



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

PLANNING DIVISION

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**Case #: ZBA # 2012-07**  
**Site: 234 Elm Street**  
**Date of Decision: February 15, 2012**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: February 16, 2012**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Bryan Poisson, iYO, Inc.
<b>Applicant Address:</b>	3 Cypress Street, Marblehead, MA 01945
<b>Property Owner Name:</b>	Hancock Somerville, LLC, c/o Anthony Addonizio, Jr.
<b>Property Owner Address:</b>	1200 Salem Street, #119, Lynnfield, MA 01940
<b>Agent Name:</b>	N/A

Legal Notice: Applicant Bryan Poisson and Owner Hancock Somerville, LLC, seek a Special Permit with Design Review under SZO §7.11.10.2.1.a to establish a fast order food establishment (café).

<u>Zoning District/Ward:</u>	CBD zone/Ward 6
<u>Zoning Approval Sought:</u>	§7.11.10.2.1.a
<u>Date of Application:</u>	January 17, 2012
<u>Date(s) of Public Hearing:</u>	February 15, 2012
<u>Date of Decision:</u>	February 15, 2012
<u>Vote:</u>	5-0

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Appeal #ZBA 2012-07 was opened before the Zoning Board of Appeals at the Visiting Nurse Association on February 15, 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.



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## **DESCRIPTION:**

The Applicant is proposing to open a 68-seat café called iYo Café serving frozen yogurt, coffee, tea, pastries, and other desserts with four employees. The interior space would be outfitted with a service area, self-serve frozen yogurt stations, a self-serve topping station, associated seating, a library/gathering room, two bathrooms, an office, a janitor's closet, and a small storage room. The proposed hours of the café would be 7:00 AM to midnight, seven days a week. The Applicant is also proposing to install one bicycle parking bollard just outside the storefront on the sidewalk. In January 2012, the Applicant received Special Permit approval to make alterations to the façade and a parking Variance for seven required off-street parking spaces. The Applicant will be replacing a through-wall air conditioning unit and an infill wood panel above the main entrance with a glass panel as part of the implementation of a central air system for the space. The Applicant will also be overlaying the existing canopy facing, reworking the façade signage including adding a small nine square foot blade sign, and replacing the existing floodlight outside the entrance with recessed lighting in the canopy and three gooseneck lamps on the façade. The Applicant is still working on finalizing design graphics and color schemes for the business, but has finalized signage size and lighting plans for the façade. A 31 square foot sign on the front of the façade will be lit with gooseneck lighting and there will also be a 9 square foot, internally illuminated, blade sign that will be affixed perpendicular to the façade of the building.

## **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 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 §4.4 of the SZO, the Board finds that the proposed use and alterations to the façade would not be substantially more detrimental to the neighborhood than the existing use or structure. The proposed 68-seat café serving frozen yogurt, coffee, tea, pastries, and other desserts will fit well into the existing fabric of Davis Square. The business would have four employees and the proposed hours of operation would be from 7:00 AM to midnight, seven days a week. The proposed changes to the façade of the building will be an improvement to the existing situation as they will be increasing the amount of transparent glass on the storefront and improving the lighting situation. The existing through-wall air conditioner and wood infill panel above the main entrance will be replaced with a glass panel. The existing exposed floodlight will be removed and replaced with recessed lighting in the canopy and some gooseneck lighting on the façade to illuminate the proposed signage. These changes will help to maintain the vibrancy of the streetscape and the high quality pedestrian environment in the Davis Square area.

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; 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."



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The proposal is also consistent with the purpose of the district (6.1.5. CBD - Central Business Districts), which is, to “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 proposal is designed to be compatible with the characteristics of the surrounding area and it is consistent with the district standards and guidelines for developments within the CBD as laid out in SZO §6.1.5 as follows:

1. Across the primary street edge, the building should complete the streetwall.

The existing building completes the streetwall along both Elm Street and Bowers Avenue. The Applicant is not proposing any changes to the streetwall as part of this proposal that would alter this situation at the site.

2. At the street level, provide continuous storefronts or pedestrian arcade which shall house either retail occupancies, or service occupancies suitably designed for present or future retail use.

