



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2015-27
Site: 377 Summer Street
Date of Decision: August 5, 2015
Decision: Petition Approved with Conditions
Date Filed with City Clerk: August 18, 2015

ZBA DECISION

Applicant Name:	Christos Poutahidis
Applicant Address:	377 Summer Street, Somerville, MA 02144
Property Owner Name:	Christos Poutahidis & Kyriakos Kouzoukas
Property Owner Address:	377 Summer Street, Somerville, MA 02144
Agent Name:	Richard G. DiGirolamo, Esq.
Agents Address:	424 Broadway, Somerville, MA 02145

Legal Notice: Applicants, Christos Poutahidis & Kyriakos Kouzoukas, and Owner, Christos Poutahidis, seek a Special Permit to establish an approx 3,000 sf fast order food establishment, a donut shop, with indoor and outdoor seating under SZO sec 7.11.10.2.2.b and a parking variance sec 9.5.

<u>Zoning District/Ward:</u>	CBD zone/Ward 6
<u>Zoning Approval Sought:</u>	§7.11.10.2.2.b & §9.5
<u>Date of Application:</u>	May 21, 2015
<u>Date(s) of Public Hearing:</u>	7/15 & 8/5/15
<u>Date of Decision:</u>	August 5, 2015
<u>Vote:</u>	4-0

Appeal #ZBA 2015-27 was opened before the Zoning Board of Appeals at Somerville City Hall on July 15, 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.



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DESCRIPTION:

The proposal is to establish an approximately 2,609 square foot fast order food establishment for a donut shop. There would be approximately 4 employees. The hours of operation will likely be 6am to 10pm. There will be 56 seats inside and chairs outside in the plaza along Summer Street. Three parking spaces in the basement will be dedicated for employees of the shop. The signage proposal is for three signs for the restaurant. The signage package will need to change to comply with the SZO and design considerations as part of this special permit with design review process.

FINDINGS FOR SPECIAL PERMIT (SZO §7.11.10.2.2.b):

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."*

The use falls under §7.11.10.2.2.b, fast order food establishments with no drive-up service with operations conducted in part outside an enclosed building, which requires a Special Permit with Design Review. The use will be a donut shop with indoor and outdoor seating.

All developments within the CBD district that require a special permit with design review should comply with the following guidelines to the highest degree practicable per SZO §6.1.5.

1. *Across the primary street edge, the building should complete the streetwall.*
The exterior of the structure will not change beyond the signage proposed.

2. *At the street level, provide continuous storefronts or pedestrian arcade which shall house either retail occupancies, or service occupancies suitably designed for present or future retail use.*
The proposed use is a pedestrian oriented use. A condition of approval will be to install 2 planters at the edge of the plaza to make this space more attractive and comfortable for pedestrians and patrons of the restaurant.

3. *Massing of the building should include articulation which will blend the building in with the surrounding district. At the fourth floor, a minimum five-foot deep setback is recommended.*
The exterior of the structure will not change beyond the signage proposed.

4. *Locate on-site, off-street parking either at the rear of the lot behind the building or below street level; parking should not abut the street edge of the parcel.*
The parking is below grade.

5. *Provide access to on-site, off-street parking from either a side street or alley. Where this is not possible, provide vehicular access through an opening in the street level facade of the building of a maximum twenty-five (25) feet in width.*
The underground parking access is from the side street, Cutter Avenue.



The site previously received parking relief. Twenty-four parking spaces are required for the retail, office and residential uses and the proposal was to provide 17 parking spaces.

The Applicants' Traffic Engineer has submitted data justifying the practical need for 17 parking spaces based on accepted transportation engineering practices.

