



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY
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Case #: ZBA 2012-40-R1-8/2012

Date: September 13, 2012

Recommendation: Conditional Approval

PLANNING STAFF REPORT

Site: 99 Dover Street

Applicant Name: Bright Horizons Family Solutions, Inc.

Applicant Address: 200 Talcott Avenue, South Watertown, MA 02472

Property Owner Name: 99 Dover Street, LLC

Property Owner Address: 1018 Beacon Street, 4th Floor, Brookline, MA 02446

Agent Name: Richard G. Di Girolamo, Esq.

Agent Address: 424 Broadway, Somerville, MA 02145

Alderman: Rebekah Gewirtz

Legal Notice: Applicant Bright Horizons Family Solutions, Inc. and Owner 99 Dover Street, LLC, seek a Revision to a Special Permit (ZBA 2012-40) under SZO §5.3.8 to add a new condition to the Special Permit which would give Owner the as-of-right option to restore the loading dock door that would be removed as part of the originally awarded Special Permit. The original Special Permit was to make alterations to the façade of a nonconforming structure including removing a loading dock door and replacing it with windows and an emergency egress under SZO §4.4.1. CBD Zone. Ward 6.

Zoning District/Ward: CBD zone / Ward 6

Zoning Approval Sought: Revision to Special Permit under SZO §5.3.8

Date of Application: August 21, 2012

Dates of Public Hearing: Zoning Board of Appeals – **September 19, 2012**

I. PROJECT DESCRIPTION

1. Subject Property: The subject property, Dover Plaza, consists of a 36,055 square foot lot with no existing space for landscaping due to the masonry building that occupies 35,859 square feet. The lot abuts surrounding residences as well as commercial properties. The existing use of the building is office space and a child care facility will potentially soon be opening in the building as well. The site, adjacent to Davis Square and the Campbell Park/Meacham Road Historic District, is located behind the Somerville Theatre. Presently, the main entrance into the building is at 99 Dover Street. There are also two secondary entrances into the building, one located near the western end of the structure on Dover Street and the other on Meacham Road. There is currently one operating loading dock for the building on Meacham Road at the northwestern corner of the structure. There is also another loading dock door in the same location; however, the loading dock has been removed and only the loading door remains.

In February 2012, the current Applicant, Bright Horizons Family Solutions, Inc., received a Special Permit to modify loading design standards as part of establishing a by-right child care facility. This Special Permit request, approved February 1, 2012, allowed for the removal of a conforming loading dock to create more usable space for the Applicant's child care operations. Most recently, in June of 2012, the current Applicant also received Special Permit approval to make alterations to the façade of the nonconforming structure which included the removal of a loading dock door that would be replaced with two pairs of windows and an emergency egress on the Meacham Road façade.

Prior zoning relief was also given to this building in 1992 when the Dover Plaza Trust sought to renovate and convert the use of the building to retail and fast food. However, the building was never fully utilized and few commercial spaces were actually occupied. In 1996, EJE Limited Partners sought and received a Special Permit to convert the Dover Plaza back to office space, alter the existing exit way facilities, and extend the hours of operation.

2. Proposal: The current Applicant, Bright Horizons Family Solutions, Inc., has a stipulation in their lease with the Property Owner that once the child care facility ceases to use the space within 99 Dover Street, they must be able to restore the functioning loading dock with a roll-up door on the Meacham Road façade. The most recent approval that was awarded to the Applicant back in June of 2012 does not guarantee this, as the Owner or Applicant would be required to return to the Zoning Board of Appeals and ask for another Special Permit to revert the space back into a functioning loading dock. Therefore, the Applicant has now returned to the Zoning Board of Appeals to request a revision to their originally awarded Special Permit (ZBA 2012-40) to add a new condition to the Special Permit. This additionally proposed condition, Condition # 5, would permit the Property Owner to either reinstall the existing loading dock with a roll-up door or to retain the permitted façade changes once the child care facility is no longer operating within the space. The proposed new Condition # 5 would read as follows: "The Property Owner shall have the option to restore the conforming loading dock or to retain the façade changes associated with the Special Permit after the former loading area ceases to be used by the by-right Day Care Facility." This condition would be continuous and would be verified by Planning Staff sign off.

3. Nature of Application: Revisions to Special Permits may be sought under §5.3.8 of the Somerville Zoning Ordinance (SZO) before the final Certificate of Occupancy is issued for a project that received a Special Permit. The proposed revision is not deemed de minimis in nature because the requested change to the Special Permit, to add a new condition, would contravene the set of conditions associated with the originally awarded Special Permit because there would be an entirely new condition associated with the Special Permit. Revisions to Special Permits that are not de minimis in nature are subject to the full notice and hearing provisions of the SZO.

4. Surrounding Neighborhood: The subject property is located in the Central Business District (CBD) of Davis Square and is directly west (behind) the building that houses the Somerville Theatre. While the Square has a mix of commercial and residential uses, Dover Plaza serves as a transition between the Square and the surrounding residential neighborhood. Most of the properties in Davis Square do not have off-street parking, but they are all, including 99 Dover Street, accessible to the attractions of Davis Square and public transit, which includes the Davis Square Red Line Station.

