



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

*PLANNING DIVISION*

**PLANNING BOARD MEMBERS**

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DANA LEWINTER, ALT.

**Case #:** ZBA 2010-73  
**Date:** December 2, 2010  
**Recommendation:** Conditional Approval

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**PLANNING BOARD RECOMMENDATION**

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**Site: 860 Broadway**

**Applicant Name:** Chobert, LLC  
**Applicant Address:** 1651 Trapelo Road, Waltham, MA 02451  
**Property Owner Name:** Charles Kostopoulos  
**Property Owner Address:** Beckate LLC, 51 Fairfield Street, Apt. 2, Cambridge, MA 02140  
**Agent Name:** Richard G. Di Girolamo  
**Agent Address:** 424 Broadway, Somerville, MA 02145  
**Alderman:** Rebekah Gewirtz

Legal Notice: The Applicant seeks a special permit under §4.5.1 to change a non-conforming use (a frozen yogurt parlor) to another non-conforming use in order to open a sandwich store – SUBWAY (§7.11.10.2.1.a).

Zoning District/Ward: Residence B / Ward 6

Zoning Approval Sought: Special Permit under SZO §4.5.1

Date of Application: October 29, 2010

Dates of Public Meeting • Hearing: Planning Board **12/2/10** • Zoning Board of Appeals **12/15/10**

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Dear ZBA members:

At its regular meeting on December 2, 2010 the Planning Board heard the above-referenced application. Based on materials submitted by the Applicant and the Staff recommendation, the Board voted 5-0, to recommend **conditional approval** of the requested **Special Permit**.

In conducting its analysis, the Planning Board found:



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## **I. PROJECT DESCRIPTION**

1. Subject Property: The subject property is an approximately 12,000 square foot lot with a commercial building located at the corner of Broadway and College Avenue. The building has several storefronts and the subject space is 500 square feet. This site was previously used as a bicycle sales and repair shop and then as a frozen yogurt parlor most recently. Prior zoning relief for this space was granted via a special permit to change to a non-conforming use (the frozen yogurt parlor) and also to provide relief with regard to the required off street parking. Other uses within the building include a restaurant, a furniture store, a massage business, and a convenience store.
2. Proposal: The applicant is proposing to operate a chain owned sandwich shop (SUBWAY) on the site. There will be seating for 4 individuals on the premises. Staff has contacted the applicant with regard to the hours of operation and the number of employees at the site and is waiting for a response.
3. Nature of Application: This is a commercial property within a Residence B (RB) district. The applicant is seeking a special permit under §4.5.1 of the Somerville Zoning Ordinance (SZO) for a change from one non-conforming use, a frozen yogurt parlor, to another non-conforming use, a sandwich shop.
4. Surrounding Neighborhood: This property is located in a Residence B district directly abutting Powder House Circle. This is a high volume pedestrian area located between Tufts University and Davis Square. There is residential development to the west of the site with a mix of two and three-family homes.
5. Impacts of Proposal: There shall be no impacts to the surrounding neighborhood, for the construction process will take place within the confines of the existing store space. Therefore, with construction impacts limited to the interior of the building, no significant disruption to the neighborhood is anticipated.
6. Green Building Practices: None
7. Comments:

*Fire Prevention:* Have been notified and are awaiting comments.

*Ward Alderman:* Alderman Gewirtz indicated that: "I am not in support of the change of use." If the project should be approved the Alderman would like the Zoning Board of Appeals to ensure that sign colors, materials, size, and illumination are all regulated by the Board and/or Staff to ensure that they match others on the building.

