



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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ELAINE SEVERINO
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ANNE BROCKELMAN, (ALT.)

Case #: ZBA 2015-66
Site: 23A Bow Street
Date of Decision: September 16, 2015
Decision: Petition Approved with Conditions
Date Filed with City Clerk: September 28, 2015

ZBA DECISION

| | |
|--------------------------------|---|
| Applicant Name: | Healthy Options, LLC, d/b/a The Juice Union |
| Applicant Address: | P.O. Box 336, Somerville, MA 02143 |
| Property Owner Name: | Musician Realty Trust, LLC |
| Property Owner Address: | 50 Woodfall Road, Belmont, MA 02478 |
| Agent Name: | Joshua Krefetz, Esq., Krefetz, Seed & Chan |
| Agent Address: | 244 Brighton Avenue, Suite 105, Allston, MA 02134 |

Legal Notice: Applicant, Healthy Options, LLC d/b/a The Juice Union, seeks a Special Permit with Design Review (SPD) per SZO §7.11.10.2.1.a to establish a fast order food establishment, and a Special Permit for parking relief per §9.4 and alteration to a nonconforming structure per §4.4.1. NB zone. Ward 3.

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|-----------------------------------|-------------------------------|
| <u>Zoning District/Ward:</u> | NB zone/Ward 3 |
| <u>Zoning Approval Sought:</u> | §7.11.10.2.1.a, §9.4 & §4.4.1 |
| <u>Date of Application:</u> | August 13, 2015 |
| <u>Date(s) of Public Hearing:</u> | September 16, 2015 |
| <u>Date of Decision:</u> | September 16, 2015 |
| <u>Vote:</u> | 5-0 |

Appeal #ZBA 2015-66 was opened before the Zoning Board of Appeals at Somerville City Hall on September 16, 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.



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DESCRIPTION:

The proposal affects the commercial storefront portion of the structure only. The applicant seeks Special Permits with Design Review to do the following:

- 1 – change of use from office to fast-food,
- 2 – parking relief for 1 parking space,
- 3 – alter a non-conforming structure*.

*The lot is non-conforming in terms of percent of landscaped area.

FINDINGS FOR SPECIAL PERMIT (SZO §7.11.10.2.1.a, §9.4, & §4.4.1):

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §7.11.10.2.1.a, §9.4, and §4.4.1 of the SZO. This section of the report goes through these three sections of the SZO in detail.

1. Information Supplied:

- The Board finds that the information provided by the Applicant conforms to the requirements of §7.11.10.2.1.a, §9.4 and §4.4.1 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."*

Pursuant to §7.11.10.2.1.a, regarding eating, drinking and transient establishments, the applicant requires a Special Permit with Design Review to change the use from office to fast food.

- The Board finds that the change of use from office to fast food is consistent with the purpose of the NB district and is consistent with other similar businesses in the neighborhood. The nature of the proposed juice bar is transient and the expectation that the majority of customers will walk to the business as it is not a destination-type of establishment; no seating is provided as the expectation is that consumers will be in-and-out in a short timeframe.

Pursuant to §4.4.1 of the SZO, the applicant requires a Special Permit due to not meeting the landscaped area requirement and to reconfigure the structure.

- The property is non-conforming with respect to the amount of landscaped area on the parcel. The application states that 29% of the parcel is landscaped. However, views of the site suggest that the landscaped area may be less than 29%. (See *Fig. 3* below.)



- In considering a special permit under §4.4.1 of the SZO, the Board finds that the interior reconfigurations proposed would not be substantially more detrimental to the neighborhood than what currently exists within this unit of the structure. The reconfiguration is a necessary measure in order to accommodate the production equipment, food storage and customer needs anticipated by the proposed business.

Pursuant to §9.4 of the SZO, the applicant is required to provide 1 parking space associated with the business.

- In considering a special permit under §9.4 of the SZO, the Board finds that the applicant should be provided relief from this parking requirement. Given that the nature of the business is transient, that the business is not a “destination” establishment and will not provide seating for its customers, the expectation is that customers will walk in and walk out in a quick fashion. This is a business in the NB district that is close to residential areas and small businesses and provides a substantial amount of ambulatory traffic to support the business.

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 promoting the health, safety, and welfare of the inhabitants of the City of Somerville; to secure safety from fire, panic and other dangers; to encourage the most appropriate use of land throughout the City; and to encourage housing for persons of all income levels.
- The proposal is consistent with the purpose of the NB district, which is “to establish and preserve areas for small-scale retail stores, services and offices which are located in close proximity to residential areas and which do not have undesirable impacts on the surrounding neighborhoods.”

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 surrounding neighborhood is a mix of residential and small-scale retail stores, services and offices.
- There are few to no impacts from the proposal.

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

- The proposal will not impact the existing stock of affordable housing.

6. 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.*

- The proposal will not contribute to the metrics of SomerVision.



DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans , Elaine Severino and Josh Safdie. 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 **5-0** to **APPROVE** the request. In addition the following conditions were attached:

| # | Condition | Timeframe for Compliance | Verified (initial) | Notes | | | | | | | | |
|---|--|--------------------------|--------------------|-------|--|------------|-----------------|--|-----------------|----------------------------------|-------------------|---|
| 1 | Approval is to finish the basement. 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>August 13, 2015</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>August 24, 2015</td> <td>Revised plans submitted to OSPCD</td> </tr> <tr> <td>September 2, 2015</td> <td>Modified plans submitted to OSPCD (exterior elevations)</td> </tr> </tbody> </table> | | | | Date (Stamp Date) | Submission | August 13, 2015 | Initial application submitted to the City Clerk's Office | August 24, 2015 | Revised plans submitted to OSPCD | September 2, 2015 | Modified plans submitted to OSPCD (exterior elevations) |
| | Date (Stamp Date) | | | | Submission | | | | | | | |
| | August 13, 2015 | | | | Initial application submitted to the City Clerk's Office | | | | | | | |
| August 24, 2015 | Revised plans submitted to OSPCD | | | | | | | | | | | |
| September 2, 2015 | Modified plans submitted to OSPCD (exterior elevations) | | | | | | | | | | | |
| Any changes to the approved plan that are not <i>de minimis</i> must receive SPGA approval. | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| 2 | The Applicant or Owner shall meet the Fire Prevention Bureau's requirements. | CO | FP | | | | | | | | | |
| 3 | The signage shall be installed flat against the Mansard-style roof to the dimensions and color scheme submitted by the applicant for the September 16 ZBA hearing. No blade signs shall be approved. | CO | ISD/Plng. | | | | | | | | | |
| Final Sign-Off | | | | | | | | | | | | |
| 4 | The Applicant shall contact Planning Staff at least five (5) 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
Josh Safdie

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 _____

