



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
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**Case #:** PB 2013-09

**Date:** May 9, 2013

**Recommendation:** Conditional Approval

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**PLANNING STAFF REPORT**

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**Site:** 65-75 Mystic Ave

**Applicant Name:** Rich Almeida for The Home Depot Somerville MA

**Applicant Address:** 75 Mystic Ave, Somerville, MA 02145

**Property Owner Name:** Stephen Bobrow

**Property Owner Address:** 150 East 69<sup>th</sup> Street, New York, NY 10021

**Agent Name:** None

**Alderman:** Maureen Cuff-Bastardi

Legal Notice: Applicant, Rich Almeida for The Home Depot Somerville MA, and Owner, Stephen Bobrow, seek a Special Permit with Site Plan Review (SPSR) to be able to revise SPSR # 91.49 and PB 2012-08 to allow for outside display of garden plants in the parking lot for one year.

Zoning District/Ward: ASMD / 1

Zoning Approval Sought: Special Permit with Site Plan Review (SPSR)

Date of Application: April 16, 2013

Dates of Public Hearing: Planning Board May 15, 2013

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**I. PROJECT DESCRIPTION**

1. Subject Property: On November 13, 1991 the Planning Board approved three special permits with site plan review (application #91.49) to develop an 11.646 acre parcel at 75 Mystic Avenue under the Business Park Assembly Zoning District and the Highway Overlay District. The approval allowed for the construction of a 127,156 gross square foot retail building materials store (Home Depot), a 20,086 gross sf retail garden center (Home Depot), and a 34,519 gross square foot general retail merchandise or department store (Circuit City).



The development required a variance for failure to meet the minimum landscaped area requirement and the Zoning Board of Appeals issued the variance on October 23, 1991. The requirement was for 20% of the site to be landscaped and the variance allowed for 12% of the site to be landscaped. The proposed landscaping included approximately 1,800 plantings and 111 trees and 5 heavily planted central islands that were 20 feet by 40 feet, and landscaped endcap islands to breakup the expansive parking area. Evergreen trees were proposed to screen the rear façade of the building. To mitigate the variance request, off-site plantings were proposed for New Road to create a boulevard effect along the road including flowering trees. The landscaped area included less square footage than is required; however, the number of plantings proposed was more than that required to balance the request. The variance conditions state that there shall be a minimum of 53,000 square feet of landscaping on the site; there shall be at least one additional and preferably two additional landscaped islands in the southeast parking area in front of Circuit City; there shall be up to 25 street trees on New Road; and the Developer shall work with the City's Planning Department and Law Office to develop an appropriate maintenance agreement. The conditions were met: there are two landscaped beds in front of Circuit City and 24 trees on New Road including the trees on the subject property and those in the median; however, the landscaped areas have not been well maintained.

In 2004, the Planning Board issued a minor revision (# PB 2004 –49a) to undertake various interior and exterior improvements. These improvements included but are not limited to; the introduction of a tool rental center, a new fence, CMU wall and gate at the lumber receiving area and other smaller improvements such as new sloped sidewalks. In 2005, the Planning Board approved a revision (# PB 2004 –88) to the original special permit with site plan review in order to construct an exterior area for equipment and fuel storage associated with a tool rental center and for the expansion of an existing entry vestibule.

Condition two of the Special Permit with Site Plan Review stated that “outdoor storage or outdoor operations, in part or whole, are prohibited for the building materials retail store under SZO 7.11.9.9.1.c and for the general retail merchandise/department store under SZO 7.11.9.2.c”. Throughout the special permit and revision hearings, the Board reiterated that outdoor storage and outdoor displays are not allowed at the site. The Home Depot was in violation of this condition as they displayed/stored outside of the store in the front and west side of the building: bags of mulch, wheel barrels, flowers, picnic tables, grills, pallets and compacted cardboard.

