

**MEMORANDUM IN OPPOSITION TO
ADMINISTRATIVE APPEAL**

Case #: ZBA 2010-23
Premises: 187 Elm Street
Applicant: Matthew Sullivan
Respondent: Alpine Restaurant Group, Inc., d/b/a Pizzeria Posto
Respondent's Agent: Adam Dash, Esq.
Date: May 20, 2010

SUMMARY

Respondent Alpine Restaurant Group, Inc., d/b/a Pizzeria Posto opposes the administrative appeal of Applicant Matthew Sullivan from a decision of the Superintendent of Inspectional Services to issue a Certificate of Occupancy based on the satisfaction of special permit conditions for 187 Elm Street for the following reasons:

1. The appeal period has run on the Respondent's special permit to operate a restaurant at the Premises, such that the previously approved location of the dumpster and the dumpster enclosure cannot be challenged;
2. The dumpster and dumpster enclosure at the Premises comply with the special permit conditions for the Premises; and
3. The Superintendent of Inspectional Services has the discretion as to whether a special permit condition has been complied with or not.

EXPLANATION

1. The Appeal Period on the Special Permit Has Run.

The ZBA approved the plans filed with the Respondent's special permit application. Said plans called for the dumpster enclosure to be located against the property line abutting Applicant's property. This is the same relative location where the dumpster for the Premises has been located since the existing structure at the Premises was erected in accordance with the ZBA's 1996 approval of said structure.

As the appeal period has run on the Respondent's special permit, Applicant cannot now seek to have the dumpster and dumpster enclosure at the Premises relocated, or the ZBA condition regarding same revised, by means of an administrative appeal. Allowing the current administrative appeal would allow an end run around Massachusetts General Laws 40A and the Somerville Zoning Ordinance and would extend the twenty day appeal period indefinitely on all cases. That is not the law.

Applicant is seeking to improperly re-litigate the original special permit by means of this administrative appeal.

2. The Dumpster Enclosure Complies with the Special Permit Conditions.

Applicant attended and testified at the November 4, 2009 ZBA hearing on Respondent's special permit application. At said hearing, Applicant stated that he was not opposed to Respondent's special permit if the Planning Board conditions were adopted by the ZBA.

As far as the dumpster enclosure is concerned, the ZBA adopted the October 22, 2009 Planning Board condition verbatim, namely that "Applicant [Alpine] will screen the dumpster and recycling receptacles with fencing that totally encloses them and blocks views of them." See Planning Board Report dated October 22, 2009, with the dumpster enclosure being condition 7, a copy of which is attached hereto as Exhibit A; see also ZBA decision 2009-48 dated November 4, 2009, with the dumpster enclosure being condition 7, a copy of which is attached hereto as Exhibit B.

Prior to receiving a certificate of occupancy for the Premises, the owner of the property, 187 Elm Street, LLC, erected a dumpster enclosure in the location shown on the plans approved by the ZBA, both in 1996 and again in 2009, namely against the fence along the property line between the Premises and Applicant's property. See Landscape Plan dated September 11, 1996 and date stamped into the City Clerk's Office on November 20, 1996, a copy of which is attached hereto as Exhibit C. This was not a new plan when filed by Respondent in 2009. In fact, both the October 22, 2009 Planning Board Report and November 4, the 2009 ZBA decision identify the plan being approved as the plan dated September 11, 1996. See Condition 1 in Exhibit A; see also Condition 1 in Exhibit B. Therefore, both boards had the plan.

The dumpster location has not changed since 1996, and has always been screened from Applicant's property by the fence along the property line.

The enclosure was erected per the ZBA's condition to "block views of them", with "them" being the dumpster and recycling receptacles (plural), meaning more than one recycling receptacle. Respondent testified before the Planning Board and the ZBA that he would have more than one recycling receptacle, such as for paper, plastic, cooking oil, cloth and the like. Having more than one receptacle was always intended and allowed. Respondent would be unable to recycle otherwise, and both boards approved it.

As for storing fire wood in the dumpster receptacle, there is no prohibition against it. The condition states that the dumpster and recycling receptacles should be screened, but there is no requirement for screening firewood and no prohibition from storing firewood in the dumpster enclosure. Applicant is helping the neighborhood by screening the firewood too. Certainly, firewood does not give off any odor or affect Applicant in any way.

