



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA # 2013-10
Site: 45 Beacon Street
Date of Decision: April 3, 2013
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: April 9, 2013

ZBA DECISION

Applicant Name:	Whole Foods Market Group, Inc.
Applicant Address:	125 Cambridge Park Drive, Cambridge, MA 02140
Property Owner Name:	TGIO Beacon Street, LLC
Property Owner Address:	100 Everett Avenue, Suite 12, Chelsea, MA 02150
Agent Name:	Michael E. Scott, Esq., Nutter McClennen & Fish, LLP
Agent Address:	155 Seaport Blvd, Boston, MA 02210

Legal Notice: Applicant, Whole Foods Market Group, Inc. and Owner, TGIO Beacon Street, LLC seek a Special Permit under SZO §4.4 and SZO §4.5.3 to alter a nonconforming structure by relocating emergency egress, altering the entrance, and increasing operating hours.

<u>Zoning District/Ward:</u>	RC zone/Ward 2
<u>Zoning Approval Sought:</u>	§4.4 & §4.5.3
<u>Date of Application:</u>	March 5, 2013
<u>Date(s) of Public Hearing:</u>	April 3, 2013
<u>Date of Decision:</u>	April 3, 2013
<u>Vote:</u>	5-0

Appeal #ZBA 2013-10 was opened before the Zoning Board of Appeals at Somerville City Hall on April 3, 2013. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L. c. 40A, sec. 11 and the Somerville Zoning Ordinance. After one hearing of deliberation, the Zoning Board of Appeals took a vote.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
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DESCRIPTION:

The proposal is to alter the exterior of the building. The use of the property will remain as a supermarket. They propose to remodel the entry from an existing concrete pad with ramping to include cart storage, a railing, and planter. The door on Beacon Street will be removed and filled in to match the existing material. For fire egress, a new door and ramp will be added on the east elevation (parking lot elevation). Two new insulated aluminum windows will be added to the masonry openings on the east elevation. New signage is proposed for the south elevation (Beacon Street elevation), east elevation, and the panel sign in the parking lot.

The applicant and owner are also proposing changes to the parking lot. They propose to remove the chainlink fence on the north and east edge of the property. They propose installing a planting strip on the north edge of the parking lot with evergreen trees. The back of the dumpster will be screened with another planting strip with evergreens. These two planting strips will make a defined pedestrian path to Dimick Court (private way). On the northeast corner of the property they propose a planting pocket with three deciduous trees. There will be some changes to striping to accommodate planting and bike racks. Eight spaces are proposed near the front entrance and along Beacon Street.

FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1:

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 Board 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."

In considering a special permit under §4.4 or 4.5 of the SZO, the Board does not find that the alterations proposed would not be substantially more detrimental to the neighborhood than the existing structure. The proposed changes to the site at the front entrance, landscaping, and front elevation are essentially site improvements that will benefit pedestrians, abutters, and customers. The increased operating hours are typical of the area. The proposed Sign 1 should be reduced in by 8.5 square feet to comply with SZO §12.4.4.d.

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 "the health, safety, and welfare of the inhabitants of the City of Somerville; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality."

The proposal is consistent with the purpose of the Residence C district, §6.1.3, which is, "To establish and preserve a district for multi-family residential and other compatible uses which are of particular use and convenience to the residents of the district."

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 to alter the exterior of the building will improve the pedestrian experience along Beacon, the view for abutters, and the store experience of customers. Whole Foods proposes remodeling the concrete pad at the entrance



to include cart storage, railings, and a planter which will improve customer flow into and out of the store. The increased landscaping and fence removal will improve the view for abutters and will increase the landscaped area. Lastly, the new fire egress will make a more consistent storefront along Beacon Street.

5. Vehicular and pedestrian circulation: The circulation patterns for motor vehicles through the site will remain the same. Since it will remain the same use, traffic congestion and potential traffic accidents are similar to the existing Johnnie’s Foodmaster. Pedestrian egress from the store entry will improve because of the addition of the guard rail, striping, and bollards.

