



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
JOSEPH A. CURTATONE
MAYOR

GEORGE J. PROAKIS
EXECUTIVE DIRECTOR

PLANNING DIVISION

ZONING BOARD OF APPEALS MEMBERS

ORSOLA SUSAN FONTANO, *CHAIR*
DANIELLE EVANS, *CLERK*
ELAINE SEVERINO
JOSH SAFDIE
ANNE BROCKELMAN
DREW KANE, (*ALT.*)

Case #: ZBA 2019-102
Site: 385 Broadway
Date of Decision: October 2, 2019
Decision: *Approved with Conditions*
Date Filed with City Clerk: October 16, 2019

ZONING BOARD OF APPEALS DECISION

Site: 385 Broadway

Applicant Name: Deep Cuts Deli LLC
Applicant Address: 523 Main Street, Medford, MA 02155
Owner Name: Somerville Square LLC
Owner Address: P.O. Box 424, Winchester, MA 01890

Legal Notice: Applicant, Deep Cuts Deli LLC, and Owner, Somerville Square LLC, seek a special permit with design review under SZO §7.11.10.1.1.a to establish a restaurant and under §7.11.10.1.2.a to conduct a portion of the restaurant operations outdoors. A special permit for parking relief under §9.13 is also being sought. RC Zone. Ward 4.

<u>Zoning District/Ward:</u>	RC Zone. Ward 4.
<u>Zoning Approval Sought:</u>	SZO §7.11.10.1.1.a, §7.11.10.1.2.a, and §9.13
<u>Date of Application:</u>	August 29, 2019
<u>Date(s) of Public Hearing:</u>	October 2, 2019
<u>Date of Decision:</u>	October 2, 2019
<u>Vote:</u>	5-0

Case number ZBA 2019-102 was opened before the Zoning Board of Appeals in the Council Chambers of City Hall at 93 Highland Avenue. 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. On October 2, 2019, the Zoning Board of Appeals took a vote.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
(617) 625-6600 EXT. 2500 • TTY: (617) 666-0001 • FAX: (617) 625-0722
www.somervillema.gov

I. PROJECT DESCRIPTION

The proposal is to change the use of the commercial unit from a hair salon into a restaurant and to conduct a portion of the restaurant operations outdoors by serving within the courtyard between the residential building and courtyard. The restaurant will be a small deli-style restaurant with a small on premise beer brewing operation in the basement. The proposal will include new gooseneck lighting, a new entry door, refurbished aluminum framed windows, and new signage.

II. FINDINGS FOR SPECIAL PERMIT with DESIGN REVIEW (SZO §7.11.10.1.1.a and §7.11.10.1.2.a) and SPECIAL PERMIT (§9.13):

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."*

Article 7: Permitted Uses

- Section 7.11.10.1.1.a of the SZO, requires restaurants of less than 2,500 square feet in the RC district to obtain a special permit with design review (SPD).
- Section 7.11.10.1.2.a of the SZO, requires restaurants of less than 2,500 square feet with operations, in part or in whole, conducted outside an enclosed building in the RC district to obtain a special permit with design review (SPD).

Article 9: Off-Street Parking and Loading

SZO §9.13 allows for sites with nonconforming parking to apply for a Special Permit to modify parking requirements if the total number of spaces is six or fewer. The locus is currently nonconforming with respect to the number of required off-street parking spaces as 97 spaces are required for the entire site and 85 spaces are provided. The site includes the parking lot in the rear for the residential units. The proposal to convert the commercial space into a restaurant increases the parking requirement by 12 spaces. Since the locus does not currently have sufficient off-street parking, SZO §9.4.2 requires the proposal to only provide 50% of the additional requirement.

	<i>Existing hair salon</i>	<i>Proposed restaurant</i>
Requirement	1 space per 450 n.s.f 954/450 = 2.12	0.75 spaces per employee on the largest shift plus one per four seats 4 employees * 0.75=3 44 seats / 4 = 11
	2 spaces (rounded down from 2.12)	14 spaces
<u>12 additional required spaces * 50% = 6 spaces</u>		



The applicant is requesting parking relief from providing six additional parking spaces. The property owner is going to allocate four spaces in the garage for the proposed restaurant employees should they drive to the site.

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, and upon reaching the findings and determinations set forth in Section 5.1.4”. The Board finds that granting the requested Special Permit is consistent with the purposes of SZO §9.1 and will not cause detriment to increased traffic volumes, traffic congestion of queuing of vehicles, changes in the type of traffic, change in traffic patterns and access to the site, reduction in on-street parking, or unsafe conflicts of motor vehicles and pedestrian traffic.

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 promote 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 protect health; to secure safety from fire, panic and other dangers; to conserve the value of land and buildings; 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 RC district, which is, *"to establish and preserve a district for multi-family residential and other compatible uses which are of particular use and convenience to the residents of the district."*

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."*

Surrounding Neighborhood: The subject property is located on the north side of Broadway on the block between Main Street and Bond Street. This part of Broadway includes a mix of high density residential apartment buildings and single-story strip of commercial uses that include a take-out restaurant, a hair salon, a convenience store, a laundromat, a dry cleaner, and liquor store.

