



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

ZONING BOARD OF APPEALS MEMBERS

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Case #: ZBA 2015-46
Site: 415 Medford Street
Date of Decision: August 5, 2015
Decision: Petition Approved with Conditions
Date Filed with City Clerk: August 18, 2015

ZBA DECISION

Applicant Name:	Anna Gaul, Tipping Cow, LLC
Applicant Address:	38 Dearborn Street, Medford, MA 02155
Property Owner Name:	Mark Resnick, Trustee of Double Disco Realty Trust
Property Owner Address:	138 Harvard Avenue, Allston, MA 02134
Agent Name:	N/A

Legal Notice: Applicant, Anna Gaul, and Owner, Double Disco Realty Trust, seek a Special Permit with Site Review to establish a fast food use per SZO 7.11.10.2 for an ice cream shop and parking relief per SZO §9.4.

<u>Zoning District/Ward:</u>	RB zone/Ward 4
<u>Zoning Approval Sought:</u>	§7.11.10.2 & §9.4
<u>Date of Application:</u>	July 1, 2015
<u>Date(s) of Public Hearing:</u>	August 5, 2015
<u>Date of Decision:</u>	August 5, 2015
<u>Vote:</u>	5-0

Appeal #ZBA 2015-46 was opened before the Zoning Board of Appeals at Somerville City Hall on August 5, 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 one hearing of deliberation, the Zoning Board of Appeals took a vote.



DESCRIPTION:

The proposal is for an ice cream shop to occupy the corner storefront. Tipping Cow Ice Cream serves ice cream in local farmers markets and outlets, this will be their first storefront.

FINDINGS FOR SPECIAL PERMIT (SZO §7.11.10.2):

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 the RB zoning district a Special Permit is required for a change in nonconforming use. In this case to change from a specialty food store to a fast order food establishment under requires a Special Permit per SZO §4.5.

The applicant is seeking relief for the 4 parking spaces required. The fast food parking requirement is 0.75 per employee plus 1 space per 50 square feet of waiting area. There will be 2 employees. The waiting area is 200 square feet. The parking requirement is 4 spaces.

The last use, specialty foods, required 1 space per 425 square feet. The parking requirement was 1 space.

SZO Section 9.4.1.d states that when there is a nonconforming parking situation and a change in use with no change in floor area, only 50% of the additional parking spaces shall be provided. Since the old use required 1 space and the new use requires 4, 3 parking spaces are required. Under SZO section 9.13, where the total number of parking spaces required by the Ordinance is six or fewer, the requirements for lots or sites that are nonconforming with respect to parking may be modified by special permit.

In considering a special permit under §4.5 and §9.4 of the SZO, the Board finds that the use proposed would not be substantially more detrimental to the neighborhood than the existing use. The ice cream store will fill a vacant storefront and is a new type of business for this commercial strip which could find some success on a main street in a residential neighborhood.

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 promoting the health, safety, and welfare of the inhabitants of the City of Somerville; to provide for and maintain the uniquely integrated structure of uses in the City; to lessen congestion in the streets; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality.

The proposal is consistent with the purpose of the district, which is, "To establish and preserve medium density neighborhoods of one-, two- and three-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts." This is an existing commercial building in a residential



zoning district. The uses in this building as well as the ice cream shop proposed are conveniences to the neighborhood.

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."*

This property is located in a Residence B district at the corner of Medford Street and Sycamore Street. The area is predominantly residential with some limited retail use in the area. There is 2 hour parking available on-street. Winter Hill Community School is across the street.

There are little to no impacts of the proposal. A condition proposed as part of this report is that the signage drawings will be submitted to staff for review and approval.

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.*

Three spaces of parking relief are necessary for the use proposed. There is currently 2 hour parking in front of the building. This building has never had parking associated with it. Due to the neighborhood location, most patrons will be arriving on foot, bike, or public transit. An ice cream shop does not generate vehicular traffic associated with different uses in the same category.

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.*

There are currently no ice cream shops in the vicinity of this proposal. The ice cream shop will not be detrimental to the neighborhood and will fill a vacant storefront.

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

The proposal will not impact the existing stock of affordable 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 project will not directly contribute to the metrics of SomerVision but will allow a small business owner to occupy commercial space. SomerVision calls for streamlining permitting for small businesses.



DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Elaine Severino, Josh Safdie and Anne Brockelman with Danielle Evans 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 **5-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	Approval is for an ice cream shop use in an existing storefront. 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>July 1, 2015</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>(July 27, 2015)</td> <td>Modified plans submitted to OSPCD (Plan and Graphic)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	July 1, 2015	Initial application submitted to the City Clerk's Office	(July 27, 2015)	Modified plans submitted to OSPCD (Plan and Graphic)
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Any changes to the approved use that are not <i>de minimis</i> must receive SPGA approval.										
Construction Impacts										
2	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							
3	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							
Miscellaneous										
4	The storefront windows should not be blocked by more than 30% by interior storage, signage or window coverings.	Perp	Plng							
5	Approval is for the fast food use for the Applicant, Tipping Cow, 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.	Perp	Plng							



6	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	
Public Safety				
7	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
Signage				
8	Signage shall be submitted to Planning Staff for review and approval.	BP for Signage	Plng.	
Final Sign-Off				
9	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*
Elaine Severino
Josh Safdie
Anne Brockelman, (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 _____

