



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

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Case #: ZBA # 2012-104
Site: 120 Beacon Street
Date of Decision: January 23, 2013
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: February 4, 2013

ZBA DECISION

Applicant Name:	120 Beacon Street Limited Partnership
Applicant Address:	36 Crafts Street, Newton, MA 02458
Property Owner Name:	120 Beacon Street Limited Partnership
Property Owner Address:	36 Crafts Street, Newton, MA 02458
Agent Name:	Adam Dash, Esq.
Agent Address:	48 Grove Street, Suite 304, Somerville, MA 02144

Legal Notice: Applicant and Owner, 120 Beacon Street Limited, seeks a Special Permit (SZO §4.4.1) to make exterior changes to a nonconforming building.

<u>Zoning District/Ward:</u>	NB zone/Ward 2
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	December 11, 2012
<u>Date(s) of Public Hearing:</u>	January 23, 2013
<u>Date of Decision:</u>	January 23, 2013
<u>Vote:</u>	5-0

Appeal #ZBA 2012-104 was opened before the Zoning Board of Appeals at Somerville City Hall on January 23, 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.



DESCRIPTION:

Proposed physical changes to the building are to internally subdivide the 5,060 sq. ft. ground floor retail space into two spaces, one with 3,805 square feet and the other with 1,255 square feet. Dividing the ground floor retail space into two would require the following exterior changes to the building: the addition of a door with side lights for the smaller space toward the rear of the parking lot façade; the addition of an accessibility ramp leading to the parking lot from the side of the building; the addition of a rear door; signage for both spaces; 1 for 1 replacement of glass in several windows with failed seals; and finally, installation of an additional gas meter and piping to the rear of the building.

The applicant proposes to establish a retail use in the front, 3,805 square foot space that will be created. The tenant will be Comcast, which will operate an Xfinity retail store. No tenant has been found for the 1,255 square foot space.

FINDINGS FOR SPECIAL PERMIT (SZO §):

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 §4.4 or 4.5 of the SZO, the Board finds that the alterations proposed for the building would not be substantially more detrimental to the neighborhood than the existing structure.

In consideration of the proposed use for the building under §7.11 Table of Permitted Uses of the SZO for the NB district, the Comcast Xfinity retail store falls under part 9 Sales or Rental of Goods or Equipment as a "Store selling home appliances and equipment, including audio, computer, and video equipment". The proposed use is 3,805 square feet, falling under the 5,000 square foot limitation, and is therefore permitted by-right.

In consideration of the proposed use for the building under §9.5 Number of Parking Spaces of the SZO for the NB district, nine off-street parking spaces would be required for the Retail Sales use as classified under part 9 of the Table of Permitted Uses. The property has 16 spaces available in an underutilized surface lot adjacent to the building. The property also features a single underground story of parking shared by the other uses in the building.

In consideration of the proposed signage in coordination with the proposed use for the building under §12.4 Signs in Nonresidential Districts of the SZO, the Board finds that the proposal conforms to all of the requirements of subsections (a) through (h) of §12.4.

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 conserving the value of land and buildings; encouraging the most appropriate use of land throughout the City; and preserving and increasing the amenities of the municipality.

The proposal is consistent with the purpose of the NB - Neighborhood Business district, which is, “to establish and preserve areas for small-scale retail stores, services, and offices which are located in close proximity to residential areas and which do not have undesirable impacts on the surrounding neighborhoods.

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 project is compatible with the characteristics on the surrounding neighborhood.

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Josh Safdie. Upon making the above findings, Susan Fontano made a motion to approve the request for a Special Permit. Richard Rossetti 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				
	Approval is to alter an nonconforming structure under SZO 4.4.1 to make exterior changes to the building. This approval is based upon the following application materials and the plans submitted by the Applicant: <table border="1" style="margin-left: 20px;"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">12-11-2012</td> <td>Initial application submitted to the City Clerk’s Office</td> </tr> </tbody> </table> Any changes to the approved plans that are not <i>de minimis</i> must receive SPGA approval.	Date (Stamp Date)	Submission	12-11-2012	Initial application submitted to the City Clerk’s Office	BP/CO	ISD/Plng.	
Date (Stamp Date)	Submission							
12-11-2012	Initial application submitted to the City Clerk’s Office							
	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.					



Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*
Orsola Susan Fontano, *Clerk*
Richard Rossetti
Danielle Evans
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 _____

