



CITY OF SOMERVILLE, MASSACHUSETTS
OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2011-54

Date: September 1, 2011

Recommendation: Conditional Approval

UPDATED PLANNING STAFF REPORT¹

Site: 343, 345, 349, and 351 Summer Street

Applicant Name: Strategic Capital Group, LLC

Applicant Address: 1264 Main Street, Waltham, MA 02451

Property Owner Name: George Dilboy VFW Post #529 and The Dakota Partners LLC

Property Owner Address: 371 Summer Street, Somerville, MA 02144 and
1264 Main Street, Waltham, MA 02451

Agent Name: Richard DiGirolamo, Esq.

Agent Address: 424 Broadway, Somerville, MA 02145

Alderman: Rebekah Gewirtz

Legal Notice: Applicant, Strategic Capital Group, LLC and Owners George Dilboy VFW Post #529 and The Dakota Partners LLC, seek a Special Permit with Site Plan Review under SZO §7.3 and §7.11.1.c to establish a 31 unit residential use, a Special Permit under §7.11.5.B.6.a to establish an approximately 8,300 gross square foot private, non-profit club, a Special Permit with Site Plan Review under §7.11.11.10.b to establish a 15-space commercial parking lot, and a Special Permit under §9.13.b to modify parking design standards. CBD and RA zones. Ward 6.

Zoning District/Ward: CBD and RA / Ward 6

Zoning Approval Sought: Special Permit with Site Plan Review under SZO §7.3, §7.11.1.c, and §7.11.11.10.b; Special Permit under §7.11.5.B.6.a and §9.13.b

Date of Application: June 30, 2011

Dates of Public Meeting • Hearing: Zoning Board of Appeals - Opened 8/3/2011, Continued to 8/17/11, Continued to 8/24/11, Continued to 9/6/11

¹ Updated through September 1, 2011 to respond to public comments from the August 24, 2011 Zoning Board of Appeals hearing. Changes from the original Staff Report dated August 19, 2011 are highlighted by being underlined or crossed out.



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I. PROJECT BACKGROUND

1. Subject Property: The subject property consists of two parcels on Summer Street between Cutter and St. James Avenues totaling 40,316 square feet. 343-349 Summer Street is a 16,769 square foot lot owned by The Dakota Partners that contains a vent shaft for the MBTA Red Line. This property is in an RA zoning district. The shaft is surrounded by an 8 inch concrete wall and an 8 foot high chain link fence. The parcel is covered with concrete between the sidewalk and the shaft and the remainder is covered in grass and weeds. 351 Summer Street is a 23,547 square foot parcel owned by the George Dilboy VFW Post #529 and is used as an accessory parking lot. This lot is essentially paved from end to end. This parcel is zoned Central Business District (CBD). The properties are located adjacent to the existing building shared by the Post and the Winter Hill Bank in Davis Square. It is approximately ¼ mile (less than 1,500 feet) from the MBTA Davis Square Station.
2. Site History: The first parcel (hereinafter the “shaft site”) was the site of three, three-family residential structures (9 units) and a large garage that once held a milk company. These structures were on the site until the start of construction of the MBTA Red Line. The MBTA determined that the site was required for a vent shaft and an emergency egress stairway from the Red Line tunnel. The property was taken by the MBTA and the vent structure was built on the site. In 2002, the MBTA sold the parcel to The Dakota Partners LLC, retaining easement rights to use the shaft and emergency egress stairs. The second parcel (hereinafter the “parking lot”) has been serving as an accessory parking facility for the adjacent Dilboy Post, located at 371 Summer Street. The Post has been located at its existing facility since 1941. OSPCD has limited permit history on the 351 Summer Street site, and while it once probably held automotive garages and a gasoline service station in the 1920’s, it appears to have been only a surface parking lot for many years.
3. Recent Applications: The Dakota Partners LLC, after purchasing the shaft site in 2002, proposed to construct a 14 unit structure on the site. While various versions of this application were submitted, the approved project was an L-shaped building that wrapped around the vent structure, and provided an underground parking structure that came close to lot lines and filled the majority of the lot. After approval, the project was appealed and has subsequently been the subject of three separate appeals. The substantive project was appealed and was affirmed by the Appeals Court. The Massachusetts Supreme Court denied an application for further appellate review. In order to provide access to the property, the Applicant then sought permission from the City to have a public shade tree removed. The City did not give permission to remove the tree and the developer filed an appeal in the Superior Court which is still pending. Meanwhile, the developer was granted a time extension on the original approval, and neighbors filed action in Superior Court challenging the ZBA finding on the time extension, and this item is also still pending.

Subsequent to the initial approval, the Board of Aldermen, at the request of abutters, changed the site zoning to the RA district, thereby limiting development capacity to a rate of 1 unit per 2,250 square feet of land area² (allowing 7 units with the required affordable housing, and/or other uses allowed in the RA district). The parking lot site is in the CBD district, where it has been for many years. OSPCD has no record of recent development applications for this site prior to 2009.

In 2009, Strategic Capital Group, LLC proposed a development that incorporated both lots (Case ZBA 2009-67). This application, submitted in the fall of 2009, would place residential units on the parking lot site and a new VFW post on the shaft site. The initial proposal called for a subdivision of

² See table, Section 8.5 of the SZO for lot are per unit information, and SZO Section 7.3 for affordable housing requirements for projects with more than two units in the RA district.

land from the adjacent VFW right-of-way and access to the site via the driveway shared with the Winter Hill Bank. This plan created numerous traffic challenges and was modified to remove the subdivision, reduced from 32 to 31 units to reflect the total residential development allowed on the lot, and reconfigured to reduce curb cuts. The updated plan was subsequently reviewed and modified again and was finally completed in September 2010 in preparation for hearings before the ZBA in the fall of 2010. This plan included a 4-story, 31-unit building along Summer Street and a new VFW post in the rear of the shaft lot, with associated parking. Despite meeting the zoning requirements for a special permit, (except that the applicant did not apply for a required Special Permit for tandem parking in 2009) concern was expressed by community members on this application.

In the fall of 2010, Mayor Curtatone expressed a desire to explore mediated discussion about the future of the site. The City engaged a mediator to assess the potential for additional dialogue, first by holding conversations with key stakeholders, including abutters, city representatives and project representatives. Based on these conversations the mediator encouraged the developer to enter into a mediation process with concerned neighbors to see if an alternative plan could alleviate concerns about the project. At the request of the developer, the project was therefore not scheduled before the ZBA, and entered into the mediation process.

4. Mediation: The developer entered into six mediation sessions that were facilitated by the Consensus Building Institute (CBI), and attended by representatives from the neighborhood, the development team and City staff. CBI led sessions that began on November 15, 2010 and continued for five weeks, including a joint site tour. Issues were identified including noise, parking, traffic, aesthetic impact, building size, pedestrian safety, stormwater, financial viability for the development and the VFW, VFW operations, and the desire for transit-oriented development.

The developer was able to provide sketches of new project designs that addressed a number of the concerns expressed by abutters. The group reviewed these alternatives and provided feedback, resulting in a refined design that would provide for the building configuration that is in the current plan. In December 2010, the mediation ended, without agreement on a final proposal. While the most recent design has not created a consensus for support amongst the participating neighbors, there was general consensus that this plan was an improvement from the plan submitted in 2009.

It should also be pointed out that an abutter to the site has filed a claim that the mediation process discussed above, which was conducted using a standard mediation strategy of involving representatives for different interest groups, was a violation of the Massachusetts Open Meeting Law. The City of Somerville has responded that, while this mediation provided guidance to the developer on this new application, the mediator did not report to the ZBA or any other city body, and therefore these sessions were not Public Meetings under the Open Meeting Law. It is the City's stance that the Special Permit hearing process that this case is currently going through is the public hearing process for this case. The appeal is being reviewed by the Massachusetts Attorney General's office.³

5. Subsequent Submittal: The Applicant submitted a new application in March 2011 that proposed a 31-unit, three-story building along with a new VFW Post building along the streetscape of Summer Street. This proposal went before the Zoning Board of Appeals in June 2011, and comments were heard in a public hearing in June. At the conclusion of the first meeting with testimony, the ZBA

³ A comment at the 8/24 public hearing noted that this paragraph, which was in the June staff report, was removed by the staff when staff was looking to simplify the staff report. We have put this information back for the Board to review. Staff maintains that, while this appeal is still under review, the mediation process was designed to inform the developer on the proposal to be submitted, not to influence the ZBA. The ZBA retains special permit rights to determine whether or not the plan submitted meets the findings under the SZO.

continued the case. Subsequent to this meeting the Planning Staff learned that environmental reports regarding the site had not been disclosed either with the original application or when subsequent, the Staff recommended that the Applicant withdraw the application without prejudice and, that if the applicant wanted to proceed, they should resubmit with all required information.

6. Current Submittal: On June 30, 2011, the Applicant submitted an application that included several environmental reports with results of testing on the site as well as an updated design that involved one structure with 31-units and the VFW, with a connection between the back of the VFW Post and a portion of the residential building. This application is now complete. This is the application that is currently before the Zoning Board of Appeals.

II. PROJECT DESCRIPTION

General Description: The current proposal consists of one, mixed-use building on a single lot⁴ that lies in two zoning districts. There would be a residential portion of the building that would be three stories in height and include 31 residential units, and a two story high portion that would contain a new VFW Hall for the George F. Dilboy Post #529. The VFW Post portion of the building would contain approximately 8,300 square feet. There would also be underground parking for the structure totaling 45 spaces underneath the residential portion of the building, along with 30 surface spaces under the upper floors of the residential portion, and 33 more spaces in the open air behind the VFW Post portion. The building would consist of wood-frame and masonry construction (Type 5A). The below-grade parking garage underneath the residential portion of the building would be concrete and steel, classified as a Type 2 construction.

1. Residential Portion: The Applicant proposes to construct a three-story, 31 unit residential portion of the building including an underground parking garage and first-floor at-grade parking in the back. Of the 31 units, 4 will be affordable in perpetuity under the City's Inclusionary Housing Ordinance. Pursuant to the Affordable Housing Implementation Plan, the affordable units will consist of 1 studio, 2 1-bedrooms, and 1 2-bedroom.

