



CITY OF SOMERVILLE, MASSACHUSETTS
ZONING BOARD OF APPEALS
JOSEPH A. CURTATONE
MAYOR

MEMBERS

Herbert F. Foster, Jr., *Chairman*
Orsola Susan Fontano, *Clerk*
Richard Rossetti
T. F. Scott Darling, III, Esq.
Danielle Fillis
Elaine Severino (Alt.)

Case #: ZBA 2007-59
Site: 34 Allen Street
Date of Decision: March 5, 2008
Decision: *Petition Approved with Conditions*

Date Filed with City Clerk: March 14, 2008

ZBA DECISION

Applicant Name: Anthony Pasquale
Applicant Address: 37 Grandview Avenue, Saugus, MA 01906
Property Owner Name: Allen Street Realty Trust
Property Owner Address: P.O. Box 1163, Saugus, MA 01906
Agent Name: Richard G. DiGirolamo, Esq.
Agent's Address: 424 Broadway, Somerville, MA 02145

Legal Notice: Applicant Anthony Pasquale & Owner Allen Street Realty Trust seek a special permit (SZO §4.5.1) to change from one non-conforming use (factory) to another non-conforming use (recreational/health club). RB zone.

Zoning District/Ward: Residence B (RB) zone/Ward
Zoning Approval Sought: §4.5.1
Date of Application: November 8, 2007
Date(s) of Public Hearing: 12/12/07, 1/9, 1/23, 2/6, 2/20 & 3/5/08
Date of Decision: March 5, 2008
Vote: 5-0

Appeal #ZBA 2007-59 was opened before the Zoning Board of Appeals at Somerville City Hall on December 12, 2007. 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 (1) hearing(s) of deliberation, the Zoning Board of Appeals took a vote.

DESCRIPTION:

The Applicant is seeking a special permit under SZO §4.5.1 to change the building's use from one non-conforming use (factory) to another non-conforming use (recreational/health club). The applicant is proposing to open a Japanese Martial Art studio where members would train in Aikido. Aikido is practiced in pairs and involves hand-to-hand practice, sword, Jo (short staff) and other weapon training.

FINDINGS FOR SPECIAL PERMIT (SZO §4.5.1):

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 Applicant requires a special permit under §4.5.1 of the SZO. Under §4.5.1 SZO "A nonconforming use may be changed to another nonconforming use only by special permit authorized by the SPGA in accordance with the procedures of Article 5, 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 Board finds that the Applicant's proposal **would not be substantially more detrimental** to the surrounding neighborhood than the existing structure, as required under §4.5.1 of the SZO. The proposal is not substantially more detrimental in all relevant categories, including traffic volumes, traffic congestion and neighborhood character. This recreation and health club will be a positive development in this neighborhood, replacing a vacant industrial use with a use better suited for this residential neighborhood.

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 Board finds that the proposal **is consistent** with the purposes set forth in Article 1 of the Zoning Ordinance; and, to the extent possible for a lawful pre-existing nonconforming structure, with those purposes established for the Residential B (RB) zoning district in which the property is located, namely "(t)o 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."

The Board finds that the proposal **is compatible** with the site and area. The proposal does not seek to alter the size or shape of the existing structure. The Board would support replacement of the garage doors with a door/window configuration that would be more compatible with the surrounding neighborhood. These changes may require zoning relief, but even without these changes the change of use is beneficial.

5) Parking: Due to the nature of Aikido, individuals practicing the art need sufficient space to perform the motions. The parking for the facility is based on a designed occupancy of 27 persons which would require seven (7) parking spaces. This number of spaces currently exists on the site. In the future,

if another recreational facility wants to occupy the space and increase the capacity it is conditioned in this report that a Special Permit review would be necessary.

ADDITIONAL FINDINGS FOR SPECIAL PERMIT (SZO §4.5.1):

Susan Fontano stated that this request does not appear to be detrimental to the neighborhood.

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Elaine Severino and Danielle Fillis with Scott Darling absent. Upon making the above findings, Susan Fontano made a motion to approve the request for a special permit. Elaine Severino 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 applicant to change a structures use from one non-conforming use (factory) to another non-conforming use (recreational/health club). This approval is based upon the following application materials and the plans submitted by the Applicant and/or its contractor:		Plng.								
	<table><tr><th>Date</th><th>Submission</th></tr><tr><td>November 8, 2007</td><td>Initial application and the plot plan submitted to the City Clerk’s Office</td></tr><tr><td>February 14, 2008</td><td>Floor Plan</td></tr></table>					Date	Submission	November 8, 2007	Initial application and the plot plan submitted to the City Clerk’s Office	February 14, 2008	Floor Plan
	Date					Submission					
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	February 14, 2008					Floor Plan					
Any changes to the approved use or submitted plans must receive ZBA approval.											
2	A code compliant fire alarm system shall be installed.	CO	FP								
3	Applicant will supply one bicycle parking space, which can be satisfied with a U type bicycle rack.	CO	Plng.								
4	Maximum capacity for the Certificate of Occupancy is 27 persons and is based on the specific use as an Aikido studio. A change to any another recreational/health club use that would increase the capacity will require Special Permit review.	Cont.	ISD								
5	New signs shall not be internally illuminated and must comply with SZO §12.3.a for signs in residence districts;	Cont.	Plng.								
6	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final sign-off on the building permit to ensure the proposal was constructed in accordance with the plans and		Plng.								

	information submitted and the conditions attached to this approval.				
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Attest, by the Zoning Board of Appeals:

Herbert Foster, Chairman
Orsola Susan Fontano, Clerk
Richard Rossetti
Danielle Fillis
Elaine Severino, (Alt.)

Attest, by the Zoning Board of Appeals 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
ZBA 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 _____