



CITY OF SOMERVILLE, MASSACHUSETTS
OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: PB 2010-04
Site: 299 Broadway
Date of Decision: September 2, 2010
Decision: *Petition Denied*
Date Filed with City Clerk: September 9, 2010

PLANNING BOARD DECISION

Applicant Name:	Comar Real Estate Trust (James Cohen, Trustee)
Applicant Address:	89 Winchester Street, Brookline, MA 02446
Property Owner Name:	Comar Real Estate Trust (James Cohen, Trustee)
Property Owner Address:	89 Winchester Street, Brookline, MA 02446
Agent Name:	Robert L. Allen, Jr., Esq.
Agent Address:	300 Washington Street, Brookline, MA 02445
 <u>Legal Notice:</u>	 Applicant/Owner, Comar Real Estate Trust – James Cohen, Trustee, seek a special permit for the use of a Large Retail general merchandise store (SZO §7.13.K) and a special permit to alter the structure and signage (§6.1.22.D.5).
 <u>Zoning District/Ward:</u>	 CCD 55. Ward 4.
<u>Zoning Approval Sought:</u>	§7.13.K & §6.1.22.D.5
<u>Date of Application:</u>	March 22, 2010
<u>Date(s) of Public Hearing:</u>	6/24, 7/15, 8/5, 8/19 & 9/2/10
<u>Date of Decision:</u>	September 2, 2010
<u>Vote:</u>	5-0

Case #PB 2010-04 was opened before the Planning Board at Somerville City Hall on June 24, 2010. 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 (8/24 and 9/2), the Planning Board took a vote.



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DESCRIPTION:

The proposal is to change the structure's use from a supermarket to a General Merchandise Store (Ocean State Job Lot) in the Large Retail Use Cluster in the CCD-55 Zoning District (SZO §7.13.K) and a special permit to alter the structure and signage (§6.1.22.D.5). The proposal will add façade improvements, signage, and landscaping to the existing site. The interior of the structure will be renovated but the existing footprint will remain the same.

FINDINGS FOR SPECIAL PERMIT (SZO §7.13.K & §6.1.22.D.5):

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §5.1.4 of the SZO.

1. Information Supplied: 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."

To the extent possible for the existing structure, the proposed façade and signage changes comply with the design guidelines for the CCDs (§6.1.22.H). The applicant worked with Planning Staff to increase visual and pedestrian interest along Broadway through the addition of five columns to the windowless brick façade. The existing metal roofing will also be repainted in a more aesthetically appropriate color.

Despite compliance, the positive impact of the changes is limited by the massing and siting of the existing structure. The property will continue to lack an inviting and pedestrian-oriented streetscape without substantial renovation or redevelopment that is not a part of this proposal. The proposal does not encourage pedestrian activity as it fails to reorient the main entrance toward the sidewalk. The parking lot remains the dominant feature of the property rather than being hidden from view. The applicant did not provide any significant buffer between vehicles in the parking area and the pedestrians on the sidewalk. The existing guardrail that is designed to be appropriate for a highway, not a walkable neighborhood, would remain on this site plan. The most significant barrier to pedestrian activity is the use of the structure itself. While the previous use on this site was a supermarket that met the daily needs of residents, the proposed use is a store that is designed to draw from throughout the region and encourage fewer trips with larger purchases, a model that is not compatible with pedestrian activity.

In general, while this proposal will fill a vacant building, it will not bring any significant benefit to the streetscape and urban design of Broadway on Winter Hill.

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 SZO includes requirements in Section 1.2 to:

- Conserve the value of land and buildings;
- Encourage the most appropriate use of land throughout the city; and,
- Increase the amenities of the municipality.

The proposal is not consistent with the specific purpose of the SZO above. The proposal ensures that a valuable parcel of land that was identified for up-zoning in a new zoning district approved in February 2010 will remain with a single story structure at a floor-area ratio under 0.3 for the foreseeable future. The proposal ensures that the site



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will not be conserved and used for its greatest value. The proposal limits the site to a use that is not the most appropriate use of the land and limits the ability to bring new amenities to the Winter Hill neighborhood.