The underground parking garage would have 45 parking spaces. The building would have a U-shape as the residential portion would wrap around and connect with the VFW Post portion of the proposed building. The building uses fiber-cement and solid cellular PVC materials. The main entrance would be clearly identified by a large modern canopy. The first-floor has fewer units, as the rear of the first floor is a surface parking area that is accessible from the adjacent parking lot. Two first-floor units are proposed to have patios. The residential portion of the building would have the following breakdown of units by floor:

	Studio	1-Bedroom	2-Bedroom	Total
1st Floor	0	3	2	5
2nd Floor	2	3	8	13
3rd Floor	2	3	8	13
Total	4	9	18	31

⁴ Under state zoning act, (per extensive case law interpreting MGL 40A Section 6) when two vacant adjacent parcels are held under the same ownership and are developed in a manner where a structure or structures need both lots in order to meet zoning requirements, these lots are merged for zoning purposes (even if they are not merged onto a single deed). Upon entering into this development, these lots would be merged for zoning purposes.

Along the far side of the building, it crosses the zone line into the RA district. At this point, the building roof-line changes to a mansard roof, and the building becomes 2.5 stories so that it complies with height and story requirements of the RA district.

The residential portion of the building would have 31 individual air condenser units located at the center of the roof, a minimum of ten feet from the roof edges. The Applicant has indicated that these would not be visible from the street because they will be shielded by the two-foot high parapet and will be tucked back from the building edge. The Applicant proposes individual AC units, rather than a central AC unit, as a noise reduction strategy, i.e., when individual residents are not using their air conditioners, they will be turned off, as opposed to a large central system which would be operating continuously for most of the year.

There are no roof decks in the current proposal. Earlier proposals included roof decks that have been removed to address neighborhood concerns.

The building is equipped with an elevator and two stairwells. The residential portion of the building has 45 underground parking spaces, 22 of which are set in 11 tandem pairs. These spaces will be assigned as pairs to units seeking two parking spaces. Entrance to the below ground residential parking area will be from a driveway located in the middle of the U-shape at the same location as an existing curb cut. The Applicant has indicated that bike storage will be provided for each unit at the back of each parking space, but this storage area is not presently indicated on the plans.

2. G.F. Dilboy Post #529 Portion: The proposed George F. Dilboy Post #529 portion of the building would be two stories containing approximately 8,300 gross square feet of floor area. The proposed design connects the VFW Post portion of the building with the residential portion forming a U-shaped structure. The proposed VFW Post portion has a neo-colonial design. The asymmetrical alignment of the prominent front entrance adds a modern element to the design. The front entrance is clearly marked by two columns that support an arched canopy over a landscaped patio. The façade on both sides of the front door would protrude slightly from the front face of the building maintaining the appearance of columns from the ground to the truncated turret above the main entrance. The balance of the construction material would be a panel block (Nichiha panel) for the first story and red brick for the top story. Other notable design elements include an oversized cornice throughout and double windows on the second story. The first floor will have trellises under the high windows. The upper right corner of the building will include all mechanical equipment in an interior room, as evidenced by the louver panels that mimic windows on the right side elevation. These louvers will provide air intake and exhaust for the mechanical systems. Keeping these systems interior to the building will minimize visual and noise impacts for abutters in the neighborhood as well as occupants of the residential portion of building.

The first floor includes a 2,478± square foot hall with a bar, one men's restroom, one women's restroom, a storage room, a kitchen, and a lobby.⁵ First floor windows will be 7 feet above ground for privacy. To reduce noise emanation, the only first floor windows are located in the front of the building away from the main hall. At 2 feet x 4 feet in dimension, they are quite small and will be inoperable. No first floor windows are proposed along the side or rear elevations which means that there will be no windows on any side of the main hall. Emergency exits are proposed on the right side and rear of the building. An elevator and stairwell are located in the front of the building to the right of the lobby.

⁵ Staff will also recommend that an interior trash/recycling storage area be provided on this floor.

The second floor includes an office, a bar, gaming area, men's and women's restrooms, card room and lounge, as well as storage and cooler areas and the mechanical room. The bar connects to a kitchen. The gaming area is located in the center and adjoins the lounge area in the front center of the building. Windows on the front of the second floor enter the office, lounge and mechanical area. Windows on the right side enter into the kitchen and stairway, while the card room has three small windows on the rear of the structure. There are no second floor windows on the left elevation.

Windows on the first floor front of the building will be inoperable, so as to limit noise escaping the building. Windows in the card room and 2nd floor bar are awning windows that only open slightly. Windows located on the east elevations, closest to the MBTA shaft will also be inoperable to help prevent the shaft exhaust from entering into the building⁶. The remaining windows are double-hung windows.

The proposed VFW Post portion of the building would offer the same activities as the existing Post at 371 Summer Street. The VFW Post has a license to operate until 1:00 AM. In 2009, the VFW Post hosted approximately 170 events. Most of these events had 80 guests or fewer, but attendance did range from 20 guests to over 100. Planning Staff has worked with the Post Commander and his Board to understand the occupancy limits and needs of the existing Post operations. To ensure that the operations in the new building do not exceed the extent of operations in the existing building, Planning Staff have proposed and Post leadership have agreed to condition any approval of this project on a similar level of activity to that of the current building. Upon review of the proposed plans, the Fire Department has determined that the total allowed occupancy for the 2009 version of the VFW Post building would be 355. Permitted occupancy on the first floor would be 180 and the second floor would be 175, and it is expected that a similar occupancy would be allowed in this current design.

A neighbor has recently questioned the status of some of the licenses of the existing VFW Post. The Post requires a variety of licenses to operate its existing facility, and it is expected that the same licenses will be required for the new facility. A letter submitted on July 28, 2011 from an abutter indicates that that the existing VFW at 371 Summer Street does not have a valid entertainment license, may not have a common victualler license, and may lack appropriate fire inspection certificates. The City is investigating this complaint, as well as a complaint that the existing commercial parking lot at 351 Summer Street (see #3 below) does not have a required license. While the Staff wants the Board to be aware of these complaints and the related investigation of them, they do not directly impact the proposed uses and activities in the special permit application that is before you.

Staff has spoken with the City Clerk's Office regarding the licenses of the existing VFW Post and found that the existing Post has a valid Club License (# C-5) which permits them to serve alcoholic beverages, but does not have a victuallers license or entertainment license. But, the same is true of the other four Veterans Posts in Somerville (American Legion East Somerville Post 388, Inc., Somerville Post 19 American Legion Department of Massachusetts, Inc., Disabled American Vets of W.W., Chapter 27 of Somerville, Inc., and the Somerville, Memorial Post 447 The American Legion, Inc.). All only have Club Licenses. None of these Posts have entertainment or victuallers licenses. Planning Staff has been and will continue to work in conjunction with the Licensing Commission as the Applicant moves forward to acquire the necessary permits to operate the private, non-profit club, to ensure that the club receives the license or licenses that are required to operate their facility.

⁶ The applicant has indicated that this is the case, and it will be reflected in condition.

3. Commercial Motor Vehicle Lot: The Dilboy Post currently uses a portion of their parking lot as a commercial lot to provide off-site parking for nearby commercial users. As a part of this application, the Post has indicated that they are applying to continue to use 15 parking spaces for commercial off-site parking. The commercial spaces will be used weekdays from 6:00 AM to 6:00 PM. After 6:00 PM, all commercial parking will end, and these spaces will be available for use for the Post. The commercial parking spaces have been identified, and all are under the residential portion of the building, closest to Davis Square. A walkway along the left side of the residential portion of the building provides access from the commercial lot to Summer Street and Davis Square. These commercial parking spaces will require separate licensing from the City.
4. Site Design: The site design provides a strong, yet pedestrian friendly presence on Summer Street. As conditioned, the developer will provide an additional area of approximately one foot of sidewalk on the inside of the private property line. Both portions of the building will have prominent entrances along this sidewalk. Along the street, the area in front of the shaft will be cleaned up and a landscape buffer will be placed along the edge of the parking lot. Two curb cuts are provided, one in the CBD district to provide access to the parking ramp and one in the RA district to provide access to the surface parking. This is a reduction from the three curb cuts that are presently on the site. No public shade trees will be disturbed by this plan.

The parking in the surface lot underneath the residential portion of the building will include visitor parking for the residences, handicap parking for the project, and commercial parking during the daytime in designated spaces. The remainder of the parking lot, as well as the commercial spaces at night, will be available for VFW Post members and member events. The project includes a landscaped buffer along the entire rear of the site with trees and a fence along the back of the lot.⁷ The Applicant is providing an on-site bike rack next to the vent shaft. A walkway along the left side of the building provides access from the commercial parking to Summer Street. Landscaping is also provided on the portion of the shaft site that is not covered with concrete, and a small outdoor seating area is provided behind the shaft in the landscape area next to the VFW Post building.

The land setup for the project site is not unique for a development project in Somerville. In this proposed project, the VFW Post (a non-profit, club or lodge for members only) would occupy one portion of the building and the 31 residential units, which would occupy the other portion of the building, would be sold off independently from the Post portion of the building. A land setup that contains two different uses on the same property can also be found in Somerville at the 28-30 Newberne Street/128 Willow Avenue project. At this project there are seven residential condominiums and a commercial condominium, all of which are under separate ownership. Furthermore, there are many mixed use projects with residential uses vertically on top of businesses or other uses. New developments with these use mixes also are able to apply their entire site area to determine lot area per unit.

III. NATURE OF APPLICATION

1. Zoning Classification: The subject site consists of two parcels (comprised of Assessors' Lots 33-36) containing 23,547 square feet (the "Parking Lot") and 16,769 square feet (the "Shaft Site"). The Parking Lot is located in a Central Business District (CBD) and the Shaft Site is located in a RA district. The Project involves combining these parcels into a lot under common ownership that will contain 40,316+/- square feet.⁸

⁷ Staff is also proposing conditions to increase landscaping and provide a soundproof eight (8) foot fence on this rear lot line which interfaces with residential properties along Hawthorne Street.

⁸ Combined lots in two zoning districts are subject to SZO Section 7.4.

