



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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JOSH SAFDIE (ALT.)

Case #: ZBA 2010-50
Site: 199C Highland Avenue
Date of Decision: October 20, 2010
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: October 28, 2010

ZBA DECISION

Applicant Name:	The Chocolate Tarte, LLC
Applicant Address:	199C Highland Avenue, Somerville, MA 02143
Property Owner Name:	Paras Hatziagannis
Property Owner Address:	20 Red Gate Lane, North Andover, MA 01845
Agent Name:	N/A

<u>Legal Notice:</u>	Applicant The Chocolate Tarte, LLC & Owner Paras Hatziagannis seek a special permit with design review under SZO §7.11.10 to establish a bakery use with up to 8 seats and special permit under §9.13, parking exception.
<u>Zoning District/Ward:</u>	RC zone. Ward 5.
<u>Zoning Approval Sought:</u>	§7.11.10 & §9.13
<u>Date of Application:</u>	September 14, 2010
<u>Date(s) of Public Hearing:</u>	October 20, 2010
<u>Date of Decision:</u>	October 20, 2010
<u>Vote:</u>	5-0

Appeal #ZBA 2010-50 was opened before the Zoning Board of Appeals at Somerville City Hall on October 20, 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 Applicant would like to add seating for up to eight patrons on the site. The type of food served will remain the same. While the establishment will remain essentially as it has been, the change from an establishment without seating to an establishment with seating moves the use of this establishment from the category of a specialty shop (bakery) to the category of an 'eating / drinking' establishment under 7.11.10. Specifically, the use is a restaurant under 7.11.10.1. It is not a 'fast food establishment' under 7.11.10.3, because it does not meet all four points of the definition of a fast food establishment under 2.2.56 (specifically, does not involve extensive automobile-oriented trips. Therefore, it is a restaurant under 7.11.10.1.

Parking: The application will not change the size of the establishment. The establishment will move from the retail category (1 space per 450 square feet) to the restaurant category (1 space per 110 square feet, or 0.75 spaces per employee & 1 per 4 seats). Using the initial calculation, the initial use required 2 parking spaces (685 square feet / 450 square feet = 1.52). The new use, using seating would require 2.75 spaces (1 employee plus 8 seats), or using the square foot requirement would require six spaces (685 square feet / 110 square feet = 6.23). Therefore, there is an additional requirement of four parking spaces that cannot be achieved on site. Per section 9.13A of the SZO, the applicant is seeking to modify parking requirements for the existing non-conforming structure, as no parking can be provided on site.

FINDINGS FOR SPECIAL PERMIT WITH DESIGN REVIEW AND PARKING (SZO §7.11.10 & §9.13):

In order to grant a special permit with design review, the SPGA must make certain findings and determinations as outlined in §5.1 of the SZO. This section of the report goes through §5.1 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.

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 design review."

The application has met any and all required standards. The applicant has provided a plan that is consistent with the expectations for a change in use in this district, and the application is limited to the addition of seats to the interior of an existing establishment.

3. Consistency with Purpose: The Applicant has to ensure that the project is consistent with: 1) the purposes of this Ordinance, particularly those set forth in Article 1 and Article 5; and 2) the purposes, provisions, and specific objectives applicable to the requested special permit with site plan review which may be set forth elsewhere in this Ordinance, such as, but not limited to, those at the beginning of the various sections.'"

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 proposal is also consistent with the purposes of the applicable sections.

The proposal is consistent with the purpose of the RC district. The districts is designed 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 this district."

The expansion of this business helps to achieve this goal and allow for the expansion of a unique business in the City. The applicant is operating a storefront in a block of stores that has been on this location for many years. The block is surrounded by and helps to serve an adjacent residential neighborhood.



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4. Site and Area Compatibility: The Applicant has to ensure that the project “(i)s designed in a manner that is compatible with the existing natural features of the site and is compatible with the characteristics of the surrounding area, and that the scale, massing and detailing of the buildings are compatible with those prevalent in the surrounding area”.

There would be not change to the structure or site as a result of this application.

5. Environmental Impacts: “The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.”

The application will create no change to any environmental impact on the neighborhood.

6. Design Review: The Applicant must make a positive determination that the application is in conformance with the design guidelines for residence zones under SZO 5.1.5B.

The application makes no changes to the building presence, building entrances, bay widths, materials, roofs, colors, parking areas and utility equipment. The building remains as a single story retail block on Highland Avenue with no external design changes.

7. Parking: Parking relief must not cause detriment to the surrounding neighborhood through any of the following applicable criteria: 1) increase in traffic volumes; increased traffic congestion or queuing of vehicles; change in the type of traffic; change in traffic patters; reduction on street parking; unsafe conflict of motor vehicle and pedestrian traffic.

The application will not make any changes to parking design or layout. The provision of tables may cause patrons to remain in the neighborhood, and those patrons that arrive by car may stay for longer than they previously would do. Highland Avenue provides adequate 2-hour on-street parking to support the visitors to neighborhood residences and businesses. The addition of tables should cause no detrimental impact on the neighborhood.



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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 change in use category for use under 7.11.10.3.	BP/CO	Plng.							
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>Sep 14, 2010</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>March 21, 2009 (9/14/10)</td><td>Plan submitted to OSPCD</td></tr></table>				Date (Stamp Date)	Submission	Sep 14, 2010	Initial application submitted to the City Clerk's Office	March 21, 2009 (9/14/10)	Plan submitted to OSPCD
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March 21, 2009 (9/14/10)	Plan submitted to OSPCD									
Any changes to the approved floor plans that are not <i>de minimis</i> must receive ZBA approval.										
2	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP							
3	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.							



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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