



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

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JOSH SAFDIE (ALT.)

Case #: ZBA2009-21
Site: 45 Day Street
Date of Decision: August 19, 2009
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: August 31, 2009

ZBA DECISION

Applicant Name:	Flatbread, Inc.
Applicant Address:	45 Day Street, Somerville, MA 02144
Property Owner Name:	Davis Square Bowladrome, Inc.
Property Owner Address:	45 Day Street, Somerville, MA 02144
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145

<u>Legal Notice:</u>	Applicant Flatbread, Inc. & Owner Davis Square Bowladrome, Inc. seeks a special permit under §9.13.a in order to not provide six (6) required parking spaces. This would enable the applicant to construct a by-right restaurant less than 5000sf within the existing structure. CBD zone. Ward 6.
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<u>Zoning District/Ward:</u>	CBD zone/Ward 6
<u>Zoning Approval Sought:</u>	§9.13.a
<u>Date of Application:</u>	May 14, 2009
<u>Date(s) of Public Hearing:</u>	7/15, 8/5 & 8/19/09
<u>Date of Decision:</u>	August 19, 2009
<u>Vote:</u>	5-0

Appeal #ZBA 2009-21 was opened before the Zoning Board of Appeals at Somerville City Hall on July 15, 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, Flatbread Inc. is proposing to restructure the current bowling alley and billiard hall into a 140 seat restaurant serving pizza with a bar. The company is a small franchise operation that has a few restaurants in northern New England. The restaurant will have a family friendly atmosphere and part of the company's business

philosophy is to be a good neighbor in the communities where the restaurants are located. The company uses organic, locally grown ingredients whenever possible to support the local community and to be more environmentally friendly.

The proposed restaurant would be approximately 3,455 sf and the bar would be approximately 749 sf. In addition to the new restaurant, ten of the existing lanes would remain for bowling. The applicant is not proposing any alterations to the storefront. The proposed use would require six (6) additional off-street parking spaces under Article 9 of the SZO due to the proposed seating and increase in employees.

FINDINGS FOR SPECIAL PERMIT (SZO §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 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."

Parking Reduction: The Applicant requires a special permit under §9.13 of the SZO. Under §9.13, the SPGA may grant a special permit modifying certain parking standards of Article 9 only when consistent with the purposes set forth in §9.1 and that the zoning relief does not cause detriment to the surrounding neighborhood through: increase in traffic volumes, increased traffic congestion or queuing of vehicles, change in the type of traffic, change in traffic patterns and access to the site, reduction in on-street parking, and unsafe conflict of motor vehicle and pedestrian traffic.

The Board finds that the parking relief would not cause detriment to the neighborhood. The Davis Square neighborhood is a commercial area with high pedestrian traffic, excellent access to public transportation and municipal parking. The nature of the business will generate a high turnover rate of customers that will often arrive by foot, which makes the parking reduction acceptable.

Of those purposes set forth under §9.1 of the SZO, the availability and safe use of parking areas will not be negatively affected by a granted reduction in required spaces. Bicycle parking will be increased through conditions based on approval of this Special Permit.

Bar Use: The Applicant requires a Special Permit to establish a bar use under §7.11.10.6.a of the SZO. As conditioned, the proposal would comply with the SZO standards. The bar use would need to be licensed by the city and would be subject to any and all restrictions under the licensing agreement and applicable building code. According to the City Clerk, "Somerville does not grant alcohol licenses to bars or taverns that don't serve food. Somerville only grants alcohol licenses to restaurants that provide onsite dining." The Board finds that the licensing restrictions ensure that the operation would maintain a family friendly atmosphere and strengthen the compatibility with the neighborhood.

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 project is located in a Central Business (CBD) zoning district. The CBD district seeks, "to preserve and enhance central business areas for retail, business services, housing, and office uses and to promote a strong pedestrian character and scale in those areas. A primary goal for the districts is to provide environments that are

safe for and conducive to a high volume of pedestrian traffic, with a strong connection to retail and pedestrian accessible street level uses".

Parking Reduction: Allowing the proposed reduction in parking would be consistent with the goals of the City and the CBD district by promoting pedestrian traffic. The Board finds the Davis Square area to be among the most pedestrian friendly areas in the city due the character of the area, the diversity in commercial uses and proximity to public transportation. The approval of this Special Permit will serve to strengthen the strong pedestrian presence that exists. Parking is available to patrons that must drive to the area in several municipal lots spread throughout the area. The location at 45 Day Street is particularly well serviced by municipal parking.

Bar Use: The Board finds the proposed bar use would be beneficial to the health and vibrancy of the square and to enhance the character of the area as a central business district. The Board finds that since this use would be in conjunction with a restaurant and bowling alley that the negative effects sometimes associated with a bar use would be avoided. The project would also be beneficial to the neighbors of the property as this will increase dining and entertainment options that are available in the area. The ten (10) bowling lanes that will be preserved will continue to provide entertainment options in the Davis Square area. The Board finds that this to an important amenity to the area and will condition that the lanes remain at the facility.

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."

There is no proposal to redesign the exterior of the structure. Any alterations to the façade that would not be considered cosmetic by Inspectional Services would need additional Special Permit approval. As a condition of approval any new signage will be required to be approved by Staff.

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Fillis 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 **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 reduction of the required parking spaces from six (6) to zero (0), and to allow for the establishment of an approximately 750 sf bar in order to develop a restaurant and bar of approximately 4,200 sf within the existing bowling alley. This approval is based upon the following application materials and the plans submitted by the Applicant and/or Agent:		Plng.							
	<table><tr><th>Date (stramp date)</th><th>Submission</th></tr><tr><td>(5/14/09)</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>6/24/09 (7/10/09)</td><td>Floor Plan submitted to OSPCD (A-1)</td></tr></table>				Date (stramp date)	Submission	(5/14/09)	Initial application submitted to the City Clerk's Office	6/24/09 (7/10/09)	Floor Plan submitted to OSPCD (A-1)
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Any changes to the approved plans or use must receive ZBA approval.										

2	The applicant shall purchase 125 City of Somerville Parking Meter Cards at an amount of \$20 each from the Office of Traffic and Parking. The applicant shall make the cards available on premises for purchase by the general public during regular hours of operation. The cards may be sold at a value no greater than the amount paid to Traffic & Parking. The Applicant shall also participate in any City efforts to market the parking cards.	CO	T&P	
3	Any proposed new signage shall be approved by Planning Staff	CO	Plng	
4	Four (4) bicycle parking spaces shall be provided which can be met with two (2) "U" type bicycle racks.	CO	Plng.	
5	The applicant shall develop a plan to mitigate any potential negative effects from the bar use such as noise or loitering to be approved by Planning Staff.	Building permit	Plng.	
6	Ten (10) lanes for bowling shall remain available for public use and shall be kept in working order. The applicant shall make best efforts to retain three (3) lanes beneath the new floor construction. Two (2) lanes may be removed and stored for potential future restoration.	CO	Plng.	
7	The Applicant must contact the 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 Building Permit Signoff	Plng. / ISD	

Attest, by the Zoning Board of Appeals:

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

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 _____