2. **Floor Area Ratio (FAR):** Under the provisions of Somerville Zoning Ordinance (SZO) (Section 7.4), the total development capacity of a split-zoned site is determined by reviewing the FAR allowances for each of the two zones that apply. In this instance, the CBD zoning district allows an FAR of 2.0 and the RA zoning district allows an FAR of 0.75. As can be seen in the below table, the total developable space on the site is 59,671 square feet. The proposed development consists of 38,586 square feet, only 64% of the total development capacity.

Zone	Lot Area (sf)	SZO FAR	Developable SF	Proposed SF	Actual FAR
CBD	23,547	2.0	47,094	36,301	1.54
RA	16,769	0.75	12,577	2,285	0.14
Total	40,316	1.48	59,671	38,586	0.96

The SZO also governs how the developable space is allocated across the property, specifically that while buildable space from the more restrictive lot can be relocated onto the less restrictive lot, the opposite is not the case (See Section 7.4 of the SZO). This means that the 12,600 square foot limitation on the RA parcel cannot be exceeded. As can be seen above, at 2,285 square feet, the amount of building proposed for the RA portion of the site is a fraction of what is allowed. Even on the CBD site, the development is significantly below the allowable development capacity. In effect, the proposed development will not utilize over 20,000 square feet that could be made available under the ordinance.

3. **Parking:** Parking for the residential units would be provided through the underground garage. Visitor spaces would be located in the surface lot under the building, along with commercial parking (15 spaces total) and parking for the Dilboy Post. All uncovered surface parking is dedicated to the VFW Post portion of the building.

Combined, the proposed project provides 108 parking spaces, which exceeds the minimum parking requirement of 76 spaces. Out of 108 parking spaces, 76 would be full size, 28 would be compact, and 4 would be ADA accessible spaces, one of which will be a designated visitor space for the residential portion of the building. Residents will be assigned spaces in the garage, which has forty-five (45) parking spaces. Eleven (11) units will have two (tandem) spaces available to them. The remaining twenty-three (23) spaces will be available for the remaining twenty (20) units, thereby allowing three (3) of these units to have two separate spaces available to them, while the remaining seventeen (17) units will each have one space assigned. Tandem spaces are not prohibited by the applicable sections of the SZO, pursuant to review by the Director of Traffic and Parking, and securing the required Special Permit.⁹ Six visitor spaces will be provided under the building in the at-grade lot.

The VFW Post would have exclusive 24-hour use of 42 parking spaces, as well as evening access to the additional 15 commercial spaces. The proposed fifteen commercial spaces would be rented monthly from 6:00 AM to 6:00 PM and therefore be available for VFW Post events after 6:00 PM while also helping to address daytime parking demand in Davis Square. The VFW is required to provide 28 parking spaces and therefore exceeds total parking requirements.

⁹ The parking space dimensions in Section 9.9 and 9.11 of the SZO do not specifically exclude tandem parking, but it is implied by the statement in Section 9.9.a that “each parking space . . . shall be connected by a maneuvering aisle and driveway to a street.” Section 9.13.b allows for modification of the standards of Section 9.9 and 9.11 provided the design is prepared by the appropriate professional and approved by the Traffic and Parking Director. It has been common in other projects to only approve tandem spaces where they will be shared by one residential dwelling unit.

Parking Requirements Table			
Residential Use	Number	Requirement	Total Required
1 Bedroom Units	9	1.5	13.5
2 Bedroom Units	18	1.5	27
Studio Units	4	1	4
Visitor Spaces		1 per 6 units	6
Total Residential			51
VFW Post			
Assembly Space	2,478 sf	1 / 6 people (1)	28
Total for Post Building			28
Total Required Parking			79

(1) based upon seating capacity of 15 square feet per person

SZO Section 9.11.c allows up to 20% of required parking spaces to be compact spaces, therefore, 80% of the required parking must be full-sized spaces. The parking requires 45 residential spaces, 6 residential visitor spaces and 28 post spaces for a total of 79 spaces, therefore 80% of these (63 spaces) must be full-sized spaces. As noted above, 76 full size spaces are being provided.

The Applicant is placing a small landscape strip behind the wheel stop on the spaces that abut the property at 341 Summer Street. This is not required, but it will provide a small buffer and a pervious area within the parking spaces. The front of a vehicle may overhang the wheel stop, and therefore this area remains available for parking. But the landscaping will ensure that paving up to the lot line is not required.

4. Setbacks: The structure meets all zoning setback and height requirements (see table, Section 8.5). The residential portion of the building is 3 stories tall. When that portion crosses the district line into the RA district, it reduces in size to 2.5 stories through a mansard roof. The CBD district has no front or side setbacks. Rear setback is based upon height and 15 feet is provided. The rear setback area will be used as a landscape buffer between the building and abutting residential properties even though under the SZO this space could be used for parking. The Post portion of the building is two stories and 27 feet in height. The portion of the structure in the RA district has extensive setbacks from adjacent lots
5. Use: The proposed uses on the site include 31 residential units, a Commercial Motor Vehicle Lot and a private non-profit club. The commercial parking use is located completely in the CBD zoned area of the site. The private club and the residential use straddle the zoning line, but the areas within the RA district meet the dimensional requirements for the RA district and both uses are allowed within the RA district, with the applicable Special Permits.

Section 7.11.1.c of the use regulations for the CBD allows "multiple dwellings of seven (7) or more units" by Special Permit with Site Plan Review (SPSR) under Section 5.3 as long as 12.5% affordable housing is provided. Section 7.3 also allows multi-family use in the RA district with affordable housing by Special Permit.

Section 7.11.5.B.6 of the use regulations for allows a "Private non-profit club or lodge for members only" containing less than 10,000 gross floor area on a 10,000 square foot lot by Special Permit in the RA district, and by-right in the CBD district. The proposed use as an approximately 8,300 gross square foot private club satisfies the dimensional requirements for the applicable districts, while noting that only approximately 2,400 square feet of this use is within the RA zoned portion of the site.

Section 7.11.11.10.b of the use regulations for the CBD allows commercial “structured or open lot (outdoor) motor vehicle parking where the parking spaces are not accessory to a principal use on the same lot and where no sales or service take place” of 5,000 or more square feet gross floor area by Special Permit with Site Plan Review (SPSR).

Therefore, all uses proposed on the site are allowed by Special Permit.

IV. PROJECT SITING AND IMPACTS

1. Smart Growth, Transit-Oriented Development and Davis Square:

Davis Square serves as an example of a transit-oriented development (TOD) area, with a commercial core, mixed use, pedestrian friendly design and residential development surrounding a heavy rail station on the MBTA Red Line. These areas provide the ability to walk to shops, live in a culturally diverse setting, take advantage of enhanced mobility, and create a neighborhood where there is a mix of housing, jobs, shops and recreation within access to multiple modes of transportation. Successful TODs provide opportunities to live without daily dependence on a car or a need to use a car for daily convenience trips and opportunities for car-free residents to access jobs and daily needs.

As a result of increased understanding of the need for sustainable development, plus the desire among new homebuyers and older residents to live in vibrant, accessible neighborhoods to improve their quality of life, the typical market for suburban residences is not growing. Instead, data shows that demand for TOD housing continues to exceed and supply, and some estimates suggest that by 2030, almost 25% of new buyers are going to be seeking TOD living arrangements. TOD residents like their transit access, and studies indicate that residents within ½ mile of transit are five times more likely to take it than those who are not. Reconnecting America estimates that there will be an additional demand for 10 million Americans who want to live near transit by 2030. Therefore, areas like Davis Square are likely to be a top choice for residents seeking an urban community with eclectic shopping opportunities, nearby jobs and access to transit.

2. Surrounding Neighborhood:

Davis Square is a thriving transit-oriented neighborhood that is anchored by the station on the Red Line, Boston’s heavy rail subway system that connects Cambridge to downtown and communities south of Boston. The station is the only rail station located within the city limits of Somerville. Since the arrival of the Red Line in 1984, Davis Square has become a destination for its restaurants, business district, and mix of commercial properties and nearby residential neighborhoods.

The Davis Square area depends upon the adjacent transit to support its business district and surrounding residential neighborhoods. The station location has generated a significant upward residential demand, leading to increased housing prices in the square, particularly as TODs have become more appealing, and as the value of properties in neighboring Cambridge have risen.

Davis Square has historically incorporated mid-rise residential buildings on corner lots and on the main streets that come in and out of the square. These buildings have peacefully co-existed with adjacent two- and three-family homes for many years. Within approximately one-half mile of the subject property there are 7 long standing apartment buildings of four or more stories, which exceed the FAR and unit density of the proposed project and do not comply with off-street parking requirements. These buildings are among the earliest buildings in the neighborhood. They are listed as follows:

Address	Zone	Height (feet)	# of Units	FAR (net)	Square feet per dwelling unit	Walking Distance
49 Dover St.	RB	48	41	3.7	216	0.5 miles
123 Orchard St.	RB	50	30	2.0	322	0.3 miles
131 Orchard St.	RB	44	25	1.9	395	0.4 miles
18 Day St.	RB	46	50	2.2	308	0.4 miles
38 Day St.	RB	46	25	1.8	429	0.4 miles
36 College Ave	CBD	58	45	4.2	168	0.4 miles
119 College Ave	RB	48	41	2.7	320	0.6 miles
Proposed 343-351 Summer	RA/ CBD	39	31	0.94	1300	0.3 miles
RA required		Max 35	1 per 2,250 sf	0.75		
CBD required		Max 50	1 per 1,000 sf	2.0		

It should be noted that of the properties listed in the table above only 36 College Avenue is in a CBD district, similar to the location of most of the structure at this site. Others are in a residence district, but that is a RB, not an RA district. The building at 119 College Avenue abuts an RA District.

The neighborhood surrounding the site is at the edge of the commercial core of Davis Square, and consists of a mix of residential and commercial uses. The Davis Square MBTA station is approximately ¼ mile from the site to the northwest. To the east are largely two-family homes with a mix of single- and three-family homes. To the northwest along Elm Street to Davis Square are a wide variety of retail, entertainment, and offices uses.

The neighborhoods to the east are zoned RA. The core of Davis Square to the northwest is zoned CBD. Across Summer Street to the southwest of the subject property is a Neighborhood Business (NB) district. To the north and northeast is a RB district along Hawthorne Street to Dresden Circle. To the north of the RB district along Highland Avenue is a continuation of the CBD and a second NB district.

