



CITY OF SOMERVILLE, MASSACHUSETTS

ZONING BOARD OF APPEALS

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Case #: ZBA #2005-70-R2-0409

Site: 191 Highland Avenue (Arts Center)

Date of Decision: May 20, 2009

Decision: Revision Approved with Conditions

Date Filed with City Clerk: May 27, 2009

ZBA DECISION

Applicant Name:	The Center for the Arts at the Armory
Applicant Address:	191 Highland Avenue, Somerville, MA 02143
Property Owner Name:	Joseph Sater
Property Owner Address:	472 Massachusetts Avenue, Cambridge, MA 02138
Agent Name:	N/A

Legal Notice: Applicant Center for the Arts at the Armory & Owner Joseph Sater seek revisions to a special permit (SZO §5.3.8) to revise a condition to allow overlapping events under certain circumstances. RA/RC zones. Ward 5.

<u>Zoning District/Ward:</u>	RA/RC zones/Ward 5
<u>Zoning Approval Sought:</u>	Revision to Special Permit# 2005-70
<u>Date of Application:</u>	April 28, 2009
<u>Date(s) of Public Hearing:</u>	May 20, 2009
<u>Date of Decision:</u>	May 20, 2009
<u>Vote:</u>	5-0

Appeal #2005-70-R2-0409 was opened before the Zoning Board of Appeals at Somerville City Hall on May 20, 2009. After one hearing of deliberation, the Zoning Board of Appeals took a vote.

DESCRIPTION:

The current request is to modify condition 24 from the 2005 permit, which states that "The Owner/Applicant must work with his/her tenants to ensure that there will be no multiple events held at the Armory and that scheduled events will not overlap." The Applicant is seeking to modify this condition to allow events to occur simultaneously in both spaces. The Applicant states that limiting the use of the café based on the use of the auditorium has presented a significant hindrance to leasing the café space (particularly in addition to the restriction prohibiting cooking on site). The Applicant states that it is difficult to anticipate which auditorium events will reach the 325 or 395 limit, until tickets are actually taken; when the limit is reached, people are turned away. Therefore it would impossible for a café operator to reliably plan their events based on when auditorium events might reach capacity, risking having to stop an event if the auditorium event were more successful than anticipated. However, the Applicant has proposed efforts that could be taken to minimize any impacts of having simultaneous events.

The current request was made in March 2009 and withdrawn in order to allow other time-sensitive conditions to be approved expeditiously.

Impacts of Proposal: It appears from a review of the record and comments from members of the community that the original intent in prohibiting overlapping events was to prevent overcrowding and parking problems. However, as described below, the parking and occupancy of the structure would not be altered by the revision to this condition. Actual impacts of having overlapping events might be a noticeable influx and outflow of people at the same time, similar to an at-capacity event, if multiple events had similar start and end times. To mitigate this possibility, the recommended revised condition would encourage café events that overlapped with larger auditorium events to be scheduled to encourage table turnover during the event and to have staggered hours from the auditorium event.

Clarification of Occupancy Question: At the March 2009 hearing regarding the request to permit overlapping events, a number of questions were posed about the relationship of the maximum capacity of the building to the limits imposed by Condition 36, which limits attendance at “at capacity” and “other” events. Condition 36 is more restrictive than the code requirements of the facility; furthermore, it does not pertain to the building overall but only to a portion of the building. In the 2005 approval, the applicant’s architect prepared calculations that were adopted by the ZBA of the proposed changes to floor area, capacity, and parking requirements.

The original **occupancy of the auditorium** (a.k.a. “drill hall”) when the structure was still used as an Armory was 467; the reconfiguration of the assembly space, with the introduction of bathrooms and the gallery space, reduced the auditorium’s capacity to 395.

The **occupancy of the building overall**, with the addition of the live/work units and the changes of use, increased from a maximum capacity of 550 to 555 persons.

The **parking requirement** for the prior combination of uses was 95 spaces, and the site had been nonconforming with respect to that requirement, having only 39 spaces on site; with the reconfigured combination of uses, five additional parking spaces were required for a total of 44. 44 spaces are now provided on site; in addition, Condition 37 requires the applicant to maintain 40 additional spaces at a satellite parking lot.

Based on this analysis, allowing overlapping events would not impact the building’s occupancy limits or parking requirements. The café would remain subject to its 52-person limit; the auditorium would remain subject to the restrictions of Condition 36: 395 ten times per month and 325 all other times; and other by-right uses in the building would be subject to their own respective occupancy limits under the building code.

Clarification of “Events”: As provided in the definitions attached to earlier approvals, “events” might generally be described as activities that take place before an audience or the general public. This is distinct from other activities between a service provider and a client/customer or a teacher and a class, which may take place elsewhere in the Armory facility; these types of activities, which are in the building as-of-right, would not be subject to the “event” capacity limitations but rather to code limits for their respective spaces.

FINDINGS FOR SPECIAL PERMIT REVISION

There are not specific required findings for a revision to a special permit. Rather, staff review the original findings for the specific zoning relief requested and identify any findings that have changed as a result of the proposed revision. Below, the Board has reviewed the four central findings required of all special permit applications under SZO §5.1.4.

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." With a condition requiring monitoring of combined event capacity, the requested modification to the permits is found to be consistent with the granting of the original permit and compliant with the standards of the ordinance.

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 Board finds that the proposal would remain consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to The purposes of the Ordinance are to provide for and maintain the uniquely integrated structure of uses in the City; to conserve the value of land and buildings; to preserve the historical and architectural resources of the City; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality. Furthermore, the Board finds that the proposal would remain consistent with the purposes of the RA and RC districts, which are, respectively: To establish and preserve quiet neighborhoods of one- and two-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts; and to establish and preserve a district for multi-family residential and other compatible uses which are of particular use and convenience to the residents of the district.

The Board finds that the development would remain subject to a multitude of conditions that would mitigate adverse impacts to the residential community. Furthermore, the Board finds that, with mitigation of potential impacts as conditioned, the development is in fact an enhancement of the neighboring community, and that the requested revisions are critical to the success and even survival of this burgeoning cultural center.

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."

No changes are proposed to the built form or the site plan as approved. The land use would not change from the prior approval, and the operations of the use would only change minimally, with little if any impact as conditioned.

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. 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:

Based on the above findings and subject to the following conditions, the Planning Staff recommends **CONDITIONAL APPROVAL** of the requested **REVISIONS TO PRIOR PERMITS**. All conditions to the original permit, as amended from time to time, remain attached to this revision; changes to these conditions resulting from this request are shown below, with additions marked in underline, deletions in ~~strike through~~.

Condition	Timeframe for Compliance	Verified (initial)	Notes
With this application, the applicant is granted modifications to Condition 24 as shown hereunder.			
24. <u>The Owner/Building Manager shall work with tenants of the café and auditorium to ensure that if there are overlapping events in the two spaces, starting and ending times are staggered. Where possible, event schedules should be coordinated to encourage smaller-scale or pass-through (instead of ticketed or sit-down) events in the café when an auditorium event is anticipated to approach capacity. The Owner/Applicant must work with his/her tenants to ensure that there will be no multiple events held at the Armory and that scheduled events will not overlap.</u>	Cont.	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
ZBA 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 _____

Date: May 22, 2009
Case #: ZBA 2005-70-R2-0409
Site: 191 Highland Ave (Arts Center)