



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

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ELIZABETH MORONEY

Case #: PB #2012-17
Site: 167 Broadway
Date of Decision: September 20, 2012
Decision: Petition Approved with Conditions
Date Filed with City Clerk: September 25, 2012

PLANNING BOARD DECISION

Applicant Name:	Yenlin Chan
Applicant Address:	15 Woodpark Circle, Lexington, MA 02421
Property Owner Name:	Yungkuei Chan
Property Owner Address:	15 Woodpark Circle, Lexington, MA 02421
Agent Name:	N/A

<u>Legal Notice:</u>	Applicant, Yenlin Chen, and Owner, Yungkuei Chen, seeks a Special Permit under SZO §6.1.22.D.5 to alter the façade of the building including new window and door openings, signage, and lighting, as well as a Special Permit under SZO §6.1.22.D.6 for exterior seasonal seating
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<u>Zoning District/Ward:</u>	CCD 55 zone/Ward 1
<u>Zoning Approval Sought:</u>	§6.1.22.D.5 & §6.1.22.D.6
<u>Date of Application:</u>	August 20, 2012
<u>Date(s) of Public Hearing:</u>	September 20, 2012
<u>Date of Decision:</u>	September 20, 2012
<u>Vote:</u>	4-0

Appeal #PB 2012-17 was opened before the Planning Board at Somerville City Hall on September 20, 2012. 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 Planning Board took a vote.



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DESCRIPTION:

The proposal is to open a new restaurant in the building. The restaurant will be Lotus Express and will be a casual Asian restaurant that is anticipated to be open from 11:30am to 10pm and have 4 to 5 employees.

The alterations to the building will be broken up into two phases. The first phase will include removing the awning and cupola from the building and creating a single level roofline. The proposal also includes installing new signage on the Broadway and Cross Street sides of the building and an awning above the front door. The building and wall surrounding the parking lot will be painted. The site work includes replanting the existing planter boxes, adding two new planter boxes, installing a new fence around the dumpster, and removing the payphone in front of the building.

The sign on the front and side of the restaurant will be 12.5 feet long by almost 3 feet at its tallest point. The sign will be thin, channel letters that are internally illuminated and sit on an aluminum raceway that will not be lit. The sign for the front has already been constructed because of a misunderstanding about the process and a picture of it can be found in the staff report. The awning would be a typical straight awning made of Sunbrella fabric and located at the entrance in the parking lot. New lights will be located along the front façade between the windows at the level of pedestrians.

The second phase will include adding an entrance to the restaurant on the Broadway façade as indicated on the elevations as "future entry door" and replacing the windows with a window system that folds out so that much of the front wall would be open to the sidewalk during nice weather. The second phase also includes adding outdoor seating in front of the restaurant. The Applicant would like to generate revenue and have the streetscape improvement project complete before implementing phase two.

FINDINGS FOR SPECIAL PERMIT (SZO §5.1, §6.1.22.D.5 & §6.1.22.D.6):

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."

The proposal complies with the development standards in the CCD.

1. *Penthouse and Mechanical Equipment.* There will not be a significant change to the mechanical equipment at the site. There is some equipment on the roof and behind the building. There is a wall between the subject property and the abutting residential neighbor, and the neighbor has not informed staff or the Board that this is an insufficient buffer between the house and equipment. The pay phone at the front of the property is nonfunctional and will be removed.
2. *Service Areas and Loading Spaces.* The restaurant does not currently have nor will it have a loading dock. Loading will occur on the street or in the parking lot. The dumpster is located at the back of the property and the existing fencing that is in disrepair should be removed and replaced with a wood fence that will help to dampen the sound when the dumpster is emptied. The dumpster area will also be continuously baited for rats.



