



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
**JOSEPH A. CURTATONE**  
**MAYOR**

PLANNING DIVISION

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DANIELLE EVANS  
ELAINE SEVERINO (ALT.)  
JOSH SAFDIE (ALT.)

**Case #: ZBA # 2011-30**  
**Site: 187 Elm Street**  
**Date of Decision: May 4, 2011**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: May 16, 2011**

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**ZBA DECISION**

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|                                |   |
|--------------------------------|---|
| <b>Applicant Name:</b>         | 187 Elm Street, LLC                             |
| <b>Applicant Address:</b>      | 332 River Street, Suite D, Woonsocket, RI 02895 |
| <b>Property Owner Name:</b>    | Alpine Restaurant Group, Inc.                   |
| <b>Property Owner Address:</b> | 187 Elm Street, Somerville, MA 02144            |
| <b>Agent Name:</b>             | N/A   |

Legal Notice: Applicant, Alpine Restaurant Group, Inc. and owner 187 Elm St, LLC seek a Special Permit with Design Review to revise the requirements established in a condition related to operating hours that is attached to permit ZBA 2009-48. The original special permit was to establish a restaurant with outdoor seating (§7.11.10.1.2.b). NB zone. Ward 6.

|                                   |                |
|-----------------------------------|----------------|
| <u>Zoning District/Ward:</u>      | NB zone/Ward 6 |
| <u>Zoning Approval Sought:</u>    | §7.11.10.1.2.b |
| <u>Date of Application:</u>       | March 31, 2011 |
| <u>Date(s) of Public Hearing:</u> | May 4, 2011    |
| <u>Date of Decision:</u>          | May 4, 2011    |
| <u>Vote:</u>                      | 5-0            |

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Appeal #ZBA 2011-30 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 revise the requirements of condition 12 attached to permit ZBA 2009-48. Condition 12 states, “[a]ll operations of the restaurant shall end at 11pm.” The Planning Board added this recommended condition at the public meeting at the request of a neighbor and the ZBA approved the condition. The Applicant agreed to it at the time; however, after operating the restaurant, he realized that the 11pm close time was limiting his ability to run a successful business. For example, the Applicant stated that customers have chosen to leave the restaurant even at an early seating because when they were informed of the closing time they realized that it would prohibit their ability to have a long, relaxing dinner. The Applicant is requesting to be open later 1am seven days a week. If condition 12 were struck or altered, the Applicant would have the ability to be open later. One in the morning is the typical closing time under state regulations that is allowed for restaurants that have liquor licenses.

**FINDINGS FOR SPECIAL PERMIT WITH DESIGN REVIEW (SZO §5.1):**

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 Staff 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."

If the condition regarding the closing time was struck or altered, the restaurant would still be under the regulation of the Licensing Commission and the State law for closing time of 1am for restaurants with liquor licenses. The Board found that a 1am closing time was reasonable on Thursday through Saturday night and an 11pm closing time was reasonable on Sunday through Wednesday night. The Board found that the closing regulations in the Rules and Regulations for the Licensing Commission shall apply to the closing time condition. Also, a 1am closing time for New Years Eve shall be granted when the holiday falls on a Sunday through Wednesday.

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."

As an independent neighborhood-serving restaurant, 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. The restaurant is also consistent with the purpose of the district, which is, “[t]o 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 restaurant has been in operation for one year and has received no complaints related to noise or disturbances except for a complaint related to compliance with condition 12 limiting the hours of operation and the interpretation of the condition. The extension of the operating hours will not change the type of activities occurring at the venue and will likely not change the type of patrons at the restaurant. The impacts of the restaurant are not anticipated to change.

Changing the operating hours will allow the restaurant to be more successful and continue to be viable in this location that has had a high turnover rate of restaurants in the past. It would be beneficial to the City



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and the neighborhood for the property to succeed. The use here is relatively quiet, and no negative impacts are anticipated.