According to the Assessor's Database, 341 Summer Street, which abuts the proposed VFW Post site to the east in the RA zone, is a three-family home measuring 13,692 gross square feet (gsf), 11,328 net square feet. To the west is the Winter Hill Bank and the current VFW Post with, while owned separately on separate parcels, was constructed as a single building with shared walls on property lines. Across Cutter Avenue is a new mixed-use (residential, office and retail) building which is under construction. Approximately one block to the west at 212 Elm Street is a 4 story, 112,985 gsf mixed-use building which houses a Citizens Bank and offices for Arrowstreet Inc., CBA Landscape Architects, Davis Square Realty, Environmental Design Group, Powderhouse Productions, Spotfire Inc., and Tibco Software Inc., some of the largest employers in Somerville today.

3. Green Building Practices: The Applicant intends to apply for LEED and Energy Star Certification for the building.
4. Comments:

Fire Prevention: Fire department indicated that they are satisfied with the plan subject to five conditions which are incorporated in the report as recommended conditions numbered 23-28 below.

Ward Alderman: Alderman Gewirtz has held several neighborhood meetings for various versions of the project proposals at this site. Alderman Gewirtz has indicated to Planning Staff that she is opposed to the project as presented.

Traffic & Parking: Responded with the following comment:

The Applicant seeks to establish a 31 unit residential use and an 8,300 gross square foot private non-profit club at 343 – 351 Summer Street. The Applicant is seeking a special permit under sec. 9.13.b of the Somerville Zoning Ordinance (SZO) to modify parking requirements. Traffic and Parking has been informed by SPCD that the Applicant meets and exceeds the number of required parking spaces for this development. Traffic and Parking has also been informed by SPCD that the relief the Applicant seeks under sec. 9.13.b concerns tandem parking spaces. The proposed tandem parking spaces proposed by the developer will be such that each tandem parking space (two parking spaces where the vehicles will be bumper to bumper in an elongated parking space) will only be assigned to a single unit. Traffic and Parking has no objection to this scheme.

It also appears that some pillars will be within one foot of the maneuvering aisle. As long as the pillars are properly signed as to their proximity to the maneuvering aisle, Traffic and Parking has no objection to this proposal. However, Traffic and Parking has been informed that one pillar, while being in close proximity to the maneuvering aisle as mentioned above, will also be located next to a HP parking space. This is a concern. The City's ADA Coordinator should review this HP parking space arrangement to determine if this HP parking space is in compliance with all ADA requirements.

Aside from the potential HP parking space issue, Traffic and Parking at this time and with the information provided has no objections with this application.

DPW/Highway: Have been notified, but have not yet provided comments.

Housing: Have been notified, but have not yet provided comments.

Conservation Commission: Have been notified, but have not yet provided comments

Engineering: City Engineer Rob King submitted the following to Planning Staff by e-mail:

The drainage system has been designed using standard engineering practices.

The applicant has provided the City with a plan that indicates all stormwater (up to the 100-year storm event) will be maintained within the project limits. This is above and beyond the typical requirements set forth in our stormwater policy. However, there will still be additional information required by the City prior to construction and if there are concerns from abutting properties, perhaps this information could be provided during the ZBA review stage.

I'd recommend that a drainage report be prepared and submitted to the City for review. The report will give this office a better understanding of the assumed soil conditions within the property limits and more specifically within the proposed infiltration area. To satisfy concerns, I'd recommend that soil testing be required prior to issuance of a foundation or building permit. Testing shall be conducted at the proposed location for the infiltration system. Soil analysis shall be completed using methods outlined and approved within the Massachusetts Stormwater Regulations. Results shall be provided to this office for review.

Should soil conditions vary from those assumed in the drainage report, a revised drainage plan and report will be required prior to issuance of a foundation or building permit. As always, the Engineering Department reserves the right to require modifications to the drainage system design based on the testing results.

As a follow up comment, the Engineer noted that:

1. The drainage swale behind the back yards on Hawthorne Street should be adequate to contain rainwater. The swale is designed with pipes to ensure that any overflow is removed from the swale area.
2. Lot drainage should also be reviewed by MBTA engineers to ensure that there is no impact on the MBTA shaft and tunnels.

Inspectional Services Division: Have been notified, but have not yet provided comments.

Wiring Inspector: John Power has indicated that the project must be designed to have only one (1) electrical service because it is one (1) building.

Design Review Committee: The Design Review Committee had reviewed the previous plan for the site in 2009 and 2010. The most recent plan was presented to the DRC for comments at the February 2011 meeting. At that meeting, the developer introduced the new site layout to the DRC and provided background on the new design and the similarities and differences between the new design and the 2009 proposal. DRC comments were as follows:

- a. The DRC would like to understand how the scale of this building compares to the adjacent bank as well as other buildings around Davis Square.
- b. The DRC would like to see the small windows on the Summer Street façade of the Post be larger or as an alternative provide some on-wall landscaping and a seat wall to mitigate the distance between the windows and the sidewalk.
- c. Some design work is needed to address the interaction between the stairs, ramp, sidewalk and planter.
- d. The right side elevation of the Post and Residential building need more design attention.
- e. The front façade of the residential building could be improved, in the center panel with the circular window.
- f. The façade that overlooks the bank parking lot could be improved as well, as it will be visible to many people.
- g. The mechanical room may be better located in the back corner near the underground garage driveway.
- h. The plantings in the rear buffer could be denser and consist of more columnar type species to create a stronger vegetative buffer.
- i. The Post roof could be a good site for a green roof.

The Applicant returned to the DRC in March 2011 for a second meeting. They updated the plans to address DRC and Staff feedback on their original plan set. At that meeting, the DRC made the following design comments:

- a. The panels on the front façade of the residential building seem extremely flat. Some sort of detail or treatment is needed there. The DRC would like to see the same type of screening or lattice from the Dilboy Post front façade be used on either side of the entryway to the residential building.
- b. Under the front façade windows of the Dilboy Post it feels very horizontal. Connecting the front elements below the windows would be a better design.

- c. The DRC would like to see a stronger material for the proposed trellis on the front facades of each of the buildings. Perhaps a metal material could be used instead of wood for the trellis.

The March DRC meeting was also attended by a few neighbors. One expressed concern about the quality of construction and project materials. Another expressed concerns about the bulk of the building and impacts of the larger residential building on the block of Summer Street and adjacent residential homes. Members of the DRC discussed the materials, methods of construction, and the role of larger residential buildings mixed into urban neighborhoods with two- and three-family houses.

At the conclusion of the March 2011 DRC meeting, the members determined that the project had addressed their concerns and did not need further design review.

Public Comment: When the first plan for this project was proposed in 2009, it was followed by scheduling at least three community meetings attended by upwards of 30 community members. Detailed questions and comments were offered at these meetings and the topics included, but were not limited to: 1. Number of units, site density, size/type of units; 2. Building bulk; 3. Setbacks between the CBD and RA areas; 4. Pedestrian safety and location of driveways/curbcuts; 5. Roof deck and privacy for abutters across the street; 6. Height of residential building; shadow impacts; 7. Operation of commercial parking lot; 8. Parking lot design and noise mitigation; 9. Consistency between the VFW Post and allowable uses in the RA district; 10. Operation of VFW Post; 11. VFW Post building design and noise mitigation; 12. Review by MBTA relative to the Red Line shaft; 13. Location of dumpster; 14. Findings of traffic study; and, 15. Possible commercial use(s) of site.

As noted above, to address concerns that had been expressed, in the fall of 2010 the Mayor suggested, and the Applicant agreed to enter into a mediation process. The result of that process is outlined in the attached letter from the mediator, and is described in more detail in Section I.4 above. As a result of the mediation, the Applicant submitted new plans in March 2011. These plans were subsequently reviewed in one meeting with the neighborhood residents and Alderman Gewirtz. At the request of the neighbors, neither the Applicant nor the City Staff attended this meeting, but Staff did provide a set of the project plans and some background information to neighbors in preparation for this meeting. The updated plans provide an approximately 320 square foot connector between the two buildings, but otherwise does not change the nature of the building.

Public comment was taken on the previous plan before the ZBA on June 8, 2011, and Staff summarized the concerns expressed by the public at that meeting, and has retained those comments. Many comments relate to the impacts listed above, and some related to the incomplete environmental submittal, and a few other items (views of the rooftop condensers, views from Hawthorne Street, etc.) that were not provided before that past meeting, but have now been addressed. Other comments ~~have been~~ were recorded at the August 24, 2011 meeting and are addressed in this updated Staff Report for the meeting on September 6, 2011, either in the body of the report, or in the additional portions of Section 5, below (beginning with section L. and will be addressed by staff at the August 23, 2011 meeting and will be combined with comments from August 24, 2011, with a complete set of written replies.

After the August 24, 2011 meeting, additional public comments will be summarized and the report will be updated to address these concerns.

In Section 5, below, Staff has provided comments on some of the concerns raised for consideration.

5. Impacts of Proposal:

Overall, the proposal will bring a vacant lot and a surface parking lot, which collectively can be considered an eyesore, into productive use. The project will help meet demand for housing near the Red Line, add new residents that will contribute to the vitality of Davis Square, provide a new fully accessible building for veterans who are members of the Dilboy Post, and create an improved pedestrian environment along the length of the site. Below is a more extensive explanation of the some of the potential community impacts and recommendations about how to address these.

A. Number of units, site density and size of structures

There is significant demand for housing near transit both nationally and in the Boston area. While condominium housing has not historically attracted families with children, they do attract young singles and couples as well as empty nesters seeking housing with access to amenities. In other words, while the proposed project is slightly different than the two- and three-family homes that surround the site, those who would seek to purchase these types of units are not too different than the families in the existing neighborhood. They share an interest in living near transit and near a vibrant location like Davis Square. The form of the new building is similar to what can be found in the neighborhood today. Further, with a unit density of 1 unit per 1,200 square feet of land area, the proposed density is more similar to the density of the 2-3 family housing than the apartment buildings found in the neighborhood today. The way that the building is proposed to be placed on the site is referential to the site's role as a transition between the CBD and the lower scale development further down Summer Street; i.e., the development of a three-story residential section of building, which is lower than the bank building, transitioning to a two story Post section of the building, bridges the existing gap between the residential neighborhood and Davis Square.

