



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2014-03
Site: 44 Park Street
Date of Decision: June 24, 2015
Decision: Petition Denied
Date Filed with City Clerk: July 2, 2015

ZBA DECISION

Applicant Name:	Claudia Murrow
Applicant Address:	23 Park Street, Somerville, MA 02143
Property Owner Name:	Belam II, LLC
Property Owner Address:	15 Ward Street, Somerville, MA 02143
Agent Name:	N/A

Legal Notice: Applicant, Claudia Murrow, seeks an Administrative Appeal per SZO §3.1.9, 3.2, and 3.2.3 from a decision from the Inspectional Services Division that issued a temporary certificate of occupancy for a School for Instruction in Arts at 44 Park Street, Owner, Belam II LLC.

<u>Zoning District/Ward:</u>	RC zone/Ward 2
<u>Zoning Approval Sought:</u>	§3.1.9, §3.2 & §3.2.3
<u>Date of Application:</u>	March 7, 2015
<u>Date(s) of Public Hearing:</u>	5/7/14-6/24/15
<u>Date of Decision:</u>	June 24, 2015
<u>Vote:</u>	5-0

Appeal #ZBA 2014-03 was opened before the Zoning Board of Appeals at Somerville City Hall on May 7, 2014. 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:

1. **Subject Property:** The property is a 43,012 square foot lot on which sits a 10,908 square foot one-story steel framed warehouse. The building has an 800 square foot vacant office area in the front portion of the building and a daycare occupying the rear of the building since 2012. On the site, there is a parking lot with 30 spaces and a playground for the daycare. The rear of the site, where the daycare occupies, was renovated in 2012. The northern edge of the property abuts an MBTA commuter rail track.

2. **History:** In September of 2013 the Zoning Board of Appeals granted a Special Permit under SZO §4.4.1 to alter a nonconforming structure, Somerville Zoning Ordinance (SZO) §7.11.8.9.a to establish a for-profit school for instruction in arts, skills, or vocational training less than 5,000 square feet with ancillary alterations to existing site plan and parking.

The proposal was to build out a 4,060 net square foot area to teach and study circus arts. The business combines aerobics, strength, flexibility on apparatuses like aerial fabric and aerial hoop. Classes prepare students for the strength, flexibility, and choreography needed for performances.

The parking requirement was met by a parking lot expansion. Business services require 1 parking space per 450 square feet which is 9 spaces. The parking lot was extended to include ten additional spaces on a crushed rock surface with a railroad tie curb. A handicap parking space was accommodated on existing paving at the front of the lot for a total of 11 additional spaces. Under SZO §9.15, one bicycle space needed to be provided. Four bicycle racks were installed near the handicap space at the front of the building which will accommodate 8 bicycles.

A Temporary Certificate of Occupancy was issued by Inspectional Services Division on December 23, 2013. The certificate is temporary because of pending litigation on the case. There was a voluntary dismissal of the appeal and the occupants can seek a final certificate of occupancy. The Certificate was issued for a school for instruction in arts with a maximum occupancy load of 100 gross square feet per occupant.

FINDINGS

1. **Role of the ZBA:** In an administrative appeal hearing, the ZBA hears appeals of the decision of the Superintendent of Inspectional Services. The process for such appeals is set out in MGL 40A, Section 8 and Section 3.2 of the SZO. An appeal may be taken by any person aggrieved by an order or decision of the Superintendent of Inspectional Services. The ZBA must determine whether to affirm the ISD decision or overturn it and why.

The Board believes that Claudia Murrow has status as an aggrieved party in this circumstance and that appeal is properly before your Board.

2. **Analysis of the Appeal:** OSPCD staff have reviewed: 1) the appeal application from Claudia Murrow; 2) the file for the property at Inspectional Services; 3) the plans and conditions of the 2013 special permit. Claudia Murrow has raised six arguments in support of her appeal. A discussion of the arguments is below.

a) *The temporary certificate of occupancy issued for the use at 44 Park Street for the business, Esh Aerial Arts, is a fitness facility or gym and not a 'school for instruction in arts', which is the use on the Temporary Certificate of Occupancy (TCO).*

The Board in consultation with Inspectional Services determined that the proposed use of the space fit into the zoning category SZO §7.11.8.9.a, for-profit school for instruction in arts, skills, or vocational training, as opposed to §7.11.6.3.a, a commercial health, exercise, racquet, weight reduction, bowling or similar facility. The determination was that the principle use of the space most closely matched the for-profit school in instruction in skills based on the



primary use of the space. The Esh Aerial Arts business uses the space for classes in instruction of circus arts. The business is focused on teaching skills and the space does not have open drop in hours for exercise, which is typical for a health club.

The City's Building Inspectors provided information on the Use and Occupancy Classification in the International Building Code. The use of Esh Aerial Arts was determined to fit in Business Group B as a 'training and skill development not within a school or academic program' use.

As a point of information, 'gymnasiums without spectator seating' fits into an Assembly Group A; however, the Building Code states that a tenant space used for assembly purposes with an occupant load of less than 50 persons shall be classified as a Group B occupancy. Therefore, Esh Aerial Arts with a limit of less than 50 people would be a Group B use under either classification.

b) The business offers performances, which would exceed the 49 person limit on the TCO.

The space is limited to 100 gross square feet per occupant and the business must comply with this regulation regardless of the number of classes or a special event happening. The net square feet of the space is 4,060.

Special events are allowed as they are accessory to the principle use of the space. Per SZO §7.11.1, accessory uses that are customarily associated with a given principle use shall be permitted by-right in conjunction with such permitted principle use.

c) Under the use 'school for instruction in arts', they do not need a second means of egress if they say that they will have less than 49 people in the room.

The Building Code states that the use of the space with a limit of 50 occupants would be classified as a Group B use if determined to be 'training and skill development not within a school or academic program' or 'gymnasium'. Therefore, Esh Aerial Arts has the same egress requirements under either classification.

d) The corresponding impact of the use was not contemplated by the ZBA.

The use of the Esh Aerial Arts space at 44 Park Street was clearly presented to the Zoning Board of Appeals for review. The staff report explained the use of the space and the business owners appeared at the hearing to describe how they would use the space.

An additional point of information is that the health club/gym use in the RC zoning district requires a Special Permit, which is the same type of review and zoning permit as exists for a for-profit school.

e) A traffic study was not done relative to the Special Permit or Temporary Certificate of Occupancy.

SZO §5.1.2 lists the required information for Special Permits. A traffic study is under the category of additional information, if applicable. The Planning Staff and Zoning Board did not find that a traffic study was needed to evaluate the impact of the use. The parking requirements were met and the use does not generate many trips to the site. The facility has classes with approximately 3 to 8 students per class.

Traffic studies are not required to obtain certificates of occupancy.

f) Signs need zoning relief and/or a permit.

The signage meets the requirements of the signage standards in SZO §12 and the conditions of approval related to signage. Condition 5 states, "[s]ignage design to be submitted Planning Staff for review and approval, and condition 6 states, "[s]ignage will be limited in size and location to that shown in the elevation diagrams".



DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans , Elaine Severino and Josh Safdie. Richard Rossetti made a motion to not overturn the decision of the Inspectional Services Department to issue a temporary Certificate of Occupancy based on the use approved by Special Permit and the use listed on the Certificate. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **DENY** the request.



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Richard Rossetti, *Clerk*
Danielle Evans
Elaine Severino
Josh Safdie

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 _____

