



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

**MEMBERS**

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ORSOLA SUSAN FONTANO, *CLERK*  
RICHARD ROSSETTI  
T. F. SCOTT DARLING, III, ESQ.  
DANIELLE FILLIS  
ELAINE SEVERINO (ALT.)  
JOSH SAFDIE (ALT.)

**Case #: ZBA 2008-43**  
**Site: 1 Summer Street**  
**Date of Decision: October 1, 2008**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: October 14, 2008**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Victoria Lamb
<b>Applicant Address:</b>	1 Summer Street, Somerville, MA 02143
<b>Property Owner Name:</b>	Victoria Lamb
<b>Property Owner Address:</b>	1 Summer Street, Somerville, MA 02143
<b>Agent Name:</b>	N/A

<b><u>Legal Notice:</u></b>	Applicant & Owner: Victoria Lamb seeks Special Permit with Site Plan Review under SZO §7.11.1.c to revise a previously approved residential development by converting storage space to a commercial office. The applicant seeks variance from SZO §9.5 in order not to provide the one additional parking space required by this change of use. CBD zone. Ward 3.
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<b><u>Zoning District/Ward:</u></b>	CBD zone/Ward 3
<b><u>Zoning Approval Sought:</u></b>	§7.11.1.c & §9.5
<b><u>Date of Application:</u></b>	August 11, 2008
<b><u>Date(s) of Public Hearing:</u></b>	9/17 & 10/1/08
<b><u>Date of Decision:</u></b>	October 1, 2008
<b><u>Vote:</u></b>	5-0

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Appeal #ZBA 2008-43 was opened before the Zoning Board of Appeals at Somerville City Hall on September 17, 2008. 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 two hearings of deliberation, the Zoning Board of Appeals took a vote.

**DESCRIPTION:**

The Applicant is proposing to change an existing 140 s.f. storage room to non-medical commercial office use for resident lease only. This space is located on the ground floor in the front lobby area and no exterior work is

proposed. The change in use would generate the requirement of one (1) additional parking space which is not provided for in the proposal.

**FINDINGS FOR SPECIAL PERMIT (SZO §7.11.1.c & §9.5):**

In considering the requested special permits with site plan review the Staff must consider and make findings and determinations as outlined in §5.2.5 of the SZO. This section of the report goes through §5.2.5 in more detail.

1. Information Supplied: The Applicant must comply "with the information requirements in Section §5.2.3;"

The information provided by the Applicant allows for a comprehensive review of the proposed development and complies with the requirements set forth under §5.2.3 of the SZO.

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 site plan review".

As conditioned, the proposal will comply with these standards.

3. Purpose of the District: The Applicant has to ensure that the project "is consistent with the intent of the specific zoning district as specified in Article 6". The project site is located within a Central Business District (CBD). The CBD district seeks to "preserve and enhance central business areas for retail, business services, housing, and office uses and to promote a strong pedestrian character and scale in those areas. A primary goal for the districts is to provide 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."

The Board finds the proposal for office space to be consistent with the intent of the CBD. The proposed variance to reduce the required parking is also consistent with the goals of the district to promote pedestrian activity. The Board finds that limiting the number of parking spaces available will encourage using other modes of transportation, including walking, to get to the office space.

4. Site and Area Compatibility: The Applicant has to ensure that the project "Is 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 buildings are compatible with those prevalent in the surrounding area."

No exterior alterations are proposed.

5. Functional Design: The project must meet "accepted standards and criteria for the functional design of facilities, structures, and site construction."

The Board finds the project meets accepted standards and criteria for the functional design of facilities, structures, and site construction. Any necessary mitigation has been incorporated into the recommended conditions section of this report.

6. Impact on Public Systems: The project will "not create adverse impacts on the public services and facilities serving the development, such as the sanitary sewer system, the storm drainage system, the public water supply, the recreational system, the street system for vehicular traffic, and the sidewalks and footpaths for pedestrian traffic."

The Board finds that any public impacts would be related to the street system and vehicular traffic. The SZO requires one parking space for the proposed office space and the applicant is requesting a variance from that requirement. The Board finds that due to the location of the existing building within a CBD, the considerable

pedestrian activity in the area, and the availability of public transportation that the parking reduction is acceptable for this use.