In response to neighborhood comments, the Applicant has downscaled the building by lowering the height in the CBD (where height to a mean roof line may reach 50 feet) to create a three story building that is more in line with the height of adjacent homes.

The arrangement create by merging the lots does not add any development density to the site. It allows for the total lot area of both existing lots to be applied to the single development. Therefore, while not adding density, the project shifts the development capacity allowed on this site almost entirely from the RA District to the CBD District. The proposal respects the zoning on both sites by capping residential development at the same number of units (31) that would be allowed across this site whether it was developed together or separately. While some at the hearing noted that this did not respect the impact of the change from CBD to RA zoning, it is worth noting that there was an impact on this proposal with the establishment of RA zoning on the shaft site. The change from CBD to RA zoning reduced the potential maximum number of units that would be allowed on these two lots from 40 to 31 and lowered the possible maximum floor area that could be built on these two lots from approximately 80,000 square feet to just under 60,000 square feet of development potential. The proposed development consists of 38,586 square feet, only 64% of the total allowed development capacity, and a total of 31 units on the site.

B. Environmental impact

Environmental impacts of new infill development adjacent to urban commercial districts typically involve stormwater and soil conditions. In general, the development of new structures is likely to have some environmental impact, and that impact must be addressed and mitigated as necessary. But, the impact when an urban site is being reused is minimized by the location and the condition of the site. The site has served as a surface parking lot and weed-filled vacant lot for many years. It is located in close proximity to Davis Square where daily needs can be met without the need for daily car trips, and where rapid transit offers convenient access to Boston and Cambridge. Staff find that placing 31 residential units on this site will have minimal impact on the environment, far less than spreading these units across the region.

Securing a site for the Dilboy Post will ensure that their activities can continue adjacent to the neighborhood that has always served as their home, and that they can continue to serve returning veterans, especially those with mobility issues who cannot access the Post building today.

Localized environmental impacts from construction often involve the care and treatment of stormwater runoff. On the current parking lot site, the pavement across the entire site requires runoff from the entire site to reach city streets and/or adjacent properties. A new development will treat runoff, and, if possible will allow it to percolate into the ground instead of contributing to the combined sewer system. The City Engineer will review the site plan and proposed stormwater systems in detail prior to issuance of a building permit to ensure compliance with City regulations.

In their March 2011 application, the Applicant submitted a report indicating that preliminary analysis and soil testing has been completed on the vacant lot, and no reportable contamination was found. According to the Applicant's submittal, preliminary analysis was also completed for the parking lot, but the Applicant did not submitted any information indicating that any soil tests have been completed on this lot. Many lots formerly used for automobile storage and service in Somerville have been found to have some contamination. Amidst the Zoning Board hearing process, Planning Staff learned that the Applicant had not submitted all of the environmental reports that they had in their possession for site. Upon confirming this information, Staff recommended that the Applicant withdraw their application and resubmit the application to include all of the available environmental reports for the site.

After receiving the June 2011 application with numerous environmental reports, which is before the Zoning Board at this time, Staff immediately recommended an outside consultant perform a peer review of these documents to determine their accuracy and to develop a plan for the additional environmental testing that would be needed at the site. The outside consultant is report has been completed, and recommends a work plan with a series of follow-up steps. If any of the items in the work plan should generate a reportable condition, that condition would be reported to DEP, and DEP would need to review and sign off on a remediation strategy.

The Planning Staff has proposed a condition that would require the applicant to follow the work plan, and allow for the City's consultant to monitor the work plan activities. The consultant who wrote this report, Jeffrey Nangle of Nangle Consulting Associates, will be in attendance at a future ZBA meeting to address the Board and answer their questions, but will not be at the August 24, 2011 meeting. Mr. Nangle will be in attendance at the ZBA meeting on Tuesday, September 6, 2011.

It should also be noted that the Applicant intends to apply for LEED certification for the residential portion of the structure and Energy Star Certification for the entire building.

C. Size/type of units

Concerns have been expressed about the mix of units, and the need for studio units in Somerville. Staff has generally been encouraging the development of larger units where possible in projects submitted for Special Permit. However, it should be recognized that one-bedroom and studio units do provide a more affordable option for homebuyers seeking to enter the Somerville market. The Applicant had reduced the number of studios in the project, and has continued to try to meet market demand and the City's preferences for unit mix. But, this has had to be balanced with neighborhood desires to keep the structure at no more than three stories. Therefore, while some unit sizes may be smaller than in the original proposal, the unit mix currently proposed will appeal to a mix of family and household types.

Importantly, the proposed project will provide for 4 units that will be permanently affordable – addressing a recognized need in Davis Square given the way the prices in the private housing market have increased

since the opening of the Red Line station. The unit mix will reflect the mix in the building, with one studio and one two-bedroom unit amongst the four affordable units. Under City ordinances, affordable units must remain permanently affordable, as rental unit occupants have annual income monitoring, and for-sale units can only be resold to qualified low-income buyers at affordable prices. Two of the units in the proposed residential portion of the building will have a limited amount of natural sunlight, Units # 14 and # 15, as they are only separated from the Post building by a narrow space above the connection between the Post building and residential building. Planning Staff supports the recommendation of Alderman Gewirtz and is now recommending a condition that indicates that neither of these units shall be permitted to be designated as one of the affordable housing units associated with the project.

D. *Building bulk/massing*

As described above, the SZO allows for a certain level of development square footage within the CBD and RA zones, while also specifically determining the number of residential units allowed per lot area. As currently designed, the proposed development meets or exceeds all of dimensional requirements (Per table, Section 8.5 of the SZO) of the zoning ordinance and the overall developable space is less than would otherwise be allowed. Specifically:

- Proposed lot coverage is less than 71% in the CBD and 10% in the RA, when 80% and 50% are allowed in these districts, respectively.
- Proposed Open Space is 20% in the CBD and 36% in the RA, when 10% and 25% are required in these districts, respectively.
- The Floor Area Ratio requirement¹⁰ would allow for 47,000 square feet of floor area in the CBD district and 12,575 square feet of floor area in the RA district, for a total of over 59,000 square feet where only 38,267 square feet is being proposed.
- Within the RA district, the proposed FAR is 0.14 (only 2,285 square feet of building is to be built within the RA district) when 0.75 is allowed.

Given that the proposed uses and structure cross both of the parcels in this proposal, Staff is recommending that language be added to both deeds to recognize the interrelationship. Further, under the current zoning, no additional residential units could be added to either portion of the parcel.

E. *Pedestrian safety and location of driveways/curb cuts*

Concerns arose regarding the location of the driveways/curb cuts and whether the angle of incline of the driveway to the underground parking garage would allow vehicles to pause at the top in order to see pedestrians passing by. These concerns initially arose when the project was proposed to contain three curb cuts. The project has subsequently been revised to have two curb cuts – one in the CBD for the residential below-ground parking and one in the RA district that will access both surface lots. This brings the project into compliance with City regulations relative to curb cuts. In addition, under the current proposal, the angle of incline for the garage is less and more space is provided at the top so that a vehicle can stop before crossing the sidewalk.

F. *Zoning compliance*

Under the original proposal, questions arose regarding whether a setback was required between a building in the CBD district and a building in the RA district. In the current proposal, the building crosses district

¹⁰ FAR or Floor Area Ratio is the ratio of net floor area of buildings to total lot area. A structure with 50,000 square feet of floor area on a 100,000 square foot lot would have an FAR of 0.5.

lines. The provision in question is SZO Section 8.6, Footnote 12 which states that “where a lot in a business or industrial district abuts a lot or district line in a RA, RB or RC district, no building in the business or industrial district shall be erected closer to the residential line than 1/3 the height of said building, but not less than 15 feet.” Given the unique nature of the proposed development, Planning Staff consulted with the Law Office regarding how to apply this footnote. After close review of the footnote, the Law Office and Planning Staff determined that the setback requirement did not apply for either the original or revised proposal. This is due to the fact that since both parcels will be owned by the same entity (as committed to by the Applicant), the lot within the RA district, which is smaller than the minimum required lot size, will automatically become merged, for the purposes of zoning, with the adjacent lot upon transfer of ownership. This in effect creates a single lot that has a zone line running through it instead of two lots¹¹. Since Footnote 12 applies when a lot is located abutting the RA, RB or RC district, it no longer applies to the project site. Section 8.6, Footnote 20, which states that “where a lot abuts an RA, RB or RC zoning district line, any structure (or portion of a structure) within 30 feet of said district line shall be limited to 3 stories and 40 feet,” does not apply for the same reason. These provisions do not apply to the Shaft Site at all because it is completely located in the RA district. To ensure that the two parcels will not be separated in the future, Planning Staff have recommended two conditions – first, that no building permit be issued until the Applicant provides evidence of the land transfer and, second, that deed restrictions indicating that the parcels cannot be sold independently be placed on both parcels prior to issuance of a building permit. The Law Office will need to approve the language of the restriction.

There has been additional concern about the calculation of the lot area per unit for this project. The Applicant is invoking a provision of the SZO that allows the Applicant to use land in an adjacent district with lower zoning allowances for the purpose of meeting zoning requirements and for providing passive use (including parking) on that land (See SZO 7.4: Lots in Two Districts). Therefore, the Applicant can cluster the residential units on the CBD site of the lot, crossing the district line only when the building steps down to meet the RA zoning height requirements. The full residential development capacity (as well as site coverage and floor area ratio) can be allocated to the lot with the more intense CBD zoning. Regardless of how this may be set up, the total residential development capacity of this land under the SZO is for 31 units. While the more intensive provisions of the CBD cannot be applied to the RA zoned land, one can take the development capacity allowed on the entire site and build the majority of that capacity on the CBD site where it is closer to Davis Square and its amenities. The provisions of Section 7.4 then allow the less intensive lot area to be used to meet passive use requirements (setback, landscape or parking) for the entire site.

