



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 #2010-12
Site: 415B Medford Street
Date of Decision: May 5, 2010
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: May 12, 2010

ZBA DECISION

Applicant Name:	Ana Nascimento
Applicant Address:	250 School Street, Somerville, MA
Property Owner Name:	Antonio Ferreira
Property Owner Address:	77 Lilah Lane, Reading, MA 01867
Agent Name:	N/A

<u>Legal Notice:</u>	Applicant, Ana Nascimento, and Owner, Antonio Ferreira, seeks a Special Permit under SZO §4.5.1 to change a non-conforming use and establish a frozen juice store under 7.11.9.3.a.
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<u>Zoning District/Ward:</u>	RB zone/Ward 4
<u>Zoning Approval Sought:</u>	§4.5.1 & §7.11.9.3.a
<u>Date of Application:</u>	March 23, 2010
<u>Date(s) of Public Hearing:</u>	May 5, 2010
<u>Date of Decision:</u>	May 5, 2010
<u>Vote:</u>	5-0

Appeal #ZBA 2010-12 was opened before the Zoning Board of Appeals at Somerville City Hall on May 5, 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 is proposing to operate an independently owned juice bar which would feature a frozen berry drink from Brazil. The drink is made from frozen Acai Berries and is considered a health drink. The frozen berries will be combined with ice or yogurt and blended into a smoothie type of beverage. Also, a type of premade pocket sandwich that comes frozen would be heated up in a microwave and served.

FINDINGS FOR SPECIAL PERMIT (SZO §4.5.1):

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 Permit.

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 §4.5.1 of the SZO, Board find that the use proposed is appropriate for the area and will be a benefit to the neighborhood through the service it provides, by filling a vacant storefront and creating the potential for several jobs. The existing structure has a commercial presence in the area and the Board finds it appropriate to continuing to support commercial uses here. Changes to the exterior will be minimal and final proposed signage will need Planning Staff approval.

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 this use to be consistent with the purposes of the ordinance and that continuing commercial, service and retail uses on this property to be an appropriate use of the land.

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 Board finds this use to be consistent with the existing context of the area. The Board finds any negative impacts to the community from this proposal to be minimal and that the use would be a benefit to the community. Façade alterations will be minimal and subject to Planning Staff approval.

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:



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#	Condition	Timeframe for Compliance	Verified (initial)	Notes				
1	<p>Approval is for a change in non-conforming use to allow for the operation of a specialty food store. This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>(3/23/2010)</td><td>Initial application submitted to OSPCD</td></tr></table> <p>Any changes to the approved use that is not <i>de minimis</i> must receive ZBA approval.</p>	Date (Stamp Date)	Submission	(3/23/2010)	Initial application submitted to OSPCD	BP/CO	Plng.	
Date (Stamp Date)	Submission							
(3/23/2010)	Initial application submitted to OSPCD							
2	Final design of the façade and signage shall be approved by Planning Staff. Any future sign or façade change shall be approved by Planning Staff.	Continued	Plng					
3	The Applicant shall meet all requirements for fire protection for a business use.	CO	FP					
4	No more than 4 seats shall be allowed on premises for waiting customers only. No food or beverage shall be consumed onsite.	Continued	ISD					
5	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final sign-off on the building permit to ensure the proposal has been completed 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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