



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

PLANNING DIVISION

ZONING BOARD OF APPEALS MEMBERS

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Case #: ZBA 2010-25
Site: 187 Elm Street
Date of Decision: July 14, 2010
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: July 22, 2010

ZBA DECISION

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

Legal Notice: Applicant, Alpine Restaurant Group, Inc., & Owner, 187 Elm St, LLC, seek a Variance from parking requirements (SZO §9.5) in order to increase seating capacity of the restaurant from 50 to 98 interior seats.

<u>Zoning District/Ward:</u>	NB zone/Ward 6
<u>Zoning Approval Sought:</u>	§9.5
<u>Date of Application:</u>	May 11, 2010
<u>Date(s) of Public Hearing:</u>	6/16, 7/14
<u>Date of Decision:</u>	July 14, 2010
<u>Vote:</u>	4-0

Appeal #ZBA 2010-25 was opened before the Zoning Board of Appeals at Somerville City Hall on June 16, 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 two hearings of deliberation, the Zoning Board of Appeals took a vote.



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DESCRIPTION:

The Applicant is seeking a variance from parking requirements to increase the number of seats in the restaurant from 50 to 98. The outdoor seating would remain at 20 seats. The applicant has indicated that the number of employees (8-9) on site at any given time and the closing time of 11pm would not change from the 2009 special permit approval, although it would be valuable to investigate how this would work operationally with the addition of more seating. The Applicant stated that the business is doing well. Patrons are standing in line to wait to eat at the restaurant and there is sufficient space inside of the restaurant to add seating.

FINDINGS FOR VARIANCE (§9.5):

In order to grant a variance for parking (§9.5) requirements the SPGA must make certain findings and determinations as outlined in §5.5.3 of the SZO.

The Applicant's responses to the findings are attached and summarized below.

1. There are "special circumstances relating to soil conditions, shape or topography of land or structures which especially affect such land or structures but not affecting generally the zoning district in which it is located, causing substantial hardship, financial or otherwise."

The Applicant stated that there is ample space in the building to add additional seats and there is demand for more seating. Also, the lot has an unusual triangular shape and this prevents space for parking in order to fully utilize the interior space of the building. The low seating occupancy creates a hardship because the Applicant is paying rent and utilities on a building which is underutilized with its limited seating.

The Board finds that the existing lot is somewhat unique in its triangular shape. There is limited ability to expand the property to add parking. This unique circumstance means that any expansion of the building, or any new building on the lot, would be subject to a parking variance under the current zoning. The failure of several businesses at the site in the past suggest that this is a difficult location to run a restaurant and the increased seating capacity should help to reduce financial hardships associated with running a business at the site.

2. "The variance requested is the minimum variance that will grant reasonable relief to the owner, and is necessary for a reasonable use of the building or land."

The Applicant stated that the only relief necessary is for the number of parking spaces required to fully utilize the building. The site is within walking distance of the MBTA stops in Davis and Porter Square and is in close proximity to the parking lot on Cutter Avenue.

The Board accepts the argument in the memorandum dated June 29, 2010 submitted by attorney Adam Dash, Esq., agent and attorney for the applicant, that the requested variance is the minimum variance that will grant reasonable relief.

3. "The granting of the variance would be in harmony with the general purpose and intent of this Ordinance and would not be injurious to the neighborhood or otherwise detrimental to the public welfare."

The Applicant stated that having a dedicated parking lot for a business in Davis Square is unique. Since the lot has not been frequently utilized, there are many metered parking spaces near the site, and the restaurant has a large pedestrian customer base, it is unlikely that the increased seating capacity will have a significant effect on the area. Having a successful business in this location where other businesses have failed is in the best interest of the neighborhood.



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The restaurant is in harmony with the general purposes of the Ordinance as set forth under §1.2, including but not limited to conserving the value of land and buildings and encouraging the most appropriate use of land throughout the City. The restaurant is also consistent with the purpose of the neighborhood business 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. The Applicant's parking memo demonstrates that there is availability of on-street parking spaces near the business during the restaurant's hours of peak demand so the increased seating itself would not have undesirable impacts on the parking demand in the neighborhood. Parking availability and turnover are important to the vibrancy of the Square. The site is in close proximity to the Davis Square MBTA subway stop, bus routes, as well as the nearby municipal parking facilities.

While it remains to be seen if additional input from the immediate abutters generates particular concern, the Board and traffic and parking staff do not find significant impacts on the neighborhood and believe that the identified conditions would address this concern.

The Applicant submitted a petition with over 600 names of people that are in support of adding more seats to the restaurant (and serving alcohol on the outdoor patio). People that signed the petition are from different zip codes, although, many live in the same zip code as the restaurant.

The Board finds that granting the variance would not be detrimental to the neighborhood.



DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti and Scott Darling with Danielle Fillis and Elaine Severino absent and Josh Safdie recused. 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 **4-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes								
1	Approval is to not provide 11 parking spaces in order to increase the restaurant’s (§7.11.10.1.2.b) capacity to 98 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>May 11, 2010</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>(May 27, 2010)</td><td>Plans submitted to OSPCD (floor plans)</td></tr><tr><td>May 11, 2010</td><td>Traffic Memo</td></tr></table>				Date (Stamp Date)	Submission	May 11, 2010	Initial application submitted to the City Clerk’s Office	(May 27, 2010)	Plans submitted to OSPCD (floor plans)	May 11, 2010	Traffic Memo
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May 11, 2010	Traffic Memo											
Any changes to the approved plans that are not <i>de minimis</i> must receive SPGA approval.												
2	For pedestrian safety the Applicant shall purchase of 5 Pedestrian Impact Recovery Systems to be delivered to the City for installation in various and appropriate crosswalks along pedestrians corridors in the Davis Square area to the restaurant.	CO	Plng. / T&P									
3	For pedestrian and bicycle safety, the Applicant shall provide \$2,500.00 to the City for pavement markings to be installed in the area specified in condition 2.	CO	Plng. / T&P									
4	To encourage turnover rates at parking spaces in the vicinity of Davis Square, the Applicant shall purchase twenty \$20.00 Somerville Parking Meter Cards from Traffic and Parking. These Parking Meter Cards would be for sale at the same price by the business owner to patrons of the establishment and any other individuals.	CO	Plng. / T&P									
5	The Applicant shall post signage in the parking lot to inform patrons that the parking spaces are available for them to use.	CO	Plng.									



6	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.	
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Attest, by the Zoning Board of Appeals:

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

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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