



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

PLANNING DIVISION

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**Case #: ZBA # 2011-94**  
**Site: 89 Holland Street**  
**Date of Decision: March 14, 2012**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: March 15, 2012**

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**ZBA DECISION**

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<b>Applicant Name:</b>	FFDJ, LLC
<b>Applicant Address:</b>	81 Holland Street, Somerville, MA 02144
<b>Property Owner Name:</b>	Kennedy Realty Trust
<b>Property Owner Address:</b>	95 Holland Street, Somerville, MA 02144
<b>Agent Name:</b>	Richard G. DiGirolamo, Esq.
<b>Agent Address:</b>	424 Broadway, Somerville, MA 02145

Legal Notice: Applicant FFDJ, LLC and Owner Kennedy Realty Trust, seek a Variance under SZO §5.5 from the parking requirements of SZO §9.5 for relief from eight required off-street parking spaces.

<u>Zoning District/Ward:</u>	NB zone/Ward 6
<u>Zoning Approval Sought:</u>	§5.5 & §9.5
<u>Date of Application:</u>	December 5, 2011
<u>Date(s) of Public Hearing:</u>	2/29 & 3/14/12
<u>Date of Decision:</u>	March 14, 2012
<u>Vote:</u>	5-0

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Appeal #ZBA 2011-94 was opened before the Zoning Board of Appeals at Somerville City Hall on February 29, 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.



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## **DESCRIPTION:**

The Applicant, the owner of Dave's Fresh Pasta, is proposing to open a wine bar in the vacant retail space at 89 Holland Street, which is in the building adjacent to the existing restaurant. The existing vacant space is 908 gross square feet. The wine bar would have six employees, 46 seats, and an average of approximately 52 customers at one time. The first floor would contain the bar, seating, a food preparation area, and two restrooms. The basement would contain an additional bathroom, an office, a cooler, and storage space. The wine bar would act as an associated space for the customers of Dave's Fresh Pasta next door at 81 Holland Street, for before or after dinner, as well as for solely wine bar patrons. This type of use, a bar/tavern, in this size of a space requires 16 parking spaces per §9.5 of the Somerville Zoning Ordinance (SZO). In applying the nonconforming parking calculation of §9.4.1 of the SZO to the site, which compares the most recent previous use of the space and the new proposed use, the proposed wine bar needs to provide eight additional off-street parking spaces to comply with the zoning ordinance.

## **FINDINGS FOR VARIANCE (SZO §5.5):**

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."

The Applicant indicated in their application that "the existing site at 89 Holland Street is somewhat unique in that it is directly abutted on two sides by buildings with minimal or no setbacks. There is limited ability to expand the site to add parking or loading. These unique circumstances means that any expansion of the building, or any new building on the lot would in all probability be subject to a parking and loading variance under the current zoning."

The building at 89 Holland Street takes up much of the lot it sits upon. At the rear of the building there is a driveway for two parking spaces (or potentially four if parked in a tandem fashion) and a separate structure that is currently used for storage. The footprints of the existing main and secondary structures occupy approximately 72% of the subject property. There is no other space on the lot for the Applicant to provide any additional off-street parking spaces to conform with §9.5 of the SZO. The last previous use in the space, a retail clothing store, was operating without any off-street parking and the Applicant is proposing to do the same. The Board finds that these circumstances at the property affect the parking situation at the site causing substantial hardship.

2. "The specific variance as may be granted by the Board is the minimum variance that will grant reasonable relief to the owner, and is necessary for a reasonable use of the building or land."

The Applicant indicated in their application that "the variance being sought for eight (8) parking spaces, would be reasonable relief to the applicant and would allow for a reasonable use of the land. The wine bar is a reasonable use for a Neighborhood/Business District and for the reuse of the building. Any new building on the site that attempted to comply with the on-site parking requirements of the Ordinance would be so small in size that it would (be) financially infeasible, while the addition of a smaller building with surface parking would be to the visual detriment of the streetscape. Furthermore, the site is in close proximity to the Davis Square MBTA subway stop, numerous bus routes, as well as the numerous nearby municipal parking facilities and on-street metered parking. These alternative means of transportation and the parking mitigation efforts should help offset any parking pressures that would normally be associated by approving this type of variance. The space in the building has been used previously for retail, which requires loading and is accomplished without a loading dock. The change in use without providing a loading dock is reasonable for this site."



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Section 9.5 of the SZO requires that bars/taverns have, whichever is greater, 0.75 parking spaces per employee plus one space for every four seats, or one parking space for every 110 gross square feet of floor space. The wine bar would have six employees on site which would require 4.5 spaces and the bar would have 46 seats which would require 11.5 spaces for a total of 16 required off-street parking spaces. The storefront space itself is only 908 gross square feet which would require eight parking spaces per the floor area calculation. Since the employee plus seating parking calculation is greater, the wine bar would need to provide 16 parking spaces on-site. The most recent previous use of the space, a clothing retail store, was only required to have one parking space on-site but had none. After performing the parking space calculation for the existing nonconforming parking situation as laid out in SZO §9.4.1 (one half the difference between the existing parking spaces being 'provided' and the required number of parking spaces for the proposed new use), the Applicant is required to provide an additional eight off-street parking spaces for the proposed wine bar use at the site. Therefore, the Board finds that the request for eight parking spaces of relief is the minimum amount required under a Variance to allow the wine bar use to locate in the storefront at 89 Holland Street.