7. 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."

No environmental impacts are foreseen as a direct result of this development. The office use would be allowed as-of-right in CBD if there were not seven (7) units existing through Special Permit in the building.

8. Consistency with Purposes: "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."

As the required findings of Article 5 have been made, and the proposal satisfies the purposes of Article 1, including "to encourage the most appropriate use of land" and "to preserve and increase the amenities of the municipality" and of Article 6, as already described, the Board finds the proposal to be consistent with the purposes of the SZO.

9. Signage: "The size, location, design, color, texture, lighting and materials of all permanent signs and outdoor advertising structures of features shall reflect the scale and character of the proposed buildings."

As conditioned, signage must reflect the residential nature of the building and the historic character of the building.

#### **FINDINGS FOR VARIANCE (SZO §9.5):**

In order to grant a variance the Board must make certain findings and determinations as outlined in §5.5.3 of the SZO.

1. There are "special circumstances relating to soil conditions, shape or topography of land or structures which especially affect such land or structures but not affecting generally the zoning district in which it is located, causing substantial hardship, financial or otherwise."

The Board finds that there are special circumstances relating to the size of the existing historic structure and the lot coverage on the site. Lot area for parking does not exist on the site due to the high lot coverage of the building. The original proposal was creative in creating enough parking spaces for the residential units in a below grade parking structure, but that area is filled to capacity. This circumstance creates a hardship for the owner in accommodating an office use which, on its own, would be allowed as-of-right in the CBD. Also, the provision of required parking would adversely impact the historic structure and its landscaping along the street.

2. "The variance requested is the minimum variance that will grant reasonable relief to the owner, and is necessary for a reasonable use of the building or land."

The Board finds this variance from the City parking requirements (one space) to be the minimum variance to grant reasonable relief to the owner in order to incorporate an office use within the CBD. As previously stated, the proposed use would be allowed by right in this zoning district, and therefore, the Board finds this a reasonable use of the building. Without this parking variance the applicant would not be allowed this reasonable by-right use to be established.

3. “The granting of the variance would be in harmony with the general purpose and intent of this Ordinance and would not be injurious to the neighborhood or otherwise detrimental to the public welfare.”

The Board finds that the intent of the Ordinance is for Central Business District areas to provide a wide variety of commercial uses in a pedestrian friendly environment. The reduction in parking will encourage pedestrian activity and the office has the potential to provide a local amenity. The applicant has stated that the office is to be rented solely to a resident or residents of the building who currently have available parking within the building. The Board finds that granting the variance would be in harmony with the general purpose of the Ordinance.

### **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 with Site Plan Review. Scott Darling seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **APPROVE** the request.

Upon making the above findings, Susan Fontano made a motion to approve the request for a variance. Richard Rossetti 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	<p>Approval is for a revision to the original Special Permit with Site Plan Review to allow the alteration of a storage area into a non-medical, commercial office space and for a variance to reduce the parking requirement for this use by one space. This approval is based upon the following application materials and the plans submitted by the Applicant and/or its contractor:</p> <table><tr><th>Date</th><th>Submission</th></tr><tr><td>August 11, 2008</td><td>Initial application and site plan submitted to the City Clerk's Office</td></tr></table> <p>Any changes to the approved site plan or use that are not <i>de minimis</i> must receive ZBA approval.</p>	Date	Submission	August 11, 2008	Initial application and site plan submitted to the City Clerk's Office		Plng.	
Date	Submission							
August 11, 2008	Initial application and site plan submitted to the City Clerk's Office							
2	The office space shall only be available for lease to residents of 1 Summer Street. No clients, patrons or employees that do not reside at 1 Summer Street shall be allowed to enter or use the office. This condition shall be incorporated into the condominium documents.	Perpetual	ISD.					
3	No signage identifying the commercial use shall be placed on the 1 Summer Street property.	CO	Plng.					
4	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 was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	CO	Plng.					

Date: October 3, 2008  
Case #: ZBA 2008-43  
Site: 1 Summer Street

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 Zoning Board of Appeals 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 \_\_\_\_\_