



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
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**MAYOR**

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JOSH SAFDIE (ALT.)

**Case #: ZBA 2010-01**  
**Site: 44-48 Third Avenue**  
**Date of Decision: February 17, 2010**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: February 19, 2010**

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**ZBA DECISION**

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<b>Applicant Name:</b>	APCA Third Avenue, LLC c/o Tom Woods
<b>Applicant Address:</b>	20 Custom House Street, Suite 800, Boston, MA 02110
<b>Property Owner Name:</b>	APCA Third Avenue, LLC c/o Tom Woods
<b>Property Owner Address:</b>	20 Custom House Street, Suite 800, Boston, MA 02110
<b>Agent Name:</b>	WilmerHale, LLC, c/o Michele A. Mulvaney
<b>Agent Address:</b>	60 State Street, Boston, MA 02109

Legal Notice: Applicant, and Owner, APCA Third Avenue LLC, seeks a Special Permit with Site Plan Review under SZO §7.11.11.10.b in order to establish an indoor parking/storage facility for federally confiscated vehicles. IA zone. Ward 1.

<u>Zoning District/Ward:</u>	IA zone/Ward 1
<u>Zoning Approval Sought:</u>	§7.11.11.10.b
<u>Date of Application:</u>	January 26, 2010
<u>Date(s) of Public Hearing:</u>	February 17, 2010
<u>Date of Decision:</u>	February 17, 2010
<u>Vote:</u>	5-0

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Appeal #ZBA 2010-01 was opened before the Zoning Board of Appeals at Somerville City Hall on February 17, 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 convert approximately 15,120 n.s.f. of existing warehouse space into a parking/storage facility for used or seized vehicles by the General Services Administration/Drug Enforcement Agency. The proposed maximum number of vehicles in the facility at any time would be 42. There would be no auctions, sales, service or any other actions beyond storage of vehicles at the facility. The facility would be unmanned and approximately ten vehicles would be entering or leaving the facility per week. Access to the facility will be direct from Third Avenue onto the property and existing loading dock area. Pedestrians to the building would continue to enter from the front of the building on the west side of the structure.

## **FINDINGS FOR SPECIAL PERMIT WITH SITE PLAN REVIEW (SZO §7.11.11.10.b):**

In considering the requested special permits with site plan review the Zoning Board 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 is in general compliance with the requirements set forth under §5.2.3 of the SZO. Additional information regarding drainage systems will be necessary before any building permits are issued.
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 an Industrial A District. The IA zone seeks, "to establish and preserve areas for industrial and related uses which are not incompatible with commercial uses; uses which are most appropriately located as neighbors of industrial uses including living and studio space for artists; and uses which are necessary to service the immediate needs of industrial establishments in those areas, and accessory uses to industrial uses such as day care centers, cafeterias, health facilities, and the like."

The Board finds that the proposal is consistent with the purpose of the IA zone. A parking facility would be typical of an industrial use and compatible with the other industrial uses in the area.

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."

Since the lot has previously been developed, prior natural features have been significantly altered. The site has most recently been used as a warehouse and office. The site and surrounding area are industrial in design and since there are no alterations proposed for the exterior, the building would remain in character with its surroundings. While the proposed use approval would be for a structured motor vehicle parking, conditions would be placed on this approval that the facility would not be available to the public for use as a commercial parking facility. Due to the proposed operation of the facility as a DEA vehicle storage lot, there would be a limited number of vehicles entering and leaving this facility and would therefore have minimal effect on the character of the surrounding area.

This site is one of two parcels that the Commonwealth needs for the future Green Line maintenance facility. The City and the applicant have reached a verbal agreement that if this site is chosen for the maintenance



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facility that they will vacate the building and that the special permit will become void. This will be a condition of approval in this report and a legal agreement shall be drafted as well.

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

Based upon the comments received from the various City Departments any necessary mitigation or minor design changes have 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."

It is not anticipated that this proposal will create any adverse impacts on the public services and facilities serving the development. However, the application for building permit will require review by DPW and any adverse impacts on public systems that may result from the development will need to be addressed.

