



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2019-99
Site: 219-221 Elm Street
Date of Decision: October 2, 2019
Decision: *Approved with Conditions*
Date Filed with City Clerk: October 16, 2019

ZONING BOARD OF APPEALS DECISION

Site: 219-221 Elm St, a/k/a 387-391 Summer St and 217 Elm St, a/k/a 376 Summer St

Applicant Name: Painted Burro, Inc.
Applicant Address: 187 Elm Street, Somerville, MA 02144
Property Owner Name: Laverty Family Trust
Property Owner Address: 255 Bent Street, Cambridge, MA 02141
Agent Name: Adam Dash, Esq.
Agent Address: 48 Grove Street, Suite 304, Somerville, MA 02144

Legal Notice: Applicant, Painted Burro, Inc., and Owner, Laverty Family Trust, seeks a Variance under SZO §5.5 and Article 9 for parking relief to expand the number of seats in the restaurant from 110 to 142. CBD Zone. Ward 6.

<u>Zoning District/Ward:</u>	CBD Zone. Ward 6.
<u>Zoning Approval Sought:</u>	SZO §5.5, Article 9
<u>Date of Application:</u>	August 28, 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 2019-99 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
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I. PROJECT DESCRIPTION

The proposal is to reconfigure the seating plan within the restaurant that will result in 142 total seats. The proposal to increase the number of seats by 32 requires parking relief as the additional seats increase the parking requirement by eight spaces.

II. FINDINGS FOR VARIANCE (§5.5 and Article 9)

A Variance (§5.5) is sought for parking relief of 8 spaces.

<i>Existing 110 seat restaurant</i>	<i>Proposed 142 seat restaurant</i>
0.75 spaces per employee on the largest shift plus one per four seats	0.75 spaces per employee on the largest shift plus one per four seats
35 employees * 0.75 = 26.25	35 employees * 0.75 = 26.25
110 seats / 4 = 27.5	142 seats / 4 = 35.5
54 spaces (rounded up from 53.75)	62 spaces (rounded up from 61.75)

In order to grant a variance the Board must make certain findings and determinations as outlined in §5.5.3 of the SZO.

1. *There are “special circumstances relating to soil conditions, shape or topography of land or structures which especially affect such land or structures but not affecting generally the zoning district in which it is located, causing substantial hardship, financial or otherwise.”*

Applicant’s response: The property has several business establishments and a small parking area. No additional parking can be obtained. The lot is oddly shaped, such that no new parking can be added. Applicant is a popular restaurant with people having to wait for seating at many times. Applicant would like to make better use of its interior space and add seating to address that consumer demand, however, business growth is hampered by the inability to increase the available parking. This is a hardship and stifles the ability for the business to grow. Had the lot been more regularly shaped, then additional parking could be created, but that is not the case. Davis Square has a Red Line MBTA station and ample bus service. The customers waiting for a table at Applicant's restaurant are already in Davis Square. All Applicant wishes to do is to add seats to accommodate them.

Board response: The Board concurs that the shape and size of the lot prevents the option of adding additional parking spaces on-site.

2. *“The variance requested is the minimum variance that will grant reasonable relief to the owner, and is necessary for a reasonable use of the building or land.”*

Applicant’s response: This is minimum increase in seating to allow Applicant to serve its customers and reasonably use its space. No other changes are being made.

Board response: The Board finds that the request is the minimum variance that will grant reasonable relief to the owner and is necessary for a reasonable use of the building as a restaurant.



3. “The granting of the variance would be in harmony with the general purpose and intent of this Ordinance and would not be injurious to the neighborhood or otherwise detrimental to the public welfare.”

Applicant’s response: The proposal is simply to expand the seating in the existing and popular Painted Burro Mexican restaurant. As Painted Burro is currently part of the neighborhood, its expansion is in keeping with the character of the neighborhood. A parking variance was granted in 1990 to convert these storefronts into restaurant spaces in ZBA case number 1990-85, and Painted Burro was granted special permits in 2012 to expand into the adjacent former Spike’s Junkyard Dogs space in ZBA case number 2012-83. No parking relief was required for the 2012 expansion in square footage. The building dimensions, square footage and exterior will not change.

Board response: The Board finds that the proposal will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public health. There will be no changes to the outside or operations of the restaurant and adding more seats will decrease the impacts that queuing has onto the sidewalk.

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 addition of seats to the existing restaurant. 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 28, 2019</td> <td>Initial application submitted to the City Clerk’s Office</td> </tr> <tr> <td>August 19, 2019</td> <td>Existing and Proposed floor plans</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	August 28, 2019	Initial application submitted to the City Clerk’s Office	August 19, 2019	Existing and Proposed floor plans
	Date (Stamp Date)				Submission					
August 28, 2019	Initial application submitted to the City Clerk’s Office									
August 19, 2019	Existing and Proposed floor plans									
Any changes to the approved seating plans that are not <i>de minimis</i> must receive SPGA approval.										
Final Sign-Off										
2	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:

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 _____

