certificate of Occupancy (TCO).*

Planning Staff in consultation with Inspectional Services determined that the principle use of the aerial arts businesses at 14 Tyler Street and 44 Park Street most closely match the for-profit school in instruction in arts and skills based on the primary use of the space. Both businesses use the space for classes in instruction of aerial and circus arts. The businesses focus on teaching skills and the space does not have open drop in hours for exercise, which is typical for a health club. The City is being consistent in the zoning classification of similar uses by making this correction to the Certificate of Occupancy when the Inspector understood that the actual use of the space at 14 Tyler Street had a more appropriate zoning use than the use indicated on the application for the Certificate of Occupancy.

b) *A change in use from a private gymnasium to a public use requires the facility to be accessible.*

AirCRAFT Aerial Arts is located on the second floor of the building and is only accessible via a staircase. Inspectional Services has issued a letter on May 5, 2015 to the building owner regarding the accessibility requirements. An accessible entrance is required even when no work is being performed when the use of a building changes from a private use to one that is open to and used by the public. Inspectional Services gave the owner 30 days to retain the services of a duly licensed Massachusetts Registered Design Professional to submit stamped plans to the Architectural Access Board to address the access issue.

The owner of the building has retained Arrowstreet to investigate and design accessibility routes to the space occupied by AirCRAFT Aerial Arts. Arrowstreet submitted a letter to Inspectional Services on June 8, 2015 stated that they are working on addressing the issue and requested more than 30 days to design and produce plans for an appropriate solution. The letter states that the plans will be submitted to the Inspectional Services and the Massachusetts Architectural Access Board when complete. Inspectional Service and Arrowstreet have met to discuss possible locations for elevators to be installed in the building; however, the final plans have not yet been submitted. The owner of the building has submitted a Variance application to the Massachusetts Architectural Access Board and the accessibility of the building will be handled by this Board. The ZBA did not find that revoking the Certificate of Occupancy was necessary to ensure that the space is made accessible.



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 deny the request for an Administrative Appeal. 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:

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

Attest, by the Administrative Assistant:

Dawn M. Pereira

<p>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.</p>



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 _____