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."

Because of the nature of the proposed use and the industrial nature of the area in which it is projected to be established, adverse environmental impacts are not anticipated. In addition, it is not expected that this facility will produce a level of emissions that would be higher than are now experienced in the area due to any increased traffic generated by the proposed use.

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 Purpose, Interpretation and Scope, and of Article 6, as already described, the Zoning Board finds the proposal to be consistent with the purposes of the SZO.

9. Emergency Access: There is easy access to buildings, and the grounds adjoining them for operations by fire, police, medical and other emergency personnel and equipment.

Planning Staff, ISD and Fire Prevention have had discussions with the applicant regarding emergency access to the building. It is understood that the floor plans/parking layout for the 42 vehicles will be reviewed by the Fire Department prior to issuance of any building permit/CO.

### **DECISION:**

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Josh Safdie with Scott Darling recused. Upon making the above findings, Susan Fontano made a motion to approve the request for a special permit. Josh Safdie 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	Approval is for the establishment of a 15,120 s.f. structured motor vehicle parking facility for the General Services Administration/Drug Enforcement Agency. This facility shall not allow or become a revenue producing commercial parking facility for the general public. This approval is based upon the following application materials and the plans submitted by the Applicant and/or its Agent:		Plng.									
	<table><tr><th>Date (Stamp)</th><th>Submission</th></tr><tr><td>(1/12/10)</td><td>Initial application submitted to the City Clerks Office</td></tr><tr><td>5/30/08</td><td>Site Plan</td></tr><tr><td>2/4/10</td><td>Parking Plan</td></tr></table>				Date (Stamp)	Submission	(1/12/10)	Initial application submitted to the City Clerks Office	5/30/08	Site Plan	2/4/10	Parking Plan
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	(1/12/10)				Initial application submitted to the City Clerks Office							
	5/30/08				Site Plan							
2/4/10	Parking Plan											
2	Any changes to the approved site plan that are not <i>de minimis</i> must receive ZBA approval.											
2	The tenant shall vacate the premises on the later to occur of a) the date that is 6 months after notice of lease termination, and b) the occurrence of the following two events: i) the filing of a notice of eminent domain taking by the Commonwealth of Massachusetts or another governmental agency or authority with the Registry of Deeds; and ii) written notice to Landlord and Tenant from the Commonwealth or such agency or authority that the Commonwealth or such agency or authority is ready to demolish the building.	Continuous	ISD/Plng									
3	The applicant shall put similar language from Condition #2 binding the tenant in any lease or tenancy agreement for the premises. A draft of the lease shall be submitted to Planning Staff prior to the issuance of a building permit and an executed copy of the lease shall be submitted to the Planning Staff prior to issuance of a Certificate of Occupancy.	BP/CO	ISD/Plng									
4	This special permit will terminate 6 months after the later to occur of i) the filing of a notice of eminent domain taking by the Commonwealth of Massachusetts or another governmental agency or authority with the Registry of Deeds; and ii) written notice to Landlord and Tenant from the Commonwealth or such agency or authority that the Commonwealth or such agency or authority is ready to demolish the building. An agreement between the parties to that effect shall be recorded with the Middlesex Registry of Deeds.	Agreement prior to CO	Legal /ISD /Plng									
5	No auctions or vehicle sales to individuals shall occur onsite.	Continuous	ISD									
6	The structure and internal vehicle layout shall meet all codes and any additional requirements set by Inspectional Services.	BP	ISD									



	Fire Prevention or any other City Department.			
7	Parking of stored vehicles shall only be allowed within the structure.	Continuous	ISD	
8	Any signage shall be approved by Planning Staff.	Continuous	Plng	
9	Planning Staff may approve minor modifications made to the exterior of the structure that are required in response to Fire Prevention concerns. Elevations shall be required for Planning Staff approval if exterior modifications are proposed.	BP	Plng	
10	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	

Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*



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Orsola Susan Fontano, *Clerk*  
Richard Rossetti  
Danielle Evans  
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 \_\_\_\_\_



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