



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 2009-01**  
**Site: 377 Summer Street**  
**Date of Decision: June 3, 2009**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: June 11, 2009**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Christos Poutahidis
<b>Applicant Address:</b>	80 Prichard Avenue, Somerville, MA 02144
<b>Property Owner Name:</b>	Christos Poutahidis
<b>Property Owner Address:</b>	80 Prichard Avenue, Somerville, MA 02144
<b>Agent Name:</b>	Richard G. DiGirolamo, Esq.
<b>Agent Address:</b>	424 Broadway, Somerville, MA 02145

**Legal Notice:** Applicant & Owner: Christos Poutahidis seeks a Special Permit to establish 6 dwelling units (SZO §7.11.1.c) and for shared parking (§9.13.e). The dwelling units would be part of a mixed use building with office and retail. CBD zone. Ward 6.

<b><u>Zoning District/Ward:</u></b>	CBD zone/Ward 6
<b><u>Zoning Approval Sought:</u></b>	§7.11.1.c & §9.13.e
<b><u>Date of Application:</u></b>	January 30, 2009
<b><u>Date(s) of Public Hearing:</u></b>	3/4, 3/18, 4/1, 4/15, 5/6, 5/20 & 6/3/09
<b><u>Date of Decision:</u></b>	June 3, 2009
<b><u>Vote:</u></b>	4-0

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Appeal #ZBA 2009-01 was opened before the Zoning Board of Appeals at Somerville City Hall on March 4, 2009. 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 three hearings of deliberation, the Zoning Board of Appeals took a vote.

**DESCRIPTION:**

The two buildings on the site would be demolished and a 15,990 square foot building would be constructed. It would be a mixed use building with the following uses by floor. The basement would be underground parking for 16 cars (one handicapped space would be located at grade). The first floor would be retail space of approximately 4,666 gross square feet. The second floor would be office space of approximately 4,906 gross square feet. The third

and fourth floors would be six bi-level residential units of approximately 1,050 square feet. The residential units would have two bedrooms, one bath, and balconies.

**FINDINGS FOR SPECIAL PERMIT (SZO §§7.11.1.c & §9.13.e):**

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 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 Board finds that the Applicant has complied with the standards for granting a special permit for the six residential units and for exceptions to parking requirements, §9.13 of the SZO.

In considering a special permit under §9.13 "the SPGA may grant such a special permit only when consistent with the purposes set forth in Section 9.1, and upon reaching the findings and determinations set forth in Section 5.1.4". The Board finds that the proposal, as conditioned, would be consistent with Section 9.1. All but one parking space would be located below grade and accessed via a driveway off of Cutter Avenue. There would be a ramp signal system and the vehicle parked in the handicapped space would back into the space to prevent vehicle conflict. The Board finds that granting the requested special permit would not cause detriment to the surrounding neighborhood through any of the criteria as set forth under SZO §9.13, which are as follows:

- 1) increase in traffic volumes;
- 2) increased traffic congestion or queuing of vehicles;
- 3) change in the type(s) of traffic;
- 4) change in traffic patterns and access to the site;
- 5) reduction in on-street parking;
- 6) unsafe conflict of motor vehicle and pedestrian traffic.

Additionally, the standards for shared parking have been met. There are three uses that would utilize common parking. Traffic and Parking staff have approved the parking deviation based on calculated parking demand data for combined land uses based on recognized methodology.

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 proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to providing for and maintaining the uniquely integrated structure of uses in the City, adequately protecting the natural environment (through green building design) and encouraging the most appropriate use of land throughout the City.

The proposal is consistent with the purpose of the Central Business District, which is, "[t]o 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."

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 project is designed in a manner that is compatible with the built area and uses. The building would have a mix of uses with residential, office and retail that would promote daytime and nighttime activity of the site, which is important for a successful square. The building meets the guidelines of a CBD: it completes the streetwall and provides a continuous retail storefront, there is articulation to the massing, the fourth floor is setback, parking is below street level, and parking is accessed from a side street. Additionally, the proposed materials are compatible with the buildings in Davis Square.

