



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.)
JOSH SAFDIE (ALT.)

Case #: **ZBA 2008-45**
Site: **708 Broadway**
Date of Decision: **September 17, 2008**
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: **September 22, 2008**

ZBA DECISION

Applicant Name:	Mike Moccia/Ball Square Cafe
Applicant Address:	708 Broadway, Somerville, MA 02144
Property Owner Name:	Vittorio Moccia
Property Owner Address:	710 Broadway, Somerville, MA 02144
Agent Name:	N/A

<u>Legal Notice:</u>	Applicant: Mike Moccia – Ball Square Cafe & Owner: Vittorio Moccia seek a special permit under SZO 9.13.a for modification of parking requirements in order to increase the number of seats in the restaurant. NB zone. Ward 6.
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<u>Zoning District/Ward:</u>	NB zone/Ward 6
<u>Zoning Approval Sought:</u>	§9.13.a
<u>Date of Application:</u>	August 11, 2008
<u>Date(s) of Public Hearing:</u>	September 17, 2008
<u>Date of Decision:</u>	September 17, 2008
<u>Vote:</u>	5-0

Appeal #ZBA 2008-45 was opened before the Zoning Board of Appeals at Somerville City Hall on September 17, 2008. 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 proposing to add 12 seats to the restaurant for a total of 36 seats. There is no opportunity to provide parking on-site without demolition of the building. The applicant is not proposing any alterations to the storefront or additional fulltime employees.

FINDINGS FOR SPECIAL PERMIT (SZO §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."

In considering a special permit under §9.13 of the SZO "the SPGA may grant such a special permit only when consistent with the purposes set forth in Section 9.1, and upon reaching the findings and determinations set forth in Section 5.1.4". The Applicant must be able to demonstrate that granting the requested special permit 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.

The Board finds that the parking relief would not cause detriment to the neighborhood related to the above criteria. The results of the transportation mode study show that the additional 12 seats will have minimal impact on traffic and parking in the area. Patrons of this establishment will continue to car pool, walk and/or bicycle to this store. Since there will be additional patrons walking and bicycling to the store, mitigation for the three parking spaces is required.

With respect to Section 9.1, the Board finds that granting the requested special permit would not create a situation that would be a nuisance or hazard to pedestrians and adjacent properties, nor would it decrease the traffic carrying capacity of the adjacent streets or significantly compromise the on-street parking available in Ball Square.

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 purpose of the Neighborhood Business District is, "[t]o establish and preserve areas for small-scale retail stores, services and offices which are located in close proximity to residential areas and which do not have undesirable impacts on the surrounding neighborhoods." Allowing increased seating with no off-street parking would be consistent with the purpose of preserving this small scale business.

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."

There would be no change to the exterior of the building. Increasing the number of seats is compatible with the demand for restaurants in Ball Square.

DECISION:

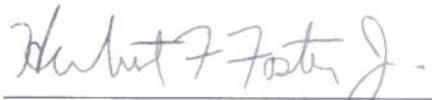
Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Fillis and Scott Darling. Upon making the above findings, Susan Fontano made a motion to approve the request for a special permit. Richard Rossetti seconded the motion. Wherefore the Zoning Board of Appeals 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 addition of 12 seats to the restaurant for a total of 36 seats This approval is based upon the following application materials and the plans submitted by the Applicant and/or Agent:	CO	Plng.	

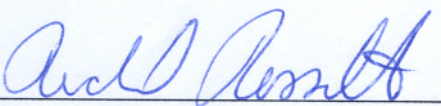
Attest, by the Zoning Board of Appeals:

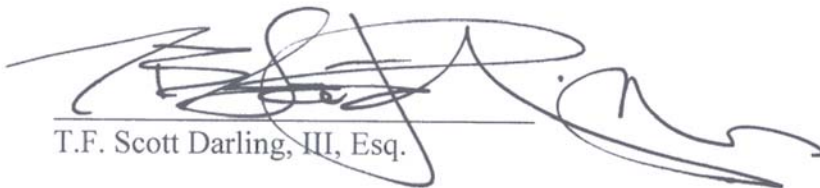
Herbert Foster, *Chairman*
Orsola Susan Fontano, *Clerk*
Richard Rossetti
T.F. Scott Darling, III, Esq.
Danielle Fillis

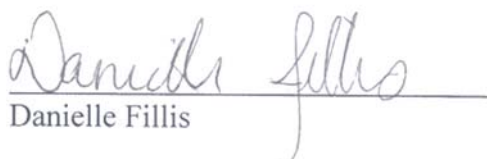
Attest, by the Zoning Board of Appeals:


Herbert F. Foster, Jr., Chairman


Orsola Susan Fontano, Clerk


Richard Rossetti


T.F. Scott Darling, III, Esq.


Danielle Fillis

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 _____