3. *Pedestrian Oriented Requirement.* The building has been designed to become more pedestrian oriented in phase one but more notably in phase two of the proposal. The current entrance on the parking lot side of the building will have an awning over it and the rest of the awnings on the building will be removed. This will allow the entrance to be visible from the sidewalk as well as the parking lot. Phase two will add a door on the front of the building so that it appears more inviting and is accessible directly from the sidewalk. The large storefront windows will remain, which create interest for pedestrians. Phase two will include replacing the windows with a 'nanawall' type system for the center and right window, allowing windows to open during nice weather thereby connecting the patrons eating at the counter with pedestrians on the street. The scale and orientation of the signage, awnings and lighting are oriented to pedestrians. Finally, the outdoor seating as part of phase two will provide additional vibrancy to the area and will be another element that improves the pedestrian experience.
4. *Lighting.* There will be new exterior lighting fixtures along the front of the building between the windows at the level of the pedestrian. The fixtures will provide lighting along the sidewalk that is appropriate to the pedestrian-oriented character of the surrounding area. The fixtures will also provide light for the future outdoor seating. The design of the lighting is important and shall be reviewed and approved by Planning Staff.
5. *Transition to Abutting Residential District.* The property abuts a residential district and the building is nonconforming because it is not setback 20 feet from the district line. There is a wall between the subject property which appears to provide a sufficient buffer between the house and equipment and the neighbor has not said otherwise during the special permit process.
6. *Parking Design.* The planter box in front of the 8 car parking lot will be landscaped to soften the edge of the parking lot along the sidewalk. The wall around the parking area will be painted to improve its appearance.
7. *Payment in Lieu of Parking.* Payment in lieu of parking is not applicable to this application. Since the square footage of the building is not increasing and the outdoor uses do not require additional parking, no additional parking beyond that which exists onsite is required.
8. *Credit for Provisions of Land for Public Infrastructure.* Not applicable.

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 conserving the value of land and buildings and encouraging the most appropriate use of land throughout the City. The building is being reused and a restaurant use is an appropriate use for this commercial corridor.

The proposal is consistent with the purpose of the district. The restaurant and outdoor seating provide an active use for the building. As a reuse of an existing 1695sf building, there is not an opportunity to have a multi-use, multi-tenanted building as is encouraged in the district; however, the business will be increase commercial investment by improving this vacant building and it will be neighborhood serving.

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 is designed to be compatible with the characteristics of the surrounding area and is consistent with the design guidelines in the CCD.

1. The building is built close to the front property line along Broadway and completes the street wall.
 2. The massing and height of the one-story structure will not change.
 3. The height of the building is only one-story and the surrounding buildings are one-, two- and two and one-half stories. A transition to residential or historically designated properties is not applicable.
 4. The 30 foot-wide commercial bays with independent entrances onto the street are incorporated into this proposal. The second phase of the proposal includes adding a door on the front of the building, which helps to comply with this guideline. The proposal complies with the guideline to have 75% transparent material on the first floor. The windows will provide views into the building that should not be blocked by interior storage, nonartistic displays, or greater than 30% internally mounted signage.
 5. The existing materials on the façade are not proposed to change; although the stucco will be repaired where the awning is removed and the other improvements to the building including removing the cupola and straightening the roofline will greatly improve the appearance of the property. The change to the building will remove the KFC brand look which would not be appropriate to remain for this new restaurant type. The building design is simple and gives the building a fresh look.
 6. The building materials are the same on all sides of the building.
 7. The signage design respects the building's context. The signs will be located in the signage band on the building and on the awning above the entrance to the restaurant. The letters of the signs will simply state the name of the business and not include excessive wording. Although large interior lit signs are generally discouraged, the proposed interior lit signs are acceptable because they are made of individual channel letters that are thin in size and well crafted. The letters sit on a base that is not lit. The awning will be made of a sunbrella material, which is an encouraged material.
 8. The use of the property will be a restaurant, which is an encouraged use on the ground floor in this district.
 - 9./10. Artist Live/Work Spaces and residential unit size do not relate to the nonresidential proposal.
 11. The building location is not changing. The streetscape improvement project planned for this portion of Broadway will increase the width of the sidewalk.
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 vehicle and pedestrian circulation is not proposed to change as a result of the application from the previous use as a restaurant. When the outdoor seating is installed in the future, the streetscape improvement project will have been completed which will create wider sidewalks in this area and provide sufficient space for seating and sidewalk accessibility.

