



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
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**MAYOR**

PLANNING DIVISION

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**Case #: ZBA 2009-48**  
**Site: 187 Elm Street**  
**Date of Decision: November 4, 2009**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: November 6, 2009**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Alpine Restaurant Group, Inc.
<b>Applicant Address:</b>	39 Alpine Street, Somerville, MA 02144
<b>Property Owner Name:</b>	187 Elm Street, LLC
<b>Property Owner Address:</b>	74 Prospect Street, Cambridge, MA 02139
<b>Agent Name:</b>	Adam Dash, Esq.
<b>Agent Address:</b>	48 Grove Street, Suite 304, Somerville, MA 02144

**Legal Notice:** Applicant Alpine Restaurant Group, Inc. & Owner 187 Elm Street, LLC seek a Special Permit with Design review (SZO §5.1.5) to establish a restaurant with outdoor seating (§7.11.10.1.2.b). NB zone. Ward 6.

<b><u>Zoning District/Ward:</u></b>	NB zone/Ward 6
<b><u>Zoning Approval Sought:</u></b>	§5.1.5 & §7.11.10.1.2.b
<b><u>Date of Application:</u></b>	October 2, 2009
<b><u>Date(s) of Public Hearing:</u></b>	November 4, 2009
<b><u>Date of Decision:</u></b>	November 4, 2009
<b><u>Vote:</u></b>	5-0

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Appeal #ZBA 2009-48 was opened before the Zoning Board of Appeals at Somerville City Hall on November 4, 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(s) of deliberation, the Zoning Board of Appeals took a vote.



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## **DESCRIPTION:**

The proposal is to open a restaurant with the same number of seats as the previous restaurants at this location: 50 inside and 20 outside. The restaurant would be a pizzeria and there would be a wood-burning oven with a new vent on the roof. Two existing rooftop vents would be removed. There would be some changes to the interior space; however, the exterior would remain the same except for a change to the wording on the sign. The location and size of the sign would remain the same. The outdoor seating would have planters to distinguish the eating area from the sidewalk. Since the sidewalk would be reduced to 4 feet, the planters should be placed so that pedestrians can comfortably step in between them if more space is needed to pass someone. The planters should also be movable so that in cool weather they could be pushed toward the building or removed to allow for a wider sidewalk.

The Applicant proposes to have 8-9 employees onsite at any one time and operate 7 days per week from 11am to 11pm. Loading would be weekdays between 9 and 5 and on weekends between 10 and 3. Deliveries would occur through a delivery door in the rear.

Part of the prior special permit was to add four landscaped areas that would total approximately 548 sf. Some of the landscaping has been established; however, the remaining plantings should be installed to comply with the prior landscaping plan. The areas that are lacking landscaping are the northwest portion of the site behind the parking spaces and in the parking lot near the main Elm Street entrance.

Parking for the previous and proposed use is based on either gross square feet or number of seats and employees; whichever is larger. Both of these figures are staying the same for the new use. The required parking for the fast-order food establishment received a 10% reduction because it is within 650 sf of a municipal lot. The municipal lot remains in the same location. Since parking the requirement is the same and the municipal lot is still operating, no additional parking is required for the change in use.

## **FINDINGS FOR SPECIAL PERMIT WITH DESIGN REVIEW** **(SZO §5.1.5 & §5.1.4):**

In order to grant a special permit with design review, the SPGA must make certain findings and determinations as outlined in §5.1.4 and §5.1.5 of the SZO. This section of the report goes through §5.1.4 and §5.1.5 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."

The proposal complies with the design guidelines for business zones (§5.1.5):

1. The building maintains a strong presence along the primary street.
2. The entrances of the building are differentiated from the rest of the elevation with metal and glass in contrast to the brick on the rest of the façade.
3. There are approximately 10 foot windows that look like small storefronts along the front façade. Small scale retail is typical in the area.
4. There are clearly defined rhythms of large windows with a curved design at the top and awnings.
5. The roof is flat which is consistent with the other commercial roof types in the area.
6. The materials of the building are red brick, metal and glass, all of which are dominant in the area.
7. There is landscaping along the street where the parking lot breaks the streetwall. Additional landscaping near the entrance was proposed for the last special permit with design review and will be a recommended condition of approval to comply with this guideline to continue the streetwall between buildings.



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8. The rooftop mechanical equipment (pizza oven vent) would be placed in the middle rear of the structure and would comply with the 45 degree setback from the edge of the structure. Two existing chimneys near the edges of the building would be removed as shown on the roof plan.