While other municipalities may limit the location of dumpsters regarding lot lines, Applicant admits that Somerville does not. The dumpster location against the

Applicant's property line was allowed by the ZBA in 1996 and again in 2009. The only difference is that the other sides of the dumpster enclosure have now been screened. The ZBA condition meant that screening of the dumpster had to be done on the other, unscreened sides, and not on the Applicant's side, which already was screened by a fence. The ZBA did not require Respondent to replace the fence along Applicant's property line, nor was there ever any intent to do so.

The dumpster and dumpster enclosure are exactly where they are supposed to be. While the dumpster may move within the dumpster enclosure, it is in the correct location. There is no condition stating that the dumpster must be in a certain location within the dumpster enclosure. If prior businesses at the Premises had located the dumpster between six and eight feet from the property line as Applicant contends, then those prior businesses were in violation of the ZBA's 1996 approval. See Exhibit C, showing the 1996 location of the dumpster as being against the property line.

3. The Superintendent of Inspectional Services Has Discretion.

Per Somerville Zoning Ordinance §3.1, the Superintendent of Inspectional Services has the discretion to determine whether a special permit condition has been met and whether a Certificate of Occupancy should issue.

In this instance, the Superintendent correctly issued the Certificate of Occupancy to Respondent because Respondent complied with the conditions of the special permit, including but not limited to the dumpster and dumpster enclosure condition. In fact, with the dumpster being where it is shown on the plan approved by the ZBA, the Superintendent had no choice but to issue the Certificate of Occupancy.

CONCLUSION

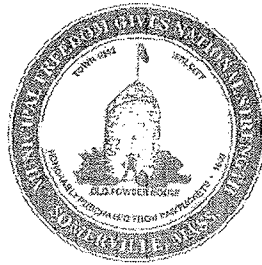
Respondent is in full compliance with the condition regarding the dumpster and dumpster enclosure. Applicant was in support of said condition at the ZBA hearing in 2009, but now seeks to re-litigate the matter after the expiration of the special permit appeal deadline. Had Applicant objected to the dumpster location, then he had the ability to do so as an appeal of the special permit approval in 2009. To now bring it up six months later as an administrative appeal is improper and should now be allowed.

Respondent is in compliance with the dumpster condition, and the Applicant's administrative appeal should be denied.

By Respondent Alpine Restaurant
Group, Inc., d/b/a Pizzeria Posto's
attorney,

A handwritten signature in black ink, appearing to read 'Adam Dash', with a long horizontal stroke extending to the right.

Adam Dash, Esq. BBO#557239
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Somerville, MA 02144
(617) 625-7373
dash@adamdashlaw.com



CITY OF SOMERVILLE, MASSACHUSETTS
OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
JOSEPH A. CURTATONE
MAYOR

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JAMES KIRYLO

DANA LEWINTER, ALT.

Case #: ZBA 2009-48

Date: October 22, 2009

Recommendation: Conditional Approval

PLANNING BOARD REPORT

Site: 187 Elm Street

Applicant Name: Alpine Restaurant Group, Inc.

Applicant Address: 39 Alpine Street, Somerville, MA 02144

Property Owner Name: 187 Elm Street, LLC

Property Owner Address: 74 Prospect Street, Cambridge, MA 02139

Agent Name: Adam Dash, Esq.

Agent Address: 48 Grove Street, Suite 304, Somerville, MA 02144

Alderman: Rebekah Gewirtz

Legal Notice: The Applicant and Owner seek a Special Permit with Design review (SZO §5.1.5) to establish a restaurant with outdoor seating (§7.11.10.1.2.b).

Zoning District/Ward: Neighborhood Business / 6

Zoning Approval Sought: Special Permit with Design Review under SZO §5.1.5 & 7.11.10.1.2.b

Date of Application: Oct 2, 2009

Dates of Public Meeting • Hearing: Planning Board 10/22/09 • Zoning Board of Appeals 11/4/09

Date of Decision: N/A

Vote: N/A

Dear ZBA members:

At its regular meeting on October 22, 2009 the Planning Board heard the above-referenced application. Based on materials submitted by the Applicant and the Staff recommendation, the Board voted (5-0), to recommend **conditional approval** of the requested Special Permit.



