



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

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ELIZABETH MORONEY
JERRY AMARAL, (ALT.)

Case #: PB 2014-11
Site: 73-76 Union Square
Date of Decision: May 8, 2014
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: May 12, 2014

PLANNING BOARD DECISION

Applicant Name:	The Independent, c/o Kenneth Kelly
Applicant Address:	73 Union Square, Somerville, MA 02143
Property Owner Name:	Independent Realty Trust
Property Owner Address:	73 Union Square, Somerville, MA 02143
Agent Name:	N/A

Legal Notice: Applicant, The Independent, and Owner, Independent Realty Trust, seeks a Special Permit under SZO §6.1.22.D.6 to establish an outdoor seating area. CCD 55 zone. Ward 3.

<u>Zoning District/Ward:</u>	CCD 55 zone/Ward 3
<u>Zoning Approval Sought:</u>	§6.1.22.D.6
<u>Date of Application:</u>	March 14, 2014
<u>Date(s) of Public Hearing:</u>	May 8, 2014
<u>Date of Decision:</u>	May 8, 2014
<u>Vote:</u>	5-0

Appeal #PB 2014-11 was opened before the Planning Board at the Visiting Nurse Association on May 8, 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 Planning Board took a vote.



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DESCRIPTION:

The proposal is to use three metered parking spaces and two loading zone spaces from the Union Square municipal parking lot in front of the Independent restaurant to create a seasonal outdoor seating platform (49 feet wide by 18 feet deep). The patio would be up from the end of May through the beginning of October. During the week, the platform is proposed to occupy the three metered parking spaces and on weekends and special events, such as the Fluff Festival and Cinco-de-Mayo, the platform, as proposed, will be expanded to include the two loading zone spaces. The semi-permanent platform will feature 14 tables on a regular basis with an additional 6 tables in the weekend/special event expanded area.

Under this proposal, access and seating at the platform will be exclusive to customers of the Independent restaurant. Table service will be provided and the applicant is seeking a license to serve alcohol.

The Planning Board issued a Special Permit for the same proposal and the patio was in use for the 2013 season. The Special Permit had an expiration date so that the Applicant would have to reapply each year to ensure that the proposal would be reviewed on a yearly basis as the City works towards establishing program to permit curbside cafes and/or parklets. There were no issued reported regarding the patio in the 2013 season.

FINDINGS FOR SPECIAL PERMIT (SZO §6.1.22):

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."*

Under SZO §6.1.22.D.6, outdoor accessory uses that involve new development may be conducted through Special Permit approval from the Planning Board. The addition of accessory uses conducted outdoors in the CCD district does not require any additional parking spaces to be provided.

This proposal is conceptually based on the many successful "Parklets" created as part of the San Francisco Pavement to Parks program (<http://sfpavementtoparks.sfplanning.org/index.htm>) and "Pop-Up Cafes" deployed in New York City (<http://www.nyc.gov/html/dot/html/sidewalks/curbside-seating.shtml>).

From the Pavement to Parks website:

Parklets repurpose two to three parking stalls along a block as a space for people to relax, drink a cup of coffee, and enjoy the city around them. Parklets do this by building out a platform into the parking lane so that the grade of the sidewalk gets carried out into the parking lane. On the platform, benches, planters, landscaping, bike parking, and café tables and chairs (in certain locations) all come together to provide a welcoming new public space.

From NYC DOT:

Curbside public seating platforms offer well-designed seasonal, outdoor public open spaces and seating at places where sidewalk seating is not available. Curbside seating platforms are designed, installed and



maintained by the adjacent sponsoring business. The seating is open to the public, not restricted to patrons of any particular establishment. Waiter service or commercial activity at the tables is strictly prohibited, as is smoking and alcohol consumption.

This proposal differs from the formal programs established in San Francisco and New York where these types of installations are considered public space, all seating on the platform is open to the public, waiter service or commercial activity at the tables is strictly prohibited, and smoking and alcohol consumption are not permitted.

Research conducted by Planning Staff and the City Solicitors Office also found examples of sidewalk extension platforms in Seattle and Montreal that did *not* restrict table service or the consumption of alcohol and where the operating establishment maintained exclusivity over the platform or sidewalk café rather than the area functioning as public space. In an ordinance establishing policy concerning sidewalk cafes, Seattle City Council found that:

Sidewalk cafes can compliment available open space resources by activating sidewalks in areas of [the city] where commercial activity is allowed; “eyes on the street” from patrons and responsible proprietors can enhance neighborhood safety and public perception of safety; and enjoyable public spaces advance [the City’s] character and quality of life.



Enclosed Sidewalk Extension Platform, Montreal, Quebec, Canada

The majority of the dimensional standards for the CCD district do not apply to this proposal; however, the intent of the following design guidelines for the CCD district is being met:

6.1.22.H.8 Retail, restaurant, and pedestrian-oriented uses are encouraged, especially on the Ground Floor.



