



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2014-03
Date: March 12, 2015
Recommendation: Uphold ISD Decision

PLANNING STAFF REPORT

Site: 44 Park Street

Applicant Name: Claudia Murrow
Applicant Address: 23 Park St. #2, Somerville MA
Alderman: Maryann Heuston

Legal Notice: Applicant, Claudia Murrow, seeks an Administrative Appeal per SZO §3.1.9, 3.2, and 3.2.3 from a decision from the Inspectional Services Division that issued a temporary certificate of occupancy for a School for Instruction in Arts at 44 Park Street, Owner, Belam II LLC . RC Zone. Ward 2.

Dates of Public Hearing: March 18, 2015

I. GROUNDS FOR APPEAL

Claudia Murrow, of 23 Park Street, is an abutter to the property at 44 Park Street. The property at 44 Park Street is the subject of the appeal. Claudia Murrow alleges that:

1. The temporary certificate of occupancy issued for the use at 44 Park Street for the business, Esh Aerial Arts, is a fitness facility or gym and not a 'school for instruction in arts', which is the use on the Temporary Certificate of Occupancy (TCO).
2. The business offers performances, which would exceed the 49 person limit on the TCO.
3. Under the use 'school for instruction in arts', they do not need a second means of egress if they say that they will have less than 49 people in the room.
4. The corresponding impact of the use was not contemplated by the ZBA.
5. A traffic study was not done relative to the Special Permit or Temporary Certificate of Occupancy.



6. Signs need zoning relief and/or a permit.

II. BACKGROUND

1. Subject Property: The property is a 43,012 square foot lot on which sits a 10,908 square foot one-story steel framed warehouse. The building has an 800 square foot vacant office area in the front portion of the building and a daycare occupying the rear of the building since 2012. On the site, there is a parking lot with 30 spaces and a playground for the daycare. The rear of the site, where the daycare occupies, was renovated in 2012. The northern edge of the property abuts an MBTA commuter rail track.

2. History: In September of 2013 the Zoning Board of Appeals granted a Special Permit under SZO §4.4.1 to alter a nonconforming structure, Somerville Zoning Ordinance (SZO) §7.11.8.9.a to establish a for-profit school for instruction in arts, skills, or vocational training less than 5,000 square feet with ancillary alterations to existing site plan and parking.

The proposal was to build out a 4,060 net square foot area to teach and study circus arts. The business combines aerobics, strength, flexibility on apparatuses like aerial fabric and aerial hoop. Classes prepare students for the strength, flexibility, and choreography needed for performances.

The parking requirement was met by a parking lot expansion. Business services require 1 parking space per 450 square feet which is 9 spaces. The parking lot was extended to include ten additional spaces on a crushed rock surface with a railroad tie curb. A handicap parking space was accommodated on existing paving at the front of the lot for a total of 11 additional spaces. Under SZO §9.15, one bicycle space needed to be provided. Four bicycle racks were installed near the handicap space at the front of the building which will accommodate 8 bicycles.

A Temporary Certificate of Occupancy was issued by Inspectional Services Division on December 23, 2013. The certificate is temporary because of pending litigation on the case. There was a voluntary dismissal of the appeal and the occupants can seek a final certificate of occupancy. The Certificate was issued for a school for instruction in arts with a maximum occupancy load of 100 gross square feet per occupant.

III. APPEAL

1. Role of the ZBA: In an administrative appeal hearing, the ZBA hears appeals of the decision of the Superintendent of Inspectional Services. The process for such appeals is set out in MGL 40A, Section 8 and Section 3.2 of the SZO. An appeal may be taken by any person aggrieved by an order or decision of the Superintendent of Inspectional Services. The ZBA must determine whether to affirm the ISD decision or overturn it and why.

Planning staff believe that Claudia Murrow has status as an aggrieved party in this circumstance and that appeal is properly before your Board.