The proposed changes to the façade of the building will maintain the existing continuous storefront situation at the property and along Elm Street. The project will replace a convenient store with a café, both of which are pedestrian oriented uses, in the Davis Square area. The proposal will continue to maintain an interactive sidewalk and pedestrian friendly environment.

3. Massing of the building should include articulation which will blend the building in with the surrounding district. At the fourth floor, a minimum five-foot deep setback is recommended.

The proposal does not include changes to the massing of the building. The proposed changes to the structure will further enhance the pedestrian environment by improving signage and lighting and increasing the amount of transparent storefront through the addition of glass at the street level along the Elm Street streetscape.

4. Locate on-site, off-street parking either at the rear of the lot behind the building or below street level; parking should not abut the street edge of the parcel.

The Applicant is not proposing any changes to the existing parking situation at the site. In January 2012, the Applicant received a parking Variance for seven required off-street parking spaces and therefore the Applicant is not required to provide any additional parking on site as part of this proposed use.

5. Provide access to on-site, off-street parking from either a side street or alley. Where this is not possible, provide vehicular access through an opening in the street level façade of the building of a maximum twenty-five (25) feet in width.

The Applicant is not proposing any changes to the existing parking situation at the site. In January 2012, the Applicant received a parking Variance for seven required off-street parking spaces and therefore the Applicant is not required to provide any additional parking on site as part of this proposed use.

The proposal is also designed to be compatible with the characteristics of the surrounding area and is consistent with the design guidelines for a business zone as laid out in SZO §5.1.5.A as follows:

1. Maintain a strong building presence along the primary street edge, continuing the established streetwall across the front of the site so as to retain the streetscape continuity; however, yards and setbacks as required by Article 8 shall be maintained.



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The existing building completes the streetwall along both Elm Street and Bowers Avenue. The Applicant is not proposing any changes to the streetwall as part of this proposal that would alter this situation at the site. The proposed changes to the façade of the building will maintain the existing continuous storefront situation at the property and along Elm Street.

2. Differentiate building entrances from the rest of the primary street elevation, preferably by recessing the entry from the plane of the streetwall or by some other articulation of the elevation entrance.

The Applicant will not be altering the existing entrance to the building with regard to its location on the existing structure. The existing door is currently slightly recessed from the Elm Street streetscape, separating it from the pedestrian way, and the Applicant is not proposing any changes to this element of the façade.

3. Make use of the typical bay widths, rhythms and dimensions prevalent in buildings adjacent to the site, especially in new construction or substantial redevelopment.

As part of the proposal the Applicant will be maintaining the typical bay width, rhythm, and dimensions of the storefront in the existing building. The physical storefront setup for the building will not be altered in any way with the exception of replacing a through-wall air conditioning unit and an infill wood panel above the main entrance with a glass panel as part of the implementation of a central air system for the space. The Applicant will also be overlaying the existing canopy facing, reworking the façade signage including adding a small nine square foot blade sign, and replace the existing floodlight outside the entrance with recessed lighting in the canopy and three gooseneck lamps on the façade. The existing entrance door is currently slightly recessed from the Elm Street streetscape, separating it from the pedestrian way, and the Applicant is not proposing any changes to this element of the façade.

4. Clearly define these bay widths, rhythms and dimensions, making them understandable through material patterns, articulations and modulations of the façades, mullion design and treatment, etc.

As part of the proposal the Applicant will be maintaining the typical bay width, rhythm, and dimensions of the storefront in the existing building. The existing entrance door is currently slightly recessed from the Elm Street streetscape, separating it from the pedestrian way, and the Applicant is not proposing any changes to this element of the façade.

5. Provide roof types and slopes similar to those of existing buildings in the area.

The Applicant is not proposing to make any changes to the roof type or slope on the existing building as part of their proposal.

6. Use materials and colors consistent with those dominant in the area or, in the case of a rehabilitation or addition, consistent with the architectural style and period of the existing building. Use of masonry is encouraged, but not considered mandatory.

