



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA # 2013-22
Site: 514C Medford Street
Date of Decision: May 15, 2013
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: May 21, 2013

ZBA DECISION

Applicant Name:	Pennypackers Fine Foods, Inc.
Applicant Address:	63 Marshside Drive, Yarmouthport, MA 02675
Property Owner Name:	L.A.B. Realty Trust
Property Owner Address:	105 Myrtle Street, Methuen, MA 01844
Agent Name:	N/A

Legal Notice: Applicant, Pennypackers Fine Foods, and Owner, LAB Realty Trust, seek a Special Permit with Design Review under SZO §7.11.10.2.1.a to establish a fast order food establishment and a Special Permit under §9.13 for 3 spaces of parking relief.

<u>Zoning District/Ward:</u>	NB zone/Ward 5
<u>Zoning Approval Sought:</u>	§7.11.10.2.1.a & §9.13
<u>Date of Application:</u>	April 2, 2013
<u>Date(s) of Public Hearing:</u>	5/1, 5/15
<u>Date of Decision:</u>	May 15, 2013
<u>Vote:</u>	5-0

Appeal #ZBA 2013-22 was opened before the Zoning Board of Appeals at Somerville City Hall on May 1, 2013. 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 (1) hearing of deliberation, the Zoning Board of Appeals took a vote.



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DESCRIPTION:

The proposal is to establish a fast food use in a vacant storefront that will be the first brick and mortar location for Pennypackers Fine Foods. They currently have two food trucks in the metro area. Pennypackers will serve a variety of 'high end' fast foods. Menu items include soups and sandwiches including their mainstay Porchetta sandwich. The restaurant will have seating for ten people. The hours of operation will be 11am to 7pm. There will be a 2.5' x 6' painted vinyl sign hung above the door. The restaurant needs 3 spaces of parking relief although no on-site parking is being provided.

FINDINGS FOR SPECIAL PERMIT WITH DESIGN REVIEW (SZO §7.11.10.2.1.A and 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."

Section 6.1.4.b includes standards and guidelines for the Neighborhood Business Districts for all development that requires a special permit with design review. The standards are to step back the fourth story of a building and locate parking behind the building or below street level. Since the building is one-story and there is no parking on site, the standards do not apply. There will be no changes to the current storefront except for the addition of a 6' x 2.5' sign above the door. The size of the sign complies with the Zoning Ordinance. The sign will be not be lighted.

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.

A parking memo was submitted as part of the application for relief of three parking spaces. The memorandum found that there is sufficient parking in the area to accommodate the relief. During weekday mid-day, weekday evening, and Saturday mid-day hours there were 40-58 parking spaces available within 500 feet of the project site. The relief of 3 spaces will not cause detriment to the surrounding neighborhood because there's available parking in the area, there is no reduction in on-street parking, the site has access via the 89 and 80 bus routes, and it will not change traffic patterns.

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 conserving the value of land and buildings.



The proposal is consistent with the purpose of the district. A small scale restaurant fits the goal of establishing and preserving areas for small-scale retail stores, services and offices which are located in close proximity to residential areas and which do not have undesirable impacts on the surrounding neighborhoods.

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.

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."

For Special Permits with Design Review approval, the proposal needs to comply with the design guidelines for business zones in §5.1.5. This proposal as conditioned meets the applicable guidelines: the building maintains a strong building presence along the primary street edge, the store entrances are differentiated by being recessed from the rest of the street elevation that create modulations in the façade, the roof is flat, which is a typical type for commercial buildings in the area, the building is an encouraged material (brick and stucco), there is no parking on-site and therefore driveways do not break the street wall, and finally there are no transformers, heating or cooling systems or similar equipment or dumpsters that are visible from the right of way.

The appearance of the storefront will not change greatly from its current state. The sign will be not be light. A condition of this report is that the white window coverings should be removed so that pedestrians can see into the restaurant.

7. 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.

In the previous case, ZBA 2012-102 for King of Wings, a neighboring business had expressed concern that a fast food restaurant will hurt the other restaurants in the neighborhood. However, creating a cluster of similar uses can improve their success by creating a hub of activity. King of Wings has not opened yet. The need for a fast-order food establishment should be balanced with the benefit of filling a vacant storefront in a Square that is in need of more private commercial investment. The retail space and the adjacent retail spaces have been vacant for some time, which negatively impacts the other businesses due to the appearance of disinvestment and the reduction in pedestrians in the square that would come for a specific business and stop into another business along the way.



DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Elaine Severino, Josh Safdie and Brandy Brooks. Upon making the above findings, Orsola Susan Fontano made a motion to approve the request for a Special Permit with Design Review. 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 the establishment of a fast order food establishment. 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>April 2, 2013</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>(May 3, 2013)</td> <td>Plans submitted to OSPCD (Plot Plan, Building Floor Plan, Restaurant Floor Plan, Signage Design, Signage Elevation)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	April 2, 2013	Initial application submitted to the City Clerk's Office	(May 3, 2013)	Plans submitted to OSPCD (Plot Plan, Building Floor Plan, Restaurant Floor Plan, Signage Design, Signage Elevation)
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Any changes to the approved plans that are not <i>de minimis</i> must receive SPGA approval.										
2	Signage will be limited in size and location to that shown in the elevation diagrams. The sign shall not be internally illuminated.	CO/Cont.	Plng.							
4	The storefront windows should not be blocked by more than 30% by interior storage, signage or window coverings. The current white window coverings should be removed.	CO	Plng							
5	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.							
6	Approval is for the fast food use for the Applicant, Pennypackers Fine Foods, Inc. 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							



Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*
Orsola Susan Fontano, *Clerk*
Richard Rossetti
Danielle Evans
Elaine Severino
Josh Safdie (Alt.)
Brandy Brooks (Alt.)

Attest, by the Senior Planner:

Lori Massa

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 _____

