



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 # 2009-57
Site: 255 Elm Street
Date of Decision: February 3, 2010
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: February 9, 2010

ZBA DECISION

Applicant Name:	Rockwell Restaurant Group, LLC
Applicant Address:	c/o Kenneth Kelly, 73 Union Square, Somerville, MA 02143
Property Owner Name:	Gorin Realty Trust
Property Owner Address:	c/o Wilder-Manley Associates, 66 Lang Wharf, Boston, MA 02110
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145
 <u>Legal Notice:</u>	 Applicant Rockwell Restaurant Group, LLC & Owner Gorin Realty Trust seeks a Special Permit with Design Review to establish a 4,900± s.f. lounge (SZO §7.11.10.6.B), a Special Permit to alter the façade of the nonconforming structure under §4.4.1, and a Variance in order to not provide thirty-one (31) required parking spaces (§9.5) and one (1) loading dock for the lounge and by-right 4,400± s.f. restaurant.
 <u>Zoning District/Ward:</u>	 CBD zone/Ward 6
<u>Zoning Approval Sought:</u>	§7.11.10.6.B, §4.4.1 & §9.5
<u>Date of Application:</u>	November 24, 2009
<u>Date(s) of Public Hearing:</u>	1/6, 1/20 & 2/3/10
<u>Date of Decision:</u>	February 3, 2010
<u>Vote:</u>	5-0

Appeal #ZBA 2009-57 was opened before the Zoning Board of Appeals at Somerville City Hall on January 6, 2010. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L.



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c. 40A, sec. 11 and the Somerville Zoning Ordinance. After two hearings of deliberation, the Zoning Board of Appeals took a vote.

DESCRIPTION:

The current application applies to the 4,470 s.f. retail space that Bowl and Board most recently occupied and the retail storage in the basement. The proposal is to convert the retail storage space in the basement into a 4,992 s.f. lounge with 122 seats, convert the retail space on the first floor to a restaurant with 191 seats and renovate the theater in the basement that was previously Jimmy Tingle Theater.

The changes to the exterior of the structure include changing the windows, doors, and sign board area for the restaurant portion of the building to appear unique from the rest of the building. Under the proposal, the original tile and marble would be covered. The proposal also includes altering the entrances on the right side of the building. A new door would be added and the existing door would be shifted to the right. The purpose of this change is to separate the office entrance from the lounge entrance. The gate leading to the alley to access the theater would also be replaced.

There is an area at the end of the alley for trash storage.

Three required bicycle parking space would be a condition of approval.

A conceptual signage plan has been submitted. A final sign design to be approved by Planning Staff is a condition of approval.

FINDINGS FOR SPECIAL PERMIT (SZO §5.1.4, §5.1.5 & §7.11.10.6.B):

In order to grant a special permit, 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 these sections 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."

Use: The Applicant requires a special permit with design review to establish a lounge use under §7.11.10.6.b. of the SZO. The liquor license would need to be issued by the City and would be subject to any and all restrictions under the licensing agreement.

Structure: The Board finds that the alterations to the façade, as conditioned, are not substantially more detrimental to the neighborhood than the existing nonconforming building. The change to the façade presents a conflict between allowing the restaurant to have a unique, modern appearance and keeping original design of the building intact; however, the conditions address this conflict. The Board finds that keeping the building design intact is important – it has a unique and distinct structure. The granite columns and yellow tile create three segments to the first story of the building. Removing these elements in just one portion of the building would make the building appear off-balanced with clashing styles. Also, if the tenant moved out it would be difficult to restore the building back to the original condition if the proposed changes were made. A condition has been attached to allow for alterations to signage, windows and doors to the restaurant portion of the building within the intended areas in the existing design of the building. This allows for conversions of retail to restaurant-style windows and doors without eliminating portions of the façade that make it uniform and balanced.



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The proposed theater entrance would not be more detrimental to the building, as it conforms with the overall design of the building. It would be within the existing glass window and door enclosure.

Within the CBD district those projects requiring a special permit with design review should also comply with the following district standards and guidelines to the highest degree practicable:

1. "Across the primary street edge, the building should complete the streetwall." The building as constructed along the sidewalk, in-line with adjacent buildings completes the streetwall.
2. "At the street level, provide continuous storefronts or pedestrian arcade which shall house either retail occupancies, or service occupancies suitably designed for present or future retail use." The change to the façade would convert a retail storefront into a restaurant storefront; which includes larger, operable windows, transoms and a smaller door. As conditioned, the storefront could go back to a retail use with minor alterations to the building.
3. "Massing of the building should include articulation which will blend the building in with the surrounding district. At the fourth floor, a minimum five-foot deep setback is recommended." The existing building includes articulation with distinct storefronts, an office entrance and upper floors that are recessed from the façade.
4. "Locate on-site, off-street parking either at the rear of the lot behind the building or below street level; parking should not abut the street edge of the parcel." The building does not have on-site parking associated with it.
5. "Provide access to on-site, off-street parking from either a side street or alley. Where this is not possible, provide vehicular access through an opening in the street level facade of the building of a maximum 25 feet in width." The building does not have on-site parking associated with it.