There has also been concern about the use of the Post portion of the building within the RA zoning district. While this new plan places the building a substantial distance from existing RA and RB zoned residences, a small portion of the building remains in the RA district. This use is a private member club that is allowed in the RA district **only** by Special Permit. Through the Special Permit process, the ZBA has the opportunity to assess the use and its impacts. There are a number of other gathering uses within RA and RB zoning districts, most are church halls that are often used for events. The American Legion building on Glen Street is in the RB district and runs similar events. While Planning Staff determined, and the City’s Law Department agreed, that the Post can be located in the RA district by Special Permit, the new plan works to address the concerns about the location of the building so close to these residences. The new site is closer to homes on Summer Street, but it places the front of the building along the street, while the function room is buffered by the new residential portion of the building, and is insulated to reduce sound impacts.

¹¹ Note that the two parcels do not actually need to be merged via a subdivision for this merger “for zoning purposes” to occur under Massachusetts law.

As a use allowed by Special Permit in an RA district (as well as CBD district), the Post may also locate its accessory parking in such a district.¹² But, the commercial parking must be located in the CBD district, as it is in this proposal.

There have also been concerns about the commercial parking lot spaces under the residential portion of the building and how someone wishing to park in those spaces would need to cross into the RA district portion of the lot to access them. In the case of this particular project, commercial parking is only allowed in the CBD District and this is only by Special Permit with Site Plan Review approval. To reach the proposed 15 commercial parking spaces, a car would have to access the curb cut off of Summer Street in the RA District and drive through the Post area parking lot to get to the commercial parking spaces. Section 7.4 states that "Land in a more restrictive zoning district may supply space for a use permitted in a less restricted zoning district if the use of the land in the more restrictive district satisfies space and passive use requirements (such as setbacks, landscaping or parking) that are not prohibited in the more restrictive district." Therefore, the SZO would allow this to occur, assuming the Applicant is also approved for the Special Permit for the 15 commercial parking spaces in the CBD District, because vehicles driving over the RA District to park in the CBD District would only be a passive use (access) for actual commercial parking spaces. Since none of the commercial parking spaces are proposed to be located in the RA District, Section 7.4 allows the access to these spaces through the RA District.

G. *Roof deck and privacy*

This plan includes no roof deck.

H. *Noise impact from utilities*

The utilities on the Post portion of the building have been located in an interior room on the second floor. This room will be inside, thereby reducing noise. The units in the residential portion of the building will be served by individual heating/cooling units that will be on the roof. These will be located toward the center of the roof, far from other neighbors.

I. *Traffic and parking impacts*

The June 2010 Traffic Impact Study assessed traffic impacts for the following intersections: Summer Street and site driveways, Summer Street and Cutter Avenue, Summer Street and Willow Avenue, and Willow Avenue and Highland Avenue. According to that study, the proposed development would generate 225 trips daily including 20 additional trips during the AM peak hour and 22 during the PM peak hour. Peak hour directional site traffic would amount to approximately one vehicle every five minutes along Summer Street for the proposed condo building. An addendum report was prepared in February 2011 to reflect the currently designed plans. The report indicated that the trip generation for the new design will remain the same as what was presented in the June 2010 study.

There were a number of requests to provide additional parking and/or traffic impact information from the project. Despite any potential concerns about the impact of the actual size of the project, the traffic

¹² Even if the Post were not allowed in the RA district, and were removed completely from the RA district, their parking can remain in the RA portion of the lot. Section 7.4 states that "Land in a more restrictive zoning district may supply space for a use permitted in a less restricted zoning district if the use of the land in the more restrictive district satisfies space and passive use requirements (such as setbacks, landscaping or parking) that are not prohibited in the more restrictive district."

impacts of the residential portion of this project on any nearby intersection are likely to be negligible, as overall traffic demand in the peak hour is likely to amount to less than one vehicle every five minutes. Therefore, traffic demand on any given intersection in the area is likely to be far less than that. Traffic demand from the Post should not be significantly different than the existing demand, although the access location for the parking will change.

Concern has been expressed about the tandem parking spaces that will provide parking for 11 of the units in the building. It is worth noting that while evening business parking is at a premium in the core of Davis Square, the project meets or exceeds all parking requirements of the SZO. The tandem parking spaces are assigned each to the same unit, so no unit owner has to move the car of another unit owner to access a car in the back space of a tandem pair. These spaces will be assigned together.

It is also worth noting that a study from Reconnecting America indicates that in communities with rapid transit rail that connects throughout a metro area, per-unit car ownership averages 0.9. This is less than one car per unit. This is probably why neighboring Cambridge only requires one car per unit in this type of a garage situation. Furthermore, even when residents in Somerville have cars, the number of residents using them (and therefore adding to traffic) in a daily commute is minimal. Many residents still see a need to own a car, but have no interest in using it for a daily commute.¹³

Additional concern was expressed about the total impact of residential and visitor spaces in the neighborhood. The parking requirements for new development in the neighborhood exceed the number of parking spaces that are typically located with existing residential development in the neighborhood. Providing excessive on-site residential parking would be contrary to sustainability goals of the City, by encouraging more vehicle ownership and requiring further infrastructure for cars. Furthermore, while residents are entitled to visitor permits, at any given time, only a small number of these permits are being used. The Planning Staff will seek to provide the ZBA with additional data on use of visitor permits in the neighborhood if that information is available.

Staff is also recommending as a condition that one parking space be dedicated to a car share program (Zipcar, Icar or similar).

J. *Future use of Post site and construction period parking*

Staff has identified two additional issues which include the availability of parking during the construction period and the future use of the existing Post site. While the proposed parking allocation will be adequate to serve the Post and the residences when the project is complete, the application has two implications for the existing operation. First, it limits parking for the Post during construction. OSPCD recommends that the Applicant expand the parking mitigation plan for the construction period to address Post event parking during the construction period. Second, completion of the project severs the existing Post facility from the separate lot where parking had previously been provided. While the applicant has presented evidence to the Planning Staff that the lot at 351 Summer Street does not legally meet a zoning requirement for parking at 371 Summer Street, practically, it has served this role for many years. For the short-term, the Post must phase their construction to complete the surface parking at 343-349 Summer Street prior to removing the lot at 351 Summer Street. To protect against the re-establishment of a parking-intensive use

¹³ According to CarFree Census summaries of the 2000 census data, Somerville ranks #5 amongst mid-sized American cities that have commuters that don't drive to work (42.42% of commuters bike, walk or take transit). But, Somerville ranks #30 amongst mid-size cities in the % of households with no car at all (22.73%). The combination of this data indicates that there is a demand for a parking space for 75+% of residential units in Somerville, but it is not likely that all of this parking will generate peak driving trips.

at 371 Summer Street, Staff is recommending a condition that would require that adequate parking for a future use exist, and that the site of the former Post is not used as an additional function hall.

K. *Reputation of Applicants*

There has been a significant effort on behalf of some abutters to address other projects that may have involved some of the principles of some of the Applicants of this project. Staff wants to caution the ZBA that these projects are not before the Board and any issues, real or perceived, with these projects are not an appropriate basis for the approval or denial of any Special Permit. Courts in Massachusetts have regularly upheld this position. For more on this subject, Staff recommends a review of the 1977 Massachusetts Appeals Court case “Dennis M. Dowd vs. Board of Appeals of Dover (5 Mass. App. Ct. 148).”

As this Board is well aware, Massachusetts Special Permit projects are regularly bought and sold between approval and development. Therefore, Special Permit Granting Authorities must continue to focus their reviews on the quality of the project, the submitted plans, the proposed conditions and the required findings rather than any reputation, (good or bad), of any particular Applicant.

Please note that, while the reputation of a developer that is building the project is not permitted to be a subject of a special permit, the operation of a use of land by a particular user can be reviewed. The VFW Post has been operating at their existing facility since 1941 and has become an important resource in the community. The conditions proposed by Planning Staff are designed to ensure that their new operation respects the neighborhood and does not expand their activities beyond what is done at their current site.

L. Leasehold Condominium

Concerns were expressed at the last ZBA meeting about the unique circumstances of establishing an arrangement whereby a condominium is developed on land under a land lease. This is allowed under Massachusetts law, and Planning Staff is aware that there have been proposed projects in Massachusetts (for example, air rights projects over the MassPike) that have been proposed to use this arrangement, but staff is unaware of any existing condominiums that use this arrangement.

This sort of arrangement is adequate to ensure that the lot remains under the control of a single legal entity and therefore no zoning violations are generated by the arrangement. Beyond that, zoning is designed to address development use, form and its review process. Zoning is not designed to regulate or control the form of ownership of a lot or portions of a lot. If the ZBA is concerned that this type of ownership arrangement is likely to impact one of the required findings, the Staff encourages to Board to seek further information about this topic from the applicant.

M. Concerns about groundwater

The plans have now been reviewed by the City Engineer, and his comments are attached, as well as an updated recommended condition on drainage. The Engineer would like the applicant to submit a drainage report prior to ZBA approval, for his review. This report can be based upon anticipated soil conditions. The condition would require soil testing in the area of the infiltration system to ensure that the site will drain according to the report.

Staff does not recommend that the Board require a peer review of the drainage system. The City of Somerville has a City Engineer with a technical understanding of drainage systems, and therefore

adequate skills to review the drainage requirements and determine appropriate conditions as well as compliance with those conditions.

N. MBTA Impacts

The Planning Staff has been discussing the project with Transit Realty (the Real Estate partner of the MBTA) to see if they can determine any concerns that may arise from the current plan. They indicated that they would not be able to make a final determination on all site details until a building permit plan set was completed. Because developers cannot fund the development of these plans until a zoning approval is granted, there cannot be 100% certainty on MBTA approval of the plans prior to approval by the ZBA. But, Transit Realty has agreed to review the current plans and provide comments to the development team and the City. The developer provided the entire ZBA plan set to the Transit Realty staff. On September 1, 2011, Transit Realty indicated that staff would be reviewing the plans in the current week and will provide comment. This would include a review to compare the plans to prior real estate agreements on the site as well as to address issues brought up by residents at the last meeting about proximity to the shaft, design of the building adjacent to the shaft, building air intake location, infiltration system impacts on the T infrastructure and the use of landscape materials at and around the emergency egress areas. Planning Staff will share this information as soon as it is available.

V. FINDINGS FOR SPECIAL PERMIT with SITE PLAN REVIEW (SZO §5.2.5):

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: Staff 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 with respect to the required Special Permits with Site Plan Review and 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 with site plan review.”

6.1.5. CBD - Central Business Districts.

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.

