



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA # 2013-33
Site: 158 Boston Avenue
Date of Decision: June 5, 2013
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: June 6, 2012

ZBA DECISION

Applicant Name:	158 Boston Avenue Realty Trust
Applicant Address:	3 Chandler Road, Medford, MA 02155
Property Owner Name:	158 Boston Avenue Realty Trust
Property Owner Address:	3 Chandler Road, Medford, MA 02155
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145

Legal Notice: Applicant and Owner, 158 Boston Avenue Realty Trust, seeks a Special Permit under SZO §9.13.a for five spaces of parking relief due to additional seating at an existing restaurant establishment.

<u>Zoning District/Ward:</u>	NB zone/Ward 5
<u>Zoning Approval Sought:</u>	§9.13.a
<u>Date of Application:</u>	April 8, 2013
<u>Date(s) of Public Hearing:</u>	May 15, 2013
<u>Date of Decision:</u>	May 15, 2013
<u>Vote:</u>	5-0

Appeal #ZBA 2013-33 was opened before the Zoning Board of Appeals at Somerville City Hall on May 15, 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 (1) hearing of deliberation, the Zoning Board of Appeals took a vote.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
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www.somervillema.gov

DESCRIPTION:

Applicant and Owner, 158 Boston Avenue Realty Trust, proposes to add twenty chairs of additional seating to the rear patio at an existing restaurant establishment. Consequently, this proposal then requires relief for five parking spaces.

The existing establishment, Pescatore Restaurant, currently has interior seating for up to 56 patrons, which includes eight bar seats, and no parking. The restaurant hours of operation are Tuesday through Saturday, 4-10 p.m. and Sunday, 4-9 p.m. The Applicant proposes to add a total of twenty chairs with tables to the adjacent patio located at the rear of the building. There are no interior or exterior alterations as part of this proposal.

FINDINGS FOR SPECIAL PERMIT (SZO §9.13.a):

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."

SZO standards and guidelines for Neighborhood Business districts (§6.1.4) give preference to "locating on-site, off-street parking at the rear of the lot, behind the building or below street level, providing vehicular access from either a side street or alley where possible." The current nonconforming parking situation is a pre-existing condition for this restaurant establishment. Since the building encompasses a large majority of the parcel, on-site parking is not possible due to the proximity of nearby structures and siting of the building.

A Parking Assessment from Design Consultants, Inc. notes 118 parking spaces within 500 feet of the subject property are those that would likely be used by restaurant patrons. Data collected during weekday and weekend evenings demonstrate an average of 51 available weekday evening spaces and 36 available weekend evening spaces. Design Consultants note that the existing on-street parking supply would be more than sufficient to support the proposed 20-seat restaurant expansion.

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 lessen congestion in the streets; to protect health; to secure safety from fire, panic and other dangers; to provide adequate light and air; 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 Neighborhood Business district, §6.1.4, 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."

In considering a Special Permit under §9.13 of the SZO, the SPGA may grant such a Special Permit only when consistent with the purposes set forth in Section 9.1. The request for five spaces of parking relief, due to additional



seating on the patio, does not propose to use land for the arrival, departure, or storage of motor vehicles, nor is the delivery or shipment of goods proposed to change as part of this proposal.

A Parking Assessment from Design Consultants, Inc. notes 118 parking spaces within 500 feet of the subject property are those that would likely be used by restaurant patrons. Data collected during weekday and weekend evenings demonstrate an average of 51 available weekday evening spaces and 36 available weekend evening spaces. Design Consultants note that the existing on-street parking supply would be more than sufficient to support the proposed 20-seat restaurant expansion. Based on the submitted Parking Assessment Memorandum, Traffic and Parking does not disagree with this assessment. However, the lack of providing all required off-street parking spaces under seasonal/fair weather conditions will result in a minor increase to vehicle queues and delays and a minor decrease in pedestrian safety in this area.

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 request for five spaces of parking relief due to additional seating on the patio is compatible with the site and the neighborhood. The existing patio would allow outdoor seating during weather permitting months while the proposed parking relief will encourage patrons to walk, bike or take public transportation to the restaurant. The subject property is serviced by MBTA Bus Routes 80 and 89, which provide access to the MBTA Green Line at Lechmere Station, the Red Line in Davis Square, and the Orange Line in Sullivan Square. There are no interior or exterior alterations proposed as part of this project.

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.

The proposed parking relief will encourage patrons to walk, bike or take public transportation to the restaurant. The subject property is serviced by MBTA Bus Routes 80 and 89, which provide access to the MBTA Green Line at Lechmere Station, the Red Line in Davis Square, and the Orange Line in Sullivan Square. Circulation patterns will not change as a result of this proposal.

Design Consultants note that the existing on-street parking supply would be more than sufficient to support the proposed 20-seat restaurant expansion. Based on the submitted Parking Assessment Memorandum, Traffic and Parking does not disagree with this assessment. However, the lack of providing all required off-street parking spaces under seasonal/fair weather conditions will result in a minor increase to vehicle queues and delays and a minor decrease in pedestrian safety in this area.



DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Danielle Evans, Elaine Severino, and Josh Safdie. Upon making the above findings, Orsola Susan Fontano 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	Approval is for a Special Permit for five spaces of parking relief due to additional seating at an existing restaurant establishment. 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>(April 8, 2013)</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>June 4, 2010 (May 28, 2013)</td> <td>Plot plan submitted to OSPCD</td> </tr> <tr> <td>January 8, 2013 (May 28, 2013)</td> <td>Plans submitted to OSPCD (Existing & Proposed)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	(April 8, 2013)	Initial application submitted to the City Clerk's Office	June 4, 2010 (May 28, 2013)	Plot plan submitted to OSPCD	January 8, 2013 (May 28, 2013)	Plans submitted to OSPCD (Existing & Proposed)
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January 8, 2013 (May 28, 2013)	Plans submitted to OSPCD (Existing & Proposed)											
Any changes to the approved plan that is not <i>de minimis</i> must receive SPGA approval.												
Traffic & Parking												
2	Conditions may require regulation of the number, size, design, and location of access drives or other traffic features so as to minimize hazard or inconvenience to vehicular or pedestrian traffic on public streets;	CO	Traffic & Pkg									
3	The Applicant or Owner shall purchase and deliver to Traffic and Parking a single spaced parking meter with the capacity to accept both coins and credit cards and is consistent with the City's current parking meter fleet.	CO	Traffic & Pkg									
Public Safety												
4	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP									
Final Sign-Off												
5	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/CO	Plng.									



Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*
Orsola Susan Fontano, *Clerk*
Danielle Evans
Elaine Severino
Josh Safdie (Alt.)

Attest, by the Senior Planner:

Lori Massa

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 _____

