



CITY OF SOMERVILLE, MASSACHUSETTS
OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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MAYOR

PLANNING DIVISION

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Case #: ZBA # 2010-73
Site: 860 Broadway
Date of Decision: January 5, 2011
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: January 11, 2011

ZBA DECISION

Applicant Name:	Chobert, LLC
Applicant Address:	1651 Trapelo Road, Waltham, MA
Property Owner Name:	Charles Kostopoulos
Property Owner Address:	Beckate, LLC, 51 Fairfield Street, Apt #2, Cambridge, MA 02140
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145

Legal Notice: Applicant Chobert, LLC and Owner Charles Kostopoulos seeks a special permit under §4.5.1 to change a non-conforming use (a frozen yogurt parlor) to another non-conforming use (Restaurant, fast food §7.11.10.2.1.a) for a Subway sandwich shop.

<u>Zoning District/Ward:</u>	RB zone/Ward 6
<u>Zoning Approval Sought:</u>	§4.5.1 & §7.11.10.2.1.a
<u>Date of Application:</u>	October 29, 2010
<u>Date(s) of Public Hearing:</u>	12/15/10 & 1/5/11
<u>Date of Decision:</u>	January 5, 2011
<u>Vote:</u>	4-1

Appeal #ZBA 2010-73 was opened before the Zoning Board of Appeals at Somerville City Hall on December 15, 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, the Zoning Board of Appeals took a vote.



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DESCRIPTION:

The applicant is proposing to operate a chain owned sandwich shop (SUBWAY) on the site. There will be seating for 4 individuals on the premises. Staff has contacted the applicant with regard to the hours of operation and the number of employees at the site and is waiting for a response.

FINDINGS FOR SPECIAL PERMIT (SZO § 5.1.4 & §4.5.1):

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 §4.5.1 of the SZO, the Board find that the proposed use would not be substantially more detrimental to the neighborhood than the existing use.

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 "to encourage the most appropriate use of land throughout the City." The Board finds this use to be consistent with the purposes of the ordinance and that continuing commercial, service and retail uses on this property to be an appropriate use of the land.

The proposal is consistent with the purpose of the district (6.1.2. RB - Residence Districts), which is, "To 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." While the district is generally designed for residential development, this pre-existing commercial block includes a number of complementary businesses.

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." No change to the general site area is anticipated. The Board recommends that site signage be conditioned to be consistent with other signs on this structure.

5. Adverse environmental impacts: The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.

No adverse effect is anticipated.

6. Vehicular and pedestrian circulation: The circulation patterns for motor vehicles and pedestrians which would result from the use or structure will not result in conditions that create traffic congestion or the potential for traffic accidents on the site or in the surrounding area.



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The Board finds this use to be consistent with the existing context of the area. The Board finds any negative impacts to the community from this proposal to be minimal and that the use would be a benefit to the community. The Board is still recommending that façade alterations at the site be subject to Planning Staff approval. While many fast food establishments create significant vehicle traffic, it is anticipated that most traffic to this site, like the traffic to other establishments on this block, will be on foot or will be able to be absorbed by the short term parking provided in front of the establishments on the block.

7. **Fast food establishments:** In special permit applications for fast-order, take-out or automobile oriented food service establishments, there shall be establishment of a need for such a facility in the neighborhood or in the City, and impacts on traffic circulation, parking and visual, physical, or historical characteristics of the particular location shall not be detrimental.

The Board finds that the impacts on traffic circulation and parking will be minimal, and the visual, physical, or historical characteristics of the proposed location of the use are not detrimental to the neighborhood. As opposed to other 'fast food' establishments, this use has minimal impacts and any vehicle traffic can be accommodated by street parking in front of the building.

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Scott Darling. Upon making the above findings, Susan Fontano made a motion to approve the request for a special permit. Scott Darling seconded the motion. Wherefore the Zoning Board of Appeals voted **4-1** to **APPROVE** the request with Danielle Evans voting in opposition. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes								
1	Approval is for the change of a non-conforming use (a frozen yogurt parlor) to another non-conforming use in order to open a fast food sandwich store. 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>October 22, 2010</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>October 22, 2010</td><td>Plans submitted with application (Site Plans 1 and 2, Tuscany II Décor Back-Up Sheets 1-4)</td></tr><tr><td>November 29, 2010</td><td>Façade and signage designs submitted to OSPCD</td></tr></table>				Date (Stamp Date)	Submission	October 22, 2010	Initial application submitted to the City Clerk's Office	October 22, 2010	Plans submitted with application (Site Plans 1 and 2, Tuscany II Décor Back-Up Sheets 1-4)	November 29, 2010	Façade and signage designs submitted to OSPCD
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November 29, 2010	Façade and signage designs submitted to OSPCD											
Any changes to the approved site plans, elevations, or use that are not <i>de minimis</i> must receive SPGA approval.												
2	The Applicant shall meet the Fire Prevention Bureau's requirements.	CO	FP									