More specifically, the purpose of the CCD-55 zoning district in Section 6.1.22.A is to:

- Encourage active mid-rise commercial and residential uses that contribute to a multi-modal-friendly street;
- Increase commercial investment in high-profile, accessible areas including retail that is largely neighborhood-serving in multi-tenant, mixed use buildings;
- Preserve and complement historic structures;
- Discourage inappropriate auto-oriented, significant trip-generating uses along transit corridors; and,
- Promote pedestrian and bicycle activity.

The CCD-55 zoning district was adopted for this area of Broadway in February of 2010. This zoning amendment was the culmination of an extensive community outreach and participation process designed to develop and implement a vision for the Winter Hill and East Somerville neighborhoods. Throughout this process, community members expressed their support for zoning that encouraged a balance between old and new, by preserving and complementing historic structures while increasing investment in high-profile areas. The community identified a preference for the establishment of more mid-rise mixed-use development in the area, and the importance of a high quality public realm for pedestrians and bicyclists especially in light of the forthcoming Green Line Extension which will bring rapid transit to nearby Gilman Square. As a result of this process, the zoning amendment balanced an up-zoning of development capacity along much of the corridor with the establishment of strict development standards and design guidelines to ensure that development meets or exceeds community expectations. Within the CCD-55 zoning district the maximum floor-area ratio (FAR) is now 3.0. This development capacity is established to provide a catalyst for transformative development that will change the nature of Broadway, fill the gaps in the streetscape, and encourage new business that will complement the existing business mix and encourage shoppers to visit multiple businesses within the neighborhood on single trips.

This proposal would impact one of the most significant sites within the new zoning districts on Broadway. The location is a key corner with has significant street frontage that has the ability to define the character of this area for many years. Use of this site can strengthen or detract from nearby neighborhood-serving businesses in a way that no other property in this district can. The Planning Board has concluded that this proposal is not consistent with the purpose of the CCD district, as follows:

a. Encourage active mid-rise commercial and residential uses that contribute to a multi-modal-friendly street

Ocean State Job Lot has a reputation of being well-run discount establishment that finds overstock and discontinued items to sell at a discount. The merchandise is always changing based upon the deals that they are able to find. Many supporters of the store find it valuable to return every few weeks to find new bargains. Despite their reputation for being a well-run establishment, they do not generally perform significant exterior improvements to their facilities to open a new store, although the extent of exterior improvement proposed for the Somerville site exceeds their typical level of investment in a new store.

As noted in the purpose statement, the intent of the zoning district is to facilitate mixed use, multi-story development, of which this project is neither. In acknowledgement that significant redevelopment of the site was unlikely given the current economic circumstances, the Planning Staff attempted to see if the property owner was amenable to a time-limited special permit that would allow for regular discussions about redevelopment of the site in a more supportive economic situation – a type of agreement which has been reached on several properties elsewhere in Somerville. Instead, the owner indicated that he recently extended the lease for the existing drug store and he has indicated that the lease for this tenant would be for a ten year term with multiple extensions. The owner has also refused to divide the store into smaller stores that could allow for a specialty or ethnic food market that would be more compatible with community needs in the short



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term. The owner's actions in this instance seek to extend the status quo far into the future, limiting any redevelopment opportunity of the largest and most valuable parcel of land within the new Broadway rezoning area. Therefore, the project is directly in conflict with the purpose of encouraging mid-rise development.

Further, the proposed use will reinforce the auto-oriented nature of the property instead of contributing to a multi-modal-friendly street. Although landscaping will begin to break up the expanse of parking lot, the addition of greenery will be minimal. The current configuration of the structure combined with the nature of the use makes the proposal inconsistent with the goals of a multi-modal street and inappropriate for the neighborhood.

b. Increase commercial investment in high-profile, accessible areas including retail that is largely neighborhood-serving in multi-tenant, mixed use buildings

The store provides a stable base of merchandise including some food items, but daily food needs, including fresh healthy fruits and vegetables are not a part of their business model. In significant written comments submitted to the Planning Board many residents have identified the need for fresh foods as the primary neighborhood need. Furthermore, a survey in Winter Hill completed by the Shape Up Somerville program indicated that residents are seeking more fresh fruits and vegetables as a part of their shopping needs. They also generally indicated that they often walk and/or bike to the grocery store and that existing stores are rather far from the neighborhood.