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In conducting its analysis, the Planning Board found:

I. PROJECT DESCRIPTION

1. Subject Property: The subject parcel contains two contiguous parcels which constitute 6,569 square feet. There is a one-story structure and eight parking spaces on the lot (one additional parking space should be marked as previously permitted). The ZBA granted a special permit with design review for the site in 1996 (1996-06) for a fast order food establishment with no drive-up service conducted in part or in whole outside of an enclosed building (7.11.10.2.2) and a variance for thirteen parking spaces. The Applicant stated that there have been at least five restaurants at the property in the last thirteen years. Some of the businesses included Carberry's Bakery, Boloco, and Green Tomato II. The original special permit was for 50 seats inside and 20 outside.



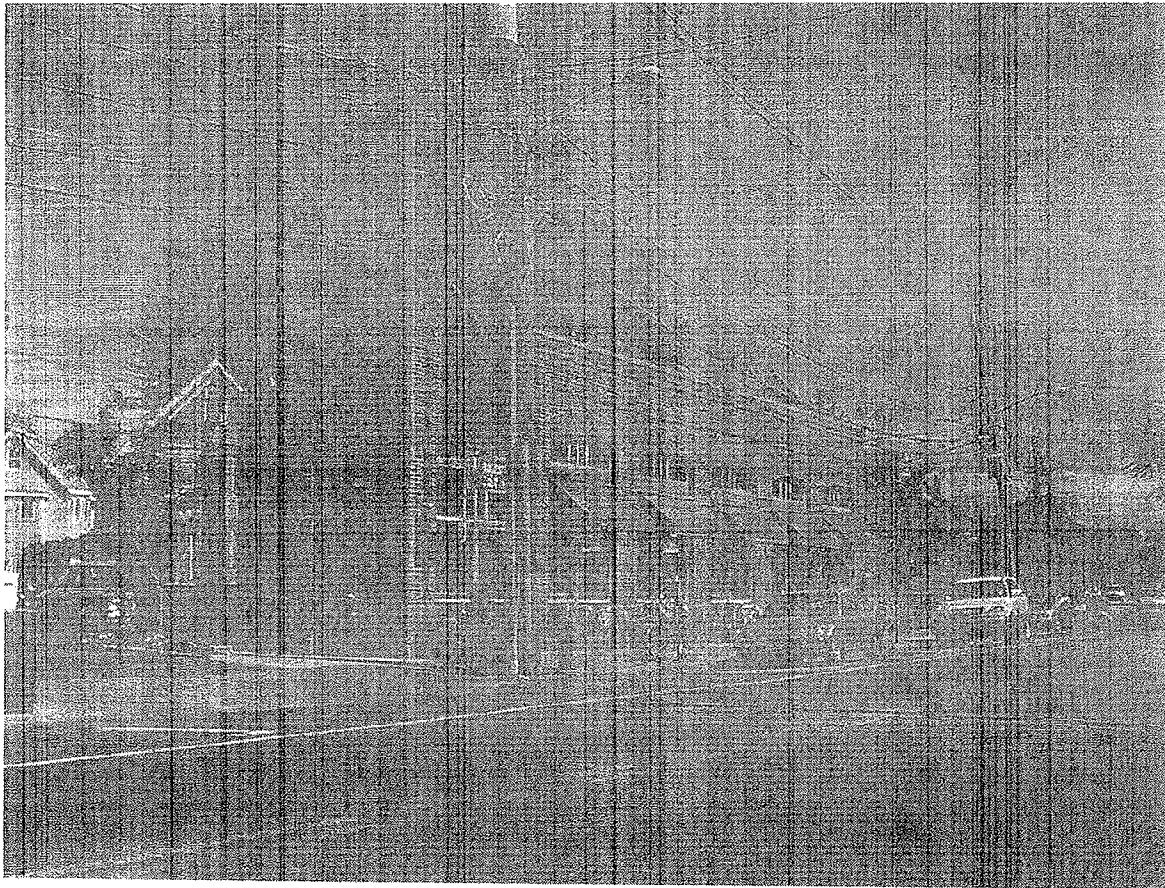
2. Proposal: The proposal is to open a restaurant with the same number of seats as the previous restaurants at this location: 50 inside and 20 outside. The restaurant would be a pizzeria and there would be a wood-burning oven with a new vent on the roof. Two existing rooftop vents would be removed. There would be some changes to the interior space; however, the exterior would remain the same except for a change to the wording on the sign. The location and size of the sign would remain the same. The outdoor seating would have planters to distinguish the eating area from the sidewalk. Since the sidewalk would be reduced to 4 feet, the planters should be placed so that pedestrians can comfortably step in

