



CITY OF SOMERVILLE, MASSACHUSETTS
OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2012-69

Date: August 30, 2012

Recommendation: Conditional Approval

PLANNING STAFF REPORT

Site: 256 Elm Street, a/k/a 260 Elm Street, #103

Applicant Name: OL Davis Square, LLC

Applicant Address: 7 Comanche Place, Andover, MA 01810

Property Owner Name: Urban Equity Development Company

Property Owner Address: 3 Crenshaw Lane, Andover, MA 01810

Agent: Adam Dash, Esq.

Agent Address: Adam Dash & Associates, 48 Grove Street, Suite 304, Somerville, MA 02144

Alderman: Rebekah L. Gewirtz / Ward 6

Legal Notice: Applicant OL Davis Square, LLC, and Owner Urban Equity Development Company, seek a Special Permit with Design Review under SZO §7.11.10.2.2.a to establish a fast order food establishment (frozen yogurt parlor).

Zoning District/Ward: CBD / Ward 6

Zoning Approval Sought: Special Permit with Design Review under SZO §7.11.10.2.2.a

Date of Application: August 7, 2012

Dates of Public Hearing: Zoning Board of Appeals – **September 5, 2012**

I. PROJECT DESCRIPTION

1. Subject Property: Located in the heart of Davis Square, near the intersection of Elm and Holland streets and College and Highland avenues, the subject commercial space is part of Davis Square Plaza in a building with the address 256 Elm Street. This particular commercial space has the address 260 Elm Street, Suite 103, and is approximately 1,950 gross square feet (including the basement)



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and 975 net square feet. The building at 256 Elm Street, which houses 260 Elm Street, Suite 103, is a two-story masonry structure with several commercial storefronts on a parcel that is 15,056 square feet. The most recent use for this space was a karate studio. There is one employee parking space associated with this commercial space located behind the building.

An application for a Special Permit with Design Review under SZO §7.11.10.2.2a was submitted on May 22, 2012 for 260 Elm Street, #103 (ZBA 2012-42), and was heard at the June 20, 2012 Zoning Board of Appeals hearing. This case was opened and continued to the next hearing on July 11, 2012, at which time the Applicant withdrew the application as both the original Applicant and Agent for the case had changed. Another application for a Special Permit with Design Review under SZO §7.11.10.2.2a was submitted on June 25, 2012 for the same location, but with an address of 258 Elm Street, Store #103 (ZBA 2012-54), by the new Applicant and Agent, which was also heard at the July 11 hearing. The second case, ZBA 2012-54, was approved by the Board; however, this case was appealed due to an alleged discrepancy regarding the address. The Applicant presently seeks approval for another Special Permit with Design Review under SZO §7.11.10.2.2a with an address of 256 Elm Street, a/k/a 260 Elm Street, #103, to clarify any alleged discrepancy regarding an inconsistent address; however, the Applicant has reserved its rights that the decision in ZBA 2012-54 is correct, proper and valid.

2. Proposal: The Applicant, OL Davis Square, LLC, proposes to change the use of this commercial space and establish a 25-seat frozen yogurt parlor (13 seats inside and 12 seats outside) called Orange Leaf Frozen Yogurt. The yogurt parlor will have four employees present per shift and twelve employees total. The interior space will be outfitted with a kitchen, self-serve frozen yogurt stations, a self-serve topping station, associated seating near the front of the space as well as outside, and two bathrooms. Images of two different tile samples have been provided on the cover sheet of the plans and these are to be located on the kitchen and machine walls. The proposed hours for the yogurt parlor are 11 a.m. – 11 p.m., seven days a week.

There are no exterior changes proposed for this commercial space which includes signage, other than the name plate. The owner of Davis Square Plaza requires that businesses have a standardized sign design.



Left: 256 Elm Street, a/k/a 260 Elm Street, Suite 103, commercial storefront



Right: Davis Square Plaza signage

3. Nature of Application: A fast order food establishment (frozen yogurt parlor) that is less than 2,500 square feet with operations conducted, in part, outside an enclosed building in a Central Business District (CBD) requires a Special Permit with Design Review under SZO §7.11.10.2.2a.

Currently, there is no customer parking associated with this commercial space and only one employee parking space, located behind the building. Staff has determined that no parking is necessary for this Special Permit with Design Review proposal to change use from a karate studio to a frozen yogurt parlor. The parking requirement for the karate studio was calculated as 4-6 more spaces than the proposed new use as a yogurt parlor, depending upon the inclusion of outside seating. Therefore, this change in use does not require additional parking nor does it require that any parking be associated with the use of this commercial space.

4. Surrounding Neighborhood: The subject property is located within the Central Business District of Davis Square. The surrounding Davis Square Plaza and neighborhood is a mix of restaurant, retail, office, and commercial uses that are within walking distance of the MBTA's Davis Square Red Line station. Although the majority of these businesses do not provide off-street parking, multiple municipal lots are located within the immediate vicinity.

5. Impacts of Proposal: The proposed 25-seat frozen yogurt parlor will likely have a minimal impact on the surrounding Plaza and neighborhood. The establishment would have four employees present per shift and the proposed hours of operation would be 11 a.m. – 11 p.m. seven days a week, which fits into the character of the surrounding area of Davis Square. The vehicular trips that this yogurt parlor potentially generates would be offset by the proximity of this commercial space to alternate modes of transportation and nearby parking lots. This type of business helps maintain the vibrancy of the streetscape and the high quality pedestrian environment of the Square, which is a benefit to the surrounding Davis Square neighborhood.

6. Green Building Practices: The Applicant has not indicated any green building practices that will be applied to interior alterations as part of this proposal.

7. Comments:

Fire Prevention: Has been contacted and in an email to Staff, dated August 15, 2012, Bill Hallinan stated he had conducted a site visit with the new tenant and everything looked fine.

