



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

MEMBERS

HERBERT F. FOSTER, JR., *CHAIRMAN*
ORSOLA SUSAN FONTANO, *CLERK*
RICHARD ROSSETTI
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DANIELLE FILLIS
ELAINE SEVERINO (ALT.)
JOSH SAFDIE (ALT.)

Case #: ZBA 2008-66

Site: 600 Windsor Place

Date of Decision: June 24, 2009

Decision: Petition Approved with Conditions

Date Filed with City Clerk: July 2, 2009

ZBA DECISION

Applicant Name:	Green Cab, Inc.
Applicant Address:	85 Foley Street, Somerville, MA 02145
Property Owner Name:	The Windsor Company LLC.
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145

<u>Legal Notice:</u>	Applicant Green Cab, Inc. & Owner The Windsor Co., LLC, seek a special permit with site plan review (SZO §7.11.11.12.1.b) in order to establish a taxi storage and service use of more than 5,000 gross square feet. IP zone. Ward 2.
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<u>Zoning District/Ward:</u>	IP zone/Ward 2
<u>Zoning Approval Sought:</u>	§7.11.11.12.1.b
<u>Date of Application:</u>	November 18, 2008
<u>Date(s) of Public Hearing:</u>	1/21, 2/4, 2/18, 3/4, 3/18, 4/1, 4/15, 5/6, 5/20, 6/3, 6/24
<u>Date of Decision:</u>	June 24, 2009
<u>Vote:</u>	5-0

Appeal #2008-66 was opened before the Zoning Board of Appeals at Somerville City Hall on January 21, 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 (1) hearing(s) of deliberation, the Zoning Board of Appeals took a vote.

DESCRIPTION:

The Applicant is proposing to establish a taxi dispatch, storage and service use on the property. Operations would be carried out within the existing structure, which is proposed to provide approximately 52 interior parking spaces for taxis. Approximately 3500sf of the existing structure would be retrofitted

for offices and a customer receiving area of the Green Cab company. Approximately 3800sf of the existing structure would be retrofitted for use as a service area for the taxis.

The business would operate 24 hours a day, 365 days a year. There would be 20 fulltime employees rotating on the 24 hour schedule, with a maximum of 10 employees stationed on-site at any given time. Approximately 52 taxi cabs would be dispatched out of the facility, which would be driven by "self-employed contractors" (considered employees for parking calculations) that would work 12 hour shifts. 44 parking spaces (3 handicapped) are proposed around the perimeter of the structure (see conditions for reduction requirement).

FINDINGS FOR SPECIAL PERMIT (SZO §7.11.15.c):

In order to grant a special permit with site plan review, the SPGA must make certain findings and determinations as outlined in §5.2.5 of the SZO. This section of the report goes through §5.2.5 in detail.

1. Information Supplied: The Board finds that the information provided by the Applicant conforms to the requirements of §5.2.3 of the SZO and allows for a comprehensive analysis of the project.
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 would 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".

On April 23, 2009 the Union Square Rezoning was adopted by the Board of Alderman. The property at 600 Windsor Place is now zoned TOD 135. However, the last paragraph of the rezoning amendment states:

Effective Date. The effective date ("Effective Date") of this Ordinance shall be the date of which it is adopted by the Somerville Board of Aldermen. Notwithstanding the foregoing, this Ordinance shall not apply to any use, structure, or parking proposal for which, prior to the Effective Date, the applicant had applied (a) to the Inspectional Services Department for a building permit, or (b) to the SPGA for a Special Permit ("SP") or Special Permit with Site Plan Review ("SPSR"); but rather, the validity of the building permit, SP, or SPSR, even if granted after the Effective Date, shall be governed by the zoning in effect immediately prior to the Effective Date.

Since the date of application for this expansion was November 18, 2008 and before the "Effective Date" of this ordinance (4/23/09), the proposal would be reviewed under and governed by the original Industrial Park (IP) zoning district.