The Applicant is not proposing to make any alterations to the existing structure outside of new signage, replacing a through-wall air conditioning unit and an infill wood panel above the main entrance with a glass panel as part of the implementation of a central air system for the space. The Applicant will also be overlaying the existing canopy facing, replacing the existing floodlight outside the entrance with recessed lighting in the canopy, and installing three gooseneck lamps on the façade to illuminate the signage. The proposed signage conforms to §12 of the SZO and façade alterations are consistent with the architectural style of the existing building.

7. When parking lots are provided between buildings, abutting the primary street and breaking the streetwall, provide a



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strong design element to continue the streetwall definition across the site, such as a low brick wall, iron works or railing, trees, etc.

There is currently no on-site parking for the existing building and the Applicant is not proposing to change the existing situation. The existing building, which takes up almost the entire lot, will be maintained as will the structure's strong presence along Elm Street. In January 2012, the Applicant received a parking Variance for seven required off-street parking spaces and therefore the Applicant is not required to provide any additional parking on site as part of this proposed use

8. Locate transformers, heating and cooling systems, antennae, and the like, so they are not visible from the street; this may be accomplished, for example, by placing them behind the building, within enclosures, behind screening, etc.

The Applicant is not proposing to relocate or add any new transformers, heating and cooling systems, antennae, or the like to the existing structure.

9. Sites and buildings should comply with any guidelines set forth in Article 6 of this Ordinance for the specific base or overlay zoning district(s) the site is located within.

The proposal is consistent with the guidelines set forth for developments within the CBD district as laid out in SZO §6.1.5. Please see the text above for detailed responses to this section.

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 proposal. No new noise, glare, 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 proposal. The lighting being proposed for the business will have a minimal impact on the surrounding area. The existing exposed floodlight will be removed and replaced with recessed lighting in the canopy and some downward aiming gooseneck lighting will be used to illuminate the proposed façade signage to go along with the 9 square foot perpendicular blade sign which will be internally illuminated. The structure will remain a one-story building used for commercial purposes.

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 any changes to the existing parking situation at the site. The structure will remain a one-story building used for commercial purposes. In January 2012, the Applicant received a parking Variance for seven required off-street parking spaces and therefore the Applicant is not required to provide any additional parking on site as part of this proposed use. The Parking Memorandum submitted as part of that Variance application by Fort Hill Infrastructure Services, LLC indicated that the impact of the proposed project on the Davis Square parking supply is likely to be minimal. The memorandum strongly encouraged the Applicant to consider offering discounted MBTA passes to employees, participating in the City's employee parking program, and making customers fully aware of the public transportation options available to them, especially through the use of iYo Café's website. The Parking Memorandum also stated how the particular proposed use of the space, a café, would tend to generate trips where the trip takers will have already visited another establishment in Davis Square. These particular types of trips are closely associated with other existing dessert type establishments in the Davis Square area, such as J.P. Licks. The trips that the café will generate will also be offset by the storefront's proximity to alternate modes of transportation (Red line, MBTA Bus Service, taxis, Tufts Shuttle Bus, Community Path, etc.) and



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the multiple public parking lots located within 650 feet of the establishment. These factors will help to minimize the impacts of the proposed café's parking needs.

After reviewing the Parking Memorandum, the Traffic and Parking Department indicated that the requested parking variance would create a minor increase in traffic congestion and vehicle delay in this location in Davis Square. Traffic and Parking also thought there would be a slight decrease in pedestrian and bicycle safety as well as a lowering of parking space turnover rates. Aside from these impacts, there were no negative anticipated affects from the proposed parking variance. Traffic and Parking suggested that to alleviate this condition and to promote a safe comprehensive transportation network in Davis Square, mitigation to provide effective turnover rates at parking spaces was required. To encourage appropriate turnover rates, Traffic and Parking recommended that the Applicant purchase and deliver to the City seven single-space parking meters capable of accepting coins, credit cards and pay-by-cell phone technology, and this was included as a condition as part of the awarded Variance.