### **DECISION:**

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti and Josh Safdie. Scott Darling recused himself and Danielle Fillis was absent. Upon making the above findings, Susan Fontano made a motion to approve the request for a special permit. Richard Rossetti seconded the motion. Wherefore the Zoning Board of Appeals voted **4-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes												
1	Approval is for 6 dwelling units (SZO §7.11.1.c) as part of a mixed use building with office and retail and for shared parking of 17 spaces (§9.13.e). This approval is based upon the following application materials and the plans submitted by the Applicant:	CO/BP	Plng.													
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>(Jan 30, 2009)</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>Dec 29, 2008 (May 1, 2009)</td><td>Plans submitted to OSPCD (Site Grading Drainage and Utilities Plan: C2, C3)</td></tr><tr><td>Mar 26, 2009 (May 1, 2009)</td><td>Modified plans submitted to OSPCD (2nd-4th floor plans:3, Proposed Elevations, 5)</td></tr><tr><td>April 28, 2009 (May 1, 2009)</td><td>Modified plans submitted to OSPCD (Basement / Parking, 1<sup>st</sup> floor w/ Site Plan: 2, Proposed Elevations: 4)</td></tr><tr><td>May 15, 2009</td><td>Modified plans submitted to OSPCD (3-D views, proposed evelations: 4)</td></tr></table>				Date (Stamp Date)	Submission	(Jan 30, 2009)	Initial application submitted to the City Clerk’s Office	Dec 29, 2008 (May 1, 2009)	Plans submitted to OSPCD (Site Grading Drainage and Utilities Plan: C2, C3)	Mar 26, 2009 (May 1, 2009)	Modified plans submitted to OSPCD (2nd-4th floor plans:3, Proposed Elevations, 5)	April 28, 2009 (May 1, 2009)	Modified plans submitted to OSPCD (Basement / Parking, 1 <sup>st</sup> floor w/ Site Plan: 2, Proposed Elevations: 4)	May 15, 2009	Modified plans submitted to OSPCD (3-D views, proposed evelations: 4)
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Any changes to the approved plans or use that are not <i>de minimis</i> must receive ZBA approval.																
2	If the retail use that is established at this location is not a by-right use and requires a Special Permit, the Applicant shall seek this permit.	CO	ISD													

3	The Applicant shall install a code compliant fire alarm system and a fire suppression system.	CO	FP	
4	The Applicant shall provide an "Inspection and Maintenance Plan" of the drainage system to the City and to the client.	CO	Engineering	
5	Signage shall be posted specifying that a vehicle is required to "back in" to the HP parking space and thus exit the parking space in a forward movement.	CO	T&P	
6	The Applicant will provide contributions to the City of \$2000.00 for pavement marking in the Davis Square area and \$2,000.00 for pavement markings in the Cutter Square area and also contributions to the City of \$2,000.00 for traffic and parking signs in the Davis Square area and \$2,000.00 for the traffic and parking signs in the Cutter Square area.	CO	T&P	
7	The Applicant shall supply 2 bicycle parking spaces, which can be satisfied with "U" type bicycle rack.	CO	Plng.	
8	The transformers should be located as not to decrease the landscaped area and it shall be fully screened.	Electrical permits & CO	DPW	
9	The Applicant, its successors and/or assigns, shall be responsible for maintenance of both the building and all on-site amenities, including landscaping, fencing, lighting, parking areas and storm water systems, ensuring they are clean, well kept and in good and safe working order.	Cont.	ISD	
10	The Applicant shall at his expense replace any existing equipment (including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheel chair ramps, granite curbing, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity. All new sidewalks and driveways must be constructed to DPW standard.	CO	DPW	
11	All construction materials and equipment must be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P	
12	To the extent possible, all exterior lighting must be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	Plng.	
13	The suspected underground fuel tanks on this site must be removed under the supervision of the Fire Prevention Bureau. Permits will be required for these removals.	CO	FP	
14	The applicant shall develop a demolition plan in consultation with the City of Somerville Inspectional Services Division. Full compliance with proper demolition procedures shall be required, including timely advance notification to abutters of demolition date and timing, good rodent control measures (i.e. rodent baiting), minimization of dust, noise, odor, and debris outfall.	Demolition Permitting	ISD	

15	<p>Because of the history of the site and the intended use, the Applicant shall, prior to issuance of any foundation permit and/or any building permit for the project, provide to the Planning Department and the Inspectional Services Division:</p> <p>a) a copy of the Response Action Outcome (RAO) Statement, signed by a Licensed Site Professional (LSP) and filed with DEP, verifying that a level of no significant risk for the proposed residential use has been achieved at the site; or</p> <p>b) if remediation has not reached the RAO stage, a statement signed by an LSP describing (i) the management of oil and hazardous materials/waste at the site, including release abatement measures intended to achieve a level of no significant risk for residential use at the site, treatment and storage on site, transportation off-site, and disposal at authorized facilities, (ii) a plan for protecting the health and safety of workers at the site, and (iii) a plan for monitoring air quality in the immediate neighborhood.</p>	Foundation Permit	Plng/ ISD	
16	Notification must be made, within the time period required under applicable regulations, to the Massachusetts Department of Environmental Protection (DEP) if there is any release of oil, hazardous materials, or regulated hazardous substances at the site. The City's OSE office, Fire Department and the Board of Health shall also be notified.	CO	OSE/FP/B OH	
17	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.	Final sign off	Plng.	
18	The Applicant shall comply with the Development Impact Agreement.	Demolition Permitting to CO	ISD	
19	The Applicant shall pull back angled portion of the building on corner of Cutter and Summer Streets 2' but not less than a 10% differential on first floor.	BP	Plng./ISD	

Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*  
Orsola Susan Fontano, *Clerk*  
Richard Rossetti  
Josh Safdie (Alt.)

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 \_\_\_\_\_