



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

ZONING BOARD OF APPEALS MEMBERS

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JOSH SAFDIE

Case #: ZBA 2015-11
Site: 120 Washington Street
Date of Decision: June 24, 2015
Decision: Petition Approved with Conditions
Date Filed with City Clerk: July 3, 2015

ZBA DECISION

Applicant Name: Mark Food Enterprises, Inc. d/b/a Oliveira's Restaurant
Applicant Address: 120 Washington Street, Somerville, MA 02143
Property Owner Name: ITS Realty, LLC
Property Owner Address: 87 Baker Street, Belmont, MA 02478
Agent Name: Daniel Thompson, Esq./Anthony Gargano, Esq.
Agent Address: 149 Cambridge Street, Cambridge, MA 02141

Legal Notice: Applicant, Mark Food Enterprises, and Owners, ITS Realty, LLC, seek a Variance for parking relief to expand the restaurant seating count.

Zoning District/Ward: IA zone/Ward 1
Date of Application: February 26, 2015
Date(s) of Public Hearing: 4/1, 4/15, 5/6, 5/20, 6/10 & 6/24/15
Date of Decision: June 24, 2015
Vote: 5-0

Appeal #ZBA 2015-11 was opened before the Zoning Board of Appeals at Somerville City Hall on April 1, 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 three hearings of deliberation, the Zoning Board of Appeals took a vote.



DESCRIPTION:

The proposal is to increase the seating count from 80 seats to 152 seats. This requires a variance of 16 spaces. The property previously had seating for 150 people but removed seats in order to apply for a liquor license. In doing so, they did not realize the association between seating count and parking. They would like to increase their seating count and have also applied to change their liquor license. The liquor license application will be taken up after a conclusion to the zoning appeal.

FINDINGS FOR SPECIAL PERMIT:

1. Explain any special circumstances affecting the land or structure (related to soil conditions, shape or topography) that are unusual and do not affect other properties and any hardship that results from these special circumstances.

The proposal before the Board is not for redevelopment of the site but is rather a change in seating count within an existing building. The lot is almost a kite shaped lot which does not lend itself to an optimal parking layout. The site is already maximized in terms of parking and is the most efficient layout possible. The site is also landlocked and cannot extend parking onto other lots. The major abutter, the MBTA, will use the adjacent site for circulation around the Washington Street Green Line station. A condition of approval is that the applicant installs two signs, a sign at the entrance of the primary parking lot indicating additional parking on the ancillary lot and a sign at the ancillary lot indicating that the parking is for Olivera's Steakhouse.

2. Explain if and how the Variance is the minimum approval necessary to grant reasonable relief to the owner and results in a reasonable use of the land or structure.

This variance is the minimum approval necessary to grant reasonable relief to the owner because this is not a site redevelopment and already had a seating count at the proposed capacity. Restaurants experience rushes, to limit their capacity hurts the existing business. Other uses, would most likely need parking relief to use the existing building.

3. Explain if and how the granting of the Variance will be in harmony with the SZO and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Granting Oliveria's Restaurant an increased seating capacity is in harmony with the SZO because it allows a small business owner to adapt and grow their business. It will not be injurious to the neighborhood since most patrons walk to the restaurant after Sunday church services. In addition to the parking provided onsite, there's some on street parking available on New Washington Street.

In the proposed zoning code, this area is within the Neighborhood TOD area and has a parking maximum of 1 space per 100 square foot. They can provide *up to* 48 spaces but are not required to provide any parking.



DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Elaine Severino and Josh Safdie. 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 **5-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	<p>Approval is for a parking variance of 16 spaces. 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>February 26, 2015</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>April 27, 2012</td> <td>Modified plans submitted to OSPCD (Seating Floor Plan)</td> </tr> </tbody> </table> <p>Any changes to the approved plan that is not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	February 26, 2015	Initial application submitted to the City Clerk's Office	April 27, 2012	Modified plans submitted to OSPCD (Seating Floor Plan)	BP/CO	ISD/ Plng.	
Date (Stamp Date)	Submission									
February 26, 2015	Initial application submitted to the City Clerk's Office									
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2	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP							
3	The Applicant shall apply for any and all necessary licenses.	CO	City Clerk							
4	The Applicant shall update their certificate of occupancy.	CO	ISD							
5	The Applicant shall stripe the lot prior to the liquor license hearing or 60 days after approval, whichever comes first.	Liquor Lic. Hearing/60 days after approval	Plng/ City Clerk							
6	The Applicant shall install two signs, a sign at the entrance of the primary parking lot indicating additional parking on the ancillary lot and a sign at the ancillary lot indicating that the parking is for Olivera's Steakhouse.	CO	Plng/ City Clerk							
7	The asphalt that is not needed for marked parking spaces and maneuvering aisles shall be removed and the land shall be landscaped. A landscape plan with a variety of plantings including shrubs and evergreens shall be submitted to Planning Staff for review and approval.	CO	Plng							
8	Parking space marked as #9 shall be marked as an accessible parking spot.	CO	Plng							



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 _____

