



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

PLANNING DIVISION

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Case #: ZBA # 2010-70-R1-2/2012
Site: 71 Linwood Street
Date of Decision: February 29, 2012
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: March 1, 2012

ZBA DECISION

Applicant Name:	Herb Chambers I-93 Inc. d/b/a Chambers Motorcars
Applicant Address:	259 McGrath Hwy, Somerville, MA 02145
Property Owner Name:	NSTAR Electric Company
Property Owner Address:	One NSTAR Way, Westwood, MA 02145
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145

Legal Notice: Applicant Herb Chambers Motorcars and Owner NSTAR Electric Company, seek a revision to Special Permit ZBA 2010-70 under SZO §5.3.8 in order to alter a condition to pay the City for the installation of handicap accessible pads instead of actually installing the pads themselves. The original permit was to use the existing structure for an automobile repair facility (SZO §7.11.5.b and/or §7.11.6.b).

<u>Zoning District/Ward:</u>	IA zone/Ward 2
<u>Zoning Approval Sought:</u>	§5.3.8
<u>Date of Application:</u>	January 24, 2012
<u>Date(s) of Public Hearing:</u>	February 29, 2012
<u>Date of Decision:</u>	February 29, 2012
<u>Vote:</u>	5-0

Appeal #ZBA 2010-70-R1-2/2012 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 one hearing of deliberation, the Zoning Board of Appeals took a vote.



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DESCRIPTION:

The building was previously utilized by NSTAR electric company and Herb Chambers Motorcars is converting the structure into an automobile repair facility. Repairs and improvements will be performed here for used vehicles to prepare the vehicles for resale or to be sent to auction. The space may also be used to repair customer vehicles during peak times and during the construction at the main facility at McGrath Highway. At no time will customers be at this facility and vehicles to be repaired will be delivered to and from the facility by Herb Chambers Motorcars employees only. The project gained approval through the awarded Special Permit with Site Plan Review in May of 2011. The special permit permitted the use change of the building to an auto repair and storage facility in excess of 5,000 square feet. Over the last ten months the Applicant has completed this work and the fulfilled the conditions of the Special Permit with Site Plan Review with one exception. Condition #5 of the originally approved Special Permit with Site Plan Review required the Applicant to install three handicap accessible pads at the intersection of Linwood and Poplar Streets. One on the Applicant's side of Linwood Street, the second on the opposite side of Linwood Street, and the third across Poplar Street from the subject property.

The current sidewalk situation in the area does not include any ramps that would help someone transition down from the sidewalk to the street level to cross the street at this intersection. All the sidewalks at this intersection are elevated with a six inch high curb. The installation of accessible pads at this intersection would allow for someone in a wheelchair to transition down a ramp from the sidewalk to the street level, cross the street, and then to transition back up a ramp to the elevated sidewalk. The Applicant hired a contractor to perform site improvements at the subject property, including the installation of the handicap accessible pads. Upon a code review of the minimum dimensional requirements (ramp slope, ramp width, etc.) for handicap accessible pads, the contractor determined the pads could not be installed to meet the code requirements due to site constraints including existing chain link fences on the properties located opposite from 71 Linwood Street. The Applicant raised serious concerns that they could be held liable if someone were to be injured as a result of unsuccessfully attempting to use the non-code compliant accessible pads. After consulting with the Inspectional Services Division, the Engineering Department, the Legal Department, and Planning Staff, it was determined that it made more sense to have the Applicant pay into a City of Somerville fund the necessary amount to have the work of installing the accessible pads performed by the City. The City could then go before the Architectural Access Board to request a variance from the code requirements for the handicap accessible pads due to the existing dimensional constraints of the sidewalks in the area. The contractor provided a quote of \$11,750.00 to the Applicant for what it would cost to install the handicap accessible pads. In this proposal to revise the originally awarded Special Permit with Site Plan Review, the Applicant would like to revise Condition #5 to pay \$11,750.00 into a City of Somerville fund to have the City install the accessible pads and to change the entity providing a sign off on this condition from the Traffic and Parking Department to the Planning Staff.

FINDINGS FOR SPECIAL PERMIT REVISION (SZO §5.3.8):

In order to grant a revision to 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.

The following findings are relevant to the proposed alteration of Condition # 5 in the originally awarded Special Permit with Site Plan Review.

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 proposal complies with the standards for issuing a revision to the Special Permit with Site Plan Review. The



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final Certificate of Occupancy has not yet been issued, the proposal is otherwise in accordance with the originally approved plans and conditions, and notice has been given for the public hearing.

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, with the revised Condition #5, 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 secure safety from fire, panic and other dangers; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; to conserve the value of land and buildings; and to encourage the most appropriate use of land throughout the City."

The proposal, with the revised condition, is also still consistent with the purpose of the district (6.1.8. IA - Industrial Districts), which is, "To establish and preserve areas for industrial and related uses which are not incompatible with commercial uses; uses which are most appropriately located as neighbors of industrial uses including living and studio space for artists; and uses which are necessary to service the immediate needs of industrial establishments in those areas, and accessory uses to industrial uses such as day care centers, cafeterias, health facilities, and the like."