Impacts of Proposal (Design and Compatibility):

Special Permits with Design Review applications must meet the design guidelines under SZO §5.1.5. The design guidelines for business districts are as follows:

1. *Buildings should be generally of the same size and proportions as those existing in the neighborhood. This shall apply in cases of multi-family development as well as one-, two-, and three-family units. For example, if relatively small two- and three-family structures are common in a neighborhood where multi-family development is proposed, the multi-family development should be physically broken into components that, from a design perspective, are housed in buildings of similar width, depth, and height as those typically found in the neighborhood.*
2. *Use of traditional and natural materials is strongly encouraged (e.g. wood clapboard, wood shingles, brick).*



3. *Additions to existing structures should be consistent with the architecture of the existing structure in terms of window dimensions, roof lines etc.*
4. *Although additions should not clash with or be incompatible to the existing structure, it is acceptable and even desirable for the new construction to be distinguishable from the existing building, perhaps by maintenance of design elements of the original building that would otherwise be lost (e.g. false rakes, fasciae, and the like).*
5. *Where practical, new or infill building construction should share the same orientation to the street as is common in the neighborhood. When not contrary to any other zoning law, front and side yards should be of similar dimensions as those typical in the area.*
6. *Driveways should be kept to minimal width (perhaps a maximum of twelve (12) feet), and be designed so that no vehicle parked on the drive may straddle the public sidewalk in any way. Low barriers or plantings may be required to separate the parking area from the pedestrian space.*
7. *Transformers, heating and cooling systems, antennas, and the like, should be located so they are not visible from the street or should be screened.*
8. *Sites and buildings should comply with any guidelines set forth in Article 6 of this Ordinance for the specific base or overlay zoning district(s) the site is located within.*

The Board finds that the design guidelines above are not applicable to this change in use application. The proposal will enhance the aesthetics of the storefront by adding new gooseneck lighting, replacing the entry door, refurbishing the aluminum framed windows, and replacing the signage within the existing footprint. It is conditioned that the sign include individual letters and logos rather than installing a flat vinyl graphic over the existing sign.

5. Housing Impact: Will not create adverse impacts on the stock of existing affordable housing.
6. 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.

III. DECISION

Present and sitting were, Susan Fontano, Danielle Evans, Anne Brockelman, Elaine Severino, Josh Safdie, and Drew Kane. Upon making the above findings, Danielle Evans made a motion to approve the requested special permit. Elaine Severino seconded the motion. The Zoning Board of Appeals voted **5-0** to **APPROVE** the request **WITH CONDITIONS**. The following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
---	-----------	--------------------------	--------------------	-------



1	Approval is for the change in use to a restaurant with a portion conducted outdoors in an on-site courtyard. 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>August 29, 2019</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>September 17, 2019</td> <td>Plans (A1-A7)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	August 29, 2019	Initial application submitted to the City Clerk's Office	September 17, 2019	Plans (A1-A7)
	Date (Stamp Date)				Submission					
	August 29, 2019				Initial application submitted to the City Clerk's Office					
September 17, 2019	Plans (A1-A7)									
Any changes to the approved site plan or elevations/use that are not <i>de minimis</i> must receive SPGA approval.										
Pre-Construction										
2	The Applicant must contact the Engineering Department to obtain a street address prior to a building permit being issued.	BP	Eng.							
3	The proposed basement finished floor elevation shall not be less than is 1 foot above the Seasonal High Ground Water elevation. The seasonal high ground water elevation shall be determined by a Massachusetts certified soil evaluator and stated on a signed soil test pit log.	BP	Eng.							
4	The applicant must comply with the Policy for new connections to and modifications to existing connections to the municipal sewer and drainage system stormwater management and infiltration/inflow mitigation. The Applicant shall work with Engineering to meet this condition and provide the required fees/mitigation.	BP	Eng.							
Construction Impacts										
5	The applicant shall post the name and phone number of the general contractor at the site entrance where it is visible to people passing by.	During Construction	Plng.							
6	The Applicant shall at their expense replace any existing equipment (including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheel chair ramps, granite curbing, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity. All new sidewalks and driveways must be constructed to DPW standard.	CO	DPW							
7	All construction materials and equipment must be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P							
8	For the convenience of and respect for the neighborhood, during the construction phase, construction work shall not begin prior to 7:30am and shall finish no later than 5pm Monday through Friday. There shall be no construction or construction-related work performed on weekends or holidays.	During Construction	ISD							
Miscellaneous										



9	The property owner must provide the restaurant space with four parking spaces in the garage.	CO/ Perpetual	Plng.	
10	Electrical conduits on the exterior facades of buildings shall be painted to match the wall material to which they are attached. Conduits are not allowed on the front of any structure.	CO	Plng.	
11	Garbage and recycling locations shall be clearly indicated on site plans. Storage areas shall be inside of the structure or shall be fully screened from view from both the public way and abutters by an appropriate material reviewed and approved by staff. The location shall not impact any parking, landscaping, or egress.	BP	Plng.	
12	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				
13	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
14	Per Somerville fire safety regulations, grills, barbecues, chimineas and the like are NOT permitted on decks or porches.	Perpetual	FP/ISD	
Signage				
15	Signage must include individual letters and logos. A plan showing such must be reviewed and approval by Planning Staff prior to the issuance of a building permit.	BP/CO	Plng.	
Final Sign-Off				
16	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.	
Miscellaneous				
17	The Applicant will provide updated plans to Planning Staff prior to the issuance of a building permit that shows handicapped accessibility compliance that leads from inside to the rear patio.	BP	Plng.	



Attest, by the Zoning Board of Appeals:

Susan Fontano, *Chair*
Danielle Evans, *Clerk*
Josh Safdie
Anne Brockelman
Elaine Severino
Drew Kane (Alt.)

Attest, by Planner:

Alexander Mello

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 _____