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Josh Safdie. Upon making the above findings, Susan Fontano made a motion to approve the request for a Special Permit. Richard Rossetti seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **APPROVE** the request. In addition the following conditions were attached:

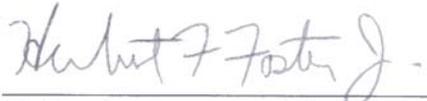
#	Condition	Timeframe for Compliance	Verified (initial)	Notes								
1	Approval is to relocate emergency egress and alter the entrance of existing supermarket. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/PIng.									
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>March 5, 2013</td> <td>Initial application submitted to the City Clerk’s Office</td> </tr> <tr> <td>March 5, 2013 (March 7, 2013)</td> <td>Plans submitted to OSPCD (L-001 Context Plan, Plan of Land, Base Plan Existing Conditions, L-100 Existing Site Plan, L-101 Site Improvement Plan, L-102 Enlarged Store Entry Plan, L-103 Exterior Elevations and Details, A-1 Basement and First Floor Equipment Plans)</td> </tr> <tr> <td>November 29, 2012 (March 18, 2013)</td> <td>Signage Plans submitted to OSPCD (SK-00, SK-01, SK-02 and SK-03, SK-04 all named Signage/Façade Review)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	March 5, 2013	Initial application submitted to the City Clerk’s Office	March 5, 2013 (March 7, 2013)	Plans submitted to OSPCD (L-001 Context Plan, Plan of Land, Base Plan Existing Conditions, L-100 Existing Site Plan, L-101 Site Improvement Plan, L-102 Enlarged Store Entry Plan, L-103 Exterior Elevations and Details, A-1 Basement and First Floor Equipment Plans)	November 29, 2012 (March 18, 2013)	Signage Plans submitted to OSPCD (SK-00, SK-01, SK-02 and SK-03, SK-04 all named Signage/Façade Review)
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Any changes to the approved site plan and elevations that are not <i>de minimis</i> must receive SPGA approval.												
2	The size of the sign along Beacon Street shall not be larger than 68 sf. Applicant shall submit a new signage drawing to reflect this size to Planning Staff.	BP	PIng.									
3	Landscaping should be installed and maintained in compliance with the American Nurserymen’s Association Standards;	Perpetual	PIng. / ISD									



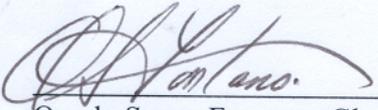
4	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
5	Signage will be limited in size and location to that shown in the elevation diagrams and lighting after 10p.m. facing residential property will be turned down or off.	CO/Cont.	Plng.	
6	The Applicant, its successors 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.	Cont.	ISD	
7	The Applicant shall at his expense replace any existing equipment (including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheel chair ramps, granite curbing, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity. All new sidewalks and driveways must be constructed to DPW standard.	CO	DPW	
8	To the extent possible, all exterior lighting must be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	Plng.	
9	The store shall make best efforts to limit deliveries in 18-wheelers from 7am-9am.	Perpetual	ISD	
10	The vents shall be diverted away from the residential abutters.	CO	Plng.	
11	The operator of the site shall close and lock the gate at the end of the private way when the store is closed.	Perpetual	ISD	
12	The carts shall have locks so that they are not taken off site.	Perpetual	ISD	
13	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.	

Attest, by the Zoning Board of Appeals:

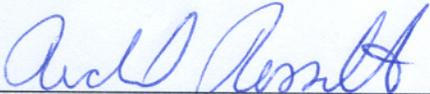
Herbert Foster, *Chairman*
Orsola Susan Fontano, *Clerk*
Richard Rossetti
Danielle Evans
Josh Safdie (Alt.)



Herbert F. Foster, Jr., Chairman



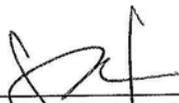
Orsola Susan Fontano, Clerk



Richard Rossetti



Danielle Evans



Josh Safdie (Alt.)

Copies of this decision are filed in the Somerville City Clerk's office.
Copies of all plans referred to in this decision and a detailed record of the
SPGA proceedings are filed in the Somerville Planning Dept.



CLERK’S CERTIFICATE

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 3.2.10.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner’s certificate of title.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner’s certificate of title. The person exercising rights under a duly appealed Special Permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on _____ in the Office of the City Clerk, and twenty days have elapsed, and

FOR VARIANCE(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ any appeals that were filed have been finally dismissed or denied.

FOR SPECIAL PERMIT(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

Signed _____ City Clerk Date _____