In April of 2011 and 2012, the Planning Board approved the change to condition two of the original special permit to allow for temporary outdoor displays of products and merchandise. The products were limited to the area in front of the building between the main entrance and the end of the garden center. In addition, the permit allowed for the temporary outdoor display of garden plants in the Circuit City parking lot but this approval was only valid through November 1 of 2012 to ensure that the parking would be available if the building was occupied. Outdoor storage or outdoor operations, in part or whole, was still prohibited for the building materials retail store and for the general retail merchandise/department store.

The special permit in 2011 and 2012 (PB 2011-06 & 2012-08) included the following condition:

*“The existing landscaped areas shall be improved by July 1, 2011 by: re-grading of islands, upgrading the mulch, cutting back/removing dead shrubs and trees, planting additional shrubs in the two large front islands, maintaining the snow damaged areas. Landscaping shall be improved by July 1, 2012 as follows: the trees and large shrub containment shall be pruned. Final sign-off of 2011 and 2012 landscape improvements shall be subject to review and approval by Planning Staff. Maintenance/improvements to*

*the landscaping shall be conducted on an annual basis. Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards."*

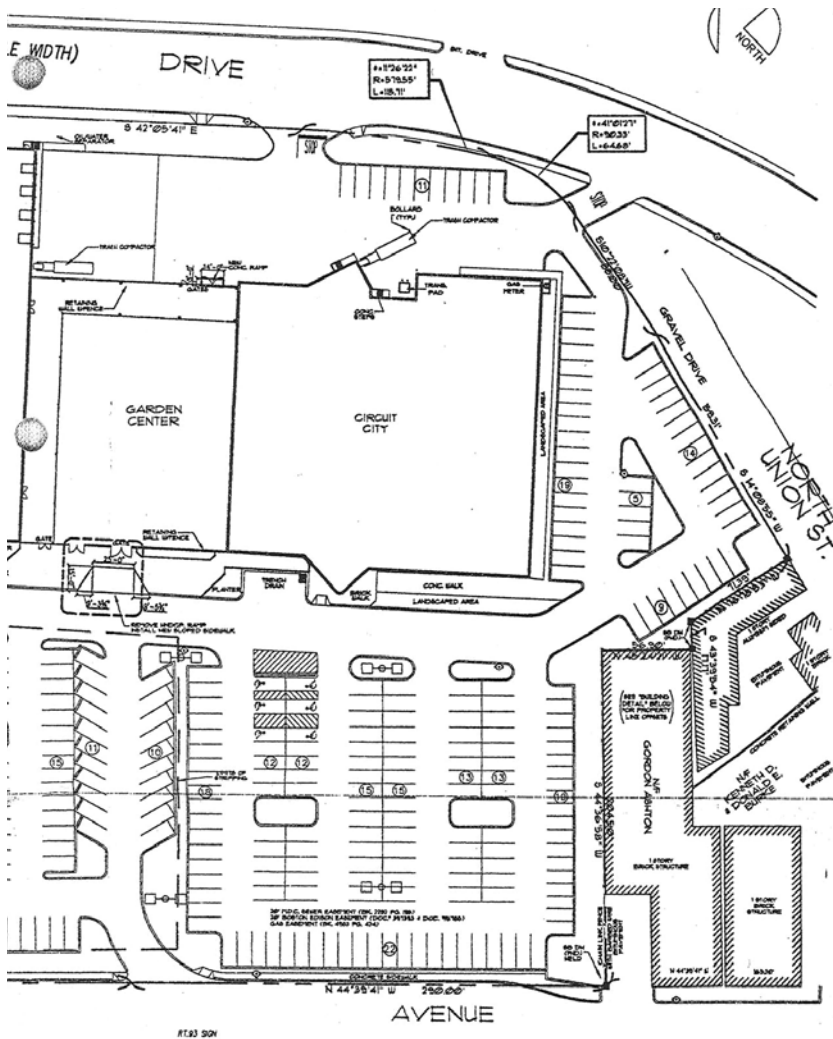
The prior store manager stated that the following landscape improvements have been made in 2011:

The dead shrubs were pruned back and removed. Landscaping was graded and refreshed (2011) and the work will be completed this spring. Two rhododendrons, two large leaf rhododendrons, and two dogwood trees were installed around April 7, 2012.



