



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

GEORGE J. PROAKIS, AICP  
EXECUTIVE DIRECTOR

PLANNING DIVISION

**ZONING BOARD OF APPEALS MEMBERS**

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**Case #:** ZBA 2019-123  
**Site:** 393 Highland Avenue  
**Date of Decision:** November 20, 2019  
**Decision:** *Petition Approved with Conditions*  
**Date Filed with City Clerk:** November 27, 2019

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**ZBA DECISION**

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**Applicant & Owner Name:** 393 Highland Avenue LLC  
**Applicant & Owner Address:** 5 Claremon Street #1 Somerville, MA 02144  
**Agent Name:** Nicholas Iannuzzi  
**Agent Address:** 189 Wells Avenue Suite 200 Newton, MA 02459

**Legal Notice:** Applicant and Owner, 393 Highland Avenue, LLC, seeks a SPSR under §7.11 to convert from retail to office use greater than 10,000 SF, a SPD to convert to office uses from 5,000-9,999 SF and a SP under §4.4.1 to make alterations to a non-conforming structure in order to update and add an entryway. CBD zone. Ward 6

**Zoning District/Ward:** CBD/Ward 6  
**Zoning Approval Sought:** SPSR & SPD §7.11, SP §4.4.1  
**Date of Application:** November 1, 2019  
**Date of Public Hearing:** November 20, 2019  
**Date of Decision:** November 20, 2019  
**Vote:** 5-0

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Appeal #ZBA 2019-123 was opened before the Zoning Board of Appeals at Somerville City Hall on November 20, 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 November 20, 2019, the Zoning Board of Appeals took a vote.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143  
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[www.somervillema.gov](http://www.somervillema.gov)

**DESCRIPTION:**

The proposal is to convert the building from a retail to an office use and to make minor alterations to the façade for more natural daylight and visibility into/out of the building.

**FINDINGS FOR SPECIAL PERMIT, SPECIAL PERMIT WITH SITE REVIEW, AND SPECIAL PERMIT WITH DESIGN REVIEW (SZO §7.11 & SZO §4.4.1):**

In order to grant a special permit with site plan review, the SPGA must make certain findings and determinations as outlined in §5.2.5 of the SZO. This section of the report goes through §5.2.5 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.

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 with site plan review.”*

The Applicant would like the flexibility to seek one or two tenants to fill the space. The differences in square footages actually requires two types of zoning review. A SPSR is required for office tenants greater than 10,000 SF in the CBD zoning district under §7.11. A SPD is required for office tenants between 5,000-9,999 SF in the CBD district under §7.11.

A SP is required for building alterations because it is a nonconforming structure. Several site considerations like ground coverage and landscaped area do not comply. The Applicant proposes a new entrance on the northwest corner. This alteration to a nonconforming structure requires the Applicant to obtain special permits under §4.4.1 of the Somerville Zoning Ordinance (SZO). There are some by-right changes as well including re-opening windows that are currently bricked-in.

Section 4.4.1 states that “[l]awfully existing nonconforming structures other than one- and two-family dwellings may be enlarged, extended, renovated or altered only by special permit authorized by the SPGA in accordance with the procedures of Article 5.” In considering a special permit under §4.4 of the SZO, The Board finds that the alterations and use proposed would not be substantially more detrimental to the neighborhood than the existing use and structure.

The applicant has met with staff about the intentions of their site. They are seeking an interim office use for up to ten years to allow for the City to have time to complete its neighborhood planning process and engage specifically on the potential disposition of the City parking lot to create a commercial redevelopment site.

This proposal aligns with the neighborhood plan draft and the requirements of the zoning. There are no negative impacts anticipated from the change of use. The alterations to the structure are minimal.

All developments within the CBD district that require a special permit with design review or special permit with site plan review should comply with the following guidelines to the highest degree practicable.



- a. Across the primary street edge, the building should complete the streetwall.

This building completes the streetwall and is opening up more storefront windows along the street edge.

- b. At the street level, provide continuous storefronts or pedestrian arcade which shall house either retail occupancies, or service occupancies suitably designed for present or future retail use.

This is a conversion from retail to office uses with the idea that this is interim use prior to redevelopment of the site. The re-opening of windows and storefronts will make the building more pedestrian friendly.