5. Impacts of Proposal: There do not appear to be negative impacts to Davis Square or the residential neighborhood surrounding the Square as a result of this proposed Revision to the Special Permit. The alterations associated with the originally awarded Special Permit (ZBA 2012-40), which remove the loading dock door and infill the façade with windows and an emergency egress will enhance the façade along Meacham Road. This proposed additional Condition # 5 would simply permit the Property Owner, if they so choose, to return this portion of the Meacham Road façade back to a functioning loading dock with a roll-up door. This is what currently exists on this portion of the façade today. This additionally proposed condition does not require that the loading dock and roll-up door be reinstalled once the child care facility leaves the premises; it simply provides the Property Owner the ability to return the façade back to its original state before the child care facility made changes to the façade to begin their operations. The Property Owner will also retain their ability to keep the façade changes that the child care facility will make, if they so choose. This flexibility to either retain the child care facility's changes to the façade or to reinstall the loading dock and roll-up door would not appear to be detrimental to the surrounding neighborhood. Without this additionally proposed condition attached to the originally awarded Special Permit, the child care facility will not be able to open in this space because they will not be able to meet the conditions of their lease and the Meacham Road façade will remain as it currently exists today.

6. Green Building Practices: None indicated.

7. Comments:

Fire Prevention: Has been contacted but has not yet provided comments.

Ward Alderman: Alderman Gewirtz has been contacted but has not yet provided comments.

Wiring Inspector: Has been contacted but has not yet provided comments.



Existing Conditions

II. FINDINGS FOR REVISION OF SPECIAL PERMIT (SZO §5.3.8):

In order to grant a Revision to 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.

The following findings are relevant to the proposed addition of Condition # 5 to the original Special Permit.

1. Information Supplied: The Staff 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 standards for issuing a Revision to a Special Permit. The final Certificate of Occupancy has not yet been issued for the project, the proposal otherwise is in accordance with the originally approved plans and conditions, and notice has been given for the public hearing.

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 proposed revision is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to promoting the "health, safety, and welfare of the inhabitants of the City of Somerville; to provide for and maintain the uniquely integrated structure of uses in the City; to secure safety from fire, panic and other dangers; to provide adequate light and air; to conserve the value

of land and buildings; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality.”

The proposed revision is also consistent with the purpose of the district (6.1.5. CBD - Central Business Districts), 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 alterations that will be performed to the façade in accordance with the originally awarded Special Permit (ZBA 2012-40) have been designed to be compatible with the built and unbuilt surrounding area. The infill design for the loading dock door is consistent with the rest of the façade. The windows are similar in size, shape, and appearance to those already existing on the Meacham Road façade, and the new emergency egress door appears to be identical to the one located to the left of the proposed infill space. Similarly, this proposed Revision to the Special Permit would also be compatible to the site and the surrounding area because it would simply allow for this portion of the Meacham Road façade to potentially return to what currently exists there today; a functioning loading dock with a roll-up door. Without this additionally proposed condition attached to the originally awarded Special Permit, the child care facility will not be able to open in this space because they will not be able to meet the conditions of their lease and the Meacham Road façade will remain as it currently exists today.

5. Adverse Environmental Impacts: The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.

No adverse environmental impacts are anticipated from this proposed Revision to the Special Permit. No new noise, glare, dust, smoke, vibration, nor emissions of noxious materials nor pollution of water ways or ground water nor transmission of signals that interfere with radio or television reception are anticipated as part of the proposed revision.

6. Vehicular and Pedestrian Circulation: The circulation patterns for motor vehicles and pedestrians which would result from the use or structure will not result in conditions that create traffic congestion or the potential for traffic accidents on the site or in the surrounding area.

The Applicant is not proposing to make any changes to the circulation patterns for motor vehicles or pedestrians that were approved in the originally awarded Special Permit (ZBA 2012-40).

III. RECOMMENDATION

Revision to Special Permit under §5.3.8

Based upon the materials submitted by the Applicant, the above findings, and subject to the following conditions, the Planning Staff recommends **CONDITIONAL APPROVAL** of the requested **REVISION TO SPECIAL PERMIT**.

The recommendation is based upon a technical analysis by Planning Staff of the application material based upon the required findings of the Somerville Zoning Ordinance, and is based only upon information submitted prior to the public hearing. This report may be revised or updated with new recommendations, findings and/or conditions based upon additional information provided to the Planning Staff during the public hearing process.

(Deletions ~~struck~~, additions underlined)

#	Condition	Timeframe for Compliance	Verified (initial)	Notes										
1	Approval is to make alterations to the façade of a nonconforming structure under SZO §4.4.1 which include removing a loading dock door and replacing it with windows and an emergency egress. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/Plng.											
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>(May 1, 2012)</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>December 30, 2011 (May 30, 2012)</td><td>Loading space reconfiguration plan submitted to OSPCD (Sheet PR-1)</td></tr><tr><td>April 19, 2012 (May 30, 2012)</td><td>Proposed Exterior Infill Wall & Glazing plan submitted to OSPCD (sheet SD-1)</td></tr><tr><td>April 19, 2012 (May 30, 2012)</td><td>Proposed Infill Wall & Glazing Elevation submitted to OSPCD (SD-2)</td></tr></table>				Date (Stamp Date)	Submission	(May 1, 2012)	Initial application submitted to the City Clerk’s Office	December 30, 2011 (May 30, 2012)	Loading space reconfiguration plan submitted to OSPCD (Sheet PR-1)	April 19, 2012 (May 30, 2012)	Proposed Exterior Infill Wall & Glazing plan submitted to OSPCD (sheet SD-1)	April 19, 2012 (May 30, 2012)	Proposed Infill Wall & Glazing Elevation submitted to OSPCD (SD-2)
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Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive SPGA approval.														
2	Approval is subject to the Applicant’s and/or successor’s right, title and interest in the property.	Cont.	Plng.	Deed Submitted & Application Formed Signed										
3	The Applicant or Owner shall meet the Fire Prevention Bureau’s requirements.	CO	FP											
4	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services 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.											

<u>5</u>	<u>The Property Owner shall have the option to restore the conforming loading dock or to retain the façade changes associated with the Special Permit after the former loading area ceases to be used by the by-right Day Care Facility.</u>	<u>Cont.</u>	<u>Plng.</u>	
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