



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

PLANNING DIVISION

**ZONING BOARD OF APPEALS MEMBERS**

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

**Case #: ZBA # 2012-69**  
**Site: 256 Elm Street a/k/a 260 Elm Street, #103**  
**Date of Decision: September 5, 2012**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: September 6, 2012**

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**ZBA DECISION**

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<b>Applicant Name:</b>	OL Davis Square, LLC
<b>Applicant Address:</b>	7 Comanche Place, Andover, MA 01810
<b>Property Owner Name:</b>	Urban Equity Development Company
<b>Property Owner Address:</b>	3 Crenshaw Lane, Andover, MA 01810
<b>Agent Name:</b>	Adam Dash, Esq.
<b>Agent Address:</b>	48 Grove Street, Suite 304, Somerville, MA 02144

Legal Notice: Applicant OL Davis Square, LLC, and Owner Urban Equity Development Company, seek a Special Permit with Design Review under SZO §7.11.10.2.2.a to establish a fast order food establishment (frozen yogurt parlor).

<u>Zoning District/Ward:</u>	CBD zone/Ward 6
<u>Zoning Approval Sought:</u>	§7.11.10.2.2.a
<u>Date of Application:</u>	August 7, 2012
<u>Date(s) of Public Hearing:</u>	September 5, 2012
<u>Date of Decision:</u>	September 5, 2012
<u>Vote:</u>	5-0

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Appeal #ZBA 2012-69 was opened before the Zoning Board of Appeals at Somerville City Hall on September 5, 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, OL Davis Square, LLC, proposes to change the use of this commercial space and establish a 25-seat frozen yogurt parlor (13 seats inside and 12 seats outside) called Orange Leaf Frozen Yogurt. The yogurt parlor will have four employees present per shift and twelve employees total. The interior space will be outfitted with a kitchen, self-serve frozen yogurt stations, a self-serve topping station, associated seating near the front of the space as well as outside, and two bathrooms. Images of two different tile samples have been provided on the cover sheet of the plans and these are to be located on the kitchen and machine walls. The proposed hours for the yogurt parlor are 11 a.m. – 11 p.m., seven days a week.

There are no exterior changes proposed for this commercial space which includes signage, other than the name plate. The owner of Davis Square Plaza requires that businesses have a standardized sign design.

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

In order to grant a special permit with design review, 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.
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 with Design Review.”

In considering a Special Permit with Design Review under §5.1.4 of the SZO, the Board find that the project complies with the standards for granting a Special Permit with Design Review.

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

1. The commercial storefront is located within an existing plaza and there will be no exterior changes to the storefront. Outdoor seating will be installed for use during weather permitting months.
2. The storefront entrance is differentiated from the plane of the streetwall through the use of different color brick that compose an arch as well as the sign located directly above the storefront. This entrance is not proposed to change as part of this application.
3. The storefront is approximately 16 feet wide and not proposed to change.
4. There will not be any changes to the width of the bay or storefront. The storefronts within the Plaza are currently all consistent.
5. The roof of the building located at 256 Elm Street is flat and not proposed to change.
6. The building material is appropriate for a mixed use building and will not change with this application. The design of the sign is consistent with the signage for other businesses in the Plaza and therefore will not compete with surrounding signs.
7. There is no on-site customer parking for the yogurt parlor and, therefore, there is no driveway to break the streetwall.
8. There will be no transformers, heating and cooling systems, antennae or similar appurtenances visible from the street.



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9. The site is not located in an overlay district. The massing of the building does not change with this application and complies with the standards set forth in Article 6 for the Central Business District. This storefront completes the streetwall within this pedestrian Plaza, provides a continuous storefront to blend within the surrounding business district, and there is no on-site parking to break the streetwall.

3. Consistency of Purpose: The Applicant has to ensure that the project "is consistent with (1) the general purposed 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."

The proposal is also consistent with the purpose of the Central Business District, §6.1.5, 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 existing natural features of the site and is compatible with the characteristics of the surrounding area, and that the scale, massing and detailing of the buildings are compatible with those prevalent in the surrounding area."

The proposal is designed to be compatible with the characteristics of the surrounding area. The proposal is also consistent with the district standards and guidelines for developments within the CBD as laid out in SZO §6.1.5, which is outlined in Finding 2 above.

The Zoning Board of Appeals has recently approved two similar food establishments within Davis Square that will also serve frozen yogurt.

5. 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.

6. Lighting: With respect to lighting, the Applicant must ensure that "all exterior spaces and interior public and semi-public spaces shall be adequately lit and designed as much as possible to allow for surveillance by neighbors and passersby."

The lighting for this commercial storefront is consistent with the existing lighting within the Davis Square Plaza and is not proposed to change.

7. Vehicular and Pedestrian Circulation: The circulation patterns for motor vehicles and pedestrians resulting from the change in use of this commercial space will not result in conditions that create traffic congestion or potential traffic accidents on the site or in the surrounding area.



This proposal does not add parking and currently there is no parking on site. Furthermore, the new use will be located within a pedestrian plaza.

8. Fast Food Establishments: In Special Permit applications for fast-order, take-out or automobile oriented fast 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 standards for a business zone as laid out in SZO §5.1.5.A. Findings for the consistency of this proposal with these elements of the SZO can be found in Part II, Section 2 of this report. The establishment of this type of business will enhance the streetscape and maintain the high quality pedestrian environment within Davis Square, which benefits the surrounding neighborhood.

**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. 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 a Special Permit with Design Review under SZO §7.11.10.2.2.a to establish a fast order food establishment (yogurt parlor). This approval is based upon the following application materials and the plans submitted by the Applicant:	CO / BP	ISD/PIng.							
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>(August 7, 2012)</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>August 6, 2012 (August 24, 2012)</td> <td>Locus and site plans submitted to OSPCD (CS, A101, A102, A103, A104, A105, A106, &amp; A107)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	(August 7, 2012)	Initial application submitted to the City Clerk's Office	August 6, 2012 (August 24, 2012)	Locus and site plans submitted to OSPCD (CS, A101, A102, A103, A104, A105, A106, & A107)
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Any changes to the approved site plan or use that are not <i>de minimis</i> must receive SPGA approval.										
2	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP							
3	The Applicant shall at his expense replace any existing equipment (including, but not limited to street sign poles, signs, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity and the installation or dismantling of outdoor seating. All new sidewalks and driveways must be constructed to DPW standard.	CO	DPW							



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.	
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Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*  
Orsola Susan Fontano, *Clerk*  
Richard Rossetti  
T.F. Scott Darling, III, Esq.  
Danielle Evans

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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