1. Across the primary street edge, the building should complete the streetwall.

The building completes the streetwall with an attractive building and a green edge along the sidewalk. Two curb cuts are proposed which is compliant with City regulations and is one fewer than the existing site.

2. 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.

Ground floor retail use previously was considered by the Applicant but public comment at the first community meeting led to the elimination of the commercial component. Further, given the fact that the site is transitioning to a lower density portion of Summer Street and much of the opposite side of

the street contains residential buildings, it is unlikely that ground floor retail in this area would be actively used.

3. 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.

The entire building has a ten-foot setback and the entire building has no fourth floor or roof deck.

4. 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.

Off-street parking in the CBD is located in the rear of the building and an underground garage is provided.

5. 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.

Access to the underground parking garage is provided through a 28.2 ft wide ramp with a garage door. Access to the surface parking is provided by a single curbcut in the RA district.

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 proposal is consistent with the purposes of the districts, which are:

6.1.1. RA - Residence Districts: "To establish and preserve quiet neighborhoods of one- and two-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts."

6.1.5. CBD - Central Business Districts: "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."

The project is a transit-oriented development in close proximity to the core of Davis Square, with a building along Summer Street that will activate the sidewalk and replace a parking lot and weed-filled lot with an attractive building along safe sidewalks and uses that can support the retail activity in the core of the square. It protects the RA zone by moving much of the development out of that zone except for ancillary activities and a small portion of the building. It provides a new option for housing near Davis Square, supports city-wide and regional smart growth policies and scales down from the taller buildings in the Square to the residential streets adjacent to the site.

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 proposal includes a building that will be within the existing built-out area around Davis Square, within ¼ mile of the MBTA station, and served by adequate services.

Davis Square has historically incorporated mid-rise residential buildings on corner lots and on the main streets that come in and out of the square. These buildings have peacefully co-existed with adjacent two- and three-family homes for many years. Within approximately one-half mile of the subject property are 7 long standing apartment buildings of four or more stories, which exceed the FAR and unit density of the proposed project and do not comply with off-street parking requirements. These buildings are among the earliest buildings in the neighborhood. The residential project is consistent with this site scale and massing, but meets current parking and bulk requirements.

The Dilboy Post has been a part of the Davis Square neighborhood for generations, and the new building would continue the use in a structure that complements the residential portion of the building and improves the streetscape along Summer Street.

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

The structure functions well as a residential and private club building. Each portion has required facilities and design features to meet their required functions. Staff recommends a condition to add an internal trash/recycling storage in the VFW Post portion of the building to limit any need for outdoor garbage storage.

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 building meets required standards for 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 proposed residential portion of the building will not result in any environmental impacts beyond activities that are typically associated with residential units. The impacts of the VFW Post portion of the building are not anticipated to be any different than the impacts of the existing location. But, to address the new location closer to the residential neighbors, the Planning Staff is recommending a set of conditions to address noise impacts from the new structure. The Staff recommends that the Applicant be required to provide a sound resistant construction, and that a tall fence with a sound barrier be placed along the rear lot line. In the front, the windows will not be operable. No other impacts from the VFW Post portion of the building are anticipated.

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 proposal is consistent with the general purposes of the Ordinance as set forth under Section 1.2, which includes, but is not limited to providing for and maintaining “the uniquely integrated structure of uses in the City, adequately protecting the natural environment (through green building design) and encouraging the most appropriate use of land throughout the City.” The project provides an accessible

modern location for the Dilboy Post to continue to serve veterans, and the residential portion provides a transit-oriented design in a location close to the amenities of Davis Square and the MBTA station.

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 proposal is consistent with the purpose of the Central Business District, which is, “[t]o 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 district 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.” The project places the residential portion of the structure with a front-door on the street, locates residential parking underneath the building and all other parking behind the building, and provides an attractive façade along Summer Street that contributes to the pedestrian orientation of the street. The project replaces a surface parking lot that serves as an open gap in the urban streetscape with an attractive building. Where parking is exposed along the street, a landscape buffer is provided. The project provides a direct connection from the commercial parking to the Summer Street sidewalk. The project also widens the sidewalk along Summer Street.

The proposal is consistent with the purpose of the RA district, which is, “[t]o establish and preserve quiet neighborhoods of one- and two-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts.” Within the RA district, the project mainly includes uses accessory to the activities in the CBD, including parking, landscaping and portions of the VFW Post and residential sections. This is as allowed in the SZO. The adjacent neighbors are buffered by a fence and landscaping. These activities provide a buffer from the more extensive activities in the CBD to the residential properties in the adjacent RA and RB districts. The shaft site benefits from limited development under this plan, protecting the nearby residences by shifting the intensity of development towards and into the CBD. Within the RA district is a small portion of the VFW Post section of the building, a club that can be established in RA district by Special Permit, and a small portion of the residential section of the building with a mansard roof that is 2.5 stories tall, the typical size of other RA zoned structures.

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 project is located harmoniously with the surrounding features, placing an attractive building along Summer Street to replace surface parking and enhance the pedestrian experience. The project is buffered from the smaller adjacent residential structures with a significant rear yard setback along the entire property. The residential portion of the structure is lower than the adjacent Winter Hill Bank, and the height steps down with the two-story Post section of the building, and a 2.5 story corner of the residential portion of the building behind the Post. Therefore, the project as a whole provides a reasonable balance to bridge the scale of Davis Square with the scale of the adjacent neighborhood. While the site allows for a four-story building comparable to Davis Square development, the Applicant is proposing three stories to transition from the intensity of the square to the quiet neighborhood beyond.

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.”

All stormwater will be retained on site. This will be a net improvement from the existing lot that sheet flows into the street.

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.”

There is no removal, alteration or other impact on historic properties on the site.

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 proposal replaces a surface parking lot and a vacant weed-filled lot with an attractive building along Summer Street. The proposal includes associated landscaping and buffers into the residential neighborhoods that will serve to reduce the impact of the development on adjacent structures. The Planning Staff recommends a fence and sound barrier along the rear property line. The combination of these design elements 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.”

All lighting shall be directed downward to light the parking areas and site without spilling onto adjacent properties and the night sky. The Planning Staff recommends that the project be conditioned to ensure that this issue is addressed.

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.”

Per review by the Fire Department, the site offers adequate access for emergency equipment. The project will be reviewed by the MBTA to ensure that the shaft is adequately protected and maintained.

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.”

Traffic design has been improved by the location of the two proposed driveways. Vehicular traffic will have access from a garage entrance in the residential portion of the building and single driveway entrance on Summer Street. Traffic and Parking department has approved this design.

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.”

All utilities will be underground.

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 Applicant has taken care to address adverse impacts. The most significant potential impact - noise from the Dilboy Post - has been addressed through a proposed design established by a sound engineer. This plan will provide a double wall in the Post portion of the building, and a concrete ceiling on the first floor to keep sound from escaping that level. Sound at the property line is expected to be well below the level allowed in the noise ordinance and will be conditioned as such. Extensive operating conditions are proposed by Planning Staff.

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.”

No outdoor signs are proposed with the exception of some simple wording on the entrance overhang to the VFW Post portion of the building. This proposed text that will be affixed to the overhang respects the scale and character of the proposed and existing buildings in the area.

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.”

This has generally been addressed, but Planning Staff recommends a condition to require internal trash storage for the Post portion of the building.

21. Screening of Parking: In cases of buildings on stilts, the parking area should be screened or partitioned off from the street by permanent structures except in the cases where the entrances to the parking area is directly off the street.

Surface parking is located under the residential portion of the building in the rear. This area is screened from the street by design, as the building meets the street in the front. Vehicle access to this area is along

the side, behind the Post section of the building. This area is also screened by the design with limited openings along the rear and side of the structure. A pedestrian walkway along the side allows access to the commercial parking for pedestrians without exposing the parking along this side of the structure.

VI. ADDRESSING NEIGHBORHOOD IMPACTS

After participating in several neighborhood meetings where this project had been discussed and participating in mediation, the Applicant has made modifications to respond to those concerns. Nonetheless, it is clear to Planning Staff that significant issues raised by neighbors did still need to be addressed. For this reason, the conditions in Section 7 are proposed to address these issues.

To summarize the most significant conditions, they include:

1. Limiting member-sponsored events in the Hall at the Post to 125 people as a maximum capacity except for four specific identified events per year where capacity can reach 190. This is despite the Applicant's request for a set limit of 190 people for all events.
2. Requiring installation of a sound dampening eight foot fence along the entire rear property line of both lots.
3. Landscaping the rear and side yards between the developed site and abutting residences with additional trees, thereby creating a substantial vegetative buffer between the structures and parking area on the site and the neighbors.
4. Limiting the future use of the existing Post building (through agreement with the Post) to uses that would not create significant parking demand.

Staff believes that with these conditions and the others below, this project will be a benefit to the City of Somerville and the Davis Square neighborhood in that it provides additional housing to help meet demand in Davis Square, includes four permanently affordable units, is a sustainable development with its proximity to transit and commitment to green and energy efficient designations, and, importantly, provides a fully ADA compliant venue for the VFW Post and its veteran members.

VII. PRELIMINARY RECOMMENDATION

Special Permit with Site Plan Review under SZO §7.3 and §7.11.1.c; Special Permit under §7.11.5.B.6.a, §7.11.11.10.b, and §9.13.b.

Based on the above findings and subject to the following conditions, the Planning Staff recommends **CONDITIONAL APPROVAL** of the requested **SPECIAL PERMIT with SITE PLAN REVIEW** and **SPECIAL PERMIT**.

This recommendation is based upon a technical analysis by Planning Staff of the application material based upon the required findings of the Somerville Zoning Ordinance, and is based only upon information submitted prior to the public hearing. This report may be revised or updated with new recommendations, findings and/or conditions based upon additional information provide to the Planning Staff during the public hearing process.

