



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

PLANNING DIVISION

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JOSH SAFDIE (ALT.)

Case #: ZBA 2009-63
Site: 864 Broadway
Date of Decision: January 20, 2010
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: January 26, 2010

ZBA DECISION

Applicant Name:	Heberson Dosantos
Applicant Address:	42 Rosewood Avenue, Billerica, MA 01821
Property Owner Name:	Charles Kostopoulos
Property Owner Address:	4055 Losillias Drive, Sarasota, FL 34238
Agent Name:	N/A

<u>Legal Notice:</u>	Applicant, Heberson Dosantos, & Owner, Charles Kostopoulos seek a Special Permit under SZO §4.5.1 to change the use from an approximately 500sf real estate office to a used furniture store (§7.11.9.7).
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<u>Zoning District/Ward:</u>	RB zone/Ward 6
<u>Zoning Approval Sought:</u>	§4.5.1 & §7.11.9.7
<u>Date of Application:</u>	December 7, 2009
<u>Date(s) of Public Hearing:</u>	January 20, 2010
<u>Date of Decision:</u>	January 20, 2010
<u>Vote:</u>	5-0

Appeal #ZBA 2009-63 was opened before the Zoning Board of Appeals at Somerville City Hall on January 20, 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 one hearing of deliberation, the Zoning Board of Appeals took a vote.



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DESCRIPTION:

The proposal is to change the use to a furniture store. The anticipated hours of operation are 11 a.m. to 7 p.m. during the weekdays and 11 a.m. to 5 p.m. on the weekends. There would be one or two employees. The Applicant and Owner are not proposing any changes to the façade except for adding the name of the business above the door. The awning from the previous business was removed and the façade would be more in-line with the Owner's signage design plan for the building that was part of the Storefront Improvement Program in the past.

FINDINGS FOR SPECIAL PERMIT (SZO §4.5.1 & §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 of the SZO, the Board finds that the use proposed would not be substantially more detrimental to the neighborhood than the existing use. A furniture store is an appropriate use for the area with college students and residences. Powder House Circle functions as a commercial area even though it is zoned residential. The store is relatively small so it would not be out of scale with the retail in the area. The store would fill a vacant storefront and provide a few jobs. There is metered parking along the street for people to park and pick up furniture. The existing structure has a strong commercial presence in the area and the Board finds it appropriate to continuing to support commercial uses here.

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 use of a furniture store is not an allowed use; however, it is consistent with the purpose of the Residence B district, which is, "[t]o 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". A small furniture store is a convenient use for the residents in the area.

The proposal is also consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to "conserve the value of land and buildings," and to "provide for and maintain the uniquely integrated structure of uses in the City".

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 does not anticipate negative impacts to the community from this use. There will be no change to the exterior of the building except for the change in signage that will be more compatible with the design of the other signage on the building and the style of the building.



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DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Scott Darling and Elaine Severino. 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 **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 store selling furniture, home furnishings, carpets, or home appliances and equipment, including audio, computer, and video equipment (§7.11.9.7). 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>(Dec 7, 2009)</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>(January 4, 2010)</td><td>Plans submitted to OSPCD (elevation, floor plan)</td></tr></table>				Date (Stamp Date)	Submission	(Dec 7, 2009)	Initial application submitted to the City Clerk's Office	(January 4, 2010)	Plans submitted to OSPCD (elevation, floor plan)
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	(Dec 7, 2009)				Initial application submitted to the City Clerk's Office					
(January 4, 2010)	Plans submitted to OSPCD (elevation, floor plan)									
Any changes to the approved use that are not <i>de minimis</i> must receive ZBA approval.										
2	Final design of the signage shall be approved by Planning Staff.	BP	Plng.							
3	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP							
4	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	Plng.							



Attest, by the Zoning Board of Appeals:

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