



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

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Case #: ZBA #2009-05
Site: 103 Belmont Street, #2
Date of Decision: April 15, 2009
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: April 16, 2009

ZBA DECISION

Applicant Name:	Jennifer Evans
Applicant Address:	103 Belmont Street, #2, Somerville, MA 02143
Property Owner Name:	Jennifer Evans
Property Owner Address:	103 Belmont Street, #2, Somerville, MA 02143
Agent Name:	N/A

<u>Legal Notice:</u>	Applicant & owner Jennifer Evans seeks a special permit (SZO §5.1) to establish an office within a primary residence (§7.11.4.f) and to modify the parking requirements for nonconforming structures for one required parking space (§9.13.a).
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<u>Zoning District/Ward:</u>	RA zone/Ward 3
<u>Zoning Approval Sought:</u>	§5.1, §7.11.4.f & §9.13.a
<u>Date of Application:</u>	March 10, 2009
<u>Date(s) of Public Hearing:</u>	April 15, 2009
<u>Date of Decision:</u>	April 15, 2009
<u>Vote:</u>	5-0

Appeal #ZBA 2009-05 was opened before the Zoning Board of Appeals at Somerville City Hall on April 15, 2009. 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 hearing of deliberation, the Zoning Board of Appeals took a vote.

DESCRIPTION:

The Applicant has been operating a home occupation (SZO §7.11.4.e) administering acupuncture services for the past 3 1/2 years, which is allowed by-right in an RA district. She has been an acupuncturist for 17 years and is licensed with the State.

The Applicant would like to have one other professional working in her home on a limited basis. This kind of arrangement is seen in other approved home offices. The two would work different hours such that the space was not in demand by clients of both practitioners. The other professional would be a licensed acupuncturist, licensed herbalist or a licensed massage therapist. The office would be in one room on the second floor that is approximately 139 n.s.f. The tandem parking in the driveway cannot be considered more than one parking space; however, practically speaking the homeowner, the other employee, and a client can park in the driveway.

The hours of operation would be generally six hours per day, anytime from Monday-Friday 9am-5pm and Saturday mornings.

The Applicant will be posting a sign that complies with the Somerville Zoning Ordinance requirements. No other alterations are proposed for the building.

FINDINGS FOR SPECIAL PERMIT (SZO §5.1, §7.11.4.f & §9.13.a):

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."

Applicant's proposal complies with the standards of §7.11.4.f, which requires that the office be part of the applicant's primary residence. The Board finds that the proposal would not cause detriment to the surrounding neighborhood through any of the criteria as set forth under SZO §9.13, which are as follows:

- 1) increase in traffic volumes;
- 2) increased traffic congestion or queuing of vehicles;
- 3) change in the type(s) of traffic;
- 4) change in traffic patterns and access to the site;
- 5) reduction in on-street parking;
- 6) unsafe conflict of motor vehicle and pedestrian traffic.

While we have respectfully considered Traffic and Parking's position, the Board finds that the proposed relief is mitigated by the following factors; which are referenced in the conditions:

- residents permit parking protects Somerville residents' parking spaces
- the property is a short walk to Highland Ave parking for out-of-town clients
- the professionals would be working staggered hours and the clients would most likely park in the driveway
- the applicant controls the driveway and can assure how it is used

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 providing for and maintain the uniquely integrated structure of uses in the City. The proposal is consistent with the purpose of the RA district, which is to establish and preserve quiet neighborhoods of one- and two-family homes, free from other uses except those which are both compatible with and convenient to the residents

of such districts. Finally, as conditioned the proposal is consistent with the purposes of section 9.1, ensuring the availability and safe use of parking areas.

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 office would be conducted entirely within the residence with no offensive externalities.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Scott Darling, Elaine Severino and Josh Safdie with Herbert Foster and Danielle Fillis absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a special permit. Scott Darling 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 an office within a primary residence for two professionals licensed in acupuncture, herbal therapy or massage therapy (§7.11.4.f). This approval is based upon the following application materials and the plans submitted by the Applicant:	CO	Plng.							
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>(March 10, 2009)</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>July 28, 2006</td><td>Floor Plans</td></tr></table>				Date (Stamp Date)	Submission	(March 10, 2009)	Initial application submitted to the City Clerk’s Office	July 28, 2006	Floor Plans
	Date (Stamp Date)				Submission					
	(March 10, 2009)				Initial application submitted to the City Clerk’s Office					
	July 28, 2006				Floor Plans					
Any changes to the approved use that are not <i>de minimis</i> must receive ZBA approval.										
2	The hours of operation for the office shall not extend beyond the hours of 9 a.m. to 5 p.m., Monday through Friday and Saturday mornings.	Perpetual	ISD							
3	In order to reduce the effects of this office on the on street parking situation in the area, the owner shall direct the other professional and clients to park in the driveway.	Perpetual	ISD							
4	The two professionals shall not see clients at the same time so that the space is not in demand by clients of both professionals.	Perpetual	ISD							
5	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final sign-off on the certificate of occupancy to ensure the proposal is operating 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:

Orsola Susan Fontano, *Acting Chairman*
Richard Rossetti, *Acting Clerk*
T.F. Scott Darling, III, Esq.
Elaine Severino (Alt.)
Josh Safdie (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
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 _____