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OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2012-54
Date: July 5, 2012
Recommendation: Conditional Approval

PLANNING STAFF REPORT

Site: 258 Elm Street, Store #103

Applicant Name: David Pierre, Jetico Holdings 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
Alderman: Rebekah L. Gewirtz / Ward 6

Legal Notice: Applicant, David Pierre, 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 business (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: June 25, 2012

Dates of Public Hearing: Zoning Board of Appeals – **July 11, 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 commercial space is addressed 258 Elm Street, Suite 103, and is approximately 1,000 square feet. The building at 256 Elm Street 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 and there is no parking associated with this commercial space.



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There has been no prior relief for this particular commercial space within the building located at 256 Elm Street.

2. Proposal: The Applicant, David Pierre of Jetico Holdings LLC, is proposing to change the use of this commercial space and establish a 20-seat frozen yogurt parlor called Orange Leaf America's Frozen Yogurt which will have four employees present for each shift. There will also be 13 additional seats located outside in front of the subject commercial space. The interior space will be outfitted with a kitchen, self-serve frozen yogurt stations, a self-serve topping station, associated seating at the front and back of the space as well as outside, and two bathrooms. Images of two different tile samples have been provided on the site plans and these are to be located on the kitchen and machine walls. The proposed hours of the yogurt parlor would be 11 a.m. – 11 p.m. seven days a week. The Applicant is also proposing to install one bicycle rack outside the storefront on the sidewalk.

There will not be any exterior changes to the commercial space including signage, except for the name plate. The owner of Davis Square Plaza requires that businesses have a standardized sign design.



258 Elm Street, Suite 103, commercial storefront and 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 parking associated with this commercial space. Staff has determined that no parking is necessary for this Special Permit with Design Review proposal to change the use from a karate studio to a frozen yogurt parlor. The parking requirement for the karate studio was calculated to need 4-6 more spaces than the proposed new use, depending upon the inclusion of outside seating. Therefore, this

change in use does not require additional parking nor does it require any parking to be associated with the new 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. While the majority of these businesses do not provide off-street parking there are multiple municipal lots within the immediate vicinity.

5. Impacts of Proposal: The proposed 20-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 the storefront to alternate modes of transportation and nearby parking lots. This type of business would help 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 that there will be any green building practices used for the interior alterations proposed to change the use for this proposal.

7. Comments:

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

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

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

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.

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 and the sign is directly above the storefront. This entrance is not proposed to change with this application.
3. The storefront is approximately 16 feet wide and not proposed to change as part of this application.
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 as part of this proposal.
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 parking for the restaurant and therefore there are no driveways to break the streetwall.
8. There will be no transformers, heating and cooling systems, antennae or the like that will be visible from the street.
9. The site is not located in an overlay district. The massing of the building is not proposed to change with this application and complies with the standards set forth in Article 6 for the Central Business District. The storefront completes the streetwall within the Plaza, provides a continuous storefront that blends with the surrounding business district, and there is no on-site parking that would break up 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>(June 25, 2012)</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>June 26, 2012 (July 3, 2012)</td> <td>Locus and site plans submitted to OSPCD (CSI.1, A101, A102, A103, A104, & A105)</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	(June 25, 2012)	Initial application submitted to the City Clerk's Office	June 26, 2012 (July 3, 2012)	Locus and site plans submitted to OSPCD (CSI.1, A101, A102, A103, A104, & A105)	CO / BP	ISD/Plng.	
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2	The Applicant shall ensure that a code compliant fire alarm system is in place.	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 or due to 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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258 Davis Square, Suite 103