**DECISION:**

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Scott Darling and Josh Safdie. Upon making the above findings, Scott Darling made a motion to approve the request for a special permit with design review. 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  | Approval is to establish a restaurant with outdoor seating (§7.11.10.1.2.b) with 98 seats inside and 20 seats outside. This approval is based upon the following application materials and the plans submitted by the Applicant:   | BP/CO                    | Plng.              |       |  |            |   |  |  |  |               |   |              |              |
|  | <table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>March 31, 2011,<br/>May 11, 2010,<br/>Oct 2, 2009</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>Aug 10, 2009 as modified by plans stamped (May 27, 2010)</td> <td>Plans submitted to OSPCD (A1.1: roof plan, A1.0: floor plan)</td> </tr> <tr> <td>Sept 11, 1996</td> <td>Plans submitted to OSPCD (landscape plan)</td> </tr> <tr> <td>May 11, 2010</td> <td>Traffic Memo</td> </tr> </tbody> </table> |                          |                    |       | Date (Stamp Date)  | Submission | March 31, 2011,<br>May 11, 2010,<br>Oct 2, 2009 | Initial application submitted to the City Clerk's Office | Aug 10, 2009 as modified by plans stamped (May 27, 2010) | Plans submitted to OSPCD (A1.1: roof plan, A1.0: floor plan) | Sept 11, 1996 | Plans submitted to OSPCD (landscape plan) | May 11, 2010 | Traffic Memo |
|  | Date (Stamp Date)  |                          |                    |       | Submission   |            |   |  |  |  |               |   |              |              |
|  | March 31, 2011,<br>May 11, 2010,<br>Oct 2, 2009  |                          |                    |       | Initial application submitted to the City Clerk's Office     |            |   |  |  |  |               |   |              |              |
|  | Aug 10, 2009 as modified by plans stamped (May 27, 2010)   |                          |                    |       | Plans submitted to OSPCD (A1.1: roof plan, A1.0: floor plan) |            |   |  |  |  |               |   |              |              |
| Sept 11, 1996  | Plans submitted to OSPCD (landscape plan)  |                          |                    |       |  |            |   |  |  |  |               |   |              |              |
| May 11, 2010   | Traffic Memo   |                          |                    |       |  |            |   |  |  |  |               |   |              |              |
| Any changes to the approved site plan, elevations or use that are not <i>de minimis</i> must receive ZBA approval. |  |                          |                    |       |  |            |   |  |  |  |               |   |              |              |
| 2  | The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.   | CO                       | FP                 |       |  |            |   |  |  |  |               |   |              |              |
| 3  | The 9 <sup>th</sup> parking space by the dumpster shall be marked as indicated on the landscape plan.  | CO                       | Plng.              |       |  |            |   |  |  |  |               |   |              |              |
| 4  | The site shall comply with the landscaping plan.   | CO                       | Plng.              |       |  |            |   |  |  |  |               |   |              |              |
| 5  | The planters, or similar barrier, separating the outdoor dining area and the sidewalk shall be placed so that pedestrians can comfortably step in between them if more space is needed on the sidewalk to pass someone. The planters, or similar barrier, shall be movable so that in cool weather they could be pushed toward the building or removed to allow for a wider sidewalk.  | CO                       | Plng.              |       |  |            |   |  |  |  |               |   |              |              |
| 6  | To the extent possible, all new exterior lighting must be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.  | CO                       | Plng.              |       |  |            |   |  |  |  |               |   |              |              |



|    |   |                |                |  |
|----|---|----------------|----------------|--|
| 7  | Applicant will screen the dumpster and recycling receptacles with fencing that totally encloses them and blocks views of them.  | CO             | Plng.          |  |
| 8  | An Outdoor Seating and Goods License is required from the Board of Alderman to encumber the sidewalk.   | annually       | BOA            |  |
| 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 is encouraged to hire locally and urge employees to commute to work on foot, bicycle or use public transportation.  | Cont.          | Applicant      |  |
| 11 | There shall only be one dumpster for trash on-site. There may be recycling receptacles within the fencing enclosure for the dumpster.   | Cont.          | ISD            |  |
| 12 | The Applicant shall be permitted to operate until 11pm Sunday through Wednesday and until 1am on Thursday through Saturday. The restaurant may remain open until 1am on New Years Eve if it falls on a Sunday through Wednesday. The rules on closing times shall be dictated by the Rules and Regulations of the Licensing Commission. | Cont.          | ISD            |  |
| 13 | The Applicant shall make his best faith efforts, including collaboration with the Traffic and Parking Director or his designee, to secure additional designated parking spaces should any become available in the Davis Square area in the future, through the Business Program or other means.   | Cont.          | Owner / Tenant |  |
| 14 | The Applicant shall contact Planning Staff at least five working days in advance of a request for a final sign-off on the building permit 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.          |  |
| 15 | The Applicant shall install a bicycle rack in an area to be approved by the Planning Staff.   | CO             | Plng.          |  |
| 16 | The Applicant shall submit a site plan that includes a bike rack, a 4' pedestrian clearance from any obstruction in the sidewalk and the approved 1996 landscaping to be approved by Planning Staff.  | CO             | 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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