



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

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Case #: ZBA # 2012-12
Site: 11-15 Holland Street
Date of Decision: May 16, 2012
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: May 22, 2012

ZBA DECISION

Applicant Name:	JTD Realty Trust
Applicant Address:	22 Hillside Avenue, Winchester, MA 01890
Property Owner Name:	JTD Realty Trust
Property Owner Address:	22 Hillside Avenue, Winchester, MA 01890
Agent Name:	Adam Dash, Esq.
Agent Address:	48 Grove Street, Suite 304, Somerville, MA 02144

Legal Notice: Applicant & Owner JTD Realty Trust seek a special permit to establish a fast order food establishment under SZO §7.11.2.1.a to open an approx 600 sf café, a special permit to alter a nonconforming structure under §4.4.1 to add and alter windows on the front and rear façade, and a special permit under §9.13.a to waive the requirement for 2 additional parking spaces.

<u>Zoning District/Ward:</u>	CBD zone/Ward 6
<u>Zoning Approval Sought:</u>	§7.11.2.1.a, §4.4.1, & §9.13.a
<u>Date of Application:</u>	January 30, 2012
<u>Date(s) of Public Hearing:</u>	2/29, 3/14, 4/4, 4/18, 5/2, & 5/16/12
<u>Date of Decision:</u>	May 16, 2012
<u>Vote:</u>	5-0

Appeal #ZBA 2012-12 was opened before the Zoning Board of Appeals at Somerville City Hall on February 29, 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 two hearings of deliberation, the Zoning Board of Appeals took a vote.



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DESCRIPTION:

The proposal is to consolidate the 190 square foot nail salon and the 400 square foot first floor residential unit into a 590 square foot café. The café would be a mostly take-out venue with only six seats inside and four outdoors. The café will be a have an emphasis on healthy, local ingredients with a menu that will include pre-prepared salads and sandwiches, cereals, coffees, teas, juices and the like. The owner is intending on growing some food on the roof of Johnny D's to use at the cafe. The windows on the façade of the residential unit and the nail salon would all be replaced with larger windows spanning almost the entire length of the storefront. A take-out window would be installed to serve pedestrians directly out onto the sidewalk. The existing gooseneck lights on the façade would be relocated over new proposed signage that is 26.5 feet wide and 2 feet high that would run the length of the café's façade. There would also be four non-illuminated signs, approximately six square feet in size, that would hang 7 feet 6 inches above the walkway underneath the overhang of the building.

FINDINGS FOR SPECIAL PERMIT (SZO §7.11.10.2.2.a, §4.4.1, and §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.

The Traffic & Parking Department has requested a Traffic Memorandum concerning the parking impacts on the neighborhood as a result of this proposal. The Applicant did not supply this memorandum. Traffic & Parking has concerns about the existing on-street parking situation in the Davis Square area. The Board was supportive of this application without the traffic memorandum.

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 change to the storefront window system is an improvement to the building's appearance and for the pedestrian experience along Holland Street. The proposed signage 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 as part of this application.
2. The building entrance is differentiated by being recessed from the plane of the streetwall and the sign is directly above the entire storefront. This entrance is not proposed to change with this application.
3. The storefront is approximately thirty feet wide creating a typical bay width in the Square.
4. The change to the windows will create a consistent storefront that is pedestrian friendly. The current residential windows do not fit with the character of the building.
5. There is a mansard roof to the building that is not proposed to change as part of this application.
6. The building material is appropriate for a mixed use building and will not change with this application. The sign design is consistent with the signage for the other business in the building and



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therefore it will not be competing with surrounding signs. The gooseneck lights illuminating the signage will remain.

7. There is no on-site parking for the restaurant and therefore there are no driveways to break the streetwall.
8. There will be no transformers, heating and cooling systems, antennae or the like that will 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, and there is no on-site parking that would break up the streetwall.

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; or
- 6) unsafe conflict of motor vehicle and pedestrian traffic.

There will be minimal impact on the surrounding neighborhood regarding the above criteria. Patrons will either walk to the restaurant or drive and find on-street parking. The restaurant will yield short visits so that people that do drive will not be utilizing a parking space for this use alone for an extended period of time.

To encourage appropriate turnover rates, reduce parking in the residential neighborhood, and to promote a safe comprehensive transportation network, it is recommended that the Applicant purchase and deliver to the City two (2) single space parking meters capable of accepting coins, credit cards and pay by phone technology.

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 local restaurant establishment that is conducive to a high volume of pedestrian traffic and has a strong connection to pedestrian accessible street level uses.

The proposal also meets the intent of §9.1, the purpose of the Off-Street Parking and Loading Article. Relief from providing two parking spaces along with the installation of two single space parking meters capable of accepting coins, credit cards and pay by phone technology 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."



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As outlined in Finding 2 above, the storefront was designed to be compatible with the surrounding area. The change from small residential windows to large storefront windows on the façade will create a storefront that is consistent with the rest of the building and more interactive with pedestrian streetscape. The proposed signage design is compatible with the rest of the building.

There are several food service uses in the surrounding area that do not have associated parking. These restaurants have proved to be successful in this pedestrian-friendly business district. Davis Square has MBTA Red Line and bus access. The transit service and the density of the surrounding neighborhood promote pedestrian activity.

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 large amount of pedestrian activity and the addition of this establishment is not anticipated to cause increased traffic. The menu for this 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 obtain another Special Permit. 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 Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Scott Darling and Elaine Severino with Herbert Foster and Josh Safdie absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit. 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	<p>Approval is for the establishment of a fast order food under SZO §7.11.10.2.2.a to open an approximately 600 square foot café without providing 2 additional parking spaces and to add and alter windows on the front façade. 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>(January 30, 2012)</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>(May 8, 2012)</td> <td>Amendment to application submitted to OSPCD</td> </tr> <tr> <td>March 6, 2009 (May 8, 2012)</td> <td>Plot Plan</td> </tr> <tr> <td>May 4, 2012 (May 8, 2012)</td> <td>Cover, Existing Conditions, Plan Layout, Existing Elevation, Proposed Elevation, and Inspiration (A-000, X-101, A-101, A-201, A-202, and A-301)</td> </tr> </tbody> </table> <p>Any changes to the approved elevation or use that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	(January 30, 2012)	Initial application submitted to the City Clerk's Office	(May 8, 2012)	Amendment to application submitted to OSPCD	March 6, 2009 (May 8, 2012)	Plot Plan	May 4, 2012 (May 8, 2012)	Cover, Existing Conditions, Plan Layout, Existing Elevation, Proposed Elevation, and Inspiration (A-000, X-101, A-101, A-201, A-202, and A-301)	BP/CO	ISD/PIng.	
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2	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											
3	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP											
4	The Applicant shall purchase and deliver to the City two (2) single space parking meters capable of accepting coins, credit cards and pay by phone technology. The parking meters should be manufactured by the IPS Group or approved equal. Specification for all requirements of the parking meters can be supplied by Traffic and Parking if required and necessary.	CO	T&P											



5	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	
6	This Special Permit is only for a café. Transfer to another fast order food establishment requires a new Special Permit.	Cont.	ISD	
7	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.	
8	The Applicant shall work with Planning Staff to explore the possibility of grading down the step at front entrance to make it more accessible.	CO	Plng.	



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Acting Chairman*
Richard Rossetti, *Clerk*
T.F. Scott Darling, III, Esq.
Danielle Evans
Elaine Severino (Alt.)

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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