The purpose of the Industrial Park (IP) district is "to provide opportunity for development in an environment free of excessive noise, odor, smoke, dust, glare, heat, visual disarray, or other nuisance." The proposed taxi storage and service use is consistent with the purpose of the IP district as it will be of light intensity while providing quality employment opportunities for residents of Somerville. Green Cab provides a valuable alternative transportation service to the residents of Somerville. Having a quality taxi service reduces the need for individually owned vehicles and reduces traffic congestion on the streets.

A TOD-135 zone allows for greater densities and heights than are currently allowed in this area. It is envisioned that larger commercial and residential structures will be developed in the surrounding area that could reach a height of 135' with a 5.5 FAR. Staff acknowledges that this development could take years to complete and the area to reach its full potential. Completion of the Green Line extension and infrastructure improvements are vital to the development of this area and until these elements are in place the adopted zoning allows for flexibility in use and building dimensions. Considering the allowed flexibilities Staff finds this use to be compatible with the existing area and zoning.

However, the City would like to see this site developed in the future to be more in-line with the adopted Union Square Zoning. The City has come to an agreement with the company owner that will control the long term operations of this business at this location. The applicant has signed a development covenant with the City that will require the applicant to cease operations at this location within ten years (two three-year extensions possible with Planning Board approval) and to begin taking steps to redevelop the site with a structure(s) and use(s) that are compatible with the adopted rezoning regulations. The areas of agreement outlined in the covenant are incorporated into the conditions of approval in this report as appropriate.

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

There are no proposed alterations to the building structure; however the site will be improved with additional landscaping. The uses in the immediate area include a scaffolding company, a moving and storage company, several metal salvage yards and a dry cleaning operation. The MBTA commuter rail tracks abut the rear of this property. The Board finds the taxi rental company to be compatible with these uses.

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

The project would meet accepted standards and criteria for the functional design of facilities, structures, and site construction. Outstanding issues involve the operations and location of the proposed fuel dispenser and associated tanks. The applicant will be required to consult with the Somerville Fire Department, Inspectional Services Division, Planning and other necessary departments prior to issuance of the CO.

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."

As previously stated there will be two 12 hour shifts of cab drivers. In the morning and afternoon there are 3-4 hour windows when shift changes would take place. Because of the wide range in times when shifts would take place, the Board does not anticipate adverse impacts on the street system. Additionally, several cab drivers take taxis home and/or change shift off site, which further reduces the impact on the street system in this area.

There will be no physical alterations to the site except for additional landscaped areas and a reduction in the number of curb cuts on the site. Storm runoff to the public system will be slightly reduced with the additional landscaping proposed for the site. No washing of vehicles will be allowed on the site and all proper procedures for disposal of waste and other hazardous materials must be strictly adhered to.

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.”

Environmental impacts would be limited to the increased emissions from the added cars to the area. The Board finds that considering the existing conditions in the area any environmental impacts from the proposed use would be almost undetectable. The prior use of the structure was as a DHL mail storage and transfer facility where operations included the consistent arrival and departure of 35 delivery vans and larger trucks.

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 provide for and maintain the uniquely integrated structure of uses in the City” and “to conserve the value of land and buildings” and of Article 6, as already described, the proposal is consistent with the purposes of the SZO.

9. Preservation of Landform and Open Space: The Applicant has to ensure that “the existing land form is preserved in its natural state, insofar as practicable, by minimizing grading and the erosion or stripping of steep slopes, and by maintaining man-made features that enhance the land form, such as stone walls, with minimal alteration or disruption. In addition, all open spaces should be designed and planted to enhance the attractiveness of the neighborhood. Whenever possible, the development parcel should be laid out so that some of the landscaped areas are visible to the neighborhood.”

The site is relatively flat and almost entirely covered with impervious materials. The increased landscaping on the site would increase the attractiveness of the neighborhood. In addition, to further increase the attractiveness of the front of the property, the Board is recommending that six (6) parking spaces be removed and replaced with landscaping.

10. Location of Access: The Applicant must ensure that “the location of intersections of access drives with the City arterial or collector streets minimizes traffic congestion.”

