



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

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JOSH SAFDIE (ALT.)

Case #: ZBA # 2012-86
Site: 862 Broadway
Date of Decision: November 7, 2012
Decision: Petition Approved with Conditions
Date Filed with City Clerk: November 16, 2012

ZBA DECISION

Applicant Name:	Amber Lee
Applicant Address:	26 Glenwood Street, #2, Somerville, MA 02145
Property Owner Name:	Charles Kostopoulos, Beckate, LLC
Property Owner Address:	51 Fairfield Street, #2, Cambridge, MA 02140
Agent Name:	N/A

Legal Notice: Applicant, Amber Lee, and Owner, Charles Kostopoulos, seek a Special Permit under SZO §4.5.1 to change the nonconforming use from a message therapy medical office to a personal training studio and a Special Permit under SZO §9.13.a for relief from parking requirements.

<u>Zoning District/Ward:</u>	RB zone/Ward 7
<u>Zoning Approval Sought:</u>	§4.5.1 & §9.13.1a
<u>Date of Application:</u>	October 4, 2012
<u>Date(s) of Public Hearing:</u>	November 7, 2012
<u>Date of Decision:</u>	November 7, 2012
<u>Vote:</u>	5-0

Appeal #ZBA 2012-86 was opened before the Zoning Board of Appeals at Somerville City Hall on November 7, 2012. 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 hearing of deliberation, the Zoning Board of Appeals took a vote.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
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DESCRIPTION:

The Applicant, Amber Lee, proposes to change the use of the subject commercial space from a message therapy medical office to a personal training studio. The Applicant does not propose to change the interior or exterior of the space, other than modifying the signage above the door. The signage will be consistent with other signage on the building and consist of gold lettering that forms an arch.

Currently, there is no on-site parking for this building and the Applicant proposes no changes to the present parking situation. The surrounding neighborhood is permitted parking and the main streets that circle the rotary have metered parking. The subject commercial space has had several previous uses and the parking situation has remained consistent. The residential zone of this parcel requires Special Permit approval to change the use of these commercial spaces.

FINDINGS FOR SPECIAL PERMIT (SZO §4.5.1 & §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."

In considering a Special Permit under §4.5 of the SZO, the Board finds that the use proposed would not be substantially more detrimental to the neighborhood than the existing use. The new use, a personal training studio, is a unique amenity to incorporate into the residential Powder House neighborhood. Locating the proposed use in a residential neighborhood, which is also accessible by public transit, encourages potential users to walk. As the space is approximately 500 net square feet, no more than four students and one trainer will occupy the space at one time.

In considering a Special Permit under §9.13 of the SZO, the Applicant must be able to demonstrate that granting the requested Special Permit would not cause detriment to the surrounding neighborhood through any of the criteria as set forth under SZO §9.13, which are as follows:

- 1) Increase in traffic volumes;
- 2) Increased traffic congestion or queuing of vehicles;
- 3) Change in the type(s) of traffic;
- 4) Change in traffic patterns and access to the site;
- 5) Reduction in on-street parking; or
- 6) Unsafe conflict of motor vehicle and pedestrian traffic.

The Department of Traffic and Parking has requested a Traffic Memorandum for the proposed space of relief to more clearly understand how this will affect the parking situation for Powder House Circle and the surrounding neighborhood. This is a unique neighborhood amenity that will likely be most often utilized by residents of the surrounding neighborhood who could walk or bike to the location. However, as the requested use is for one-on-one and small group training, no more than five people will occupy the space at one time. Additionally, the surrounding neighborhood is permitted parking while the main streets that circle the rotary have metered parking. Therefore, the on-street parking situation as a result of this proposal will likely be either minimally impacted or not at all.

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 protect health; 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 Residence B district, §6.1.2, which is, “To establish and preserve medium density neighborhoods of one-, two- and three-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts.”

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, which establishes standards ensuring the availability and safe use of parking areas within the City. The proposed nonconforming use of this commercial space will likely have either no impact or a minimal impact on the parking situation of the surrounding residential neighborhood since the surrounding area is permitted parking and the main streets that intersect at the Circle have metered parking.

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 nonconforming use of the commercial space at 862 Broadway is compatible with the characteristics of the built and unbuilt surrounding area, including land uses. The new use, a personal training studio, is a unique service which will contribute to the existing amenities that serve the surrounding residential neighborhood. There will not be modifications made to the interior or exterior of the space, other than signage. While the Applicant does request relief from providing one space of parking relief, the proposed use of this commercial space will not have more than five occupants at one time.

5. Vehicular and pedestrian circulation: The circulation patterns for motor vehicles and pedestrians which would result from the proposed use will not result in conditions that create traffic congestion or the potential for traffic accidents on the site or in the surrounding area.

Although the Department of Traffic and Parking has requested a Traffic Memorandum for the proposed parking relief, the surrounding neighborhood is permitted parking only and the proposed space would not have more than 5 occupants at any given time.



DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Josh Safdie. Upon making the above findings, Susan Fontano made a motion to approve the request for a Special Permit. Richard Rossetti 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 under §4.5.1 to change the nonconforming use from a message therapy medical office to a personal training studio and a Special Permit under SZO §9.13.a for relief from parking requirements. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/PIng.											
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>(October 4, 2012)</td> <td>Initial application submitted to the City Clerk’s Office</td> </tr> <tr> <td>April 22, 2010 (October 25, 2012)</td> <td>Mortgage Inspection Plan submitted to OSPCD</td> </tr> <tr> <td>April 22, 2010 (October 25, 2012)</td> <td>Signage plan submitted to OSPCD</td> </tr> <tr> <td>(October ?25, 2012)</td> <td>Floor plan submitted to OSPCD</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	(October 4, 2012)	Initial application submitted to the City Clerk’s Office	April 22, 2010 (October 25, 2012)	Mortgage Inspection Plan submitted to OSPCD	April 22, 2010 (October 25, 2012)	Signage plan submitted to OSPCD	(October ?25, 2012)	Floor plan submitted to OSPCD
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Any changes to the approved use that are not <i>de minimis</i> must receive SPGA approval.														
2	The Applicant or Owner shall meet the Fire Prevention Bureau’s requirements.	CO	FP											
3	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.											



Attest, by the Zoning Board of Appeals:

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

Attest, by the Administrative Assistant:

Dawn M. Pereira

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 _____