The following guidelines are not applicable to the proposal:

- c. Massing of the building should include articulation which will blend the building in with the surrounding district. At the fourth floor, a minimum five-foot deep setback is recommended.
- d. Locate on-site, off-street parking either at the rear of the lot behind the building or below street level; parking should not abut the street edge of the parcel.
- e. Provide access to on-site, off-street parking from either a side street or alley. Where this is not possible, provide vehicular access through an opening in the street level facade of the building of a maximum twenty-five (25) feet in width.

3. Purpose of District: *The Applicant has to ensure that the project "is consistent with the intent of the specific zoning district as specified in Article 6".*

The Board finds that the proposal is consistent with the purpose of the district, which is, "To preserve and enhance central business areas for retail, business services, housing, and office uses and to promote a strong pedestrian character and scale in those areas. A primary goal for the districts is to provide environments that are safe for and conducive to a high volume of pedestrian traffic, with a strong connection to retail and pedestrian accessible street level uses."

4. Site and Area Compatibility: *The Applicant has to ensure that the project "(i)s designed in a manner that is compatible with the existing natural features of the site and is compatible with the characteristics of the surrounding area, and that the scale, massing and detailing of the buildings are compatible with those prevalent in the surrounding area".*

The surrounding neighborhood is the start of the Davis Square business district. Typical in Somerville squares is the transition quickly from peak roofed houses to houses with shopfronts and commercial buildings, this is no different. The building is unique since it's visible from all sides – residences on Ellington Road, Highland Avenue, the city parking lot, and users of the Community Path.

The design will increase the visibility into the building and improve the façade more into character with its original design. Office uses are compatible with the Davis Square business district.

Special Permits with Design Review and Special Permit with Site Plan Review applications must meet the design guidelines under SZO §5.1.5/5.2.4. The Board finds that the design guidelines for business districts do not apply in this case since the application is for a change of use and there are only minor changes to the existing building instead of redevelopment.



5. Functional Design: *The project must meet “accepted standards and criteria for the functional design of facilities, structures, and site construction.”*

The Board finds that this proposal has a functional design.

6. Impact on Public Systems: *The project will “not create adverse impacts on the public services and facilities serving the development, such as the sanitary sewer system, the storm drainage system, the public water supply, the recreational system, the street system for vehicular traffic, and the sidewalks and footpaths for pedestrian traffic.”*

The Board finds that the change of use will not have an impact on public systems.

7. 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.”*

The Board finds that the proposal will not have any adverse environmental impacts.

8. Consistency with Purposes: *“Is consistent with: 1) the purposes of this Ordinance, particularly those set forth in Article 1 and Article 5; and 2) the purposes, provisions, and specific objectives applicable to the requested special permit with site plan review which may be set forth elsewhere in this Ordinance, such as, but not limited to, those at the beginning of the various sections.”*

The Board finds that the proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to provide for and maintain the uniquely integrated structure of uses in the City; to lessen congestion in the streets; to provide adequate light and air; to encourage the most appropriate use of land throughout the City.

9. Preservation of Landform and Open Space: *The Applicant has to ensure that “the existing land form is preserved in its natural state, insofar as practicable, by minimizing grading and the erosion or stripping of steep slopes, and by maintaining man-made features that enhance the land form, such as stone walls, with minimal alteration or disruption. In addition, all open spaces should be designed and planted to enhance the attractiveness of the neighborhood. Whenever possible, the development parcel should be laid out so that some of the landscaped areas are visible to the neighborhood.”*

The land is not being disturbed with this proposal.

10. Relation of Buildings to Environment: *The Applicant must ensure that “buildings are: 1) located harmoniously with the land form, vegetation and other natural features of the site; 2) compatible in scale, design and use with those buildings and designs which are visually related to the development site; 3) effectively located for solar and wind orientation for energy conservation; and 4) advantageously located for views from the building while minimizing the intrusion on views from other buildings.”*

The Board finds that the proposal being an existing building with just a change of use, the building is in relation to the surrounding environment.



11. Stormwater Drainage: *The Applicant must demonstrate that “special attention has been given to proper site surface drainage so that removal of surface waters will not adversely affect neighboring properties or the public storm drainage system. Storm water shall be removed from all roofs, canopies, and powered area, and routed through a well-engineered system designed with appropriate storm water management techniques. Skimming devices, oil, and grease traps, and similar facilities at the collection or discharge points for paved surface runoff should be used, to retain oils, greases, and particles. Surface water on all paved areas shall be collected and/or routed so that it will not obstruct the flow of vehicular or pedestrian traffic and will not create puddles in the paved area. In larger developments, where practical, the routing of runoff through sheet flow, swales or other means increasing filtration and percolation is strongly encouraged, as is use of retention or detention ponds. In instances of below grade parking (such as garages) or low lying areas prone to flooding, installation of pumps or other devices to prevent backflow through drains or catch basins may be required.”*

The Board finds that there will be no change to stormwater drainage.