The proposal meets all requirements of the zoning regarding parking and driveway dimensions. Traffic will enter and exit from several existing driveway and curb cuts 30' and greater along Windsor Place. No new curb cuts are proposed. One curb cut is recommended for removal and replacement with landscaping, which will improve pedestrian safety in front of the property.

11. Prevention of Adverse Impacts: The Applicant must demonstrate that “provisions have been made to prevent or minimize any detrimental effect on adjoining premises, and the general neighborhood, including, (1) minimizing any adverse impact from new hard surface ground cover, or machinery which emits heat, vapor, light or fumes; and (2) preventing adverse impacts to light, air and noise, wind and temperature levels in the immediate vicinity of the proposed development;”

No negative impacts on adjoining premises are anticipated as a result of the proposed use and new structure.

12. Signage: The Applicant must ensure that “the size, location, design, color, texture, lighting and materials of all permanent signs and outdoor advertising structures or features shall reflect the scale and character of the proposed buildings.

Signage has not yet been designed but must comply with the Somerville Zoning Ordinance requirement regarding exterior signage. The signage review can be completed subsequent to zoning review, with a condition of approval requiring that the sign design is in compliance with Article 12 of the Somerville Zoning Ordinance and that is satisfactory to Planning Staff prior to the issuance of any permits.

13. Screening of Service Facilities: The Applicant must ensure that “exposed transformers and other machinery, storage, service and truck loading areas, dumpsters, utility buildings, and similar structures shall be effectively screened by plantings or other screening methods so that they are not directly visible from either the proposed development or the surrounding properties.”

All service facilities will be subject to screening requirements as conditioned in this permit.

DECISION:

Present and sitting were Members Hebert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Fillis, Elaine Severino and Josh Safdie. 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), with Josh Safdie not voting, to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	Approval is for the 24 hour use as a taxi storage and service use [§7.11.11.12.1.b] of 22,800 net square feet. This approval is based upon the following application materials and the plans submitted by the Applicant and/or its contractor:	BP/CO	ISD / Plng.							
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>(11/18/08)</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>11/17/08 (12/8/08)</td><td>Plans submitted to OSPCD L-1 & A-1.0</td></tr></table>				Date (Stamp Date)	Submission	(11/18/08)	Initial application submitted to the City Clerk's Office	11/17/08 (12/8/08)	Plans submitted to OSPCD L-1 & A-1.0
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	(11/18/08)				Initial application submitted to the City Clerk's Office					
11/17/08 (12/8/08)	Plans submitted to OSPCD L-1 & A-1.0									
Any changes to the approved site plan or use must receive ZBA approval.										

2	This SPSR shall expire ten (10) years after the date of issuance of a certificate of occupancy for the Taxi Use ("Effective Date").	Cont.		Covenant
3	<p>The Applicant may apply to the SPGA for up to two (2) extensions of this SPSR: a first extension for three (3) years, which shall expire thirteen (13) years from the date of the original SPSR decision (the "First Extension"); and a second extension for three (3) years which shall expire sixteen (16) years from the date of the original SPSR decision ("Second Extension"). The Applicant shall notify the City, no less than six (6) months in advance of the expiration date (or extended expiration date) of the SPSR, that the Applicant intends to apply for an extension. Each request for extension shall be filed no later than ninety (90) days prior to the expiration date (or extended expiration date) of the original SPSR.</p> <p>In determining whether or not to grant the First Extension and Second Extensions, the Planning Board will take into account the considerations set forth in the Applicant's Covenant with the City, including without limitation: (1) the Applicant's compliance with the conditions in this SPSR; (2) then current real estate market conditions, including absorption rates and commercial financing availability and terms; (3) progress on the extension of the Green Line into Union Square; (4) proximity of the Property to the nearest Green Line Station and other redevelopment projects; and (5) the Applicant's willingness to take reasonable actions, prior to filing for the first extension, to plan for and further the redevelopment of the Property by developing a conceptual site plan for the Property ("Conceptual Site Plan") during the 8th year of the SPSR that is (i) consistent with publicly-adopted plans and guidelines for development in the Union Square/Boynton Yards area; (ii) conforms to the then-current zoning, or can be permitted with zoning relief acceptable to the SPGA; and (iii) optimizes the mixed use, transit-oriented development potential of the site; and (6) the Applicant's filing for zoning relief for a project that conforms to the Conceptual Site Plan during the 9th years of the SPSR.</p>	Cont.		Covenant
4	The 10-year limitation on the SPSR shall lapse if any holder ("Holder") of record of a first mortgage granted to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender acquires the Property by reason of foreclosure or upon conveyance of the Property in lieu of foreclosure, provided such Holder has given the City not less than sixty (60) days' prior written notice of its intention to foreclose upon its mortgage or to accept a conveyance of the Property in lieu of foreclosure. Provided,	Cont.		Covenant

