



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

PLANNING DIVISION

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Case #: ZBA # 2011-28
Site: 37-37A Davis Square
Date of Decision: May 4, 2011
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: May 16, 2011

ZBA DECISION

Applicant Name:	Davis Square Food Services, Inc. d/b/a Boston Burger Company
Applicant Address:	37 Davis Square, Somerville, MA 02144
Property Owner Name:	Sixty-Six Highland Avenue Realty Trust
Property Owner Address:	99 Albion Street, Suite 6, Somerville, MA 02144
Agent Name:	Charles J. Sillari, Jr., Esq.
Agent Address:	510 Medford Street, Somerville, MA 02145

<u>Legal Notice:</u>	Applicant Davis Square Food Services, Inc. d/b/a Boston Burger Company and Owner Sixty-six Highland Ave Realty Trust seek a special permit for modification of parking requirements (§9.13) to waive the requirement to provide two (2) additional parking spaces while adding 18 seats in the restaurant that is expanding by 300 sf in the existing building
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<u>Zoning District/Ward:</u>	CBD zone/Ward 6
<u>Zoning Approval Sought:</u>	§9.13
<u>Date of Application:</u>	April 5, 2011
<u>Date(s) of Public Hearing:</u>	May 4, 2011
<u>Date of Decision:</u>	May 4, 2011
<u>Vote:</u>	5-0

Appeal #ZBA 2011-28 was opened before the Zoning Board of Appeals at Somerville City Hall on May 4, 2011. 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 expand the restaurant into the adjacent commercial space that was previously a hair salon but is currently vacant. The space is 370 gsf (300 nsf) and would fit 18 seats. The total square footage of the restaurant would be 1040 sf and the total number of seats would be 46. There would be one additional employee working at the restaurant. A door would be built to connect the two spaces internally. No exterior renovations would be required.

FINDINGS FOR SPECIAL PERMIT (SZO §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."

In considering a special permit under §9.13 of the SZO 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.

There will be minimal impact on the neighborhood through the above criteria. The minor increase in traffic congestion and vehicle delay and slight decrease in pedestrian and bicycle safety that would be caused by not providing two additional parking spaces onsite would be conditioned to be alleviated by the Applicant providing two pedestrian impact recovery systems to the City. The markers should be placed along pedestrian corridors to and from Davis Square to promote a safe comprehensive transportation network for all modes of transportation.

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 providing for and maintaining the uniquely integrated structure of uses in the City and encouraging the most appropriate use of land throughout the City. The small expansion of a restaurant is consistent with the purpose of the Central Business District that seeks to preserve and enhance businesses with a strong pedestrian character.

Also, the proposal meets the intent of §9.1, the purpose of the Off-street Parking and Loading Article. Relief from providing two parking spaces along with the installation of two pedestrian impact recovery systems will not create a situation that would be a nuisance or hazard to pedestrians and adjacent properties, nor would it decrease the traffic carrying capacity of the adjacent streets or significantly compromise the on-street parking available in Davis Square.



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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."

An approximately 1,000 sf restaurant in Davis Square is a compatible use with the mix of businesses located in Davis Square. Most businesses in the neighborhood do not supply parking onsite which allows the build form in the Square to be pleasant for pedestrians. The expansion of the restaurant will not require alterations to the exterior of the building and will only require installation of an interior door to join the two spaces. The alterations would not preclude a future need for two smaller tenants to convert the space back to two separate spaces.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Scott Darling and Josh Safdie. Upon making the above findings, Richard Rossetti made a motion to approve the request for a special permit. Scott Darling 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 the modification of parking requirements (§9.13) to waive the requirement to provide two (2) additional parking spaces while adding 18 seats in the restaurant that is expanding by 300 sf in the existing building. 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>Apr 5, 2011</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>May 1, 1990</td> <td>Plans submitted to OSPCD (Plot Plan)</td> </tr> <tr> <td>Jan 12, 2011</td> <td>Plans submitted to OSPCD (A-1 floor plan)</td> </tr> </tbody> </table> <p>Any changes to the approved number of seats that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	Apr 5, 2011	Initial application submitted to the City Clerk's Office	May 1, 1990	Plans submitted to OSPCD (Plot Plan)	Jan 12, 2011	Plans submitted to OSPCD (A-1 floor plan)	BP/CO	Plng.	
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2	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP									
3	The Applicant shall purchase and deliver to the City two in-street pedestrian crosswalk signs (pedestrian impact recovery systems) to be placed along pedestrian corridors to/from Davis Sq.	CO	T&P									



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.	
5	The Applicant shall submit the sign design to Planning Staff for review and approval.	BP for signage	Plng.	



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Acting Chairman*
Richard Rossetti, *Acting Clerk*
T.F. Scott Darling, III, Esq.
Danielle Evans
Josh Safdie (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 _____



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