Planning Staff is developing a formal policy for dealing with this and other similar projects for the future. In lieu of a formal policy for Curbside Cafes, Staff has negotiated with the Applicant to meet the following guidelines for the proposed platform, as applicable. The guidelines below are modeled off of the design and operation guidelines for the San Francisco Parklet and New York Pop-Up Café programs:

Design Guidelines:

- The platform shall be flush with the curb/sidewalk, with no more than a ½ inch gap between the platform and the curb/sidewalk
- Curbside drainage shall not be impeded. Access must be maintained to the space beneath the platform.
- The platform shall be load-bearing: at least 750lbs per square foot.
- Vertical elements along the perimeter and/or umbrellas are required to increase visibility of the platform from vehicles.
- Platforms must be constructed and finished with quality materials.
- Plantings may be included.
- Where table service of alcohol is provided, the platform shall be enclosed by a fence, rope, or other means to prevent patrons or members of the public from wandering in and out.
- Platforms shall include a continuous physical barrier along the perimeter of the platform facing any street or parking area. This physical barrier must be visually permeable while providing a sense of security from vehicles.
- **Traffic and Parking** may require the installation of traffic safety improvements by DPW, including but not limited to, traffic markings, flexible reflective bollards, and wheel stops at the applicant's expense.

Operational Requirements:

- Any movable items, such as tables and chairs, must either be locked down at night or taken inside. Unsecured furniture is not permitted after business hours.
- A maintenance agreement to keep all plants in good health and the platform free of debris and grime may be required. The surface of the platform shall be maintained on a daily basis and the space beneath the platform rinsed out weekly.
- **The Health Department** may require pest abatement beneath the platform at the applicant's expense.

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 "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 purposes of the district, which includes, but is not limited to "Increase commercial investment in high-profile, accessible areas including retail []; and promote pedestrian [] activity".

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 property is located in the heart of Union Square and there are many restaurants and other businesses in the area.



The establishment of a seasonal outdoor seating area in the Union Square municipal parking area is viewed as a net benefit for the neighborhood by Planning Board.

The proposal is compatible with the built surrounding area. The Union Square municipal parking lot is adjacent to Union Square Plaza, a significant public space that plays host to seasonal events and other outdoor seating areas for nearby businesses. The establishment of the outdoor seating platform will read as an extension of the sidewalk in front of the Independent and visually expand the size of the plaza.

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.*

The existing width of the sidewalk will not be diminished as a result of installation of the platform as proposed.

DECISION:

Present and sitting were Members Kevin Prior, Elizabeth Moroney, Joseph Favaloro, James Kirylo and Michael Capuano. Upon making the above findings, James Kirylo made a motion to approve the request for a Special Permit. Michael Capuano seconded the motion. Wherefore the Planning Board voted **5-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	<p>Approval is to use three metered parking spaces and two loading zone spaces from the Union Square municipal parking lot in front of the Independent restaurant to create a seasonal outdoor seating platform (49 feet wide by 18 feet deep). This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>March 21, 2014</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>March 26, 2012 (<i>same plan as last year</i>)</td> <td>Plans submitted to OSPCD (Existing Site Plan, Proposed Site Plan, Proposed Elevations)</td> </tr> </tbody> </table> <p>Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	March 21, 2014	Initial application submitted to the City Clerk's Office	March 26, 2012 (<i>same plan as last year</i>)	Plans submitted to OSPCD (Existing Site Plan, Proposed Site Plan, Proposed Elevations)	Cont.	Planning	
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2	The Special Permit shall expire at the time that the City establishes a program to permit curbside cafes and/or parklets, if the plans of provisions of the Special Permit are inconsistent with the established program, at which time the Special Permit shall expire.	Cont.	Planning ISD							



3	Approval is contingent upon the granting of a permit with applicable fees by the Somerville Board of Aldermen to establish the Curbside Café within the Union Square municipal parking lot according to Sec. 12-14 of the Somerville Code of Ordinances.	Prior to construction	BoA	
4	The Applicant shall submit a certificate verifying the structural integrity of the Curbside Café platform.	Prior to construction	ISD	Complete per affidavit from registered engineer dated 7/23/13. Same structure will be used this year.
5	The applicant shall install any traffic safety improvements, including but not limited to, flexible reflective delineators and wheel stops, as required by Traffic and Parking.	Prior to final sign off	Traffic & Parking	
6	The Applicant shall make a payment(s) to the City for the use of the three (3) metered spaces of \$35/day/meter in the Union Square municipal parking lot.	At time of use for estimated number of days and any remaining balance at the end of the season	Traffic & Parking	
7	The perimeter fencing for the Curbside Café platform shall be 42" high on all sides and shall be maintained at all times whether the platform occupies the three parking spaces during the weekdays or, additionally, the two loading spaces on the weekends and over the course of special events	Cont.	ISD	
8	The Applicant shall be responsible for maintenance of the Curbside Café platform, including landscaping, fencing, lighting, and storm water systems, ensuring they are clean, well kept and in good and safe working order.	Cont.	ISD	
9	Any moveable items, such as tables and chairs, shall either be locked down at night or taken inside the Independent.	Cont.	ISD	
10	The Applicant shall contact Planning Staff for a final inspection of the Curbside Café platform to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this Special Permit.	Final sign off	Planning	



Attest, by the Planning Board:



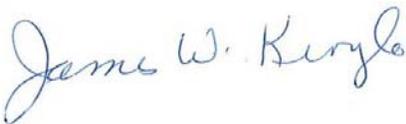
Kevin Prior, Chairman



Elizabeth Moroney



Joseph Favaloro



James Kirylo



Michael A. Capuano, Esq.

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 _____