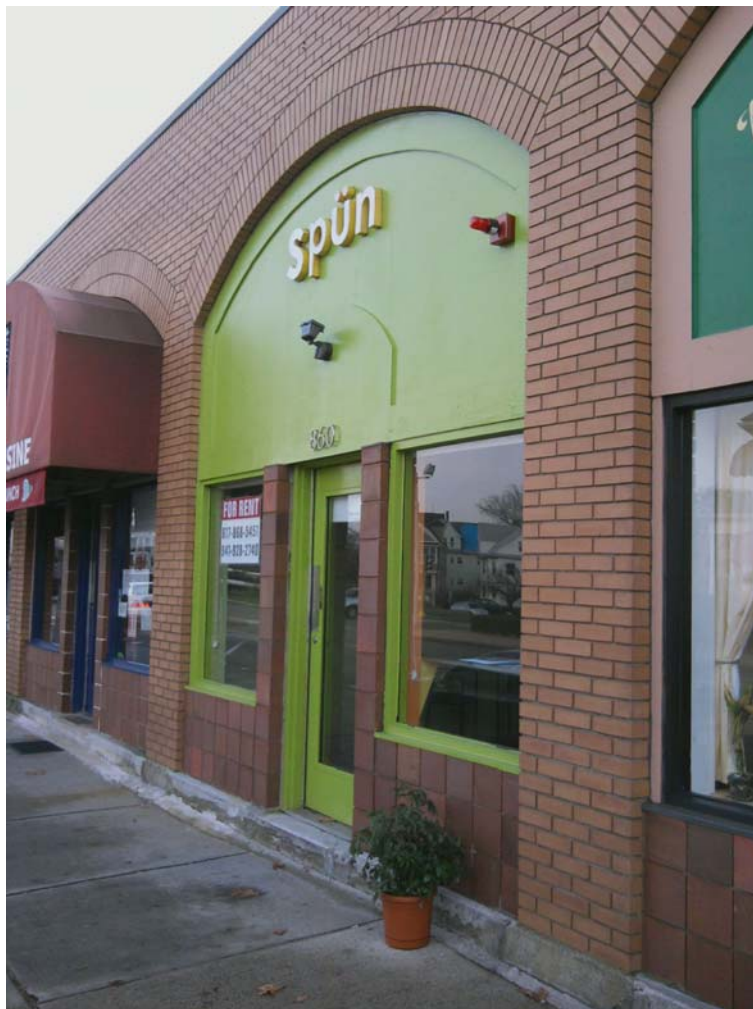
*Historic Preservation:* Preservation Planner Kristi Chase does not find an adverse effect to either the existing building or the near-by Nathan Tufts Park. See attached memo.

*Traffic & Parking:* Traffic Engineer Terry Smith indicated that: "Traffic and Parking has no objections to the Subway Restaurant application at 860 Broadway."

*Lights & Lines:* Have been notified and are awaiting comments.



Existing Conditions



**II. FINDINGS FOR SPECIAL PERMIT (SZO §4.5.1):**

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."

In considering a special permit under §4.5.1 of the SZO, the Board find that the proposed use would not be substantially more detrimental to the neighborhood than the existing use.

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 "to encourage the most appropriate use of land throughout the City." The Board finds this use to be consistent with the purposes of the ordinance and that continuing commercial, service and retail uses on this property to be an appropriate use of the land.

The proposal is consistent with the purpose of the district (6.1.2. RB - Residence Districts), 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." While the district is generally designed for residential development, this pre-existing commercial block includes a number of complementary businesses.

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." No change to the general site area is anticipated. The Board recommends that site signage be conditioned to be consistent with other signs on this structure.

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.

No adverse effect is anticipated.

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.

The Board finds this use to be consistent with the existing context of the area. The Board finds any negative impacts to the community from this proposal to be minimal and that the use would be a benefit to the community. The Board is still recommending that façade alterations at the site be subject to

Planning Staff approval. While many fast food establishments create significant vehicle traffic, it is anticipated that most traffic to this site, like the traffic to other establishments on this block, will be on foot or will be able to be absorbed by the short term parking provided in front of the establishments on the block.

7. 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.

The Board finds that the impacts on traffic circulation and parking will be minimal, and the visual, physical, or historical characteristics of the proposed location of the use are not detrimental to the neighborhood. As opposed to other 'fast food' establishments, this use has minimal impacts and any vehicle traffic can be accommodated by street parking in front of the building.

### III. RECOMMENDATION

#### Special Permit under §4.5.1

Based on the above findings and subject to the following conditions, the Planning Board recommends **CONDITIONAL APPROVAL** of the requested **SPECIAL PERMIT**. Furthermore, the Planning Board recommends the following conditions.

#	Condition	Timeframe for Compliance	Verified (initial)	Notes								
1	Approval is for the change of a non-conforming use (a frozen yogurt parlor) to another non-conforming use in order to open a fast food sandwich store. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	Plng.									
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>October 22, 2010</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>October 22, 2010</td><td>Plans submitted with application (Site Plans 1 and 2, Tuscany II Décor Back-Up Sheets 1-4)</td></tr><tr><td>November 29, 2010</td><td>Façade and signage designs submitted to OSPCD</td></tr></table>				Date (Stamp Date)	Submission	October 22, 2010	Initial application submitted to the City Clerk’s Office	October 22, 2010	Plans submitted with application (Site Plans 1 and 2, Tuscany II Décor Back-Up Sheets 1-4)	November 29, 2010	Façade and signage designs submitted to OSPCD
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	November 29, 2010				Façade and signage designs submitted to OSPCD							
Any changes to the approved site plans, elevations, or use that are not <i>de minimis</i> must receive SPGA approval.												
2	The Applicant shall meet the Fire Prevention Bureau’s requirements.	CO	FP									