§5.1.5 of the SZO provides guidelines for developments within a business zone seeking a special permit with design review. The guidelines are intended to promote certain urban design principles and physical building characteristics within business districts. These guidelines are not intended to discourage innovative architectural design solutions. This section of the report goes through the various design guidelines to determine the compatibility of the proposed project.

1. "Maintain a strong building presence along the primary street edge, continuing the established streetwall across the front of the site so as to retain the streetscape continuity; however, yards and setbacks as required by Article 8 shall be maintained."
The proposed alterations would not alter the building's strong streetwall.
2. "Differentiate building entrances from the rest of the primary street elevation, preferably by recessing the entry from the plane of the streetwall or by some other articulation of the elevation at the entrance."
The change to the façade would differentiate the entrance for the theater versus the offices. The entrance would continue to be recessed. The alley entrance to the theater would also be differentiated. The gate is currently unattractive and does not appear to be an entrance. The new gate and signage in the alley would make the entrance visible and welcoming.
3. "Make use of the typical bay widths, rhythms and dimensions prevalent in buildings adjacent to the site, especially in new construction or substantial redevelopment."
The existing bay widths at approximately thirty feet are typical in Somerville and this will not change.
4. "Clearly define these bay widths, rhythms and dimensions, making them understandable through material patterns, articulations and modulations of the facades, mullion design and treatment, etc."



The existing design of the building creates clearly defined bays through the use of tiles and granite. The proposed change to the restaurant portion of the façade would make it distinguishable as a restaurant; however, the Board believes it would adversely change the original, patterned design of the building. A condition has been added to retain the original material patterns.

5. "Provide roof types and slopes similar to those of existing buildings in the area."

The building has a flat roof, which is typically found in Davis Square.

6. "Use materials and colors consistent with those dominant in the area or, in the case of a rehabilitation or addition, consistent with the architectural style and period of the existing building. Use of brick masonry is encouraged, but not considered mandatory." The proposed design would not be consistent with the architectural style of the building. The original tiles and granite would be covered or eliminated with lighting, windows and a new board. It would be difficult to reestablish the original design if the proposed tenant moved out. The conditions address this concern.

7. "When parking lots are provided between buildings, abutting the primary street and breaking the streetwall, provide a strong design element to continue the streetwall definition across the site, such as a low brick wall, iron works or railing, trees, etc."

The existing building does not have any on-site parking associated with it, nor are any new parking lots proposed.

8. "Locate transformers, heating and cooling systems, antennae, and the like, so they are not visible from the street; this may be accomplished, for example, by placing them behind the building, within enclosures, behind screening, etc." Any mechanicals needed would be located within the building or on the roof of the building.

9. Sites and buildings should comply with any guidelines set forth in Article 6 of this Ordinance for the specific base or overlay zoning district(s) the site is located within.

The subject property is located within a CBD zoning district. Guidelines set forth under Article 6 of the Ordinance were addressed within this section of the report (above).

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 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".

Use: The Board finds that the proposed lounge use would be beneficial to the health and vibrancy of the Square and enhance the character of the area as a central business district. The project would also be beneficial to the neighbors of the property as this would increase dining and entertainment options that are available in the area.

There are only a few fixed seat theaters in the City. The Board finds that the theater is a unique entertainment venue and increasing its chance for success by renovating it and providing a connected lounge area will be a benefit to the City. Retention of the fixed seats is conditioned below to ensure that this type of venue remains.



Structure: The change to the façade would provide a strong pedestrian character to the building but it would adversely impact the historic design of the building. The conditions address this concern.

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."

Use: The lounge use would be compatible with the surrounding area, which is comprised of restaurants, bars, retail and office. The use would also be compatible with the existing theater located in the basement and the restaurant above.

Structure: The proposed change to the façade would not be characteristic of the building design as a whole. The proposal could work within the existing window, door and sign board openings to create a restaurant appearance without altering the design of the structure.

FINDINGS FOR VARIANCE (SZO §5.5.3):

In order to grant a variance for parking (§9.5) and loading (§9.7) requirements the SPGA must make certain findings and determinations as outlined in §5.5.3 of the SZO.

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 existing lot is somewhat unique in that it is directly abutted on three sides by buildings with minimal or no setbacks. There is limited ability to expand the property to add parking or loading. These unique circumstances means that any expansion of the building, or any new building on the lot, would in all probability be subject to a parking and loading variance under the current zoning.