between them if more space is needed to pass someone. The planters should also be movable so that in cool weather they could be pushed toward the building or removed to allow for a wider sidewalk.

The Applicant proposes to have 8-9 employees onsite at any one time and operate 7 days per week from 11am to 11pm. Loading would be weekdays between 9 and 5 and on weekends between 10 and 3. Deliveries would occur through a delivery door in the rear.

Part of the prior special permit was to add four landscaped areas that would total approximately 548 sf. Some of the landscaping has been established; however, the remaining plantings should be installed to comply with the prior landscaping plan. The areas that are lacking landscaping are the northwest portion of the site behind the parking spaces and in the parking lot near the main Elm Street entrance.

Parking for the previous and proposed use is based on either gross square feet or number of seats and employees; whichever is larger. Both of these figures are staying the same for the new use. The required parking for the fast-order food establishment received a 10% reduction because it is within 650 sf of a municipal lot. The municipal lot remains in the same location. Since parking the requirement is the same and the municipal lot is still operating, no additional parking is required for the change in use.



3. Nature of Application: The special permit with design review that the site received in 1996 (ZBA 1996-06) was for a fast food establishment with no drive-up service (SZO § 7.11.10.2.2). A fast order food establishment is defined as, "[a]n establishment whose primary business is the sale of food for consumption on or off the premises which is: (a) primarily intended for immediate consumption rather than for use as an ingredient or component of meals; (b) available upon a short wait time; (c) packaged

for presented in such a manner that it can be readily eaten inside or outside the premises where it is sold; and, (d) which, because of the nature of the operation, causes or is a major contributor to a large volume or frequent turnover of vehicular traffic" (§2.2.56)

Since the intended use of the space is a restaurant other than fast food (§7.11.10.1.2.b) a new special permit with design review is required to establish the use. A restaurant is defined as, "[a]ny business establishment principally engaged in serving food, drink, or refreshments, whether prepared on or off site, for patrons eating on the premises" (§2.2.139).

4. Surrounding Neighborhood: The property is located in a neighborhood business district on the edge of Davis Square's central business district. There are commercial uses along Elm Street and a residential neighborhood to the north and east.

5. Impacts of Proposal: The building is located along the street and away from the residential abutting property and there is a six foot wood fence separating the properties. The fast-order food establishments have not been successful at this location as can be seen by the frequent turnover of restaurants. The change to a sit-down restaurant may improve its success. There would also be less frequent trips to the site as a restaurant rather than as a fast-order restaurant. The businesses in the area will benefit from filling a vacant storefront.

6. Green Building Practices: The building will be reused. The Applicant intends to cook with local ingredients in the restaurant.

7. Comments:

Fire Prevention: Fire Prevention requires plans showing the location of all required fire detection and/or fire protection devices.

Ward Alderman: Has been contacted but has not provided comments.

II. FINDINGS FOR SPECIAL PERMIT (SZO §5.1):

In order to grant a special permit with design review, the SPGA must make certain findings and determinations as outlined in §5.1.4 and §5.1.5 of the SZO. This section of the report goes through §5.1.4 and §5.1.5 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 proposal complies with the design guidelines for business zones (§5.1.5):

1. The building maintains a strong presence along the primary street.
2. The entrances of the building are differentiated from the rest of the elevation with metal and glass in contrast to the brick on the rest of the façade.
3. There are approximately 10 foot windows that look like small storefronts along the front façade. Small scale retail is typical in the area.
4. There are clearly defined rhythms of large windows with a curved design at the top and awnings.