Retail: 9.3 spaces required – 4.66 spaces needed based on parking memo data

Office: 8.5 spaces – 6.8 spaces needed based on parking memo data

Residential: 10 – 5.9 spaces needed based on parking memo data

The first floor parking requirement was based on the retail requirement of 1 space per 500 square feet because the tenants were not yet identified. The credit union has a parking requirement of 1 space per 550 square feet. Their parking requirement is 3; however, a special permit was authorized for shared parking at the site so these spaces could be shared. If the 4.66 parking spaces allocated for the first floor were divided up between the tenants based on percentage of floor area that they occupy, the credit union would have been permitted for 1.75 spaces and the donut shop would have been permitted for 2.85 spaces. The restaurant has a parking requirement based on seats and employees (17 spaces) or square footage (24 spaces), whichever is greater. Subtracting 2.85 of the remaining parking spaces designated for the ground floor from the 24 space requirement leaves a parking variance of 21 spaces. The variance findings are in the next section of this report.

The bicycle parking requirement for 21 spaces is two bicycle parking spaces. A condition of approval will be for the Applicant to purchase a bike rack for the City to install on a nearby sidewalk.

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 I, 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 providing for and maintaining the uniquely integrated structure of uses in the City and encouraging the most appropriate use of land throughout the City.

The proposal to have a donut shop to activate this space is consistent with the purpose of the district, which is, "[t]o preserve and enhance central business areas for retail, business services, housing, and office uses and to promote a strong pedestrian character and scale in those areas. A primary goal for the districts is to provide environments that are safe for and conducive to a high volume of pedestrian traffic, with a strong connection to retail and pedestrian accessible street level uses."

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 the Design Guidelines in §5.1.5. should be considered. The guidelines generally relate to the form, fenestration and materials of the building which are not changing as a result of this application. Two exterior changes that are proposed to change are the signage and plaza area. The Applicants submitted a revised plan to address staff concerns.

1. The size of the wall and blade sign were reduced in size and the sign to the left of the main door was removed. The storefront is 20 feet and the proposed signage will be 23.9 square feet, which is below the area of signage allowed.
2. Halo lighting or external lighting is preferred over face lit letters. The wall sign will be halo lit and the blade sign will not be lit. This is an existing light fixture near the blade sign that will illuminate it with a soft light.



3. The blade sign was made smaller and positioned just above the existing ATM so that it would not block the existing sign. The ATM sign is located 10 feet above the sidewalk which is the lowest distance allowed in the district for a blade sign.
4. The signs should be pedestrian oriented and be compatible in placement with the credit union signage. The redesigned signs accomplish this goal. The signs are smaller and lower in height. The awning marks the entrance for the donut shop and provides shelter.

The plaza area was originally permitted with two large trees at the edge near the sidewalk and the trees have not yet been planted. The trees were shown on the plan to provide definition for the plaza, interest for pedestrians and shelter for the plaza users. If the trees are not able to be planted into the earth, a condition of approval is that two planters that are sufficient sizes to hold substantial trees shall be placed in this location and planted with 3 inch caliper trees. Also, the restaurant shall place movable chairs in the plaza to make this space functional and activate the street.

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 is another donut shop in the Square; however, this proposal is unique in that it will function as an independent establishment. The design of this building is pedestrian oriented and the use will likely not be a regional draw that would have negative impacts on the traffic circulation and parking in the area.

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

This proposal does not replace, propose, or involve housing.

8. 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.*

Davis Square is in an area to enhance in the SomerVision map. Filling a vacant retail space will help to add some jobs to the area and provide a use that will activate the plaza.

<u>SomerVision Summary</u>	<i>Existing</i>	<i>Proposed</i>
<i>Commercial Sq. Ft.:</i>	2,609	2,609
<i>Estimated Employment:</i>	0	4



FINDINGS FOR VARIANCE (SZO §9.5):

A parking variance is required for 21 spaces. The calculation of the requirement can be found in finding 2 of the special permit findings above.

In order to grant a variance for parking (§9.5) requirements the SPGA must make certain findings and determinations as outlined in §5.5.3 of the SZO.

