



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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PLANNING DIVISION

ZONING BOARD OF APPEALS MEMBERS

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Case #: ZBA 2015-30
Site: 19 Boston Street
Date of Decision: July 15, 2015
Decision: Petition Approved with Conditions
Date Filed with City Clerk: July 23, 2015

ZBA DECISION

Applicant Name:	Danuza Aquino
Applicant Address:	19 Boston Street, Somerville, MA 02143
Property Owner Name:	Danuza Aquino
Property Owner Address:	19 Boston Street, Somerville, MA 02143
Agent Name:	N/A

<u>Legal Notice:</u>	Applicant and Owner, Danuza Aquino, seeks a Special Permit to establish an office within a primary residence of a psychotherapist and therapeutic massage specialist under SZO sec 7.11.4.f and a Special Permit to not provide parking.
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<u>Zoning District/Ward:</u>	RA zone/Ward 3
<u>Zoning Approval Sought:</u>	§7.11.4.f
<u>Date of Application:</u>	May 14, 2015
<u>Date(s) of Public Hearing:</u>	6/24 & 7/15/15
<u>Date of Decision:</u>	July 15, 2015
<u>Vote:</u>	4-0

Appeal #ZBA 2015-30 was opened before the Zoning Board of Appeals at Somerville High School Auditorium on June 24, 2015. 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.



DESCRIPTION:

The owner of the therapeutic massage business went to Inspectional Services to update the address on the Certificate of Occupancy because she is moving from the first floor of the home to the second floor. Massage practices have been classified as an office within a primary residence within the last several years. Offices within primary residences require a special permit; therefore the owner is before the ZBA to correctly classify this business and allow for it to be in unit 2. The business will be therapeutic massage and psychotherapy. It will be in a small room within the residential unit that is approximately 25 square feet. The business runs one day per week with a maximum of four clients per day.

FINDINGS FOR SPECIAL PERMIT (SZO §7.11.4.f & § 9.13):

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."*

To establish an office within a primary residence of a psychotherapist and therapeutic massage specialist under SZO sec 7.11.4.f a Special Permit is required. The parking requirement for an approximately 25 square foot medical office is 0.062 spaces which rounds up to 1. Even though the requirement is so small the SZO requires any decimal less than 1 to round up to 1.

The existing parking situation is nonconforming with two driveways for two residential units because three parking spaces are required and two legal spaces are provided. No parking for the office within the residence could be created onsite. In considering a special permit under §9.13 of the SZO to not provide one parking space the Applicant must be able to demonstrate that granting the requested special permit would not cause detriment to the surrounding neighborhood through any of the criteria as set forth under SZO §9.13, which are as follows:

- 1) increase in traffic volumes;
- 2) increased traffic congestion or queuing of vehicles;
- 3) change in the type(s) of traffic;
- 4) change in traffic patterns and access to the site;
- 5) reduction in on-street parking;
- 6) unsafe conflict of motor vehicle and pedestrian traffic.

This is an existing home occupation that is moving to the second floor. It was permitted as a home occupation but should be classified as an office within a primary dwelling unit. The number of clients visiting the office is approximately four per week, which is minimally impactful to the on-street parking supply. The business owner has a business parking pass for clients to use. There are also two driveways on-site, which are used by the residents of the dwelling units; however, they fit several cars in tandem and could be used by clients if needed.

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 promote the health, safety, and welfare of the inhabitants of the City of Somerville and to provide for and maintain the uniquely integrated structure of uses in the City.

The proposal is consistent with the purpose of the district, which is, “[t]o establish and preserve quiet neighborhoods of one- and two-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts.” The business is convenient for the residents of the district and compatible as it has been running without complaints.

In considering a special permit under §9.13 of the SZO the SPGA may grant such a special permit only when consistent with the purposes set forth in Section 9.1. The minimal amount of trips per week will not negatively impact the supply of on-street parking which is abundant during business hours and will not have a great impact to pedestrian safety.

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 office within the primary residence is compatible with the surrounding area. The same operation has been located on the first floor without incidence of which Planning Staff is aware. The business will not have signage and the two-family house will not be physically altered. If signage is requested it will have to conform to the SZO requirements and the design will be reviewed and approved by Planning Staff.

6. Housing Impact: *Will not create adverse impacts on the stock of existing affordable housing.*

There is no impact to the affordability of the housing units onsite.

7. SomerVision Plan: *Complies with the applicable goals, policies and actions of the SomerVision plan, including the following, as appropriate: Preserve and enhance the character of Somerville’s neighborhoods, transform key opportunity areas, preserve and expand an integrated, balanced mix of safe, affordable and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups; and, make Somerville a regional employment center with a mix of diverse and high-quality jobs. The areas in the SomerVision map that are designated as enhance and transform should most significantly contribute towards the SomerVision goals that are outlined in the table below. The areas marked as conserve are not expected to greatly increase the figures in the table since these areas are not intended for large scale change.*

This area is an area to conserve in the SomerVision map. The proposal fits within this designation.

<u>SomerVision Summary</u>	<i>Existing</i>	<i>Proposed</i>
<i>Dwelling Units:</i>	2	2
<i>Estimated Employment:</i>	1	1



DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Elaine Severino with Josh Safdie absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals voted **4-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
1	Approval is for the establishment of an office within a primary residence for psychotherapy and therapeutic massage without a parking space. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/Plng.	
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>May 14, 2015</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> </tbody> </table>			
Date (Stamp Date)	Submission			
May 14, 2015	Initial application submitted to the City Clerk's Office			
	Any changes to the approved use that are not <i>de minimis</i> must receive SPGA approval.			
2	If signage for the business is sought, it must comply with the SZO requirements and the design must be submitted to Planning Staff for review and approval.	CO/Cont.	Plng.	
3	There shall be a maximum of one client onsite at a time.	Perpetual	ISD	
Final Sign-Off				
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.	



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Richard Rossetti, *Clerk*
Danielle Evans
Elaine Severino

Attest, by the Administrative Assistant:

Dawn M. Pereira

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 _____