5. The roof is flat which is consistent with the other commercial roof types in the area.
6. The materials of the building are red brick, metal and glass, all of which are dominant in the area.
7. There is landscaping along the street where the parking lot breaks the streetwall. Additional landscaping near the entrance was proposed for the last special permit with design review and will be a recommended condition of approval to comply with this guideline to continue the streetwall between buildings.
8. The rooftop mechanical equipment (pizza oven vent) would be placed in the middle rear of the structure and would comply with the 45 degree setback from the edge of the structure. Two existing chimneys near the edges of the building would be removed as shown on the roof plan.
9. The building complies with guidelines in Article 6 for Neighborhood Business Districts (§6.1.4.) - the parking is at the rear of the lot, behind the building.

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 conserving the value of land and buildings and encouraging the most appropriate use of land throughout the City.

The proposal is consistent with the purpose of the district, which is to establish and preserve areas for small-scale retail stores, services and offices which are located in close proximity to residential areas and which do not have undesirable impacts on the surrounding neighborhoods. This small scale restaurant where the majority of people are sitting down to eat is in close proximity to the vibrant Davis Square with several transit options. This type of use conforms to the spirit of the Neighborhood Business district.

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."

As discussed in the design guidelines in finding 2, the building conforms to the characteristics of the NB district and the area. A small scale restaurant is compatible with the commercial uses in the district and it would be a convenient use for the residents in the area. The Board does not anticipate negative impacts to the community from this use. There would be no change to the exterior of the building except for the name of the restaurant on the signage and improvements to the site that were conditions of the prior approval. The amount of landscaping would increase, the dumpster and recycling receptacles would be screened, and there would only be one dumpster for trash onsite. The businesses in the area will benefit from filling a vacant storefront.

III. RECOMMENDATION

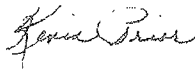
Special Permit under §5.1

Based on the above findings and subject to the following conditions, the Planning Board recommends **CONDITIONAL APPROVAL** of the requested **SPECIAL PERMIT** with **DESIGN REVIEW**.