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 variance being sought, though large in number (31 spaces), would be a reasonable relief to the owner and would allow for a reasonable use of the land. The restaurant and lounge are reasonable uses for a Central Business District and for the reuse of this building. Any new building at this site that attempted to comply with the on-site parking requirements of the Ordinance would be of such a small size that it would be financially infeasible, while the addition of a smaller building with surface parking would be to the visual detriment of the streetscape. Furthermore, the site is in close proximity to the Davis Square MBTA subway stop, numerous bus routes, as well as the numerous nearby municipal parking facilities and on-street metered parking. These alternative means of transportation and the parking mitigation efforts should help offset any parking pressures that would normally be associated by approving such a large parking variance. The space in the building is currently used as retail; which requires loading and is accomplished without a loading dock. The change in use without providing a loading dock is reasonable for this building.

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."

As demonstrated in the special permit findings above, the project is consistent with the purpose of the Ordinance and the zoning district in which it is located. The lounge and restaurant uses would contribute to the vibrancy of the Square and provide additional dining and entertainment options. The Traffic and Parking and the Board are in agreement that the Applicant's parking memo demonstrates that the proposal would not be detrimental to the neighborhood. As demonstrated there is parking availability and turnover of spaces is important to the vibrancy of the Square. The condition regarding providing a multi-space parking meter kiosk will help to facilitate turnover.



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The building currently functions without a loading dock and continuation of this practice would not be detrimental to the neighborhood.

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Scott Darling and Elaine Severino with Danielle Fillis absent. 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 for a Special Permit with Design Review. Susan Fontano made a motion to approve the request for a Variance. Scott Darling seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **APPROVE** the request for a Variance. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes								
1	Approval is to establish a 4,992± s.f. lounge (SZO §7.11.10.6.B), alter the façade of the nonconforming structure, and to not provide thirty-one (31) required parking spaces and one (1) loading dock. 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>Nov 24, 2009</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>Nov 17, 2009</td><td>Plans submitted to OSPCD (Plot Plan, Existing floor plans: X100, X101, Elevation A200)</td></tr><tr><td>Jan 15, 2010</td><td>Proposed floor plans</td></tr></table>				Date (Stamp Date)	Submission	Nov 24, 2009	Initial application submitted to the City Clerk’s Office	Nov 17, 2009	Plans submitted to OSPCD (Plot Plan, Existing floor plans: X100, X101, Elevation A200)	Jan 15, 2010	Proposed floor plans
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Jan 15, 2010	Proposed floor plans											
Any changes to the approved use or elevations that are not <i>de minimis</i> must receive ZBA approval.												
2	The Applicant or Owner will submit the final façade and signage plans for Planning Staff approval. The plans shall retain the lines of the granite and tile on the façade except that the office entrance area may be enlarged to add a door to the lounge as shown on the plans. Signage may cover these materials in a way that they could be restored in the future. There shall be lighting between the three bays of the building at similar heights.	BP	Plng.									
3	All construction materials and equipment must be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P									



4	The Applicant or Owner shall retain the fixed seating in the theater area. This shall not be construed to prohibit replacement or upgrade of the existing seats or changes to the fixed seating necessary to comply with applicable accessibility regulations.	CO	Plng. / ISD	
5	The Applicant or Owner shall improve the lighting in the alley to the theater to ensure that it is well lit for patrons.	CO	Plng.	
6	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
7	The Applicant or Owner shall screen the trash area to blocks any view of it from the alley.	CO	Plng.	
8	The Applicant or Owner shall supply 3 bicycle parking spaces either within the building or on the sidewalk in consultation with the City's Traffic Engineer.	CO	Plng.	
9	The Applicant or Owner shall provide to the City a multi-space parking meter kiosk capable of accepting coins, paper currency, credit cards, debit cards, park cards and possible pay by cell technology along with all long term and short term service agreements associated with the parking meter kiosk. Specification for all requirements of the above will be supplied to the developer by the Director of Traffic and Parking when appropriate/required prior to installation.	CO	T&P	
10	The Applicant shall at his expense replace any existing equipment (including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheel chair ramps, granite curbing, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity. All new sidewalks and driveways must be constructed to DPW standard.	CO	DPW	
11	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.	Perpetual	ISD	
12	The Applicant shall coordinate deliveries with the vendors and other businesses that use the loading zoning to minimize impact on the community.	Perpetual	Applicant	
13	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.	
14	The Applicant shall have a private vendor for trash removal that supports other businesses in Davis Square and coordinates pick up times.	Perpetual	Applicant	
15	The Applicants shall make reasonable efforts to secure a valet service.	Perpetual	Applicant	



Attest, by the Zoning Board of Appeals:

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

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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