Any combination of development or redevelopment of the primary opportunity site within the neighborhood would benefit from the inclusion of retail that sells fresh foods. While the owner has indicated that he made an effort to rent the existing building to many food establishments, he indicated that the building is too small for a conventional supermarket and too close to competition. When smaller specialty markets were suggested, the owner indicated that he was unwilling to divide the existing building.

A general merchandise discount store, such as a Job Lot, in this location will cater to customers coming a significant distance from the store via automobile, just as their stores in other parts of Massachusetts do. Shoppers at stores of this nature and in this particular configuration are typically going to the location solely for the purpose of shopping at the specific discount store and will then return home with their purchases. As a result, their presence will not benefit the adjacent businesses, as it is unlikely that they will then elect to browse in the more pedestrian-oriented stores across or further down the street. Basically, they will park, enter the store, return to their car, and exit the neighborhood. This is contrary to a fundamental objective of the new zoning. (Note that some success has been found in commercial districts with regional serving uses when the parking for the uses is remote from the store and visitors are thus compelled to walk past other storefronts on their way to their primary destination.)

c. Preserve and complement historic structures

There are no historic structures on the site. But, by retaining the structure's existing footprint, the proposal perpetuates a single-tenant, single-use building that turns a blank side to Broadway, and provides no complement to historic development pattern in the surrounding residential neighborhood which consists of small storefronts that open onto the sidewalk. The applicant did indicate that they will provide new design features along the Broadway façade to minimize some of the effect of the large single-story structure, but these do not complement the neighborhood to the extent that a well designed multi-story building would.

d. Discourage inappropriate auto-oriented, significant trip-generating uses along transit corridors

Rather than being largely neighborhood serving, the proposed use draws on a regional market. Current Job Lot locations are limited in the immediate Boston area. The nearest stores are in Quincy and Danvers. A



Somerville store is likely to result in significant vehicle trips from outside of the city. The applicant has been asked to provide information about the general catchment area for travel to their stores, but has failed to provide this information.

While the applicant's traffic impact analysis concludes that the Job Lot will generate fewer trips than the former supermarket, it indicates a higher parking demand. The combination of a reduction in daily trips with an increase in parking demand suggests that this use will generate fewer, longer trips to the store. This is the travel pattern of a regional draw that seeks customers on an occasional basis. Furthermore, the share of trips made by private vehicle may actually increase due to customer origins, replacing pedestrian and bicycle trips that were previously made from within the neighborhood. (see Section e, "promote pedestrian and bicycle activity", below.)

Therefore, despite the reduction in total number of trips, a discount store with a regional draw is likely to generate longer-distance vehicle trips, thereby creating a regional draw automobile oriented store in a location that is intended to strengthen the transit-based mixed-mode transportation system that is the basis for Somerville's future. And, while the proposed use may generate fewer trips than a supermarket, it does not negate the simple fact that a large discount store in this location is a significant trip-generating auto-oriented use that is inconsistent with the purpose of this district.

e. Promote pedestrian and bicycle activity

An urban neighborhood supermarket or other primarily local serving use(s) could generate a significant portion of its trips through walking and biking. According to the extensive field research conducted by the applicant's traffic engineer existing supermarkets in Somerville showed a 16% walk/bike split for the Market Basket on Somerville Avenue, 13% for the new Stop and Shop that is buffered from nearby neighborhoods by the McGrath Highway, and a 35% walk/bike share for the Foodmaster and Star Market stores on Beacon Street, the locations that are most similar in demographics and physical layout to the Broadway location. Only the Whole Foods, on the edge of the busy Alewife Brook Parkway generated a low walk/bike mode share. A discount store is unlikely to provide the sort of mode split of an urban supermarket, and the applicant has provided no data to suggest that Job Lot will generate this portion of local walk/bike traffic.

Therefore, the location of the proposed discount store at 299 Broadway does little in its urban design to support pedestrian and bicycle activity, and its use does not encourage pedestrian and bicycle activity. The lack of fresh food options requires residents in this neighborhood to travel farther, often by car, to meet daily grocery needs. Furthermore, tying up this redevelopment site for a long term purpose further limits the ability to provide housing and commercial opportunities within walking and biking distance of the rest of the Winter Hill neighborhood on this site.

