



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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DREW KANE (ALT.)

Case #: ZBA 2019-10
Site: 711-713 Broadway
Date of Decision: May 15, 2019
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: May 23, 2019.

ZBA DECISION

Site: 711-713 Broadway
Applicant Name: Keith Schubert
Applicant Address: 44 Country Club Road, Stoneham, MA
Owner Name: Keith Schubert
Owner Address: 11 Apex Street, Quincy, MA 02169
Ward Councilor: Lance Davis

Legal Notice: Applicant, Keith Schubert, and Owner, Ed Pignone, seek Special Permits under Article 4 of the SZO to expand the GFA of the existing restaurant space, increase the seating and dining area. Parking relief under Article 9 of the SZO. NB zone. Ward 5.*

***This property is located in Ward 6.*

<u>Zoning District/Ward:</u>	NB Zone. Ward 6.
<u>Zoning Approval Sought:</u>	SZO Article 4
<u>Date of Application:</u>	March 1, 2019
<u>Date(s) of Public Hearing:</u>	May 1, 2019 and May 15, 2019
<u>Date of Decision:</u>	May 15, 2019
<u>Vote:</u>	5-0

Case # ZBA 2019-10 was opened before the Zoning Board of Appeals in the City Council Chambers at Somerville City Hall on May 1, 2019. 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 May 15, 2019, the Zoning Board of Appeals took a vote.



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I. DESCRIPTION:

The Applicant proposes expanding operations into the left-abutting storefront that was formerly occupied by a gift shop. The proposal includes two new single-occupancy bathrooms, one of which will be handicapped-accessible. The dining and kitchen areas will be expanded and a bar added.

II. FINDINGS FOR REVISION TO A SPECIAL PERMIT (Article 9):

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §4.4.1 of the SZO. This section of the report goes through §4.4.1 in detail.

1. Information Supplied:

The Board finds that the information provided by the Applicant conforms to the requirements of §5.2.3 of the SZO and allows for a comprehensive analysis of the project. While for other projects, a certified plot plan would be needed, the Board does not find that it is necessary in this case: all of the work being undertaken is internal to the building and there is no outward or upward expansion of the building footprint. Further, the NB zone in which this commercial property is located, there is no lot area minimum required under the SZO. All of the measurements needed for zoning analysis must be taken by the architect of record and are not the type of information that would appear on a plot plan.

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."

Sections 9.4.1, 9.5, and 9.13

§9.4.1 of the SZO addresses parking requirements for properties that are already non-conforming with regard to parking and, though they are being altered, will have no change in floor area. This is the case with the Taco Party proposal. Therefore, the zoning review for parking relief applies only to the area into which the business is expanding – the former gift shop. Under the retail use, the gift shop required two (2) spaces of off-site parking which it was unable to provide. The gift shop was, therefore, non-conforming with regard to parking.

The former gift shop contains 917 square feet of floor area. 30 seats will be provided in this area between the bar and dining room. Roughly 6 employees will be working in this portion of the business. §9.5 of the SZO requires there to be .75 parking spaces for every employee and 1 parking space for every 4 seats. Regarding this proposal, those numbers equate to 13 parking spaces:

- $6 \times .75 = 4.5$ employee parking spaces (rounded to 5.0)
- $30 / 4 = 7.5$ parking spaces for 30 seats (rounded to 8.0)

§9.4.1d(2) of the SZO states that if the new use of a space requires two (2) or more additional parking spaces than the existing previous use, then only 50% of this additional parking requirement shall be provided under that new use.



In the case of Taco Party, the new restaurant use of the former gift shop space requires 11 additional parking spaces:

13 new restaurant spaces – 2 gift shop spaces = 11 spaces

This number of 11 spaces may then be reduced by 50% such that only 5.5 spaces of parking relief are required.

§9.13 of the SZO allows for up to 6 parking spaces of relief to be provided to an applicant via Special Permit. Therefore, the case of Taco Party qualifies for 5.5 spaces of relief under the Special Permit category.

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 Board finds that the proposal is consistent with the purposes of the NB zone which are “[t]o 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.”

There is no part of this proposal that the Board finds to be inconsistent with the purposes of the NB district. This proposal allows the Applicant to expand a local business along a busy pedestrian and vehicular corridor in the City. These types of businesses are additive to the culture of the City and provide the surrounding neighborhoods and all City residents with a service convenient to City living.

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 proposed use is the expansion of an allowed restaurant use in the NB district. The Board has included a condition that requires Planning Division approval of location, size, design, and style of all sign band signage to be used for this business.

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

The proposal will not add to the existing stock of affordable housing.

6. SomerVision:

The proposal allows for the expansion of a local business and provides the surrounding neighborhoods with a service convenient to City living.

III.DECISION:

Present and sitting were Members Orsola Susan Fontano, Elaine Severino, Josh Safdie, Drew Kane and Anne Brockelman. Upon making the above findings, Susan Fontano made a motion to approve the request for Special Permits. Elaine Severino seconded the motion. The Zoning Board of Appeals voted **5-0 to CONDITIONALLY APPROVE** the request for **SPECAIL PERMIT**. The following conditions are attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	Approval is for 5.5 spaces of parking relief.	BP/CO	ISD/PIng.							
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>March 1, 2019</td> <td>Application submitted to City Clerk's office.</td> </tr> <tr> <td>May 13, 2019</td> <td>Updated plans submitted to OSPCD</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	March 1, 2019	Application submitted to City Clerk's office.	May 13, 2019	Updated plans submitted to OSPCD
	Date (Stamp Date)				Submission					
March 1, 2019	Application submitted to City Clerk's office.									
May 13, 2019	Updated plans submitted to OSPCD									
<p style="color: red;">Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive SPGA approval. Whether or not a change is <i>de minimis</i> in nature must be determined by the Planning Office.</p>										
Engineering										
2	The Applicant shall present their plans to Engineering for review.	BP	Engineering/ISD							
Design										
3	All venting and piping needed as a result of this project shall be painted or wrapped to match the color of the portion of the house from which they protrude. No venting or piping shall evacuate over the public way nor protrude from the Broadway façade of the building.	CO	ISD/PIng							
Construction Impacts										
4	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 shall be constructed to DPW standards.	CO	DPW							
5	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. Note that dumpsters require a permit from the City.	During Construction	T&P/ISD							
6	The name(s) and contact information of all entities working on the site shall be posted in an area easily-visible from the public way for the passing public to read.	During Construction	ISD							



7	Construction shall be limited to M-F 7:30am – 5:00pm. No weekend construction or construction-related work shall occur.	During Construction	ISD	
Public Safety				
8	The Applicant or Owner shall meet the Fire Prevention Bureau’s requirements.	CO	FP	
Site				
9	Signage for the Taco Party business shall be updated. Signage shall first be submitted to Planning Staff for their review and approval prior to the issuance of a CO. No internally-lit signs shall be approved. All sign dimensions, location, style, color, shall be included at the time of submission to Planning Staff.	CO	ISD/Plng	
Final Sign-Off				
10	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	ISD/Plng.	



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Elaine Severino, *Acting as Clerk*
Josh Safdie
Anne Brockelman
Drew Kane (Alt.)

Attest, by the Administrative Assistant:

Monique Baldwin

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 _____