12. Historic or Architectural Significance: *The project must be designed “with respect to Somerville’s heritage, any action detrimental to historic structures and their architectural elements shall be discouraged insofar as is practicable, whether those structures exist on the development parcel or on adjacent properties. If there is any removal, substantial alteration or other action detrimental to buildings of historic or architectural significance, these should be minimized and new uses or the erection of new buildings should be compatible with the buildings or places of historic or architectural significance on the development parcel or on adjacent properties.”*

The Board finds that the building, with new windows openings and another entrance, will be more in character with its historical context and that of Somerville’s.

13. Enhancement of Appearance: *The Applicant must demonstrate that “the natural character and appearance of the City is enhanced. Awareness of the existence of a development, particularly a non residential development or a higher density residential development, should be minimized by screening views of the development from nearby streets, residential neighborhoods of City property by the effective use of existing land forms, or alteration thereto, such as berms, and by existing vegetation or supplemental planting.”*

The Board finds that the building will enhance the natural character and appearance of the City.

14. Lighting: *With respect to lighting, the Applicant must ensure that “all exterior spaces and interior public and semi-public spaces shall be adequately lit and designed as much as possible to allow for surveillance by neighbors and passersby.”*

There will be no change to exterior lighting.

15. Emergency Access: *The Applicant must ensure that “there is easy access to buildings, and the grounds adjoining them, for operations by fire, police, medical and other emergency personnel and equipment.”*

The project will comply with all local codes.



16. Location of Access: *The Applicant must ensure that “the location of intersections of access drives with the City arterial or collector streets minimizes traffic congestion.”*

There will be no change to access.

17. Utility Service: *The Applicant must ensure that “electric, telephone, cable TV and other such lines and equipment are placed underground from the source or connection, or are effectively screened from public view.”*

There will be no change to utility services.

18. Prevention of Adverse Impacts: *The Applicant must demonstrate that “provisions have been made to prevent or minimize any detrimental effect on adjoining premises, and the general neighborhood, including, (1) minimizing any adverse impact from new hard surface ground cover, or machinery which emits heat, vapor, light or fumes; and (2) preventing adverse impacts to light, air and noise, wind and temperature levels in the immediate vicinity of the proposed development.”*

The Board finds that the change of use will not create adverse impacts on the surround neighborhood including ground cover, machinery, or impacts on light, air, or noise.

19. Signage: *The Applicant must ensure that “the size, location, design, color, texture, lighting and materials of all permanent signs and outdoor advertising structures or features shall reflect the scale and character of the proposed buildings.”*

The Board has imposed a condition for Staff to review and approve all signage once tenants are secured.

20. Screening of Service Facilities: *The Applicant must ensure that “exposed transformers and other machinery, storage, service and truck loading areas, dumpsters, utility buildings, and similar structures shall be effectively screened by plantings or other screening methods so that they are not directly visible from either the proposed development or the surrounding properties.”*

No new service facilities are proposed.

21. Screening of Parking:

The parking will not change.

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

The Board finds that there will be no adverse impacts on housing.

22. 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, transform key opportunity areas, preserve and expand an integrated, balanced mix of safe, affordable and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups; and, make Somerville a regional employment center with a mix of diverse and high-quality jobs. The areas in the SomerVision map that are designated as enhance and transform should most significantly contribute towards the SomerVision goals that are*





*outlined in the table below. The areas marked as conserve are not expected to greatly increase the figures in the table since these areas are not intended for large scale change.*

One of the goals of the Davis Square Neighborhood Plan draft is to increase the availability of jobs within the Square. This not only gives people an opportunity to work near where they live but also supports local business with an increase in daytime foot traffic. The Board finds that a change of use from retail to commercial will increase the number of jobs. This change of use is an interim plan that would allow the city to complete the neighborhood plan and engage on the potential disposition of the parking lot next to the site.

