



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
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MICHAEL F. GLAVIN  
EXECUTIVE DIRECTOR

PLANNING DIVISION

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JOSH SAFDIE (ALT.)  
BRANDY BROOKS (ALT.)

**Case #: ZBA 2014-32**  
**Site: 237 Elm Street**  
**Date of Decision: May 21, 2014**  
**Decision: Petition Approved with Conditions**  
**Date Filed with City Clerk: May 27, 2014**

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**ZBA DECISION**

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<b>Applicant Name:</b>	KF Tea Davis Square, LLC
<b>Applicant Address:</b>	491 Massachusetts Avenue, #3, Boston, MA 02118
<b>Property Owner Name:</b>	Myer R. Dana Trustee, Dana Family Trust
<b>Property Owner Address:</b>	1340 Centre Street, Suite 101, Newton, MA 02459
<b>Agent Name:</b>	Paul Yu
<b>Agent Address:</b>	665 Hancock Street, Quincy, MA 02170

Legal Notice: Applicant, KF Tea Davis Square, LLC, and Owner, Dana Family Realty Trust, seek a Special Permit with Design Review to establish a fast order food establishment under SZO §7.11.10.2.a to open an approx 550 sf tea shop and a special permit under §9.13.a for parking relief. CBD zone. Ward 6.

<u>Zoning District/Ward:</u>	CBD zone/Ward 6
<u>Zoning Approval Sought:</u>	§7.11.10.2.a & §9.13.a
<u>Date of Application:</u>	April 17, 2014
<u>Date(s) of Public Hearing:</u>	May 21, 2014
<u>Date of Decision:</u>	May 21, 2014
<u>Vote:</u>	5-0

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Appeal #ZBA 2014-32 was opened before the Zoning Board of Appeals at Somerville City Hall on May 21, 2014. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L.



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c. 40A, sec. 11 and the Somerville Zoning Ordinance. After one hearing of deliberation, the Zoning Board of Appeals took a vote.

**DESCRIPTION:**

The proposal is to establish a tea shop called Kung Fu Tea in the existing establishment. There will be a small waiting area with room for a maximum number of 6 seats. There will not be any tables. There are also 3 spaces of parking relief required; no parking is associated with this storefront.

**FINDINGS FOR SPECIAL PERMIT (SZO §7.11.10.2.a & §9.13.a):**

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 use falls into §7.11.10.2.1.a for a fast order food establishment with no drive-up service, including franchises, subshops, pizza shops and the like, which requires a special permit in the Central Business District.

The use also requires a Special Permit under SZO §9.13.a to modify parking space requirements for 3 parking spaces. The parking regulations are based on whichever is greater: 0.75 per employee plus 1 per 4 seats, or 1 per 110 gross square feet. The requirement based on gross square feet is higher and results in a requirement of 7 spaces. Section 9.4 allows for a reduction because the property is nonconforming with respect to parking and no new square footage will be added. The result based on this reduction is 3 spaces of relief. Section 9.13 allows for modification of parking requirements for nonconforming structures and lots where the total number of parking spaces required by this Ordinance is six (6) or fewer.

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.

There will be minimal impact on the neighborhood through the above criteria. Nelson/Nygaard completed a parking study in Davis Square in 2012. It showed that the parking demand in Davis Square peaks on Thursday, Friday, and Saturday evenings. The parking utilization in the area, on average, is at 58% (85% is the ideal efficiency). The demand is actually highest for the residential permit parking areas. However, the 1 block stretch from the Davis Square intersection to Grove Street has a high demand. This isn't surprising since it's the heart of the square.

The business is proposing to be open from 10 am to 11pm. The tea shop will not have the typical peak demand time similar to area restaurants and will not increase traffic congestion. There are many options for traveling to the site



including walking, biking, using public transportation or driving and parking at an on-street metered space or a municipal parking lot.

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 encouraging the most appropriate use of land throughout the City.

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

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 proposal meets the intent of §9.1, the purpose of the Off-street Parking and Loading Article. Relief from providing three parking spaces along with the Applicant providing parking meters for the City to install in the area will not create a situation that would be a nuisance or hazard to pedestrians and adjacent properties, nor would it decrease the traffic carrying capacity of the adjacent streets or significantly compromise the on-street parking available in Davis Square.

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 subject property is located in the heart of the Davis Square Central Business District. There are a mix of commercial uses and some residences. A café would add to the pedestrian oriented mix of uses in the Square. Most of the lots in Davis Square do not have parking onsite which allows the build form in the Square to be pleasant for pedestrians. Patrons utilize the on-street parking spaces, the five municipal parking lots in the Square, public transportation or come by foot from the nearby business or residences to access the site.

5. 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 proposal is not anticipated to negatively impact these items or the parking situation in Davis Square. There are many options for traveling to the site including walking, biking, using public transportation or driving and parking at an on-street metered space or a municipal parking lot. Also, the mixed use environment of the Square allows for reduced trips because someone is able to walk for one establishment to another, eliminating the need for an additional vehicular trip. Someone grabbing something to drink may patronize another nearby business, reducing the number of combined vehicular trips to the area.

6. 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 Applicant finds that there is demand for a tea shop in Davis Square. A recommended condition of approval is that a different tenant under the same use would require a special permit to be established. As mentioned above, the impacts on traffic circulation, parking and visual character of the location will not be detrimental. The building will not change on the exterior except for signage. The sign will be located in the existing footprint of the previous tenant's signage. A condition of approval is Planning Staff's review and approval of the tea shop sign.



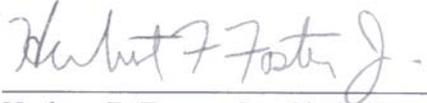
**DECISION:**

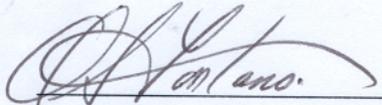
Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Elaine Severino. Upon making the above findings, Susan Fontano made a motion to approve the request for a Special Permit. Richard Rossetti seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	Approval is for a Special Permit with Design Review to establish a fast order food establishment under SZO §7.11.10.2.a to open tea shop and a special permit under §9.13.a for parking relief 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>April 17, 2014</td> <td>Initial application submitted to the City Clerk’s Office</td> </tr> <tr> <td>(May 15, 2014)</td> <td>Modified plans submitted to OSPCD (Cover, A0.0 Notes, EX-1.0 Existing Plan, A-1.1 Proposed Plan, A-1.2 FFE Plan, A-1.3 RCP )</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	April 17, 2014	Initial application submitted to the City Clerk’s Office	(May 15, 2014)	Modified plans submitted to OSPCD (Cover, A0.0 Notes, EX-1.0 Existing Plan, A-1.1 Proposed Plan, A-1.2 FFE Plan, A-1.3 RCP )
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Any changes to the approved 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	Signage will be limited in size and location currently on the building. The Applicant will submit a design for Planning Staff review and approval. The sign shall not be internally illuminated.	BP	Plng							
4	Approval is for the fast food use for the Applicant, KE Tea Davis Square, LLC. A future tenant of this space for the fast order food use would have to come back to the ZBA for special permit approval in order to operate in this location.	Perpetual	ISD							
5	The Applicant shall purchase and deliver to Traffic and Parking 3 single spaced parking meters with the capacity to accept both coins and credit cards and are consistent with the current parking meter fleet in Somerville.	CO	T&P							
<b>Final Sign-Off</b>										
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.							



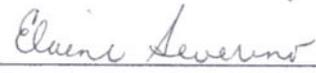
Attest, by the Zoning Board of Appeals:

  
\_\_\_\_\_  
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.

**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 \_\_\_\_\_

