



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

PLANNING DIVISION

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Case #: ZBA # 2011-64
Site: 400 Highland Avenue
Date of Decision: September 21, 2011
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: September 29, 2011

ZBA DECISION

| | |
|--------------------------------|---------------------------------------------|
| Applicant Name: | Open Center for Children |
| Applicant Address: | 155 Powder House Blvd, Somerville, MA 02144 |
| Property Owner Name: | 400 Highland Avenue, LLC |
| Property Owner Address: | 159 Salem Street, Unit 0, Malden, MA 02148 |
| Agent Name: | O'Donovan, Dwyer & O'Flaherty |
| Agent Address: | 741 Broadway, Somerville, MA 02144 |

Legal Notice: Applicant Open Center for Children and Owner 400 Highland Ave. LLC seek a special permit under SZO §9.13 to waive the requirement to provide 2 parking spaces in order to establish a day care center on the second floor of an existing building.

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|-----------------------------------|--------------------|
| <u>Zoning District/Ward:</u> | CBD zone/Ward 6 |
| <u>Zoning Approval Sought:</u> | §9.13 |
| <u>Date of Application:</u> | August 16, 2011 |
| <u>Date(s) of Public Hearing:</u> | September 21, 2011 |
| <u>Date of Decision:</u> | September 21, 2011 |
| <u>Vote:</u> | 4-1 |

Appeal #ZBA 2011-64 was opened before the Zoning Board of Appeals at Somerville City Hall on September 21, 2011. 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 daycare center on the second floor of the existing building. The second floor has a net floor area of approximately 2,200 square feet. It will be built out to include two classrooms, two offices, a library/meeting room, a kitchenette, and restrooms. The Applicant is not proposing any alterations to the building façade.

The daycare center will be operated by the Open Center for Children, a non-profit preschool currently located at 155 Powderhouse Boulevard in Somerville. The Open Center for Children has 29 students between the ages of 2 and 5½ and total of 8 staff members, who work staggered shifts with a maximum of 6 employees in the peak period. The hours of operation are 8:00 AM to 5:30 PM Monday through Friday. Drop-off times are from 8:00 AM to 9:00 AM, and pick-up times are from 3:30 PM to 5:30 PM.

FINDINGS FOR SPECIAL PERMIT (SZO §9.13):

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 §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 §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 regarding the above criteria. The reduction of 2 parking spaces would not cause significant changes in traffic volumes, congestion, patterns, or conflict. Families will have many options for traveling to the site, including walking, biking, and using public transportation. Private off-street parking in the area is limited, but there are on-street metered parking spaces and municipal parking lots available in the vicinity. The daycare center’s pick-up and drop-off times do not overlap with peak parking demand in Davis Square, and prior parking studies have found that there is reserve capacity in the Square’s parking supply throughout the day. The center is therefore not expected to significantly reduce the availability of on-street parking.

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 and encouraging the most appropriate use of land throughout the City. The establishment of a daycare center is also consistent with the purpose of the Central Business 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



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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.” The daycare center would provide a convenient childcare option for families who live near, work in, or commute from Davis Square. The lack of on-site parking and the location of the daycare center on the second floor promote the strong pedestrian character and scale of the area.

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 §9.1. The proposal is consistent with the purpose of §9.1 as described in a memo submitted by the Applicant that states that there should be no noticeable impact on the parking supply in the area as a result of the proposal.

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 use would be compatible with the surrounding uses in the Davis Square commercial area, which provides for a variety of retail, business services, housing, and office uses. The proposal is also compatible with the built environment, as the Applicant is not proposing any alterations to the building façade.

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. Scott Darling seconded the motion. Wherefore the Zoning Board of Appeals voted **4-1** to **APPROVE** the request with Susan Fontano voting in opposition. In addition the following conditions were attached:

| # | Condition | Timeframe for Compliance | Verified (initial) | Notes | | | | | | | | |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------|-------------------|----------------------------------------------------------|-----------------|-------------------------------------------|--------------------|--------------------------------|-------|-----------|--|
| 1 | <p>Approval is for waiving the requirement to provide 2 parking spaces in order to establish a daycare center on the second floor of an existing building. 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>(August 16, 2011)</td> <td>Initial application submitted to the City Clerk’s Office</td> </tr> <tr> <td>August 11, 2011</td> <td>Plans submitted to OSPCD (Schematic Plan)</td> </tr> <tr> <td>September 12, 2011</td> <td>Traffic and Parking Assessment</td> </tr> </tbody> </table> <p>Any changes to the approved use that are not <i>de minimis</i> must receive SPGA approval.</p> | Date (Stamp Date) | Submission | (August 16, 2011) | Initial application submitted to the City Clerk’s Office | August 11, 2011 | Plans submitted to OSPCD (Schematic Plan) | September 12, 2011 | Traffic and Parking Assessment | BP/CO | ISD/PIng. | |
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| September 12, 2011 | Traffic and Parking Assessment | | | | | | | | | | | |



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|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|-------|--|
| 2 | The Applicant or Owner shall meet the Fire Prevention Bureau's requirements. | CO | FP | |
| 3 | The Applicant or Owner shall purchase and deliver to the City four single-space parking meters capable of accepting coins, credit cards, and possible pay-by-cell technology. The parking meters shall be manufactured by the IPS Group or approved equivalent. Specifications for all requirements of the parking meters will be supplied by Traffic and Parking Staff when appropriate. | Final sign off | T&P | |
| 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. | |



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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