6. Fast food establishments: In special permit applications for fast-order, take-out or automobile oriented food service establishments, there shall be establishment of a need for such a facility in the neighborhood or in the City, and impacts on traffic circulation, parking and visual, physical, or historical characteristics of the particular location shall not be detrimental.



The use as a fast-order food establishment is not proposed to change from the previous use. The change from a national chain fried chicken restaurant to a locally owned independent Asian food restaurant will be an improvement. This type of food is not currently offered in the neighborhood. The change to the façade and site will be an improvement from the existing conditions.

DECISION:

Present and sitting were Members Kevin Prior, Joseph Favaloro, James Kirylo and Michael Capuano with Elizabeth Moroney absent. Upon making the above findings, Kevin Prior made a motion to approve the request for a Special Permit. Michael Capuano seconded the motion. Wherefore the Planning Board voted **4-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes														
1	Approval includes 2 phases. Phase 1 is to alter the roofline of the building, install new signage, an awning, and lighting and make site improvement. Phase 2 is to install and replace windows and doors and provide outdoor seating. 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>Aug 20, 2012</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>Sept 12, 2012</td> <td>Modified plans submitted to OSPCD (A4 elevations)</td> </tr> <tr> <td>Aug 15, 2012</td> <td>Modified plans submitted to OSPCD (A1 site plan)</td> </tr> <tr> <td>Sept 6, 2012</td> <td>Modified plans submitted to OSPCD (Sign elevation -lighting is not shown correctly – see arch elevation)</td> </tr> <tr> <td>Sept 6, 2012</td> <td>Plans submitted to OSPCD (flat cut letters)</td> </tr> <tr> <td>Aug 17, 2012</td> <td>Plans submitted to OSPCD (awning)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	Aug 20, 2012	Initial application submitted to the City Clerk's Office	Sept 12, 2012	Modified plans submitted to OSPCD (A4 elevations)	Aug 15, 2012	Modified plans submitted to OSPCD (A1 site plan)	Sept 6, 2012	Modified plans submitted to OSPCD (Sign elevation -lighting is not shown correctly – see arch elevation)	Sept 6, 2012	Plans submitted to OSPCD (flat cut letters)	Aug 17, 2012	Plans submitted to OSPCD (awning)
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Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive SPGA approval.																		



2	A certificate of occupancy/BP signoff may be issued for phase 1 before completion of phase 2. Phase 2 may be implemented at a future date if the special permit is exercised by starting phase 1 before the special permit timeframe expires.	Cont.	Plng.	
3	Applicant will screen the dumpster with wood fencing that blocks any view of the dumpster itself.	CO	Plng.	
4	The dumpster area shall be continuously baited for rodents.	Cont.	ISD.	
5	The payphone on the property shall be removed.	CO	Plng.	
6	Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards.	Perpetual	Plng. / ISD	
7	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
8	The internally lit signs will be turned off when the restaurant is closed.	CO/Cont.	Plng.	
9	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	
10	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	
11	All construction materials and equipment must be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P	
12	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.	
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.	
14	The Applicant shall submit the exterior wall light fixture design to Planning Staff for review and approval.	BP	Plng.	



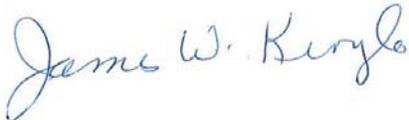
Attest, by the Planning Board:



Kevin Prior, Chairman



Joseph Favaloro



James Kirylo



Michael A. Capuano, Esq.

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 _____