	however, that 10-year SPSR limit shall be revived as though it had never lapsed if the Property is acquired through foreclosure or deed in lieu of foreclosure by a "Related Party", defined as (i) the Applicant; (ii) any person with a direct or indirect financial interest in the Applicant; (iii) any person related to a person described in clause (ii) by blood, adoption, marriage, or operation of law; (iv) any person who is or at any time was a business associate of a person described in clause (ii); or (v) any entity in which any of the foregoing have a direct or indirect financial or management interest.			
5	For the first six (6) years after the Effective Date, the Applicant shall meet with the City no less than once a year during regular business hours to review the general progress of redevelopment in Union Square/Boynton Yards, including progress in bringing the Green Line to the area. The meeting shall be held at a mutually convenient time and place.	Cont.		Covenant
6	The Applicant shall actively participate with the City and/or the SRA in applications for public funding of infrastructure and other improvements in the Union Square/Boynton Yards area.	Cont.		Covenant
7	The Applicant shall permit the City to participate in finding a suitably qualified development partner for the Applicant, provided however, that the choice of development partner will rest solely with the Applicant.	Cont.		Covenant
8	No operations shall be conducted outside the enclosed building, however, it is understood and agreed that the temporary presence of taxis outside the enclosed building during twice-a-day shift changes will not constitute "operations conducted outside of an enclosed building"	Cont.		Covenant
9	The Applicant shall close off and screen any excess drive-in doors	Building Permit	Plng	Covenant
10	The Applicant shall create a distinctive entry for the office area to be approved by Staff	Building Permit	Plng	Covenant
11	The Applicant shall remove the five (5) parking spaces from the front yard area between the building and Windsor Place that back into Windsor Place, close the curb cut that provides access to these spaces, and replace with sidewalk and appropriate landscaping. The remaining two (2) parking spaces between the building and Windsor Place shall be reconfigured into a single handicapped parking space.	Building Permit	Plng	Covenant
12	The Applicant shall replace grass, plant shrubs and replace any dead or missing canopy trees in the side yards	CO	Plng	Covenant
13	The Applicant shall remove of any debris, building materials, dirt and/or aggregate from the rear yard	CO	Plng	Covenant
14	The Applicant shall submit a revised site plan and a landscaping plan for Staff approval incorporating additional front yard landscaping area.	Building Permit	Plng	

15	The Applicant shall work with Planning Staff to locate and screen (with fencing and/or vegetation) from the public way any proposed or existing transformer, dumpster, fuel dispenser, or fuel tank	Building Permit	Plng	
16	The Applicant shall install four bicycle parking spaces which could be satisfied by two inverted U-shaped racks, as close as possible to the building's primary entrance.	CO	Plng	
17	If a sign is proposed, the Applicant shall submit a sign design that is in compliance with Article 12 of the SZO and that is satisfactory to Planning Staff.	CO	Plng	
18	A code compliant fire alarm and suppression system shall be installed. The Code Compliance Unit of the Fire Department shall be contacted regarding the fuel dispenser and storage facility.	CO	FP	
19	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	
20	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/BOH	
21	The Applicant shall make best efforts to reduce noise levels from 8pm to 8am, especially during the shift change in the early morning.	Cont.	ISD	
22	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*
Orsola Susan Fontano, *Clerk*
Richard Rossetti
Danielle Fillis
Elaine Severino (Alt.)

Attest, by the Staff Senior Planner:

Christopher DiIorio

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 _____