



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA # 2013-26
Site: 779 Somerville Avenue
Date of Decision: May 1, 2013
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: May 7, 2013

ZBA DECISION

Applicant Name:	Ralph Malin
Applicant Address:	17 Blueberry Lane, Lexington, MA
Property Owner Name:	Ralph Malin
Property Owner Address:	17 Blueberry Lane, Lexington, MA
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145

Legal Notice: Applicant and Owner, Ralph Malin, seek a Special Permit under SZO §4.5.1 for a change of in nonconforming use from a retail store (§7.11.9.5.a) to an office (§7.11.7.1.a).

<u>Zoning District/Ward:</u>	RB zone/Ward 2
<u>Zoning Approval Sought:</u>	§4.5.1, §7.11.9.5.a & §7.11.7.1.a
<u>Date of Application:</u>	March 25, 2013
<u>Date(s) of Public Hearing:</u>	May 1, 2013
<u>Date of Decision:</u>	May 1, 2013
<u>Vote:</u>	5-0

Appeal #ZBA 2013-26 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 hearing of deliberation, the Zoning Board of Appeals took a vote.



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DESCRIPTION:

Applicant and Owner, Ralph Malin, proposes to change the nonconforming use of the commercial storefront from a retail flower shop to a real estate office.

The Applicant does not intend to alter the storefront nor does the Applicant intend to install signage as part of this proposal. The interior plan proposes three desks with a storage room, rear egress and lavatory located at the back of the space.

There is currently no parking for this commercial space. The Applicant does not propose to change the existing parking situation as part of this proposal.

FINDINGS FOR SPECIAL PERMIT (SZO §4.5.1):

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 considering a special permit under §4.5 of the SZO, the Board finds that the use proposed would not be substantially more detrimental to the neighborhood than the existing use. The proposed change in use, from a retail flower shop to a real estate office, enables the storefront to be active once again and is compatible with the residential use of this portion of Somerville Avenue.

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 protect health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to conserve the value of land and buildings; 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 Residence B district, §6.1.2, 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."

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 proposal to change the nonconforming use to a real estate office will reactivate the storefront and is compatible with the residential neighborhood along Somerville Avenue.

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.

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.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Elaine Severino and Josh Safdie with Herbert Foster absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit. Josh Safdie 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 a Special Permit for a change in nonconforming use from a retail store to an office. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/PIng.							
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>(March 25, 2013)</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>January 30, 2013 (April 22, 2013)</td> <td>Plot plan and Grade Level Floor Plan submitted to OSPCD</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	(March 25, 2013)	Initial application submitted to the City Clerk's Office	January 30, 2013 (April 22, 2013)	Plot plan and Grade Level Floor Plan submitted to OSPCD
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Any changes to the approved use that are not <i>de minimis</i> must receive SPGA approval.										
Public Safety										
2	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP							
Final Sign-Off										
3	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	PIng.							



Attest, by the Zoning Board of Appeals:

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

