



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**ZONING BOARD OF APPEALS**  
**JOSEPH A. CURTATONE**  
**MAYOR**

**MEMBERS**

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

**Case #: ZBA #2005-70-R1-0409**  
**Site: 191 Highland Avenue (Armory)**  
**Date of Decision: May 20, 2009**

**Decision: Revision Approved with Conditions**  
**Date Filed with City Clerk: May 27, 2009**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Joseph Sater
<b>Applicant Address:</b>	472 Massachusetts Avenue, Cambridge, MA 02138
<b>Property Owner Name:</b>	Joseph Sater
<b>Property Owner Address:</b>	472 Massachusetts Avenue, Cambridge, MA 02138
<b>Agent Name:</b>	N/A

<u>Legal Notice:</u>	Applicant & Owner Joseph Sater seeks revisions to a special permit (SZO §5.3.8) to revise conditions pertaining to location of trash storage and designation of parking spaces. RA/RC zones. Ward 5.
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<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

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Appeal #ZBA 2005-70-R1-0409 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 Applicant, who is an owner of the property, is currently completing site work necessary to satisfy remaining conditions of the special permit in order to obtain a final Certificate of Occupancy. In the course of completing this work, the applicant has been advised that it cannot satisfy one of the conditions of approval as written, and is seeking to assign two spaces in the rear parking lot as the designated spaces for the two live/work units, rather than the two parallel spaces at the front of the site. In addition, the applicant is seeking to update the site plan to illustrate the actual location of the trash receptacle enclosure, and to remove the condition's requirement that the enclosure have a lid.

Trash Enclosure: The approved site plan illustrated a trash enclosure built onto the right side of the structure; this location presented challenges for pick up, being located along a two-way driveway. The applicant was informed that an alternative approach of storing trash indoors would not be code-compliant. Therefore, approval is sought for a revised site plan illustrating an enclosure (which has already been constructed) located in the rear parking lot, adjacent to the bicycle storage racks. This location does not adversely impact bicycle or vehicle parking or access.

As written, Condition 5 requires a lid to be placed on the enclosure; however, this means that building users would have to open both an enclosure lid and the receptacle lids in order to dispose of trash. This would be difficult and appears unnecessary for the containment of trash, so long as all receptacles have lids.

Parking Spaces for Live/Work Units: During review for code compliance, the applicant was instructed that the required handicapped-accessible spaces would have to be located within the two parallel spaces at the front of the site. As written, Condition 11 requires these spaces to be dedicated to the two live/work units and signed for direction-of-travel parking. The applicant is proposing to dedicate two spaces in the rear lot to the live/work units in order to meet the code requirements and the spirit of the original condition. In addition, the applicant is seeking to remove the requirement that these two spaces be marked for direction-of-travel parking only, since this may impair the use of vehicle ramps or lifts that are often accessed from the passenger side of the vehicle.

### **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." 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: 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; 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.

Staff finds that the proposed revisions are consistent with the intent of the original conditions.

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 as approved and the site plan changes are minimal. 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:

### **III. RECOMMENDATION (Revision to Permit under SZO §5.3.8)**

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 Conditions 5 and 11 as shown hereunder. Condition 1 has also been updated to reflect the updated site plan reflecting these changes.													
<div>1. Approval is based upon the following:</div> <table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>Application materials stamped in at the City Clerk’s Office on July 6, 2005.</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>September 29, 2005(<del>showing 44 on-site parking spaces</del>); revised parking calculations dated <del>October 4 and October 5, 2005</del>.</td><td><u>Modified Building plans</u> submitted to OSPCD</td></tr><tr><td>5/30/07 (5/31/07)</td><td>Modified plans submitted to OSPCD (Plans prepared by “SsD”)</td></tr><tr><td><u>11/17/08 (5/13/09)</u></td><td><u>Modified site plan showing relocated trash enclosure</u></td></tr></table> <div>Any changes to the approved site plan, elevations, or uses that are not <i>de minimis</i> must receive ZBA approval.</div>	Date (Stamp Date)	Submission	Application materials stamped in at the City Clerk’s Office on July 6, 2005.	Initial application submitted to the City Clerk’s Office	September 29, 2005( <del>showing 44 on-site parking spaces</del> ); revised parking calculations dated <del>October 4 and October 5, 2005</del> .	<u>Modified Building plans</u> submitted to OSPCD	5/30/07 (5/31/07)	Modified plans submitted to OSPCD (Plans prepared by “SsD”)	<u>11/17/08 (5/13/09)</u>	<u>Modified site plan showing relocated trash enclosure</u>	Met	ISD/PLNG	<div><div>▪ 4 skylights added per 2004 revisions</div><div>▪ Original A001 (zoning chart), A101, &amp; A102 (floor plans) superseded by 2007 plans.</div><div>▪ Pipes installed on side per code req’ts have received historic approval.</div></div>
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<u>11/17/08 (5/13/09)</u>	<u>Modified site plan showing relocated trash enclosure</u>												
<div>5. <u>Trash receptacles shall be contained in a screened enclosure in a location shown on plans approved by Planning Staff. The trash receptacles shall have lids to mitigate the potential for airborne waste. The Applicant shall submit a plan indicating the location of the proposed trash storage enclosure and its screening to the Planning Staff for review. The screening, if determined by the Planning Staff, shall be higher than the six feet (6’) maximum in the SZO. The trash enclosure area shall have a roof to mitigate the potential for airborne waste.</u></div>	CO	PLNG											
<div>11. <u>The two parallel Two parking spaces adjacent to the on-site driveway</u> must be designated as parking spaces for the two third floor live work units. <del>These spaces must also be clearly signed for direction of travel parking only.</del></div>	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  
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 \_\_\_\_\_