9. The building complies with guidelines in Article 6 for Neighborhood Business Districts (§6.1.4.) - the parking is at the rear of the lot, behind the building.

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 proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to conserving the value of land and buildings and encouraging the most appropriate use of land throughout the City.

The proposal is consistent with the purpose of the district, which is to establish and preserve areas for small-scale retail stores, services and offices which are located in close proximity to residential areas and which do not have undesirable impacts on the surrounding neighborhoods. This small scale restaurant where the majority of people are sitting down to eat is in close proximity to the vibrant Davis Square with several transit options. This type of use conforms to the spirit of the Neighborhood Business district.

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."

As discussed in the design guidelines in finding 2, the building conforms to the characteristics of the NB district and the area. A small scale restaurant is compatible with the commercial uses in the district and it would be a convenient use for the residents in the area. The Board does not anticipate negative impacts to the community from this use. There would be no change to the exterior of the building except for the name of the restaurant on the signage and improvements to the site that were conditions of the prior approval. The amount of landscaping would increase, the dumpster and recycling receptacles would be screened, and there would only be one dumpster for trash onsite. The businesses in the area will benefit from filling a vacant storefront.

### **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. 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:



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#	Condition	Timeframe for Compliance	Verified (initial)	Notes								
1	Approval is to establish a restaurant with outdoor seating (§7.11.10.1.2.b) with 50 seats inside and 20 seats outside. 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>Oct 2, 1009</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>Aug 10, 2009</td><td>Plans submitted to OSPCD (A1.1: roof plan, A1.0: floor plan)</td></tr><tr><td>Sept 11, 1996</td><td>Plans submitted to OSPCD (landscape plan)</td></tr></table>				Date (Stamp Date)	Submission	Oct 2, 1009	Initial application submitted to the City Clerk’s Office	Aug 10, 2009	Plans submitted to OSPCD (A1.1: roof plan, A1.0: floor plan)	Sept 11, 1996	Plans submitted to OSPCD (landscape plan)
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Sept 11, 1996	Plans submitted to OSPCD (landscape plan)											
Any changes to the approved site plan, elevations or use that are not <i>de minimis</i> must receive ZBA approval.												
2	The Applicant or Owner shall meet the Fire Prevention Bureau’s requirements.	CO	FP									
3	The 9 <sup>th</sup> parking space by the dumpster shall be marked as indicated on the landscape plan.	CO	Plng.									
4	The site shall comply with the landscaping plan.	CO	Plng.									
5	The planters, or similar barrier, separating the outdoor dining area and the sidewalk shall be placed so that pedestrians can comfortably step in between them if more space is needed on the sidewalk to pass someone. The planters, or similar barrier, shall be movable so that in cool weather they could be pushed toward the building or removed to allow for a wider sidewalk. A 4’ wide pedestrian corridor shall be maintained between the planters and any permanent structure within the sidewalk.	CO	Plng.									
6	To the extent possible, all new exterior lighting must be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	Plng.									
7	Applicant will screen the dumpster and recycling receptacles with fencing that totally encloses them and blocks views of them.	CO	Plng.									
8	An Outdoor Seating and Goods License is required from the Board of Alderman to encumber the sidewalk.	annually	BOA									
9	The Applicant, its successors and/or assigns, shall be responsible for maintenance of both the building and all on-site amenities, including landscaping, fencing, lighting, parking areas and storm water systems, ensuring they are clean, well kept and in good and safe working order.	Cont.	ISD									
10	The Applicant is encouraged to hire locally and urge employees to commute to work on foot, bicycle or use public transportation.	Cont.	Applica nt									



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11	There shall only be one dumpster for trash on-site. There may be recycling receptacles within the fencing enclosure for the dumpster.	Cont.	ISD	
12	All operations of the restaurant shall end at 11pm.	Cont.	ISD	
13	The Applicant shall make his best faith efforts, including collaboration with the Traffic and Parking Director or his designee, to secure additional designated parking spaces should any become available in the Davis Square area in the future, through the Business Program or other means.	Cont.	Owner / Tenant	
14	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	Plng.	
15	The Applicant shall install a bicycle rack in an area to be approved by the Planning staff.	CO	Plng.	
16	The Applicant shall submit a site plan that includes a bike rack, a 4' pedestrian clearance from any obstruction in the sidewalk and the approved 1996 landscaping to be approved by Planning staff.	CO	Plng.	



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



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