



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

MEMBERS

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DANIELLE FILLIS
ELAINE SEVERINO (ALT.)
JOSH SAFDIE (ALT.)

Case #: ZBA #2009-14

Site: 860 Broadway

Date of Decision: June 24, 2009

Decision: *Petition Approved with Conditions*

Date Filed with City Clerk: June 26, 2009

ZBA DECISION

Applicant Name:	Jon Staff
Applicant Address:	64 Linnean Street, Cambridge, MA 02138
Property Owner Name:	Charles Kostopoulos
Property Owner Address:	4055 Losillias Drive, Sarasota, FL 34238
Agent Name:	N/A

<u>Legal Notice:</u>	Applicant John Staff & Owner Charles Kostopoulos seek a special permit (§4.5.1) to change a non-conforming use in order to open a frozen yogurt parlor (§7.11.10.1.1.a). The applicant also seeks a special permit under §9.13.a for a modification in parking in order to not provide three (3) required spaces. RB zone. Ward 6.
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<u>Zoning District/Ward:</u>	RB zone/Ward 6
<u>Zoning Approval Sought:</u>	§4.5.1, §7.11.10.1.1.a & §9.13.a
<u>Date of Application:</u>	April 14, 2009
<u>Date(s) of Public Hearing:</u>	5/20, 6/3 & 6/24/09
<u>Date of Decision:</u>	June 24, 2009
<u>Vote:</u>	5-0

Appeal #ZBA 2009-01 was opened before the Zoning Board of Appeals at Somerville City Hall on May 20, 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 is proposing to operate an independently owned frozen yogurt parlor on the site. There will be seating for 12 individuals and the owners would work the majority of operating hours with one or two other employees.

FINDINGS FOR SPECIAL PERMIT (SZO §4.5.1, §7.11.10.1.1.a & §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 Permit.

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 finds that the use proposed is appropriate for the area and will be a benefit to the neighborhood through the service it provides, by filling a vacant storefront and by providing jobs. The existing structure has a strong commercial presence in the area and the Board finds it appropriate to continuing to support commercial uses here. Changes to the exterior will be minimal and final proposed signage will need Planning Staff approval.

Under §9.13.a, the Board agrees with the Traffic and Parking Department and support the reduction in parking requirements. As stated earlier this area has high volumes of pedestrian traffic. The applicant has submitted a parking analysis that describes their customer demographic as predominantly Tufts students and residents from the immediate area that would arrive by foot. It is not foreseen that much additional vehicle traffic will be generated by this use. It is also typical of this type of use to have a high turnover in customers and any parking would be limited to short durations. However, conditions will be placed on this approval as per the Traffic and Parking Department's request.

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 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.

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 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. Façade alterations will be minimal and subject to Planning Staff approval.

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Fillis and Elaine Severino with Scott Darling absent. 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 a change in non-conforming use to allow for the operation of a frozen yogurt parlor (12 seats) and to reduce the parking requirement by three spaces. This approval is based upon the following application materials submitted by the Applicant:	BP/CO	Plng.					
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>(4/14/09)</td><td>Initial application submitted to OSPCD</td></tr></table>				Date (Stamp Date)	Submission	(4/14/09)	Initial application submitted to OSPCD
	Date (Stamp Date)				Submission			
(4/14/09)	Initial application submitted to OSPCD							
Any changes to the approved use that are not <i>de minimis</i> must receive ZBA approval.								
2	Final design of the façade and signage shall be approved by Planning Staff.	BP	Plng					
3	The Applicant shall meet all requirements for fire protection for a business use.	CO	FP					
4	The Applicant shall furnish to the City three Pedestrian Impact Recovery Systems for installation along the pedestrian corridor from Tufts to Powderhouse Boulevard and/or Broadway.	CO	T&P					
5	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 has been completed in accordance with the 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 _____