



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
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**Case #:** ZBA 2009-54-R1-1/2011  
**Date:** March 2, 2011  
**Recommendation:** Conditional Approval

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**PLANNING STAFF REPORT**

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**Site:** 212 Elm Street

**Applicant Name:** Davis Square Real Estate, LLC

**Applicant Address:** 745 Boylston St, Suite 203, Boston MA 02116

**Property Owner Name:** same

**Agent Name:** Adam Dash, Esq.

**Agent Address:** 48 Grove St, Suite 304, Somerville MA 02144

**Alderman:** Rebekah Gewirtz

Legal Notice: Applicant & Owner, Davis Square Real Estate LLC, seek a revision to Special Permit # ZBA 2009-54 to be able to relocate or remove an interior demising wall to allow for one or two first floor retail spaces. The original special permit was to alter the exterior of the ground floor office space under SZO §4.4.1 in order to create two by-right retail storefronts of a combined approximately 4,350 square feet.

Zoning District/Ward: CBD / 6

Zoning Approval Sought: Revision to Special Permit under SZO 5.3.8

Date of Application: Jan 19, 2011

Dates of Public Hearing: Zoning Board of Appeals March 2, 2011

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**I. PROJECT DESCRIPTION**

1. Proposal: The site received a special permit (ZBA 2009-54) in December of 2009 to alter the exterior of the ground floor office space under SZO §4.4.1 in order to create two by-right retail storefronts of a combined approximately 4,350 square feet. The approved proposal included altering the two existing window openings to create two new entry doors and to construct new metal canopies over said new entries with associated lighting. The purpose of the alterations was to convert the vacant, approximately 4,348 sf of first floor non-medical office space into two retail spaces of approximately



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3,469 sf and 879 sf, respectively. Some landscaping was relocated to accommodate one of the new entries and to create three new surface parking spaces, for a net gain of approximately 105 sf of landscaping. Retail is a by-right use within the CBD district.

The Planning Board report from December 16, 2009 attached contains the details of the site and the proposal. The only change to the existing special permit that is being requested is an internal change that will not affect the plans to alter the exterior the building. The Applicants would like to have the flexibility to provide use the 4,348 sf of retail space for one or two tenants. The interior partition wall would be removed from the plans if one tenant was found to occupy the space.

2. Nature of Application: Revisions to Special Permits may be sought before the Certificate of Occupancy is issued for a project that received a special permit. The proposed revision is not deemed de minimis because it contravenes the legal notice for the original public hearing which stated that the use of the space would be for two retail storefronts. Revisions that are not de minimis are subject to the full notice and hearing provisions of the Somerville Zoning Ordinance.

3. Impacts of Proposal: Staff do not anticipate any negative impacts from the proposed revision. The plan for the exterior renovation would not change and the type of retail tenants that would occupy a 4,348 sf space versus a 3,469 sf space is negligible. The revision would allow for flexibility for the owners to find tenants for the building. Having the space occupied will be a benefit for the residents and businesses in neighborhood.

## **II. FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1, 5.3.8):**

In order to grant a revision to 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 Staff 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."

The proposal complies with the standards for issuing revisions. The Certificate of Occupancy has not yet been issued, the proposal otherwise is in accordance with the originally approved plans and conditions, and notice has been given for the public hearing.

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 change from the number of tenants in the space from two to one continues to comply with the purpose of the Central Business District and is consistent with the purpose of the Ordinance.

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 design of the exterior of the structure as approved in 2009 will not change with the proposed revision. The impacts of a tenant that would 4,348 sf space versus a 3,469 sf space is negligible. There will be a loss of a space for a small retail tenant; however, allowing for the flexibility to attract a tenant in the space outweighs having two retain spaces remain vacant.

### III. RECOMMENDATION

#### Special Permit under §4.4.1

Based on the above findings and subject to the following conditions, the Planning Staff recommends **CONDITIONAL APPROVAL** of the requested **SPECIAL PERMIT**.

#	Condition	Timeframe for Compliance	Verified (initial)	Notes				
1	Approval is to be able to relocate or remove an interior demising wall to allow for one or two first floor retail spaces in a building that received a special permit in 2009 (Special Permit ZBA 2009-54). The conditions attached to the original Special Permit continue to apply. The approval for the revision 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>Jan 19, 2011</td><td>Initial application submitted to the City Clerk's Office</td></tr></table>				Date (Stamp Date)	Submission	Jan 19, 2011	Initial application submitted to the City Clerk's Office
	Date (Stamp Date)				Submission			
	Jan 19, 2011				Initial application submitted to the City Clerk's Office			
Any changes to the approved revision that are not <i>de minimis</i> must receive SPGA approval.								
2	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.					