2. Analysis of the Appeal: OSPCD staff have reviewed: 1) the appeal application from Claudia Murrow; 2) the file for the property at Inspectional Services; 3) the plans and conditions of the 2013 special permit. Claudia Murrow has raised six arguments in support of her appeal. A discussion of the arguments is below.

a) The temporary certificate of occupancy issued for the use at 44 Park Street for the business, Esh Aerial Arts, is a fitness facility or gym and not a 'school for instruction in arts', which is the use on the Temporary Certificate of Occupancy (TCO).

Planning Staff in consultation with Inspectional Services determined that the proposed use of the space fit into the zoning category SZO §7.11.8.9.a, for-profit school for instruction in arts, skills, or vocational training, as opposed to §7.11.6.3.a, a commercial health, exercise, racquet, weight reduction, bowling or similar facility. The determination was that the principle use of the space most closely matched the for-profit school in instruction in skills based on the primary use of the space. The Esh Aerial Arts business uses the space for classes in instruction of circus arts. The business is focused on teaching skills and the space does not have open drop in hours for exercise, which is typical for a health club.

The City's Building Inspectors provided information on the Use and Occupancy Classification in the International Building Code. The use of Esh Aerial Arts was determined to fit in Business Group B as a 'training and skill development not within a school or academic program' use.

As a point of information, 'gymnasiums without spectator seating' fits into an Assembly Group A; however, the Building Code states that a tenant space used for assembly purposes with an occupant load of less than 50 persons shall be classified as a Group B occupancy. Therefore, Esh Aerial Arts with a limit of less than 50 people would be a Group B use under either classification.

b) The business offers performances, which would exceed the 49 person limit on the TCO.

The space is limited to 100 gross square feet per occupant and the business must comply with this regulation regardless of the number of classes or a special event happening. The net square feet of the space is 4,060.

Special events are allowed as they are accessory to the principle use of the space. Per SZO §7.11.1, accessory uses that are customarily associated with a given principle use shall be permitted by-right in conjunction with such permitted principle use.

c) Under the use 'school for instruction in arts', they do not need a second means of egress if they say that they will have less than 49 people in the room.

The Building Code states that the use of the space with a limit of 50 occupants would be classified as a Group B use if determined to be 'training and skill development not within a school or academic program' or 'gymnasium'. Therefore, Esh Aerial Arts has the same egress requirements under either classification.

d) The corresponding impact of the use was not contemplated by the ZBA.

The use of the Esh Aerial Arts space at 44 Park Street was clearly presented to the Zoning Board of Appeals for review. The staff report explained the use of the space and the business owners appeared at the hearing to describe how they would use the space.

An additional point of information is that the health club/gym use in the RC zoning district requires a Special Permit, which is the same type of review and zoning permit as exists for a for-profit school.

e) A traffic study was not done relative to the Special Permit or Temporary Certificate of Occupancy.

SZO §5.1.2 lists the required information for Special Permits. A traffic study is under the category of additional information, if applicable. The Planning Staff and Zoning Board did not find that a traffic study was needed to evaluate the impact of the use. The parking requirements were met and the use does not generate many trips to the site. The facility has classes with approximately 3 to 8 students per class.

Traffic studies are not required to obtain certificates of occupancy.

f) Signs need zoning relief and/or a permit.

The signage meets the requirements of the signage standards in SZO §12 and the conditions of approval related to signage. Condition 5 states, “[s]ignage design to be submitted Planning Staff for review and approval, and condition 6 states, “[s]ignage will be limited in size and location to that shown in the elevation diagrams”.

IV. RECOMMENDATION

After review of the issues raised in the appeal, the Planning staff concludes that the issues do not constitute a basis for overturning the decision from ISD and should not cause the temporary certificate of occupancy to be revoked.

Planning staff recommend that the ZBA do not overturn the decision of ISD to issue a Temporary Certificate of Occupancy based on the use approved Special Permit and the use listed on the Certificate.