23. Impact on Affordable Housing: *In conjunction with its decision to grant or deny a special permit for a structure of four or more units of housing, the SPGA shall make a finding and determination as to how implementation of the project would increase, decrease, or leave unchanged the number of units of rental and home ownership housing that are affordable to households with low or moderate incomes, as defined by HUD, for different sized households and units.*

This proposal will not have an impact on affordable housing.

**DECISION:**

Present and sitting were Members Orsola Susan Fontano, Danielle Evans, Anne Brockelman, Elaine Severino, Josh Safdie, and Drew Kane. Upon making the above findings, Josh Safdie 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	<p>Approval is for an office use over 10,000 SF, office uses between 5,000-9,999 SF, and alterations to a nonconforming structure. This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>November 1, 2019</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>November 1, 2019</td> <td>Plans submitted to OSPCD (T-1 Title Sheet, EC-1 – Existing Floor Plans, EC-2 – Existing Elevations, EC-3 – Existing Elevations, EC-4 – Existing Sections, A-1 – Proposed Ground Floor Plan, A-2 – Basement Plan, A-3 – Elevations, A-4 – Elevations, A-5 – Photos, A-6 - Photos )</td> </tr> <tr> <td>April 24, 2008</td> <td>Plans submitted to OSPCD (1 - Survey)</td> </tr> </tbody> </table> <p>Any changes to the approved plans, elevations, and use that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	November 1, 2019	Initial application submitted to the City Clerk's Office	November 1, 2019	Plans submitted to OSPCD (T-1 Title Sheet, EC-1 – Existing Floor Plans, EC-2 – Existing Elevations, EC-3 – Existing Elevations, EC-4 – Existing Sections, A-1 – Proposed Ground Floor Plan, A-2 – Basement Plan, A-3 – Elevations, A-4 – Elevations, A-5 – Photos, A-6 - Photos )	April 24, 2008	Plans submitted to OSPCD (1 - Survey)	CO / BP	ISD/PIng.	
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April 24, 2008	Plans submitted to OSPCD (1 - Survey)											
<b>Pre-Construction</b>												
2	<p>This SP, SPD, and SPSR approval:</p> <ul style="list-style-type: none"> <li>a. Is granted only to the applicant and is not transferable.</li> <li>b. Shall expire ten (10) years after the date of the clerk's date-stamped zoning decision.</li> </ul> <p>The Applicant and Owner shall, prior to occupancy of the building, sign and record a covenant with the City that outlines and specifies the terms of this condition.</p>	Cont./BP	ISD/PIng									
3	<p>The Applicant must contact the Engineering Department to coordinate the timeline for cutting or opening the street and/or sidewalk for utility connections or other construction. There is a moratorium on opening streets from November 1st to April 1st and there is a list of streets that have additional opening restrictions.</p>	BP	Eng									
<b>Construction Impacts</b>												





4	The Applicant shall at his 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	
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.	During Construction	The Parking Office	
<b>Site</b>				
6	All new sidewalks will be installed by the Applicant in accordance with the specifications of the Highway Superintendent.	CO	Plng.	
7	The Applicant will work with staff on a solution for long-term bike parking for future tenants of the building.	CO	Plng.	
<b>Miscellaneous</b>				
8	The Applicant shall work with the Somerville Arts Council to create a mural on the west façade facing the city parking lot/Grove Street.	CO	Plng.	
9	The Applicant will work with the MBTA and the City on a curb ramp up onto the sidewalk to achieve an accessible rear entrance.	BP	Plng.	
10	The Applicant, 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	
11	Any changes to existing garbage and recycling procedures shall be reviewed and approved by staff. Owner/Applicant is required to hire a private company to remove trash and recycling on a regular basis.	CO	Plng	
<b>Public Safety</b>				
12	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
13	To the extent possible, all exterior lighting must be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	Plng.	
<b>Signage</b>				
14	All signage shall be reviewed and approved by staff. Suggested types include blade signs, wall sign, suspended sign, and window signs.	CO/Cont.	Plng.	
15	Windows shall not be blocked by paper or film.	CO/Cont.	Plng.	
<b>Final Sign-Off</b>				



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	PIng.	
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Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*  
Danielle Evans, *Clerk*  
Anne Brockelman  
Elaine Severino  
Josh Safdie  
Drew Kane, *Alternate*

Attest, by the Senior Planner:

\_\_\_\_\_   
Melissa A. Woods

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 \_\_\_\_\_