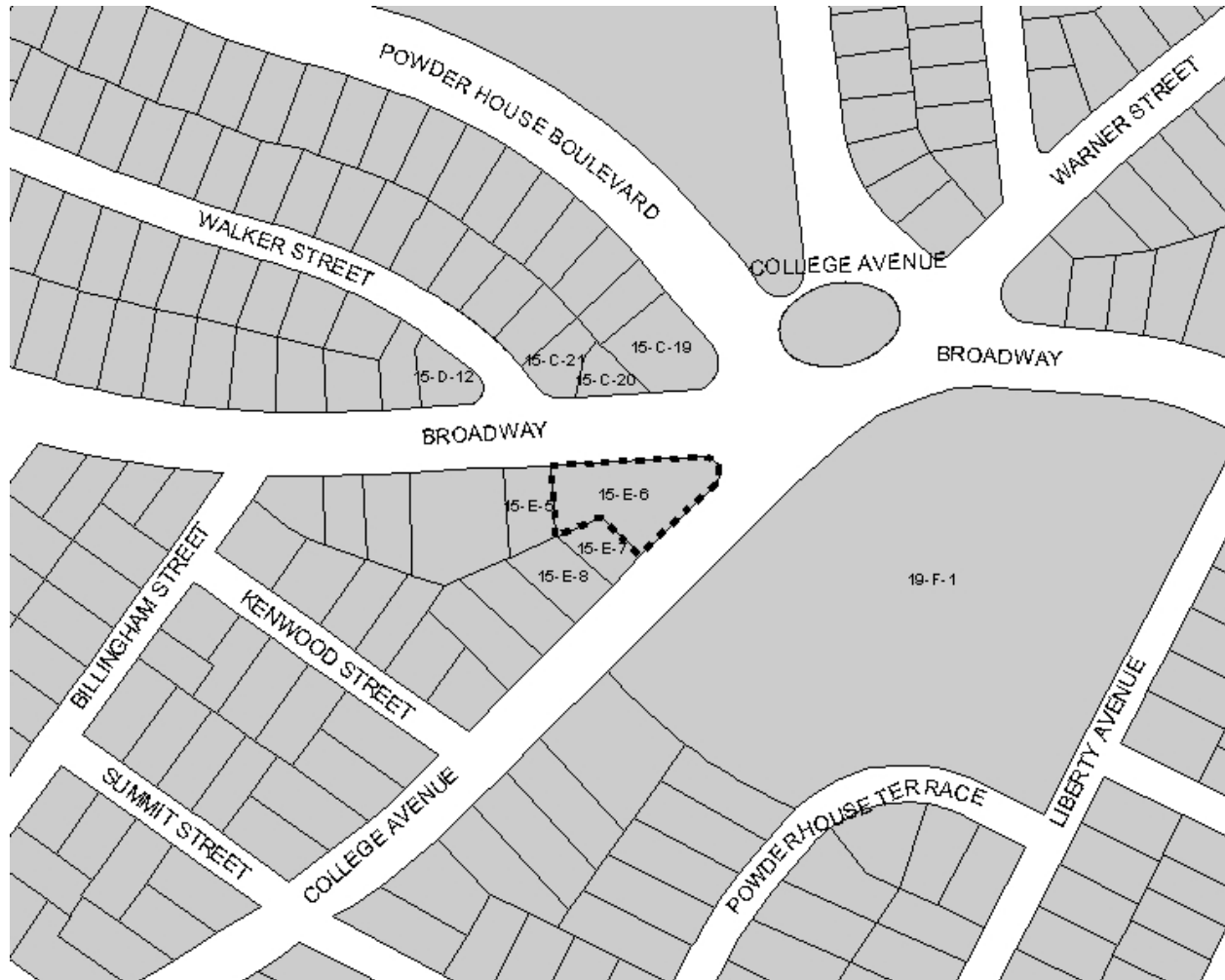
3	Final design of the façade material, colors and signage shall be approved by Planning Staff. The applicant shall provide the thickness of the proposed sign, and indicate if the existing spot light is to remain or be upgraded.	BP	Plng.	
4	All exterior lighting must be confined to the subject property or adjacent rights of way, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	Plng.	
5	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.	

Sincerely,



Kevin Prior  
Chair

Cc: Owner: Charles Kostopoulos for Beckate LLC  
Applicant: Chobert, LLC  
Agent: Richard G. Di Girolamo



**860 Broadway**