3. “The granting of the variance 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 welfare. In addition to considering the character and use of the nearby buildings, the Board, in making its findings, shall take into account the number of persons residing or working in such buildings or upon such land, and the present and probable future traffic conditions.”

The Applicant indicated in their application form that “this project is consistent with the purpose of the ordinance and the zoning district in which it is located. The wine bar use would contribute to the vibrancy of the Davis Square and Teele Square area and provide additional dining options. The applicant’s memo demonstrates that the proposal would not be detrimental to the neighborhood. As discussed there is parking availability and turnover of spaces is important to the vibrancy of both Davis and Teele Square.”

The Board finds that this project is consistent with the purposes of the SZO and will not be detrimental to the greater Davis Square neighborhood. The granting of this Variance for eight parking spaces of relief would allow a wine bar/tavern to locate in a vacant Holland Street commercial storefront on the edge of Davis Square. This business would help to maintain the vibrancy of the streetscape and enhance the pedestrian environment along Holland Street as one heads into and out of Davis Square, which is a benefit to the surrounding neighborhood. Further, the Parking Memorandum submitted by Fort Hill Infrastructure Services, LLC indicates that the proposed wine bar will only have a minimal impact on the surrounding on-street parking supply. The memorandum indicates that data collected in formulating the parking memorandum shows that the surrounding neighborhood has the reserve capacity in its parking supply to support the proposed project with an average of 80 empty parking spaces within 600 feet of the property. In addition, several other types of data suggest that the visitors traveling to the proposed wine bar will likely not need a parking space. The data is indicating that approximately 60% of the wine bar patrons will be local Somerville residents and that the majority of the customers that will visit the wine bar (72%) will likely use a mode of transportation other than driving a car.

The Traffic and Parking Department has indicated that there will be a minor increase in the traffic congestion and vehicle delay in this location which is in or considered Davis Square. Traffic and Parking also feels that the parking space occupancy will increase in the surrounding residential neighborhood, there will be a slight decrease in pedestrian and bicycle safety, and there will be a lowering of parking space turnover rates as a result of this proposed use. However, aside from these impacts, there are no negative anticipated affects from the requested parking Variance. The Traffic and Parking Department has suggested that to alleviate these conditions and promote a safe comprehensive transportation network in the Davis Square area, mitigation to provide effective turnover rates at parking spaces and reducing the spillover parking in the residential neighborhood is required. To encourage appropriate turnover rates, to reduce parking in the residential neighborhood, and to promote a safe comprehensive transportation network, Traffic and Parking is recommending that the Applicant be required to purchase and deliver



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to the City eight single space parking meters capable of accepting coins, credit cards and pay by phone technology. The Board has included this as a condition of the Variance and therefore Traffic and Parking has no objections to proposal. Furthermore, the parking Variance will allow a wine bar/tavern use to establish in the Davis Square area, which is a particular use that is in line with the existing environment that is in the square. The Board finds that the Variance would not be injurious to the neighborhood or detrimental to the public welfare and is in harmony with the general purpose and intent of the Ordinance.

**DECISION:**

Present and sitting were Members Herbert Foster, Richard Rossetti, Scott Darling, Elaine Severino and Josh Safdie with Susan Fontano and Danielle Evans absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a variance. Scott Darling 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 a Variance under SZO §5.5 from the parking requirements of SZO §9.5 for relief from eight required off-street parking spaces. 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>(December 5, 2011)</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>September 6, 2011 (February 1, 2012)</td> <td>Floor Plans (A1)</td> </tr> </tbody> </table> <p>Any changes to the approved use or site plans that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	(December 5, 2011)	Initial application submitted to the City Clerk's Office	September 6, 2011 (February 1, 2012)	Floor Plans (A1)	BP/CO	ISD/Plng.	
Date (Stamp Date)	Submission									
(December 5, 2011)	Initial application submitted to the City Clerk's Office									
September 6, 2011 (February 1, 2012)	Floor Plans (A1)									
2	The Applicant shall purchase and deliver to the City eight (8) single-space parking meters capable of accepting coins, credit cards and pay-by-cell phone technology. The parking meters should be manufactured by the IPS Group or approved equal. Specifications for all requirements of the parking meters can be supplied by Traffic and Parking if required or necessary.	CO	T&P							
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	Plng.							



Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*  
Richard Rossetti, *Acting Clerk*  
T.F. Scott Darling, III, Esq.  
Elaine Severino (Alt.)  
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 \_\_\_\_\_



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