



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

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Case #: ZBA # 2012-40-R1-8/2012
Site: 99 Dover Street
Date of Decision: September 19, 2012
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: October 2, 2012

ZBA DECISION

Applicant Name:	Bright Horizons Family Solutions, Inc.
Applicant Address:	200 Talcott Avenue, South Watertown, MA 02472
Property Owner Name:	99 Dover Street, LLC
Property Owner Address:	1018 Beacon Street, 4 th Floor, Brookline, MA 02446
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145

Legal Notice: Applicant Bright Horizons Family Solutions, Inc. and Owner 99 Dover Street, LLC, seek a Revision to a Special Permit (ZBA 2012-40) under SZO §5.3.8 to add a new condition to the Special Permit which would give Owner the as-of-right option to restore the loading dock door that would be removed as part of the originally awarded Special Permit. The original Special Permit was to make alterations to the façade of a nonconforming structure including removing a loading dock door and replacing it with windows and an emergency egress under SZO §4.4.1.

<u>Zoning District/Ward:</u>	CBD zone/Ward 6
<u>Zoning Approval Sought:</u>	§5.3.8 & §4.4.1
<u>Date of Application:</u>	August 21, 2012
<u>Date(s) of Public Hearing:</u>	September 19, 2012
<u>Date of Decision:</u>	September 19, 2012
<u>Vote:</u>	5-0



Appeal #ZBA 2012-40-R1-8/2012 was opened before the Zoning Board of Appeals at the Visiting Nurse Association on September 19, 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 Zoning Board of Appeals took a vote.

DESCRIPTION:

The current Applicant, Bright Horizons Family Solutions, Inc., has a stipulation in their lease with the Property Owner that once the child care facility ceases to use the space within 99 Dover Street, they must be able to restore the functioning loading dock with a roll-up door on the Meacham Road façade. The most recent approval that was awarded to the Applicant back in June of 2012 does not guarantee this, as the Owner or Applicant would be required to return to the Zoning Board of Appeals and ask for another Special Permit to revert the space back into a functioning loading dock. Therefore, the Applicant has now returned to the Zoning Board of Appeals to request a revision to their originally awarded Special Permit (ZBA 2012-40) to add a new condition to the Special Permit. This additionally proposed condition, Condition # 5, would permit the Property Owner to either reinstall the existing loading dock with a roll-up door or to retain the permitted façade changes once the child care facility is no longer operating within the space. The proposed new Condition # 5 would read as follows: "The Property Owner shall have the option to restore the conforming loading dock or to retain the façade changes associated with the Special Permit after the former loading area ceases to be used by the by-right Day Care Facility." This condition would be continuous and would be verified by Planning Staff sign off.

FINDINGS FOR SPECIAL PERMIT (SZO §5.3.8):

In order to grant a Revision to 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.

The following findings are relevant to the proposed addition of Condition # 5 to the original Special Permit.

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 standards for issuing a Revision to a Special Permit. The final Certificate of Occupancy has not yet been issued for the project, the proposal otherwise is in accordance with the originally approved plans and conditions, and notice has been given for the public hearing.

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 proposed revision 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 provide for and maintain the uniquely integrated structure of uses in the City; to secure safety from fire, panic and other dangers; to provide adequate light and air; to conserve the value of land and buildings; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality."

The proposed revision is also consistent with the purpose of the district (6.1.5. CBD - Central Business Districts), which is, "[t]o preserve and enhance central business areas for retail, business services, housing, and office uses and



to promote a strong pedestrian character and scale in those areas. A primary goal for the districts is to provide environments that are safe for and conducive to a high volume of pedestrian traffic, with a strong connection to retail and pedestrian accessible street level uses.”

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 alterations that will be performed to the façade in accordance with the originally awarded Special Permit (ZBA 2012-40) have been designed to be compatible with the built and unbuilt surrounding area. The infill design for the loading dock door is consistent with the rest of the façade. The windows are similar in size, shape, and appearance to those already existing on the Meacham Road façade, and the new emergency egress door appears to be identical to the one located to the left of the proposed infill space. Similarly, this proposed Revision to the Special Permit would also be compatible with the site and the surrounding area because it would simply allow for this portion of the Meacham Road façade to potentially return to what currently exists there today; a functioning loading dock with a roll-up door. Without this additionally proposed condition attached to the originally awarded Special Permit, the child care facility will not be able to open in this space because they will not be able to meet the conditions of their lease and the Meacham Road façade will remain as it currently exists today.

5. Adverse Environmental Impacts: The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.

No adverse environmental impacts are anticipated from this proposed Revision to the Special Permit. No new noise, glare, dust, smoke, vibration, nor emissions of noxious materials nor pollution of water ways or ground water nor transmission of signals that interfere with radio or television reception are anticipated as part of the proposed revision.

6. 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 Applicant is not proposing to make any changes to the circulation patterns for motor vehicles or pedestrians that were approved in the originally awarded Special Permit (ZBA 2012-40).



DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Elaine Severino with Scott Darling absent. Upon making the above findings, Susan Fontano made a motion to approve the request for a Special Permit. Richard Rossetti 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 to make alterations to the façade of a nonconforming structure under SZO §4.4.1 which include removing a loading dock door and replacing it with windows and an emergency egress. 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>(May 1, 2012)</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>December 30, 2011 (May 30, 2012)</td> <td>Loading space reconfiguration plan submitted to OSPCD (Sheet PR-1)</td> </tr> <tr> <td>April 19, 2012 (May 30, 2012)</td> <td>Proposed Exterior Infill Wall & Glazing plan submitted to OSPCD (sheet SD-1)</td> </tr> <tr> <td>April 19, 2012 (May 30, 2012)</td> <td>Proposed Infill Wall & Glazing Elevation submitted to OSPCD (SD-2)</td> </tr> </tbody> </table> <p>Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	(May 1, 2012)	Initial application submitted to the City Clerk's Office	December 30, 2011 (May 30, 2012)	Loading space reconfiguration plan submitted to OSPCD (Sheet PR-1)	April 19, 2012 (May 30, 2012)	Proposed Exterior Infill Wall & Glazing plan submitted to OSPCD (sheet SD-1)	April 19, 2012 (May 30, 2012)	Proposed Infill Wall & Glazing Elevation submitted to OSPCD (SD-2)	BP/CO	ISD/Plng.	
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2	Approval is subject to the Applicant's and/or successor's right, title and interest in the property.	Cont.	Plng.	Deed Submitted & Application Formed Signed										
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	Plng.											



5	The Property Owner shall have the option to restore the conforming loading dock or to retain the façade changes associated with the Special Permit after the former loading area ceases to be used by the by-right Day Care Facility.	Cont.	Plng.	
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Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*
Orsola Susan Fontano, *Clerk*
Richard Rossetti
Danielle Evans
Elaine Severino (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 _____

