



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

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**Case #: ZBA 2014-20**  
**Site: 864 Broadway**  
**Date of Decision: April 16, 2014**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: April 18, 2014**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Mary McPartland
<b>Applicant Address:</b>	534 High Street, Medford, MA 02155
<b>Property Owner Name:</b>	Charles Kostopoulos
<b>Property Owner Address:</b>	4055 Losillias Drive, Sarasota, FL 34238
<b>Agent Name:</b>	N/A

Legal Notice: Applicant, Mary McPartland, and Owner, Charles Kostopoulos, seek a Special Permit under SZO §4.5.1 to change the nonconforming use from a furniture store to an ice cream sandwich shop and a Special Permit under SZO §9.13 for relief from parking requirements. RB zone. Ward 6.

<u>Zoning District/Ward:</u>	RB zone/Ward 6
<u>Zoning Approval Sought:</u>	§4.5.1 & §9.13
<u>Date of Application:</u>	March 13, 2014
<u>Date(s) of Public Hearing:</u>	April 16, 2014
<u>Date of Decision:</u>	April 16, 2014
<u>Vote:</u>	5-0

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Appeal #ZBA 2014-20 was opened before the Zoning Board of Appeals at Somerville City Hall on April 16, 2014. 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 is to change the use from a used furniture store to an ice cream sandwich shop. The Applicant and Owner are not proposing any changes to the façade except for adding signage above the door.

**FINDINGS FOR SPECIAL PERMIT (SZO §):**

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."

This is a commercial property within an RB district. The applicant is seeking a special permit under §4.5.1 of the Somerville Zoning Ordinance (SZO) for a change of non-conforming use from a store selling furniture, home furnishings, carpets, or home appliances and equipment, including audio, computer, and video equipment (§7.11.9.7) to a fast food use (§7.11.10.2).

There are two spaces of parking relief required. The prior use, a furniture store, required 1.24 parking spaces. The proposed use requires 4.77 spaces (1 per 110 gsf) Per SZO §9.4.1, nonconformity with respect to parking requirements, 50% of the difference in the old and new parking requirement is required. Therefore, relief of two parking spaces is needed.

The Department of Traffic and Parking has requested a traffic study for the proposed spaces of relief to more clearly understand how this will affect the parking situation for Powder House Circle and the surrounding neighborhood. This is a unique neighborhood amenity that will likely be most often utilized by residents of the surrounding neighborhood who could walk or bike to the location, just like the used furniture store and existing businesses. Additionally, the surrounding neighborhood is permit parking while the main streets that circle the rotary have metered parking. Therefore, the on-street parking situation as a result of this proposal will likely be either minimally impacted or not at all.

In considering a special permit under §4.4 of the SZO, the Board finds that the use proposed would not be substantially more detrimental to the neighborhood than the existing use.

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."

In considering a special permit under § 4.5 of the SZO, Staff find that the use proposed would not be substantially more detrimental to the neighborhood than the existing use. An ice cream sandwich shop is an appropriate use for the area with college students and residences. Powder House Circle functions as a commercial area even though it is zoned residential. The store is relatively small so it would not be out of scale with the retail in the area. The store would fill a vacant storefront and provide a few jobs. There is metered parking along the street for people to park. This area has heavy pedestrian traffic. The existing structure has a strong commercial presence in the area and Staff find it appropriate to continue to support commercial uses here.



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 property is located in Powder House Circle and is comprised of a variety of retail shops. There is a funeral parlor and two- and three-family houses in the immediate area. Tufts University begins on the other side of Powder House Circle.

There are no anticipated negative impacts from the change in use. The customers are expected to be college students and residents in the area. There are a lot of pedestrians in the area and this business should contribute to its vibrancy.

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.

Although the Department of Traffic and Parking has requested a traffic study for the proposed parking relief, the surrounding neighborhood is permit parking only and the proposed space would have a small number of occupants at any given time.

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.

This area is a cluster of commercial uses with great variety. The need for a fast-order food establishment should be balanced with the benefit of filling a vacant storefront. This is a unique use that will complement existing businesses.



**DECISION:**

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Elaine Severino and Brandy Brooks with Herbert Foster and Josh Safdie absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit. Brandy Brooks 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	<p>Approval is for a Special Permit under SZO §4.5.1 to change the nonconforming use from a furniture store to an ice cream sandwich shop and a Special Permit under SZO §9.13 for relief from parking requirements. This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>(March 13, 2014)</td> <td>Initial application submitted to the City Clerk’s Office</td> </tr> <tr> <td>(April 10, 2014)</td> <td>Plans submitted to OSPCD (Mortgage Inspection Plan, Floor Plan, Signage Graphic)</td> </tr> </tbody> </table> <p>Any changes to the approved use that are not <i>de minimis</i> must receive ZBA approval.</p>	Date (Stamp Date)	Submission	(March 13, 2014)	Initial application submitted to the City Clerk’s Office	(April 10, 2014)	Plans submitted to OSPCD (Mortgage Inspection Plan, Floor Plan, Signage Graphic)	BP/CO	ISD/ PIng.	
Date (Stamp Date)	Submission									
(March 13, 2014)	Initial application submitted to the City Clerk’s Office									
(April 10, 2014)	Plans submitted to OSPCD (Mortgage Inspection Plan, Floor Plan, Signage Graphic)									
2	Final design of the signage shall be approved by Planning Staff.	BP	PIng.							
3	The Applicant or Owner shall meet the Fire Prevention Bureau’s requirements.	CO	FP							
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	PIng.							
5	Approval is for the fast food use for the Applicant, Mary McPartland. A future tenant of this space for the fast order food use would have to come back to the ZBA for special permit approval in order to operate in this location.	Perpetual	ISD							



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Acting Chairman*  
Richard Rossetti, *Acting Clerk*  
Danielle Evans  
Elaine Severino  
Brandy Brooks (Alt.)

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 \_\_\_\_\_