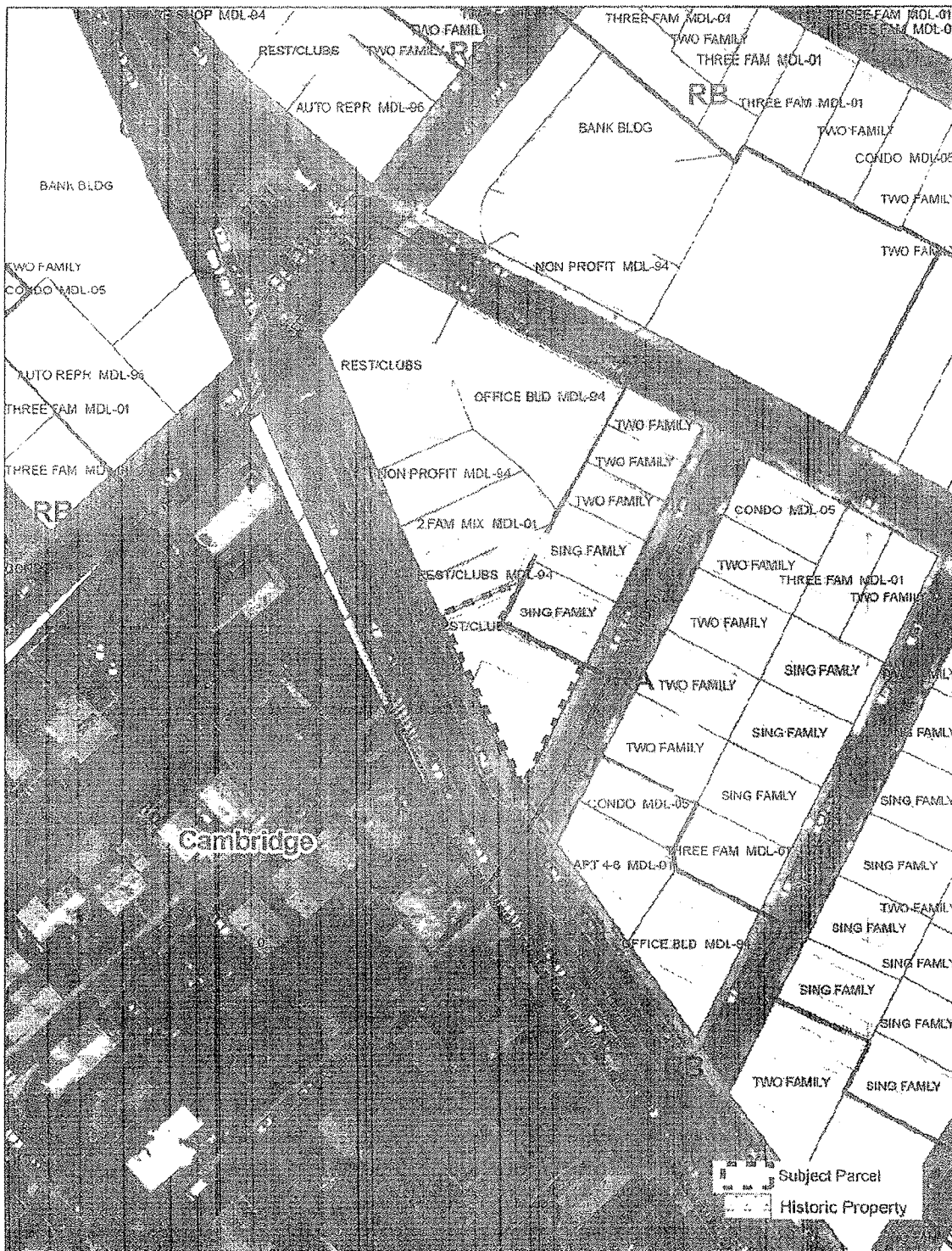
#	Condition	Timeframe for Compliance	Verified (initial)	Notes								
1	Approval is to establish a restaurant with outdoor seating (§7.11.10.1.2.b) with 50 seats inside and 20 seats outside. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	Png.									
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>Oct 2, 1009</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>Aug 10, 2009</td><td>Plans submitted to OSPCD (A1.1: roof plan, A1.0: floor plan)</td></tr><tr><td>Sept 11, 1996</td><td>Plans submitted to OSPCD (landscape plan)</td></tr></table>				Date (Stamp Date)	Submission	Oct 2, 1009	Initial application submitted to the City Clerk's Office	Aug 10, 2009	Plans submitted to OSPCD (A1.1: roof plan, A1.0: floor plan)	Sept 11, 1996	Plans submitted to OSPCD (landscape plan)
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Sept 11, 1996	Plans submitted to OSPCD (landscape plan)											
Any changes to the approved site plan, elevations or use 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 9 th parking space by the dumpster shall be marked as indicated on the landscape plan.	CO	Png.									
4	The site shall comply with the landscaping plan.	CO	Png.									
5	The planters, or similar barrier, separating the outdoor dining area and the sidewalk shall be placed so that pedestrians can comfortably step in between them if more space is needed on the sidewalk to pass someone. The planters, or similar barrier, shall be movable so that in cool weather they could be pushed toward the building or removed to allow for a wider sidewalk.	CO	Png.									
6	To the extent possible, all new exterior lighting must be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	Png.									
7	Applicant will screen the dumpster and recycling receptacles with fencing that totally encloses them and blocks views of them.	CO	Png.									

8	An Outdoor Seating and Goods License is required from the Board of Alderman to encumber the sidewalk.	annually	BOA	
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 is encouraged to hire locally and urge employees to commute to work on foot, bicycle or use public transportation.	Cont.	Applicant	
11	There shall only be one dumpster for trash on-site. There may be recycling receptacles within the fencing enclosure for the dumpster.	Cont.	ISD	
12	All operations of the restaurant shall end at 11pm.	Cont.	ISD	
13	The Applicant shall make his best faith efforts, including collaboration with the Traffic and Parking Director or his designee, to secure additional designated parking spaces should any become available in the Davis Square area in the future, through the Business Program or other means.	Cont.	Owner / Tenant	
14	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.	

Sincerely,


Kevin Prior
Chairman

Cc: Applicant: Alpine Restaurant Group, Inc.
Owner: 187 Elm Street, LLC
Agent: Adam Dash, Esq.



A TRUE COPY ATTEST:

John J Long
CITY CLERK



2009 NOV -6 P 12:10

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SOMERVILLE, MA

CITY OF SOMERVILLE, MASSACHUSETTS
OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
JOSEPH A. CURTATONE
MAYOR



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Page: 1 of 6 12/22/2009 11:25 AM

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DANIELLE FILLIS
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JOSH SAFDIE (ALT.)