1. *There are “special circumstances relating to soil conditions, shape or topography of land or structures which especially affect such land or structures but not affecting generally the zoning district in which it is located, causing substantial hardship, financial or otherwise.”*

The existing lot is somewhat unique in that it is directly abutted on two sides by buildings with minimal or no setbacks and the lot is on a corner. There is limited ability to expand the property to add parking or loading. These unique circumstances means that only retail in this space would be allowed and any other uses for the site that were not originally contemplated in the original approval would likely be subject to a parking variance under the current zoning. The way that the first floor retail space was subdivided, a retail tenant is less viable in the subject space because it only has 20 feet of frontage which is setback from the sidewalk.

2. “The variance requested is the minimum variance that will grant reasonable relief to the owner, and is necessary for a reasonable use of the building or land.”

The variance being sought, though large in number, would be a reasonable relief to the owner and would allow for a reasonable use of the land. A restaurant use for a Central Business District and for this space in this building is an appropriate use. The owner has not secured a retail tenant at this site and having a vacant space for 6 years is not a desired situation. Furthermore, the site is in close proximity to the Davis Square MBTA subway stop, numerous bus routes, as well as the numerous nearby municipal parking facilities and on-street metered parking. These alternative means of transportation and the parking mitigation efforts should help offset any parking pressures that would normally be associated by approving such a large parking variance.

3. “The granting of the variance would be in harmony with the general purpose and intent of this Ordinance and would not be injurious to the neighborhood or otherwise detrimental to the public welfare.”

As demonstrated in the special permit findings above, the project is consistent with the purpose of the Ordinance and the zoning district in which it is located. The restaurant would contribute to the vibrancy of the Square and activate this vacant storefront and plaza. Turnover of spaces is important to the vibrancy of the Square and increase pedestrian safety to avoid cueing of vehicles. The condition regarding transportation mitigation will help to facilitate turnover.



DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Elaine Severino and Josh Safdie 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 **4-0** 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 2609 sf fast order food establishment, a donut shop, with indoor and outdoor seating under SZO sec 7.11.10.2.2.b and a 21 parking variance. 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>May 21, 2015</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>(July 2, 1015)</td> <td>Modified plans submitted to OSPCD (Floor Plan)</td> </tr> <tr> <td>July 30, 2015</td> <td>Modified plans submitted to OSPCD (Wall Sign, Blade Sign)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	May 21, 2015	Initial application submitted to the City Clerk's Office	(July 2, 1015)	Modified plans submitted to OSPCD (Floor Plan)	July 30, 2015	Modified plans submitted to OSPCD (Wall Sign, Blade Sign)
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Any changes to the approved elevations that are not <i>de minimis</i> must receive SPGA approval.												
2	Approval is for the fast food use for the Applicant under the business name, Davis Square Donuts. 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 at this location.	Perpetual	ISD									
Design												
3	Applicant shall provide a revised signage plan that complies with the SZO regulations and is pedestrian oriented for Planning Staff review and approval.	BP	Plng.									
4	The Applicant shall provide movable chairs in the plaza in the spring, summer and fall when the weather is conducive to sitting outside.	Perpetual	Plng.									
Site												
5	Applicant shall improve the existing landscaping and add 2 additional trees.	CO	Plng.									
6	Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards.	Perpetual	Plng. / ISD									
Traffic & Parking												
7	Applicant shall comply with Traffic and Parking's proposed mitigation for parking relief.	CO	T&P									



8	Applicant shall purchase and deliver to the City a U- or ring-shaped bike rack to City standards for installation in the vicinity of the site.	CO	Plng.	
Miscellaneous				
9	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				
10	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
11	To the extent possible, all exterior lighting must be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	Plng.	
Final Sign-Off				
12	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.	
13	There will be a site plan showing seating, landscaping, and trees for Staff approval prior to permitting.	BP	Plng.	
14	The retaining wall will be taken care of and the Applicant shall be sensitive to any trees that may impact view of abutter business.	CO	Plng.	



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Richard Rossetti, *Clerk*
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 _____

