



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

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Case #: ZBA 2015-38
Site: 260 Elm Street
Date of Decision: August 19, 2015
Decision: Petition Approved with Conditions
Date Filed with City Clerk: August 24, 2015

ZBA DECISION

Applicant Name:	Xue Zhen Cao
Applicant Address:	22 Hillside Avenue, Quincy, MA 02170
Property Owner Name:	Urban Equity Development, Attn: Leo Roy
Property Owner Address:	3 Crenshaw Lane, Andover, MA 01810
Agent Name:	Paul Yu
Agent Address:	128 Lincoln Street, Suite 110, Boston, MA 02111

Legal Notice: Applicant, Xue Zhen Cao, & Owner, Urban Equity Development, seek a Special Permit to provide parking for a restaurant on a separate lot and for shared parking at 55 Day St.

<u>Zoning District/Ward:</u>	CBD zone/Ward 6
<u>Date of Application:</u>	June 18, 2015
<u>Date(s) of Public Hearing:</u>	7/15, 8/5 & 8/19/15
<u>Date of Decision:</u>	August 19, 2015
<u>Vote:</u>	4-0

Appeal #ZBA 2015-38 was opened before the Zoning Board of Appeals at Somerville City Hall on July 15, 2015. 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 two hearings of deliberation, the Zoning Board of Appeals took a vote.



DESCRIPTION:

To establish the by-right restaurant use a Special Permit for parking is required. The proposal is to use the lot at 55 Dover Street for shared off-site parking. Two parking spaces will also be provided at 7 Herbert Street numbered 71 and 74 that are on the same block as the restaurant. These spaces will be available for the restaurant employees to use.

The lot at 55 Day Street is owned by Day/Dover, LLC with a general partner who is also the general partner of Urban Equity Development Company who owns 260 Elm Street, where the restaurant will be located. The lot at 55 Day Street is shared by the tenants of Urban Equity Development Company. The tenants that use the lot consist of businesses with daytime operations and there are no other restaurants that are permitted to use the lot. It is a 23,000 square foot lot with approximately 67 parking spaces. Urban Equity Development will allow Soba Ya LLC access to use this lot after 6pm daily. The general manager submitted a letter stating that the off-site parking is permitted. At least 14 spaces will be made available on a regular basis.

The restaurant will post on their website and menus to let patrons know that parking is available in this lot on a first come, first serve basis. The restaurant will distribute parking passes to customers to place on their dashboards. They will request that customers leave their keys so that the restaurant has control over the number parking in the lot. They are also considering a valet service on weekends.

FINDINGS FOR SPECIAL PERMIT:

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 restaurant requires 10 parking spaces. The proposed use has a higher parking requirement when considering the gross square footage of the restaurant (31 spaces) versus the requirement using the number of employees and seats (22 spaces). Somerville Zoning Ordinance (SZO) §9.4 allows a nonconforming site for parking to consider the parking requirement for the last use and take half of this number. The last use was a medical office that required 7 parking spaces. There is also a 20 percent reduction in parking required per §9.6.3 due to the proximity to the Davis Square Red Line Station for the old and the new use. Considering these calculations the requirement is for 10 spaces and 14 will be provided off-site for patrons and 2 will be off-site for employees.

One bicycle parking space is required. A condition of approval is that the applicant purchase a bike rack and deliver it to the City to install on a nearby sidewalk to fulfill the requirement.

SZO §9.13.d allows for parking on a separate lot. In any commercial district required parking may be located on a separate lot within the zoning district in which the principal use served by the remote parking is a permitted use provided that: (1) the parking spaces are less than 500 feet walking distance of an entrance to the building which they serve and (2) where such lot is not in the same ownership a lease and/or easement guaranteeing long term use of such lot, and satisfactory in form to the SPGA and the City Solicitor, is executed and filed in the Registry of Deeds of Middlesex County.



This lot is approximately 170 feet from the front door of the restaurant. The parking lot and restaurant are owned by different entities; however, the same General Partner is the same for both. There is a signed agreement from the general manager, who is writing on behalf of the ownership of 260 Elm Street and the lot at 55 Day Street, detailing the parking agreement. Since the same parties are involved in both entities the Zoning Ordinance does not require that the agreement is recorded. Future restaurant tenants will have to provide proof of being able to continue this parking arrangement or seek parking relief as applicable.