3	The sign shall be made of wood. Final design size, colors and signage shall be approved by Planning Staff. The applicant shall provide the thickness of the proposed sign, and indicate if the existing spot light is to remain or be upgraded.	BP	PIng.	
4	All exterior lighting must be confined to the subject property or adjacent rights of way, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	PIng.	
5	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	PIng.	
6	The Applicant shall limit the hours of operation from 9:00 AM to 10:00 PM Sunday through Thursday and from 10:00 AM to 12:00 AM (Midnight) on Friday and Saturday.	CO	PIng.	
7	The Applicant shall implement appropriate filtration system measures to ensure the space is properly ventilated to alleviate the aroma that is produced by the operations on the premises.	BP	ISD	
8	The Applicant shall have a preference towards residents of Somerville for positions of employment.	CO	PIng.	
9	This Special Permit is for "SUBWAY" use only. Transfer to another fast order food establishment requires Special Permit revision.	Cont.	ISD	
10	Applicant will abide by the 11 commitments in the letter dated December 21, 2010.	Cont.	PIng.	

Attest, by the Zoning Board of Appeals:

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

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

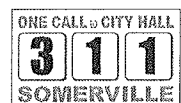
_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

Signed _____ City Clerk Date _____



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CHOBERT LLC

December 21, 2010

Herbert F. Foster, Jr.
Somerville Zoning Board of Appeals – Chairman
Somerville City Hall
93 Highland Ave.
Somerville, MA 02143

Subject: 860 Broadway (Case #ZBA 2010-73)

Dear Mr. Foster,

Thank you for taking the time to review our special permit application at the ZBA meeting on Wednesday, December 15. We have received valuable feedback and comments from the planning board, our community meeting hosted by Alderman Gewirtz, and the ZBA hearing and we have already incorporated many of the changes in our zoning application and business operating plan. Prior to our ZBA follow-up hearing scheduled for January 5, 2011, we wanted to present to you the following issues that were brought to our attention and how we plan to address them.

- 1) Hours of Operation - Revise our closing times on Sunday-Thursday to 10pm and Friday-Saturday to 12am. If noise or traffic complaints arise from neighboring residents, we can re-evaluate these closing times on a quarterly basis.
- 2) Odors and Ventilation - Since there is no cooking, grilling or frying equipment in our store, our odor levels can be controlled by focusing on the bread baking equipment. We will be installing a new HVAC system in the space and order bread oven equipment with exhaust ventilation and air filtration systems. These systems will significantly eliminate the baking smells and odors from emanating from the building.
- 3) Signage and Lighting - We will work with Alderman Gewirtz, the landlord and the planning dept to design suitable signage and facade with colors and styles that are consistent with the other area businesses. This includes a wood sign with non-backlit lighting.
- 4) Supplier Deliveries - We will request that our vendors use smaller delivery vehicles, limit the number of weekly visits and restrict the times to off-hours when they will be the least disruptive in terms of noise and traffic. We will also utilize the rear entrance of the building when possible to avoid congestion on the sidewalk and street in front of the store.
- 5) Trash Removal – We will contract with a private trash removal service provider for 1-2 pick-ups per week at off-peak hours and request smaller containers that can be stored in the rear of the building. To further reduce traffic and noise issues, we will contact the other 6 food service companies in the building and see if we can consolidate the trash removal to reduce the total number of pick-ups from the building tenants.

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CHOBERT LLC

6) Litter - In all of our stores, we have our staff pick-up outside trash in the surrounding area to keep it free of litter. We will also add another exterior trash receptacle, encourage recycling in the store and utilize covered trash receptacles in the rear of the building.

7) Hiring - We agree to give preferential treatment to local residents during the hiring process and focus on staff that are within walking distance or who are public transportation accessible in order to limit the impact on parking in the area.

8) Jobs - We anticipate hiring 15-20 employees with both full-time managerial and part-time staff positions. We provide restaurant educational and career training through online courses and training seminars. We also offer advancement opportunities as demonstrated by the fact that all of our current managers started as staff employees.

9) Competition - We have already made agreements with the landlord and the owners of the Broken Yolk and Dunkin Donuts to not offer the breakfast items on our menu in order to limit direct competition with our neighboring businesses. We will also open at 10am rather than 6-7am which are the normal hours that most Subway's open in the morning. We also plan to promote joint marketing programs with the other tenants in order to drive more overall business to the area.

10) Traffic and Parking - In addition to limiting the impact of employees commuting to work and our vendor delivery and pick-up schedules, we will also limit the number of seats in our store to 4, gear our marketing towards residents within walking distance and monitor illegal parking in front of the store.

11) Community Involvement - Similar to our other stores, we will actively contribute to the local community through sponsorships, donations and fundraisers including youth sports teams, local police and fire departments, and other community-based organizations. We plan to donate our leftover bread and other items to either the Boston Food Bank or a local soup kitchen. We will also seek out local vendors and professionals for our service contracts to further support local businesses.

Both my partner and I believe that the net result of our proposed Subway would be a positive for the community in terms of job creation, a stable and reliable rent and taxpaying tenant, and a healthy and value-oriented food option for the residents.

Please feel free to send us any comments or additional questions you or any ZBA board members may have and we look forward to hearing on January.

Sincerely,



Christopher Cho and Enrique Colbert
Chobert LLC