7. 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 proposal is designed to be compatible with the characteristics of the surrounding area and it is consistent with the district standards and guidelines for developments within the CBD as laid out in SZO §6.1.5, and with the design guidelines for a business zone as laid out in SZO §5.1.5.A. Findings for the proposal's consistency with these elements of the SZO can be found in Part II, Section 4 of this report. The establishment of this proposed business would help to maintain the vibrancy of the streetscape and the high quality pedestrian environment in Davis Square, which is a benefit to the surrounding neighborhood. As was mentioned above, the Traffic and Parking Department felt that the use and its awarded parking Variance would only create a minor increase in traffic congestion and vehicle delay in this location in Davis Square. Traffic and Parking also thought there would be a slight decrease in pedestrian and bicycle safety as well as a lowering of parking space turnover rates. Aside from these impacts, there were no negative anticipated affects from the proposed parking Variance and to alleviate these concerns and to encourage appropriate turnover parking turnover rates, the Applicant is being required to purchase and deliver to the City seven single-space parking meters capable of accepting coins, credit cards and pay-by-cell phone technology.



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**DECISION:**

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Elaine Severino with Scott Darling recused. Upon making the above findings, Susan Fontano 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	<p>Approval is for a Special Permit with Design Review under SZO §7.11.10.2.1.a to establish a fast order food establishment (café). 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>(January 17, 2012)</td> <td>Initial application submitted to OSPCD</td> </tr> <tr> <td>December 6, 2011 (January 25, 2012)</td> <td>Site Plan for 234 Elm Street (SP.1)</td> </tr> <tr> <td>December 6, 2011 (January 25, 2012)</td> <td>Vicinity Plan for 234 Elm Street (VP.1)</td> </tr> <tr> <td>December 6, 2011 (January 25, 2012)</td> <td>Existing Plan and Existing Façade Elevation &amp; Section (EX1.1 and EX1.2)</td> </tr> <tr> <td>December 6, 2011 (January 25, 2012)</td> <td>Proposed Plan and Proposed Façade Elevation &amp; Section (SK1.1 and SK1.2)</td> </tr> </tbody> </table> <p>Any changes to the approved use or site plans that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	(January 17, 2012)	Initial application submitted to OSPCD	December 6, 2011 (January 25, 2012)	Site Plan for 234 Elm Street (SP.1)	December 6, 2011 (January 25, 2012)	Vicinity Plan for 234 Elm Street (VP.1)	December 6, 2011 (January 25, 2012)	Existing Plan and Existing Façade Elevation & Section (EX1.1 and EX1.2)	December 6, 2011 (January 25, 2012)	Proposed Plan and Proposed Façade Elevation & Section (SK1.1 and SK1.2)	BP/CO	ISD/Plng.	
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2	The Applicant shall ensure that a code compliant fire alarm system is in place.	CO	FP													
3	The Applicant shall submit finalized signage design, graphics, and colors to Planning Staff for review and approval.	CO	Plng.													
4	The Applicant shall at their 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													

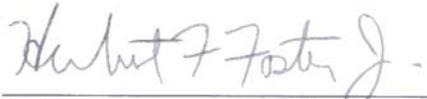


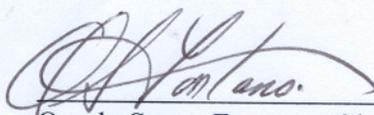
5	All construction materials and equipment must be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P	
6	The Applicant shall use either an 'inverted-u' or a 'post and ring' style bicycle rack for the proposed bicycle parking space. The installation of this bicycle parking space is subject to Planning Staff approval.	CO	Plng.	
7	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.	
8	This Special Permit is for "iYO Café (iYO, Inc.)" use only. Transfer to another fast order food establishment requires Special Permit revision.	Cont.	ISD	



Attest, by the Zoning Board of Appeals:

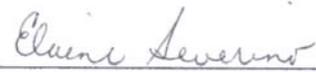
Herbert Foster, *Chairman*  
Orsola Susan Fontano, *Clerk*  
Richard Rossetti  
Danielle Evans  
Elaine Severino (Alt.)

  
\_\_\_\_\_  
Herbert F. Foster, Jr., Chairman

  
\_\_\_\_\_  
Orsola Susan Fontano, Clerk

  
\_\_\_\_\_  
Richard Rossetti

  
\_\_\_\_\_  
Danielle Evans

  
\_\_\_\_\_  
Elaine Severino, (Alt.)

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.



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**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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