Traffic & Parking: Has been contacted but has not yet provided comments.

Ward Alderman: Alderman Gewirtz contacted Staff on August 15, 2012 to explain that she was going to reach out to the Appellant to facilitate a solution between both parties. Although the Appellant did respond to the Alderman, the Appellant did not reach out or respond to Staff regarding mediation.

II. FINDINGS FOR SPECIAL PERMIT with DESIGN REVIEW (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 of the SZO. This section of the report goes through §5.1.4 in detail.

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.

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 Design Review.”

In considering a Special Permit with Design Review under §5.1.4 of the SZO, Staff find that the project complies with the standards for granting a Special Permit with Design Review.

The Special Permit with Design Review requires the SPGA to make positive determinations with the design guidelines in SZO §5.1.5.

1. The commercial storefront is located within an existing plaza and there will be no exterior changes to the storefront. Outdoor seating will be installed for use during weather permitting months.
 2. The storefront entrance is differentiated from the plane of the streetwall through the use of different color brick that compose an arch as well as the sign located directly above the storefront. This entrance is not proposed to change as part of this application.
 3. The storefront is approximately 16 feet wide and not proposed to change.
 4. There will not be any changes to the width of the bay or storefront. The storefronts within the Plaza are currently all consistent.
 5. The roof of the building located at 256 Elm Street is flat and not proposed to change.
 6. The building material is appropriate for a mixed use building and will not change with this application. The design of the sign is consistent with the signage for other businesses in the Plaza and therefore will not compete with surrounding signs.
 7. There is no on-site customer parking for the yogurt parlor and, therefore, there is no driveway to break the streetwall.
 8. There will be no transformers, heating and cooling systems, antennae or similar appurtenances visible from the street.
 9. The site is not located in an overlay district. The massing of the building does not change with this application and complies with the standards set forth in Article 6 for the Central Business District. This storefront completes the streetwall within this pedestrian Plaza, provides a continuous storefront to blend within the surrounding business district, and there is no on-site parking to break the streetwall.
3. Consistency of Purpose: The Applicant has to ensure that the project "is consistent with (1) the general purposes of this Ordinance as set forth in Article 1, and (2) the purposes, provisions, and specific objectives applicable to the requested Special Permit which may be set forth elsewhere in this Ordinance, such as, but not limited to, those purposes at the beginning of the various Articles.”

The proposal is consistent with the general purposes of the Ordinance as set forth under 1.2, which includes, but is not limited to providing for and maintaining “the uniquely integrated structure of uses in

the City; 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 proposal is also consistent with the purpose of the Central Business District, §6.1.5, 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 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.”

The proposal is designed to be compatible with the characteristics of the surrounding area. The proposal is also consistent with the district standards and guidelines for developments within the CBD as laid out in SZO §6.1.5, which is outlined in Finding 2 above.

Planning Staff has recently approved two similar food establishments within Davis Square that will also serve frozen yogurt.

5. 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 proposal.

6. Lighting: With respect to lighting, the Applicant must ensure that “all exterior spaces and interior public and semi-public spaces shall be adequately lit and designed as much as possible to allow for surveillance by neighbors and passersby.”

The lighting for this commercial storefront is consistent with the existing lighting within the Davis Square Plaza and is not proposed to change.

7. Vehicular and Pedestrian Circulation: The circulation patterns for motor vehicles and pedestrians resulting from the change in use of this commercial space will not result in conditions that create traffic congestion or potential traffic accidents on the site or in the surrounding area.

This proposal does not add parking and currently there is no parking on site. Furthermore, the new use will be located within a pedestrian plaza.

8. Fast Food Establishments: In Special Permit applications for fast-order, take-out or automobile oriented fast service establishments, there shall be establishment of a need for such a facility in the neighborhood or in the City, and impacts on traffic circulation, parking and visual, physical, or historical characteristics of the particular location shall not be detrimental.

The proposal is designed to be compatible with the characteristics of the surrounding area and it is consistent with the district standards and guidelines for developments within the CBD as laid out in SZO

§6.1.5, and with the design standards for a business zone as laid out in SZO §5.1.5.A. Findings for the consistency of this proposal with these elements of the SZO can be found in Part II, Section 2 of this report. The establishment of this type of business will enhance the streetscape and maintain the high quality pedestrian environment within Davis Square, which benefits the surrounding neighborhood.

III. RECOMMENDATION

Special Permit with Design Review under §7.11.10.2.2.a and §5.1

Based on the materials submitted by the Applicant, the above findings and subject to the following conditions, the Planning Staff recommends **CONDITIONAL APPROVAL** of the requested **SPECIAL PERMIT with SITE PLAN REVIEW**.

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.

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	<p>Approval is for a Special Permit with Design Review under SZO §7.11.10.2.2.a to establish a fast order food establishment (yogurt parlor). This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>(August 7, 2012)</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>August 6, 2012 (August 24, 2012)</td> <td>Locus and site plans submitted to OSPCD (CS, A101, A102, A103, A104, A105, A106, & A107)</td> </tr> </tbody> </table> <p>Any changes to the approved site plan or use that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	(August 7, 2012)	Initial application submitted to the City Clerk's Office	August 6, 2012 (August 24, 2012)	Locus and site plans submitted to OSPCD (CS, A101, A102, A103, A104, A105, A106, & A107)	CO / BP	ISD/Plng.	
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2	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP							
3	The Applicant shall at his expense replace any existing equipment (including, but not limited to street sign poles, signs, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity and the installation or dismantling of outdoor seating. All new sidewalks and driveways must be constructed to DPW standard.	CO	DPW							

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.	
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25 Elm Street, a/k/a 260 Elm Street, #103