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 Applicant is not proposing any physical changes to the originally approved project plans. The Applicant, as was the case with the original Special Permit with Site Plan Review, will only be performing interior renovations of the existing building to establish the auto repair/usage use, which would maintain the compatibility of the existing building with those in the surrounding area. The site modifications with regard to parking and landscaping will be an improvement to what is currently on the site. The only change to the originally awarded Special Permit with Site Plan Review is the entity that will actually be installing the handicap accessible pads. In the original approval, the Applicant was responsible for the installation of the handicap pads. As part of this revision to the Special Permit with Site Plan Review, the Applicant will pay into a City of Somerville fund \$11,750.00 to have the City install the accessible pads.

5. Adverse 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 proposed revision to the Special Permit with Site Plan Review. No new noise, glare, smoke, vibration, nor emissions of noxious materials nor pollution of water ways or ground water nor transmission of signals that interfere with radio or television reception are anticipated as part of this revision. The structure will remain a one-story building being used for auto repair/usage purposes. The proposed use of the site is consistent with industrial uses that are already occurring in the surrounding area. The Board is concerned that the long-term plans for redevelopment of the area will require this building to remain in an area where other lots may be improved for more pedestrian-oriented purposes, but the Board feels that the proposed exterior redesign will ensure that the site can operate for this use with minimal impacts on higher-value development that may occur in the area in the long-term after the arrival of the green line. The proposed revision to Condition # 5 will allow the handicap accessible ramps to still be installed at the project site, which will help to improve the pedestrian environment of the area.

6. 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.



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The Applicant is not proposing to make any changes to the circulation patterns for motor vehicles or pedestrians that were approved in the original Special Permit for the project (ZBA 2010-70). In fact, this proposed revision will allow the handicap accessible pads to be installed at the intersection which will help to realize the goal of improving the pedestrian environment of the area.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Elaine Severino and Josh Safdie with Herbert Foster and Scott Darling absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a special permit revision. Elaine Severino 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 use change of a building to an auto repair and storage in excess of 5,000 sq. ft. 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 24, 2012</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>April 25, 2011 (April 27, 2011)</td> <td>Proposed On-Site Parking Plan</td> </tr> </tbody> </table> <p>Any changes to the approved site plan or use that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	January 24, 2012	Initial application submitted to the City Clerk's Office	April 25, 2011 (April 27, 2011)	Proposed On-Site Parking Plan	CO / BP	Plng.	
Date (Stamp Date)	Submission									
January 24, 2012	Initial application submitted to the City Clerk's Office									
April 25, 2011 (April 27, 2011)	Proposed On-Site Parking Plan									
2	The property shall get final approval for fire protection systems.	CO	FP							
3	The special permit for this use shall be issued only to the applicant, Herb Chambers Motorcars, and shall not be transferrable. The special permit shall expire when Herb Chambers Motorcars is no longer using the space for the purpose intended in the application. Any future user seeking to secure this use will need to apply to extend the special permit.	Cont.	Plng./ISD							
4	All new sidewalks will be installed by the Applicant in accordance with the specifications of the Highway Superintendent. Specifically, all driveway aprons shall be concrete; the applicant shall complete all sidewalk and parking layout improvements as shown on the plan provided.	CO	Plng.							

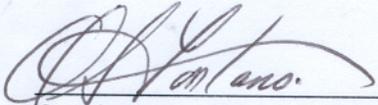


5	The Applicant shall pay into a City of Somerville fund \$11,750.00 to furnish to the City three handicap accessible pads at the corner of Linwood Street and Poplar Street. One on the Applicant's side of the street, the second across Linwood Street, and the third across Poplar Street. The City of Somerville will be responsible for installing the three handicap accessible pads.	CO	Plng.	
6	Applicant will screen the dumpster on the property with fencing that blocks it from view.	CO	Plng.	
7	The Applicant, its successors and/or assigns, shall be responsible for maintenance of both the building and all on-site amenities, including landscaping, fencing, lighting, parking areas and storm water systems, ensuring they are clean, well kept and in good and safe working order.	Cont.	ISD	
8	Applicant shall submit a landscape plan showing a planting strip along Poplar Street that is at least three (3) feet wide and submit it to Planning Staff for approval before construction can commence.	BP	Plng.	
9	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	
10	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	
11	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.	

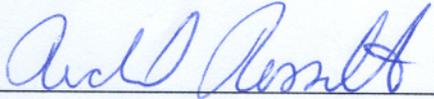


Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Acting Chairman*
Richard Rossetti, *Acting Clerk*
Danielle Evans
Elaine Severino (Alt.)
Josh Safdie (Alt.)



Orsola Susan Fontano, Clerk



Richard Rossetti



Danielle Evans



Elaine Severino, (Alt.)



Josh Safdie (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.

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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