



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

PLANNING DIVISION

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JOSH SAFDIE (ALT.)

Case #: ZBA # 2011-97
Site: 248 Elm Street
Date of Decision: January 18, 2012
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: January 25, 2012

ZBA DECISION

Applicant Name:	MDD Operations, LLC, c/o Matt D'Alessio
Applicant Address:	35 Walnut Place, Brookline, MA 02445
Property Owner Name:	Sitt Realty, LLC, c/o Myer Dana & Sons, LLC
Property Owner Address:	1340 Centre Street, Suite 101, Newton, MA 02459
Agent Name:	Joseph P. Hanley, Esq., McDermott, Quilty & Miller, LLP
Agent Address:	131 Oliver Street, 5 th Floor, Boston, MA 02110

Legal Notice: Applicant, MDD Operations, LLC / Matt D'Alessio & Owner, Sitt Realty, LLC, seek a Special Permit under SZO §7.11.10.2.1.a to establish a fast order food establishment.

<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>	December 20, 2011
<u>Date(s) of Public Hearing:</u>	January 18, 2012
<u>Date of Decision:</u>	January 18, 2012
<u>Vote:</u>	5-0

Appeal #ZBA 2011-97 was opened before the Zoning Board of Appeals at Somerville High School Auditorium on January 18, 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 proposal is to establish a fast order food establishment. The establishment will be an Amsterdam Falafel shop franchise intended to serve vegetarian falafel salads and sandwiches, fries, brownies and soft drinks. The hours of operation will likely be Monday through Sunday between 11 am and midnight; however, the closing time has not yet been confirmed for every day of the week.

Alterations to the façade include removing the opaque panels over the windows, making some of the windows operable, painting the window frames and installing a sign that is just less than 50 sf. The background to the sign will be aluminum with woodgrain graphics. Individual opaque vinyl letters will be attached to the background. The lighting on the sign will be internally illuminated reverse channel letters creating a halo effect. The only part of the sign that will be translucent and illuminate will be the “xxx”. These symbols, as well as the sign color, are taken from Amsterdam’s flag. There will also be lighting on the façade and at the entrance with a red hue.

FINDINGS FOR SPECIAL PERMIT WITH DESIGN REVIEW (SZO §7.11.10.2.1.a and 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."

The project complies with the standards for granting a special permit. The fast food establishment will not require more parking than the last use and the sign complies with the dimensional requirements.

The Special Permit with Design Review requires the SPGA to make positive determinations with the design guidelines in SZO §5.1.5.

1. The building is located on the front lot line, which creates a strong presence along the primary street in Davis Square. The setback is not proposed to change with this application.
2. The building entrance is differentiated by being recessed from the plane of the streetwall. This entrance is not proposed to change with this application.
3. The storefront is approximately fifteen feet wide creating a typical bay width in the Square. The dimension of the storefront is not proposed to change with this application.
4. The treatment of the façade with transparent square windows clearly defines this storefront from its neighbors and creates a pedestrian friendly façade.
5. The roof is flat, which is similar to other roofs in the area. The roof is not proposed to change with this application.
6. The building material is brick, which is a recommended material and will not change with this application. The sign design is consistent with the area and will stand out as being unique while not competing with surrounding signs. The letters will not glow brightly as they will be halo lit. The storefront will stand out at night with the proposed downward lighting that will have a red hue. This will provide an interesting element to the façade without having a permanent flashy sign.



7. There is no onsite parking for the restaurant. There is an alley behind the building where dumpsters are located. The entrance to the alley is off of Chester Street and does not break the streetwall. There will be one or two dumpsters in the alley with lockage tops that will be picked up six times per week. Recycling of paper, cardboard, plastic and cans (no glass) will be put out in plastic wheeled bins with covers six times per week.

8. The HVAC unit will be located on the roof and will not be visible from the street.

9. The site is not located in an overlay district. The mass of the building complies with the standards in Article 6 for the CBD and is not proposed to change with this application. The building currently completes the streetwall, provides a continuous storefront, blends in with the surrounding district, there is no on-site parking that would break up the streetwall and the alley entrance is located behind the building and accessed via a side street.

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. The proposal is also consistent with the purpose of the Central Business District in allowing for a unique restaurant establishment that is conducive to high volume of pedestrian traffic and has a strong connection to 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."

As outlined in Finding 2 above, the storefront was designed to be compatible with the surrounding area. The signage design fits in with similar establishments in the Square. The change from opaque bubbles to translucent glass on the façade will create a storefront that is more interactive with pedestrians.

5. 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.

Davis Square has a lot of pedestrian activity and the addition of this establishment is not anticipated to cause increased traffic. The menu for this fast food establishment is unique from other fast food establishments in the area and a condition of the special permit would require other fast food establishments to require another special permit. There are no other falafel restaurants in Somerville. The closest falafel restaurants appear to be in Harvard Square and Central Square. Also, the menu includes some healthy food options such as vegetarian falafel salads. The use will not impact the historic characteristics of the existing building in which it will be located.



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DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Scott Darling. Upon making the above findings, Susan Fontano made a motion to approve the request for a special permit with design review with a revised floor plan dated January 11, 2012. 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:

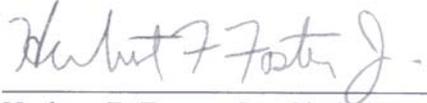
#	Condition	Timeframe for Compliance	Verified (initial)	Notes										
1	Approval is for the establishment of an approx 1200 sf fast order food establishment. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/PIng.											
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>Dec 20, 2011</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>Dec 3, 1955</td> <td>Plans submitted to OSPCD (Plot Plan)</td> </tr> <tr> <td>Dec 20, 2011 & Jan 11, 2012</td> <td>Plans submitted to OSPCD (Equipment Plan/FloorPlan)</td> </tr> <tr> <td>Jan 6, 2012</td> <td>Modified plans submitted to OSPCD (Sign Design & Night View)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	Dec 20, 2011	Initial application submitted to the City Clerk's Office	Dec 3, 1955	Plans submitted to OSPCD (Plot Plan)	Dec 20, 2011 & Jan 11, 2012	Plans submitted to OSPCD (Equipment Plan/FloorPlan)	Jan 6, 2012	Modified plans submitted to OSPCD (Sign Design & Night View)
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Any changes to the approved use or elevations that are not <i>de minimis</i> must receive SPGA approval.														
2	This Special Permit is for "Amsterdam Falafelshop" use only. Transfer to another fast order food establishment requires Special Permit revision.	Cont.	ISD											
3	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP											
4	The Applicant shall at his 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											

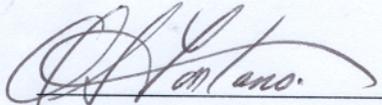


6	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	Plng.	
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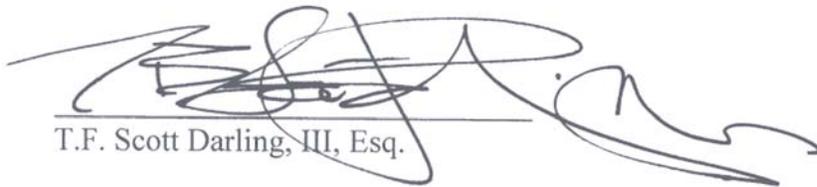
Attest, by the Zoning Board of Appeals:


Herbert F. Foster, Jr., Chairman


Orsola Susan Fontano, Clerk


Richard Rossetti


Danielle Evans


T.F. Scott Darling, III, Esq.

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.



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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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