



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

**MEMBERS**

*Herbert F. Foster, Jr., Chairman*  
Orsola Susan Fontano, *Clerk*  
Richard Rossetti  
T. F. Scott Darling, III, Esq.  
Danielle Fillis  
Elaine Severino (Alt.)  
Josh Safdie (Alt.)

**Case #: ZBA 2005-27-R1108**  
**Site: 1 Davis Square**  
**Date of Decision: December 17, 2008**

**Decision: Revision Approved with Conditions**  
**Date Filed with City Clerk: December 31, 2008**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Davis Square, LLC
<b>Applicant Address:</b>	444 Somerville Avenue, Somerville, MA 02143
<b>Property Owner Name:</b>	Davis Square, LLC
<b>Property Owner Address:</b>	444 Somerville Avenue, Somerville, MA 02143
<b>Agent Name:</b>	Adam Dash, Esq.
<b>Agent Address:</b>	48 Grove Street, Suite 304, Somerville, MA 02144

Legal Notice: Applicant & Owner: Davis Sq., LLC seeks a revision to Special Permit ZBA 2005-27a for a change in use to allow a commercial health and exercise facility to expand onto the third floor currently permitted for non-medical office use. CBD zone. Ward 6.

<u>Zoning District/Ward:</u>	CBD zone/Ward 6
<u>Zoning Approval Sought:</u>	Revision to Special Permit# 2005-27
<u>Date of Application:</u>	October 30, 2008
<u>Date(s) of Public Hearing:</u>	December 17, 2008
<u>Date of Decision:</u>	December 17, 2008
<u>Vote:</u>	4-0

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Appeal #ZBA 2005-227-R1108 was opened before the Zoning Board of Appeals at Somerville City Hall on December 17, 2008. After one hearing(s) of deliberation, the Zoning Board of Appeals took a vote.

**DESCRIPTION/FINDINGS:**

On November 2, 2005 the applicant was granted a special permit to alter and expand a non-conforming structure, a special permit with site plan review to establish a retail store of greater than 10,000 sf, a special permit with site plan review to establish a commercial health and fitness club of greater than 10,000 sf, a special permit for shared loading facilities and a variance for failure to provide twenty eight (28) additional parking spaces required for the expansion.

On March 15, 2006 the applicant was granted for a minor revision in order to incorporate a number of design changes to the original plans that were as a result of recommendations from the Design Review Committee as well as from conditions requested by the Planning Board and adopted into the final ZBA decision. Changes to the height of the building were also approved by the ZBA after preparations of the construction drawings showed the need for increased floor to ceiling height.

On July 11, 2007, the applicant received approval to modify the location of a sunshade.

The applicant is requesting this Special Permit Revision in order to allow a commercial health and exercise facility to expand onto the third floor.

The original ZBA decision approved a commercial health and fitness club of greater than 10,000 sf. However, that decision approved plans prepared showing office tenant space occupying the entire floor (A2.4). Consequently, the expansion of the health and fitness club requires ZBA approval. No additional parking is required.

The health and fitness club (Boston Sports Club), which currently occupies the second floor, wishes to expand their business into 3,016 gsf on the third floor of the building. The two floors would be connected with a 120 sf interior stairway. The health and fitness club would install by-right signage in several windows on the third floor that would match the existing second floor health and fitness club signage. The remaining third floor area would continue to be used as non-medical office.

The Board finds that the applicant has been unable to rent the third floor office space and that prolonged vacant floor space can have negative effects on a community. The expansion of the health and fitness club onto the third floor is found to be an appropriate use, and a good amenity for the neighborhood.

# **DECISION:**

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti 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 **4-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes				
1	This approval is to allow a health and fitness club to expand onto the third floor.	CO	ISD/ Plng.					
	The previous approval allowed the alteration of a non-conforming structure, established a health and fitness club use above 10,000sf, established a retail use above 10,000sf, allowed a shared loading facility and granted a variance for failure to provide 28 parking spaces.							
	Previous revisions allowed design, height and sunshade alterations.							
	Approval is based upon the following application materials and the plans submitted by the Applicant and/or agent:							
	<table><tr><th>Plan Date (Stamp Date)</th><th>Submission</th></tr><tr><td>7/21/05 (N/A)</td><td>Plans prepared by Paul Lukez Architecture (Pages A0.0-A2.3, A2.5)</td></tr><tr><td>2/7/06 (OSPCD 3/13/06)</td><td>Elevations and drawings (A200, A201, A600)</td></tr><tr><td>6/14/07 (N/A)</td><td>Elevation</td></tr></table>				Plan Date (Stamp Date)	Submission	7/21/05 (N/A)	Plans prepared by Paul Lukez Architecture (Pages A0.0-A2.3, A2.5)
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6/14/07 (N/A)	Elevation							

	<div> <div>(SKA-56)</div> <div>10/29/08 (OSPCD 12/11/08)</div> </div> <div>3rd floor expansion plan</div> <p>Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive ZBA approval. Any future changes to floor plans that do not constitute a change of use or increase the required parking shall not require ZBA approval.</p> <p>These conditions replace all conditions attached to prior permits.</p>			
2	All exterior lighting to be used on the building shall be subject to final review and approval by the City's Lights and Lines Inspector	Cont.	DPW	
3	An upgrade in the entire building's fire alarm and suppression systems to current code is required. The entire building will be required to meet the NFPA 13 and 72 2002 standards. Fire Prevention permits will be required for all work. The Board approves the granting of these special permits subject to the building being completed in accordance with plans filed and in accordance with the requirements of the Fire Prevention Bureau and fire safety code, and as evidenced by a Certificate of Compliance being granted prior to the issuance of an Occupancy Permit.	CO	FP	
4	The Applicant must continue to make the five (5) equal annual installments of the PMC (linkage) as provided in SZO §15.3. The PMC shall be calculated in accordance with the documented final area calculations obtained from the OSPCD Housing Director.	Cont.	Housing	
5	A designated trash storage room must be provided within the building. All trash must be stored within the building until it is to be removed for curbside pickup. Trash removal must occur at the designated loading area on Dover Street.	Cont.	ISD	
6	A designated bicycle storage room must be located within the building and must be available to all employees of the building.	Cont.	ISD	
7	Since the Applicant is not proposing any landscaping at the site, the Applicant/or tenants must participate in the City's Adopt-A-Spot scheme to help with the upkeep of the Davis Square Plaza, which is located directly opposite from the proposed building.	Cont.	ISD	
8	The use of the roof of the building shall be restricted to maintenance and mechanical related activities.	Cont.	ISD	
9	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	Planing	

Attest, by the Zoning Board of Appeals:

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

Attest, by the Zoning Board of Appeals 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  
ZBA 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 \_\_\_\_\_