Case #: ZBA 2009-48
Site: 187 Elm Street
Date of Decision: November 4, 2009
Decision: Petition Approved with Conditions
Date Filed with City Clerk: November 6, 2009

ZBA DECISION

Applicant Name:	Alpine Restaurant Group, Inc.
Applicant Address:	39 Alpine Street, Somerville, MA 02144
Property Owner Name:	187 Elm Street, LLC
Property Owner Address:	74 Prospect Street, Cambridge, MA 02139
Agent Name:	Adam Dash, Esq.
Agent Address:	48 Grove Street, Suite 304, Somerville, MA 02144

Legal Notice: Applicant Alpine Restaurant Group, Inc. & Owner 187 Elm Street, LLC seek a Special Permit with Design review (SZO §5.1.5) to establish a restaurant with outdoor seating (§7.11.10.1.2.b). NB zone. Ward 6.

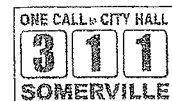
<u>Zoning District/Ward:</u>	NB zone/Ward 6
<u>Zoning Approval Sought:</u>	§5.1.5 & §7.11.10.1.2.b
<u>Date of Application:</u>	October 2, 2009
<u>Date(s) of Public Hearing:</u>	November 4, 2009
<u>Date of Decision:</u>	November 4, 2009
<u>Vote:</u>	5-0

Deed 28252-423

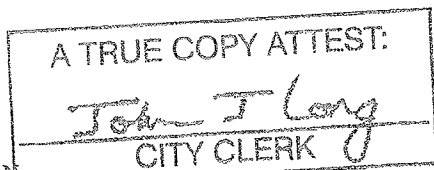
Appeal #ZBA 2009-48 was opened before the Zoning Board of Appeals at Somerville City Hall on November 4, 2009. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L. c. 40A, sec. 11 and the Somerville Zoning Ordinance. After one hearing(s) of deliberation, the Zoning Board of Appeals took a vote.



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ADAM DASH & ASSOCIATES
48 Grove Street, Suite 304
Dorset Square



Date: November 5, 2009
Case #: ZBA 2009-48
Site: 187 Elm Street

DESCRIPTION:

2009 NOV -6 P 12:10

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FINDINGS FOR SPECIAL PERMIT WITH DESIGN REVIEW
(SZO §5.1.5 & §5.1.4):

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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.

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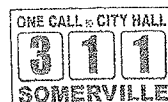
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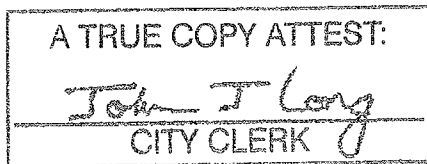
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4. There are clearly defined rhythms of large windows with a curved design at the top and awnings.
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6. The materials of the building are red brick, metal and glass, all of which are dominant in the area.
7. There is landscaping along the street where the parking lot breaks the streetwall. Additional landscaping near the entrance was proposed for the last special permit with design review and will be a recommended condition of approval to comply with this guideline to continue the streetwall between buildings.



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Date: November 5, 2009
Case #: ZBA 2009-48
Site: 187 Elm Street

8. The rooftop mechanical equipment (pizza oven vent) would be placed in the middle rear of the structure and would comply with the 45 degree setback from the edge of the structure. Two existing chimneys near the edges of the building would be removed as shown on the roof plan.
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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 conserving the value of land and buildings and encouraging the most appropriate use of land throughout the City.

The proposal is consistent with the purpose of the district, which is to establish and preserve areas for small-scale retail stores, services and offices which are located in close proximity to residential areas and which do not have undesirable impacts on the surrounding neighborhoods. This small scale restaurant where the majority of people are sitting down to eat is in close proximity to the vibrant Davis Square with several transit options. This type of use conforms to the spirit of the Neighborhood Business district.

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."