The lot at 55 Davis Square is shared among other uses; however, the Staff cannot find a record of this being required parking for other buildings. Nevertheless, shared parking is allowed under 9.13.e. The parking lot owner is stating that other users of the space primarily use the lot during the day and there are a number of open spaces at night. No other restaurants use the lot. The peak times of the proposed restaurant are in the evenings when there is sufficient parking in the lot. Businesses with different peak parking demand times sharing parking spaces is the most efficient use of the parking resource.

In considering a special permit under §9.13 of the SZO the Applicant must be able to demonstrate that granting the requested special permit would not cause detriment to the surrounding neighborhood through any of the criteria as set forth under SZO §9.13, which are as follows:

- 1) increase in traffic volumes;
- 2) increased traffic congestion or queuing of vehicles;
- 3) change in the type(s) of traffic;
- 4) change in traffic patterns and access to the site;
- 5) reduction in on-street parking;
- 6) unsafe conflict of motor vehicle and pedestrian traffic.

The Applicants have arranged to provide the required number of parking spaces in a lot that is approximately .03 miles from the restaurant. New customers will either see the parking availability on the restaurant's website or learn of the parking by looking on the menu and know that it exists for a return trip.

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 lessening congestion in the streets and facilitating the adequate provision of transportation.

The proposal is consistent with the purpose of the CBD district, 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."

In considering a special permit under §9.13 of the SZO the SPGA may grant such a special permit only when consistent with the purposes set forth in Section 9.1. The proposed off-site, shared parking will effectively utilize the existing parking lot and not cause harm to pedestrians or the built environment.

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."*

Shared parking with businesses with different peak parking demand times is the most efficient use of the parking resource. This proposal has been designed to be compatible with the surrounding land uses of Davis Square.

6. Housing Impact: *Will not create adverse impacts on the stock of existing affordable housing.*



This proposal does not involve housing.

7. SomerVision Plan: *Complies with the applicable goals, policies and actions of the SomerVision plan, including the following, as appropriate: Preserve and enhance the character of Somerville’s neighborhoods, transform key opportunity areas, preserve and expand an integrated, balanced mix of safe, affordable and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups; and, make Somerville a regional employment center with a mix of diverse and high-quality jobs. The areas in the SomerVision map that are designated as enhance and transform should most significantly contribute towards the SomerVision goals that are outlined in the table below. The areas marked as conserve are not expected to greatly increase the figures in the table since these areas are not intended for large scale change.*

The proposal will retain the existing commercial spaces as a restaurant in place of a medical office. The number of jobs for the restaurant will be 10. The number of jobs for the medical office is not known. The use of the property is not under review in the Special Permit. The shared, off-site parking is under review and is supported by SomerVision goals.

<i><u>SomerVision Summary</u></i>	<i>Existing</i>	<i>Proposed</i>
<i>Commercial Sq. Ft.:</i>	3403	3403
<i>Estimated Employment:</i>	?	10
<i>Parking Spaces:</i>	0	Offsite: 14 shared, 2 for employees



DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Elaine Severino with Josh Safdie absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals voted **4-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	Approval is for the shared, offsite parking at 55 Day Street and 7 Herbert Street for a total of at least 10 spaces. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/Plng.							
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>Jun 18, 2015</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>(July 2, 2015)</td> <td>Plans submitted to OSPCD (A1.0 Site Plans, A-1.2 Floor Plan)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	Jun 18, 2015	Initial application submitted to the City Clerk's Office	(July 2, 2015)	Plans submitted to OSPCD (A1.0 Site Plans, A-1.2 Floor Plan)
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Any changes to the approved off-site parking 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 operator of the restaurant shall post information about the offsite parking regarding location and procedure for use on the business' website and menus.	CO	Plng.							
4	Future tenants of this space seeking to use the number of parking spaces for which this spaces is grandfathered, shall provide Planning and Traffic and Parking Staff with a parking agreement that complies with the requirements of the SZO to use an off-site lot for the business/operation for at least 10 parking spaces. If the agreement cannot be produced, the future tenant will have to apply for the appropriate parking relief.	BP/CO for future tenants	Plng/T&P							
5	The Applicant shall purchase a U- or circular bike rack to City standards and deliver it to the City. The City will install the rack in the vicinity of the subject site.	CO	Plng/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.							



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Richard Rossetti, *Clerk*
Danielle Evans
Elaine Severino

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 _____