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 proposed changes to the structure's façade are compatible with the built and unbuilt surrounding area, insofar as they will improve the appearance of the currently vacant building. The applicant has provided façade improvements to address issues that were of concern to the Planning Staff. Furthermore, the applicant has agreed to 'green' the former loading dock areas that face Grant Street and Broadway, limiting loading activities to the corner of the building furthest from the street and greatly reducing a neighborhood impact of the former supermarket use.

Nonetheless, the improvements only provide minimal benefits to an otherwise inappropriate and poorly-defined building in the neighborhood. The structure, even with improvements, is not compatible with the more traditional storefronts on adjacent and nearby blocks, the parking lot and guardrail remain and the upgrades do little to encourage additional pedestrian activity on Broadway.



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DECISION

The proposed use is inconsistent with the zoning purpose statements (SZO and CCD District) and thereby fails to meet the criteria for a special permit. Three primary factors show the inconsistency: the use proposed on the site the structure it is proposed to occupy, and the time in which it is will remain.

Use – the CCD purpose statement clearly seeks uses that are predominantly local serving. While this allows room for some regional serving uses to be permitted, these are expected to be placed within the context of a mixed use development, not as single uses on large scale sites within a neighborhood shopping district. In considering how this could be applied at 299 Broadway, a regional serving use could be acceptable if it was located within a quality mid-rise mixed-use building, mixed with other local serving retail uses, and placed some distance from parking. Unfortunately, such a proposal is not before this Board.

Building Form – The existing structure at 299 Broadway is completely inconsistent with the design guidelines of the new CCD zone and buildings of its type were one of the reasons why the zoning was adopted. Historically, Winter Hill has contained small scale stores located immediately on the sidewalk and geared toward pedestrians. In many locations, the multi-story buildings that were found in Winter Hill prior to WWII have been reduced in size, but the physical form of the storefronts has remained consistent over time. Instead of the traditional pedestrian oriented storefronts, the 400 foot frontage of 299 Broadway consists of a massive parking lot and the side of a building and its design negatively affects all surrounding businesses. Studies have shown that one-sided shopping districts – as is the case in Winter Hill – are less successful than two-sided shopping districts where stores face each other. The proposal before the Board makes some gestures to improve the side of the building, but this does little to improve the pedestrian experience on this side of the street and does nothing to support business activity opposite.

Timing – In prior decisions, the Planning Board has indicated its understanding of today's economic circumstances and has been willing to issue limited duration permits for uses on properties where redevelopment is desired in the long term. These permits have been issued in a sense of collaboration with the property owners and are written to ensure that the vision for the property will ultimately be realized. In the instance of 299 Broadway, no recognition exists of the merits of the City's long term vision and instead, the property owner has indicated a strong desire to freeze the property in its current status for potentially decades into the future. Approval of the requested special permit would ensure that little or no change happens in Winter Hill even after the new transit station opens in the next few years. Given that surrounding businesses are already struggling and many are continuing on in hopes that the neighborhood will turn around, approval of the proposed permit could potentially result in more vacancies and disinvestment.

This particular use in this existing structure is an unacceptable combination. While this use as a part of a new structure may be appropriate and other uses within the existing structure may provide a short term solution, neither option is before this Board at this time. Establishing the proposed Ocean State Job Lot on this site would negate the effort and the results of the extensive community input, visioning, goal setting and rezoning exercise that was completed when the CCD-55 zoning was established on this site in February 2010.

Present and sitting were Kevin Prior, Elizabeth Moroney, Joseph Favaloro, Michael Capuano and alternate Dana LeWinter. Upon making the above findings, Kevin Prior made a motion to approve the request for a special permit. Michael Capuano seconded the motion. Wherefore the Planning Board voted **5-0** to **DENY** the request.



Attest, by the Planning Board:



Kevin Prior, Chairman



Elizabeth Moroney



Joseph Favaloro



Michael Capuano



Dana LeWinter

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.



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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 _____



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