



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

PLANNING DIVISION

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Case #: ZBA #2010-04
Site: 260 Elm Street, #102
Date of Decision: March 31, 2010
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: April 2, 2010

ZBA DECISION

Applicant Name:	Jason R. Zube
Applicant Address:	627 Fellsway, Medford, MA 02155
Property Owner Name:	Urban Equity Development Company
Property Owner Address:	331 Montvale Avenue, Woburn, MA 01801
Agent Name:	N/A

<u>Legal Notice:</u>	Applicant, Jason R. Zube, & Owner, Urban Equity Development Company, seek a Special Permit under SZO §4.5.1 to change the use from a 1,700± sf printing operation to a tattoo facility (§7.11.8.13.a) and a Special Permit under §9.13 to not provide one parking space. CBD zone. Ward 6.
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<u>Zoning District/Ward:</u>	CBD zone/Ward 6
<u>Zoning Approval Sought:</u>	§4.5.1, §7.11.8.13.a & §9.13
<u>Date of Application:</u>	February 9, 2010
<u>Date(s) of Public Hearing:</u>	3/17 & 3/31/10
<u>Date of Decision:</u>	March 31, 2010
<u>Vote:</u>	5-0

Appeal #ZBA 2010-04 was opened before the Zoning Board of Appeals at Somerville City Hall on March 17, 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 one hearing of deliberation, the Zoning Board of Appeals took a vote.



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DESCRIPTION:

The proposal is to change the use of the space from a printing operation to a tattoo and body piercing facility. The business would have two to four employees and the hours of operation would be 11am to 9pm Monday through Saturday and 11 am to 5 pm on Sunday. The applicants currently have businesses at 622 Somerville Ave and at Wellington Circle in Medford. They would be moving their business from Somerville Ave to this new location. The Applicants are not proposing any changes to the façade except a change to the existing name plate. The owner of the Davis Square Plaza requires the businesses to have a standardized sign design.

FINDINGS FOR SPECIAL PERMIT (SZO §4.5.1, 5.1 & 9.13):

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."

In considering a special permit under §4.5 of the SZO, the Board finds that the use proposed would not be substantially more detrimental to the neighborhood than the existing use. There are no anticipated negative impacts from the change in use. This business would contribute to the variety of businesses in the Square. There are only two other body art establishments in the City, none of which are located in Davis Square. Body art establishments are strictly regulated by the Board of Health.

In considering a special permit under §9.13 of the SZO the Applicant must be able to demonstrate that granting the requested special permit would not cause detriment to the surrounding neighborhood through any of the criteria as set forth under SZO §9.13, which are as follows:

- 1) increase in traffic volumes;
- 2) increased traffic congestion or queuing of vehicles;
- 3) change in the type(s) of traffic;
- 4) change in traffic patterns and access to the site;
- 5) reduction in on-street parking;
- 6) unsafe conflict of motor vehicle and pedestrian traffic.

The request for the reduction of 1 parking space would not cause detriment to the surrounding neighborhood. The project would not cause any significant change in traffic volumes, patterns, congestion or conflict. Private off street parking in the area is limited, but there are a few municipal lots nearby, on-street parking, and there is access to public transportation with the Davis Square Red Line station and several bus routes that pass through the Square.

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 encouraging the most appropriate use of land throughout the City and the purpose of the Central Business District. The business would contribute to the business services and the reduction in parking would promote a strong pedestrian character and scale in the area. A primary goal for the districts is to provide



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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. Adding additional off street private parking in this area would detract from that environment.

In considering a special permit under §9.13 of the SZO the SPGA may grant such a special permit only when consistent with the purposes set forth in Section 9.1. Traffic and Parking Staff have requested a parking memo to explain the impact of not providing the one required parking space. The memo states that there should be no noticeable impact on the parking supply in the area as a result of the proposal.

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 use would be compatible with the surrounding uses in the Davis Square commercial area, which provides for a variety of business uses. The only alteration to the appearance of the building would be a change to the sign plate. The owner of the Davis Square Plaza requires the businesses to have a standardized sign design so that change will be consistent with the other signs in the Plaza.

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans 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 the establishment of a 1,700± sf tattoo and body piercing facility (§7.11.8.13.a). 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>Feb 9, 2010</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>(Mar 2, 2010)</td><td>Plans submitted to OSPCD (floor plan)</td></tr><tr><td>Mar 2, 2010</td><td>Parking Memo</td></tr></table>				Date (Stamp Date)	Submission	Feb 9, 2010	Initial application submitted to the City Clerk’s Office	(Mar 2, 2010)	Plans submitted to OSPCD (floor plan)	Mar 2, 2010	Parking Memo
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	(Mar 2, 2010)				Plans submitted to OSPCD (floor plan)							
	Mar 2, 2010				Parking Memo							
Any changes to the approved use that are not <i>de minimis</i> must receive ZBA approval.												
2	The Applicant shall comply with the Board of Health’s Body Art regulations.	CO	BOH									
3	The Applicant or Owner shall meet the Fire Prevention Bureau’s requirements.	CO	FP									
4	Signage shall be of similar size and character to other signs at the Davis Square Plaza.	CO	Plng.									



5	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.	
6	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.	Final sign off	Plng.	



Attest, by the Zoning Board of Appeals:

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

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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