As discussed in the design guidelines in finding 2, the building conforms to the characteristics of the NB district and the area. A small scale restaurant is compatible with the commercial uses in the district and it would be a convenient use for the residents in the area. The Board does not anticipate negative impacts to the community from this use. There would be no change to the exterior of the building except for the name of the restaurant on the signage and improvements to the site that were conditions of the prior approval. The amount of landscaping would increase, the dumpster and recycling receptacles would be screened, and there would only be one dumpster for trash onsite. The businesses in the area will benefit from filling a vacant storefront.

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. 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:



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A TRUE COPY ATTEST:

John T. Long
CITY CLERK

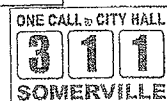
Date: November 5, 2009
Case #: ZBA 2009-48
Site: 187 Elm Street

#	Condition	Timeframe for Compliance	Verified (initial)	Notes								
1	Approval is to establish a restaurant with outdoor seating (§7.11.10.1.2.b) with 50 seats inside and 20 seats outside. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO CITY CLERK'S OFFICE	Png. CITY CLERK'S OFFICE									
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>Oct 2, 1009</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>Aug 10, 2009</td><td>Plans submitted to OSPCD (A1.1: roof plan, A1.0: floor plan)</td></tr><tr><td>Sept 11, 1996</td><td>Plans submitted to OSPCD (landscape plan)</td></tr></table>				Date (Stamp Date)	Submission	Oct 2, 1009	Initial application submitted to the City Clerk's Office	Aug 10, 2009	Plans submitted to OSPCD (A1.1: roof plan, A1.0: floor plan)	Sept 11, 1996	Plans submitted to OSPCD (landscape plan)
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Sept 11, 1996	Plans submitted to OSPCD (landscape plan)											
Any changes to the approved site plan, elevations or use 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 9 th parking space by the dumpster shall be marked as indicated on the landscape plan.	CO	Png.									
4	The site shall comply with the landscaping plan.	CO	Png.									
5	The planters, or similar barrier, separating the outdoor dining area and the sidewalk shall be placed so that pedestrians can comfortably step in between them if more space is needed on the sidewalk to pass someone. The planters, or similar barrier, shall be movable so that in cool weather they could be pushed toward the building or removed to allow for a wider sidewalk. A 4' wide pedestrian corridor shall be maintained between the planters and any permanent structure within the sidewalk.	CO	Png.									
6	To the extent possible, all new exterior lighting must be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	Png.									
7	Applicant will screen the dumpster and recycling receptacles with fencing that totally encloses them and blocks views of them.	CO	Png.									
8	An Outdoor Seating and Goods License is required from the Board of Alderman to encumber the sidewalk.	annually	BOA									
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 is encouraged to hire locally and urge employees to commute to work on foot, bicycle or use public transportation.	Cont.	Applicant									



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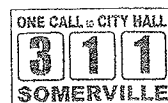
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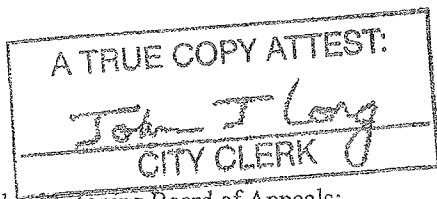
11	There shall only be one dumpster for trash on-site. There may be recycling receptacles within the fencing enclosure for the dumpster.	Cont.	ISD	2009 NOV -6
12	All operations of the restaurant shall end at 11pm.	Cont.	ISD	
13	The Applicant shall make his best faith efforts, including collaboration with the Traffic and Parking Director or his designee, to secure additional designated parking spaces should any become available in the Davis Square area in the future, through the Business Program or other means.	Cont.	Owner / Tenant	CITY CLERK'S OFFICE SOMERVILLE, MA
14	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.	
15	The Applicant shall install a bicycle rack in an area to be approved by the Planning staff.	CO	Plng.	
16	The Applicant shall submit a site plan that includes a bike rack, a 4' pedestrian clearance from any obstruction in the sidewalk and the approved 1996 landscaping to be approved by Planning staff.	CO	Plng.	



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Date: November 5, 2009
Case #: ZBA 2009-48
Site: 187 Elm 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

NOV - 6 P 12:10

CITY CLERK'S OFFICE
SOMERVILLE, MA

Attest, by the Administrative Assistant:

Dawn M. Pereira
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 11/5/09 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

John J Long

City Clerk

Date

11/30/09



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"EXHIBIT C"