*4 rhododendrons and 2 trees were installed to meet the past condition. The bike rack is also installed which satisfies a past condition.*







2. Proposal: Since the Circuit City building is still vacant, the applicants are seeking approval to continue the sale of the plants in the parking lot of Circuit City. The plants would be on brick and block tables with steel trays and on pallets. The plants would be sold from 6am to 10pm Monday through Saturday and Sunday from 8am to 8pm.

3. Nature of Application: SZO section 5.3.8 states, “[u]pon the issuance of a Certificate of Occupancy for a development, revision rights shall lapse, and further development or use changes shall be subject to the zoning applicable at that time.” Since the Certificate of Occupancy was issued for the site, the Applicants must apply for a new Special Permit with Site Plan Review to change condition 4 of the Special Permit with Site Plan Review (PB 2012-08) issued in April of 2011 to allow for outdoor display of plants in 2013.

4. Surrounding Neighborhood: The surrounding area is in a transitional period with new construction planned including the Orange Line MBTA station, large-scale mixed-use development, IKEA and a self-storage, café and community space at 50 Middlesex Avenue. Assembly Square Drive,

located behind the site was recently renovated for utility installation and roadway improvements. This site is visible from both Mystic Avenue and the highway.

5. Impacts of Proposal: The proposed temporary display of plants in the parking lot is not proposed to negatively impact the area. Since the Circuit City space is vacant, the parking spaces are not needed for this building. Also, the material on display will be limited to plants, which are visually appealing.

6. Green Building Practices:

7. Comments:

*Fire Prevention:* Did not have comments on the proposal.

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

## **II. FINDINGS FOR SPECIAL PERMIT with SITE PLAN REVIEW (SZO §5.2):**

In order to grant 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.

1. Information Supplied: The Staff 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 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."

All of the uses in the Zoning Ordinance Use Table are to be conducted within an enclosed building with the exception that temporary outdoor display of products and merchandise during operating hours is allowable. Condition 2 of the original Special Permit with Site Plan Review for this site further limited outdoor operations and storage. This application, as conditioned, would allow for temporary outdoor display of plants. Allowing this practice as conditioned would comply with the City standard and limit the Applicant to a location, timeframe, and material that would not be contradictory to the spirit of the original condition. The original condition was intended to avoid having outdoor storage of materials that would be an eyesore on the site and could remain for indefinite periods of time. No new zoning violations would be triggered as a result of the plant displays.

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 proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to encouraging the most appropriate use of land throughout the City as the outdoor display/sale area can support the business without negative impacts, and the temporary parking lot sale area is currently underutilized due to the vacant retail space. The proposal does not conflict with the purpose of the Assembly Square Mixed-Use District, which is to encourage the best of use of the area physically, economically, environmentally and socially.



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 proposal for additional temporary sale in the parking lot is designed in a manner that is compatible with the surrounding area. The material on display in the parking lot will be limited to plants, which are visually appealing and will add color and greenery to the large paved area that is currently not utilized. The timeframe for the outdoor sale of plants is only conditioned for one year so that a new tenant of Circuit City could utilize the full parking area.

5. 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 display tables will be located in the parking spaces at the edge of the Circuit City parking lot to minimize conflict between vehicles and pedestrians. There is an abundant number of parking spaces at the site especially with the Circuit City space vacant and therefore occupying approximately 20 parking spaces is not anticipated to create traffic congestion or increase the potential for traffic accidents.

### III. RECOMMENDATION

#### Special Permit under §5.2

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** to revise PB 2011-06. The following conditions supersede the operational conditions attached to the original special permit (SPSR # 91.49) that remain in effect and the revisions (PB # 91.49a). The conditions relative to the design of the site, as well as the design shown on the original site plans shall remain in effect and enforceable unless specifically superseded by these conditions.

