



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

PLANNING DIVISION

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Case #: ZBA #2009-30
Site: 719 Broadway
Date of Decision: September 16, 2009
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: September 21, 2009

ZBA DECISION

Applicant Name:	Chandra Pun
Applicant Address:	1 Cypress Road, Apt. 103, Brighton, MA 02135
Property Owner Name:	Ed Pignone
Property Owner Address:	44 Country Club Road, Stoneham, MA 02180
Agent Name:	Andrew Richardson, Merge Architects
Agent Address:	374 Congress Street, Suite 500, Boston, MA 02210

Legal Notice: Applicant Chandra Pun & Owner Ed Pignone seek a special permit under SZO 9.13.a for modification of parking requirements by two parking spaces for a by-right restaurant. NB zone. Ward 6.

<u>Zoning District/Ward:</u>	NB zone/Ward 6
<u>Zoning Approval Sought:</u>	§9.13.a
<u>Date of Application:</u>	July 14, 2009
<u>Date(s) of Public Hearing:</u>	9/2 & 9/16/09
<u>Date of Decision:</u>	September 16, 2009
<u>Vote:</u>	5-0

Appeal #ZBA 2009-30 was opened before the Zoning Board of Appeals at Somerville City Hall on August 19, 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.



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DESCRIPTION:

The proposal is to renovate the space and continue the use as a restaurant serving Indian and Nepali food. There would be 48 chairs and 7 employees at peak times. The hours of operation would be 7:30 a.m. to 10 p.m. daily with a closing time of 11 p.m. on Friday and Saturdays. There is no opportunity to provide parking on-site without demolition of the building. The applicant is not proposing any alterations to the storefront except for signage. The signage design will be worked out with Planning Staff.

FINDINGS FOR SPECIAL PERMIT (SZO §5.1 & §9.13):

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 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 Boards agrees with the Traffic and Parking Department to support the reduction in parking requirements allowed under §9.13.a. The applicant has submitted a parking memo that describes why the reduction of two parking spaces would not overall adversely impact the traffic or on-street parking situation. The majority of clients to similar restaurants would arrive via either pedestrian or bicycle mode. Those patrons using vehicles would arrive via pass-by or shared trips and not single occupant vehicle solo destination trips. It is not foreseen that much additional vehicle traffic will be generated by this use. Mitigation for the increase in both pedestrian and bicycle access to this establishment are addressed in the recommended conditions of approval.

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 encouraging the most appropriate use of land throughout the City and the purpose of the district by preserving areas for small-scale retail stores, services and offices. Allowing increased seating with no off-street parking would be consistent with the purpose of preserving this small scale space as a restaurant.

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."



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The Board finds this use to be consistent with the existing context of the area. Most of the businesses in Ball Square do not have off-street parking and rely on on-street metered parking. The new signage for the restaurant will be worked out with Planning Staff and it will be designed in a manner that is compatible with the other businesses in the area.

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Fillis and Elaine Severino. 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 use of a 48 seat restaurant without providing 2 required parking spaces. 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>(Jul 14, 2009)</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>July 13, 2009 (Aug 28, 2009)</td><td>Plans submitted to OSPCD (floor plan)</td></tr></table>				Date (Stamp Date)	Submission	(Jul 14, 2009)	Initial application submitted to the City Clerk's Office	July 13, 2009 (Aug 28, 2009)	Plans submitted to OSPCD (floor plan)
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Any increase in seating must receive ZBA approval.										
2	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP							
3	The Applicant shall furnish to the City two Pedestrian Impact Recovery Systems and two Pedestrian signs with two phosphorescent glow sticks (to be installed in the u channels of the sign poles) for placement along various pedestrian paths to or in the vicinity of Ball Square.	CO	T&P							
4	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 information submitted and the conditions attached to this approval.	Final sign off	Plng.							



Attest, by the Zoning Board of Appeals:

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

Attest, by the 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 _____



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