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 the display of items for sale along the front of the store between the main entrance and the end of the garden center, and also includes temporary outdoor display of garden plants in approx 20 parking spaces in the 65 Mystic Ave parking lot. This approval is part of a 1991 Special Permit with Site Plan Review for 127,156 gross sf retail building materials store (7.11.9.9.1.c), a 20,086 gross sf retail garden center (7.11.9.8.2.c), and a 34,519 gross sf general retail merchandise or department store (7.11.9.2.c). Approval does not include a supermarket use since no information was presented in the application relative to such a use and its associated impacts, and therefore no positive determination has been made for a supermarket use as is required by SZO §5.2.</p> <p>This approval is based upon the complete application information for the original 1991 approval for this site, as amended, as well as the following application materials and the plans submitted by the Applicant:</p> <table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>Mar 14, 2011</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>Aug 1991 with 20 parking spaces indicated for location of planting display</td><td>Plans submitted to OSPCD (site plan)</td></tr></table> <p>Any changes to the approved site plan that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	Mar 14, 2011	Initial application submitted to the City Clerk's Office	Aug 1991 with 20 parking spaces indicated for location of planting display	Plans submitted to OSPCD (site plan)	BP/CO	Plng.	
Date (Stamp Date)	Submission									
Mar 14, 2011	Initial application submitted to the City Clerk's Office									
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2	Outdoor storage or outdoor operations, in part or whole, are prohibited from the building materials retail store and for the general retail merchandise/department store except as allowed for the seasonal displays of products and merchandise, which can be located between the main entrance and the end of the garden center. ADA compliant access along the sidewalk shall be maintained at all times.	Tenant occupies space	Plng. / ISD							
3	The sale of the plants and other seasonal items display outside shall occur inside of the building.	Perpetual when allowed	Plng. / ISD							
4	The applicant shall be allowed to display and sell garden plants in the parking lot at 65 Mystic Avenue as shown on the attached plan during the 2012 season. This provision shall expire on November 1, 2013, unless permission is granted by the Planning Board to continue this activity beyond this date.	Until 11/1/13	Plng. / ISD							
5	Trash and materials to be recycled shall be removed from the parking lot and stored in an enclosed area.	Perpetual	Plng. / ISD							



6	The existing landscaped areas shall be improved by July 1, 2011 by: re-grading of islands, upgrading the mulch, cutting back/removing dead shrubs and trees, planting additional shrubs in the two large front islands, maintaining the snow damaged areas. Landscaping shall be improved by July 1, 2012 as follows: the trees and large shrub containment shall be pruned. Final sign-off of 2011 and 2012 landscape improvements shall be subject to review and approval by Planning Staff. Maintenance/improvements to the landscaping shall be conducted on an annual basis. Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards.	Perpetual	Plng. / ISD	4 bushes and 2 dogwood trees will be installed by 4/9/12. Dead shrubs were pruned & removed. Landscaping was graded and refreshed last year and should be every spring
7	Designate and utilize the 11 spaces within the rear loading/service area (adjacent to Assembly Square Drive) as employee parking.	Perpetual	Plng. / ISD	
8	The dense planting of evergreens at the rear loading bay area shall be maintained.	Perpetual	Plng. / ISD	
9	There shall be a minimum of 53,000 sf of landscaped area on the site. The Developer shall work with the Planning Staff and take every effort to increase the landscaped area beyond this to the extent possible.	Perpetual	Plng. / ISD	
10	The trees planted on the median in New Road are essentially provided in lieu of on-site landscaped area and the Developer shall be responsible for maintenance of these off-site plantings as if located on its own site. The maintenance agreement that the Developer and the City created shall continue to be valid.	Perpetual	Plng. / ISD	
11	The bicycle rack shall be secured in a fixed location to be reviewed and approved by Planning Staff.	Perpetual	Plng. / ISD	Rack is to the left of the middle entrance.
12	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.	Perpetual	ISD	
13	The Owner shall not impede closing of the curb cut along Sturtevant Street by New Road.	Closing of curb cut	DPW	
14	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.	