#	Condition	Timeframe for Compliance	Verified (initial)	Notes																		
Application and Plans																						
1	<p>Approval is for the establishment of a 31 unit residential use, an approximately 8,300 gross square foot private, non-profit club, a 15-space commercial parking lot, and modification of parking design standards. This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table border="1" data-bbox="248 600 886 1617"> <thead> <tr> <th data-bbox="248 600 566 669">Date (OSPCD Stamp Date)</th> <th data-bbox="566 600 886 669">Submission</th> </tr> </thead> <tbody> <tr> <td data-bbox="248 669 566 772">(June 30, 2011)</td> <td data-bbox="566 669 886 772">Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td data-bbox="248 772 566 856">July 9, 2009 (August 18, 2011)</td> <td data-bbox="566 772 886 856">Existing Conditions Plan</td> </tr> <tr> <td data-bbox="248 856 566 940">June 24, 2011 (August 18, 2011)</td> <td data-bbox="566 856 886 940">Landscape Plan</td> </tr> <tr> <td data-bbox="248 940 566 1108">June 24, 2011 (August 18, 2011)</td> <td data-bbox="566 940 886 1108">Permit Layout and Grading Plan, Permit Utility Plan, Details Sheet 1, and Details Sheet 2 (C1 – C4)</td> </tr> <tr> <td data-bbox="248 1108 566 1199">July 15, 2011 (August 18, 2011)</td> <td data-bbox="566 1108 886 1199">Zoning Site Plan (AZ-010)</td> </tr> <tr> <td data-bbox="248 1199 566 1289">July 19, 2011 (August 18, 2011)</td> <td data-bbox="566 1199 886 1289">1st Floor Plan (A-101)</td> </tr> <tr> <td data-bbox="248 1289 566 1528">June 24, 2011 (August 18, 2011)</td> <td data-bbox="566 1289 886 1528">Floor Plans, Elevations, Perspective Views, Shadow Studies, and Aerial Site View (A-100, A-102 to A-104, A-300 to A-302, A-901 to A-906)</td> </tr> <tr> <td data-bbox="248 1528 566 1617">(August 18, 2011)</td> <td data-bbox="566 1528 886 1617">Construction Management Plan</td> </tr> </tbody> </table> <p>Any changes to the approved plans, elevations, or associated documents that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (OSPCD Stamp Date)	Submission	(June 30, 2011)	Initial application submitted to the City Clerk's Office	July 9, 2009 (August 18, 2011)	Existing Conditions Plan	June 24, 2011 (August 18, 2011)	Landscape Plan	June 24, 2011 (August 18, 2011)	Permit Layout and Grading Plan, Permit Utility Plan, Details Sheet 1, and Details Sheet 2 (C1 – C4)	July 15, 2011 (August 18, 2011)	Zoning Site Plan (AZ-010)	July 19, 2011 (August 18, 2011)	1 st Floor Plan (A-101)	June 24, 2011 (August 18, 2011)	Floor Plans, Elevations, Perspective Views, Shadow Studies, and Aerial Site View (A-100, A-102 to A-104, A-300 to A-302, A-901 to A-906)	(August 18, 2011)	Construction Management Plan	BP/CO	ISD/Plng.	
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Construction Impacts				
2	The Applicant shall properly protect and shall not disturb any street tree on Summer Street. Damaged or destroyed trees will be replaced as follows: 1) The Applicant shall replace the tree with a tree of similar size and caliper and a species chosen by DPW in the same location; and 2) the Applicant will be required to provide to DPW two additional street trees of a minimum 3 inch caliper and a species to be selected by OSPCD, for DPW to plant at a suitable location in Somerville.	During Const.	DPW	
3	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.) if damaged as a result of construction activity. All new sidewalks and driveways must be constructed to DPW standards, including the approximately one (1) foot expansion of the sidewalk on the Applicant’s property as shown on the plan.	During Const./CO	DPW	
4	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. Construction vehicle parking and staging shall be operated per the construction plan provided with the application.	During Const.	T&P	
5	The Applicant shall undertake appropriate rodent control measures. This should include baiting for rodents before the start of construction, and additional rodent baiting as needed in advance and while the project is ongoing. Baiting should occur on the property and in the neighborhood in the vicinity of the property. Additional baiting shall be required as deemed necessary by ISD.	BP – through construction	ISD	
6	The Applicant shall conduct a survey of foundations and buildings adjacent to the site and across Summer Street prior to construction, and shall address concerns about the impact on structures from project construction.	BP	ISD	
7	The Applicant shall identify an on-site owner project manager to be a primary point of contact from ISD for all questions or concerns about quality of construction. The project manager shall be available at all times during construction and at all inspections.	BP – through construction	ISD	

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
8	The Applicant shall provide to OSPCD for review and approval a temporary parking plan to provide adequate parking arrangements within the Davis Square area for events held at the current Post building during construction, which may include construction of the new Post parking prior to removal of the existing lot.	BP	Png.	
9	Project must be designed to have only one (1) electrical service because it is one (1) building.	Electrical Permits & CO	Wiring Inspector	
Design				
10	The Applicant shall replace the entire sidewalk immediately abutting the subject property with a concrete sidewalk. All new sidewalks will be installed by the Applicant in accordance with the specifications of the Highway Superintendent. All sidewalks and driveway aprons shall be concrete. The sidewalk on Summer Street shall extend onto the private property as shown on the plan, and the Applicant shall agree to provide an easement for public use of this sidewalk extension.	CO	Png.	
11	Trash and recycling storage for the Post shall be inside of the structure. The Applicant shall not move any trash or recycling to an outside location for any period of time except to empty it directly into a truck. Applicant shall provide adequate space and facilities both trash and recycling at the Post building.	BP/Cont.	Png.	
12	The location and design of transformers will be subject to review and approval of Planning Staff prior to installation and will be screened as allowed by NStar and the MBTA.	Electrical Permits & CO	ISD	
13	All on-site lighting shall be downward directed and shall not illuminate adjacent residential parcels or the night sky.	CO/Cont.	Png.	
14	There shall be no roof deck or general roof access on the residential portion of the building, except to provide for maintenance of the roof and associated mechanical equipment.	CO/Cont.	ISD	
15	If the Applicant chooses to use a fence and gate system along the front setback where the VFW parking lot meets Summer Street, the system design and materials shall be subject to review and approval of Planning Staff.	CO	Png.	

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
16	Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards. The landscape plan shall require final review by OSPCD. The landscape plan shall be amended to add additional landscaping along the right side elevation of the Post portion of the building to the extent possible and to add two additional trees along the rear property line with a minimum of 3 inch caliper. These changes shall be reflected on an updated landscape plan and subject to review and approval of Planning Staff.	CO/Cont.	Plng./ ISD	
17	At the request of the ZBA, the Applicant shall install an eight (8) foot high wood fence along the rear of the property line with a design to be approved by Planning Staff.	CO	Plng.	
18	The Applicant shall install professionally designed sound mitigation on the parking lot side of the rear fence. This shall be in the form of an acoustic fence or fence attachment. The Planning Director shall approve the specifications prior to installation.	CO	Plng.	
19	Applicant shall maintain and provide snow removal along the walkway between parking lot and Summer Street along the left elevation of the residential portion of the structure to provide shortest access to Davis Square.	Cont.	ISD	
20	Any utility units on top of the residential portion of the building shall not be visible from on top of the building parapet at the street or from the 2 nd story elevation of surrounding properties, shall be set back a minimum of ten (10) feet from all sides of the building and shall be designed as individual systems for each unit.	CO	Plng.	
21	The Applicant shall specify the design and materials for the louvers on the right elevation of the Post portion of the building and provide this design to Planning Staff for review and approval.	BP	Plng.	
22	The Post portion of the building shall be designed with the sound-resistant wall system in the function hall that was presented to the Planning Staff in the sound engineer's September 2010 memo and concrete between the first and second floor to reduce sound impacts outside the building.	BP	ISD	
Public Safety				
23	Separate, code compliant, fire alarm systems and sprinkler systems shall be installed in the both the residential section and the VFW Post section of the building. Additionally, each system shall contain a radio master box.	CO	FP	

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
24	A Class 1 Stand Pipe System shall be installed in the residential building.	CO	FP	
25	In the landscaped area at the rear of the property, eight (8) feet of vegetative clearance from the rear of the building shall be maintained to allow the Fire Department to walk and carry equipment behind the building.	CO	FP	
26	If a fence is erected along the rear of the parking lot that prevents access to the rear of the building, that fence shall have a gate of sufficient size and be approved by Fire Prevention.	CO	FP	
27	Signage shall be posted along the twenty (20) foot wide parking lot driveway from Summer Street to the residential building to ensure the driveway is kept clear of parked vehicles. Signs shall be placed at locations along the length of this driveway to be seen from any point, subject to the approval of Fire Prevention, and shall read "Driveway Must Be Kept Clear For Emergency Vehicles".	CO	FP	
28	The Applicant shall provide written notification from the MBTA that the proposed design raises no concerns for operation of the shaft and emergency exit stairs. Any substantive modifications to the design (those not deemed de minimis) to address MBTA concerns must be approved by the ZBA, per the SZO.	BP	ISD	
Affordable Housing				
29	The Applicant shall complete an Affordable Housing Implementation Plan (AHIP). Affordable units shall be provided on-site. Four affordable units shall be provided.	Prior to vote on SPSR	SPGA/Housing	
30	Written certification of the creation of affordable housing units, any fractional payment required, or alternative methods of compliance, must be obtained from the Housing Department before the issuance of a Certificate of Occupancy (C.O.).	CO	Housing	
31	<u>Units # 14 and # 15 as indicated on the approved plans shall NOT be permitted to be designated as any of the affordable units for the project.</u>	<u>CO</u>	<u>Housing</u>	
Traffic and Parking				
32	Bike racks shall be provided as shown by the shaft. Bike rack design shall be subject to review and approval of Planning Staff. No bike racks shall be provided in the rear landscape area.	CO	Png.	
33	Snow plowed from the development shall be limited to the on-site storage area as shown in plan, and any snow unable to be stored in the storage area shall be removed from the site within 48 hours of the conclusion of a snowstorm.	Cont.	ISD	

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
34	The Applicant shall identify one (1) parking space in the surface lot to be permanently dedicated to the use of a car share program. To encourage reduced automobile dependence, the Applicant shall offer new buyers a one-year MBTA pass or one-year shared car membership upon purchasing a residential unit.	Cont.	Plng.	
35	All parking spaces shall be clearly labeled as to their purpose. Residential visitor spaces shall not be used for commercial parking or Post events. The fifteen (15) spaces used for commercial parking shall be clearly labeled and identified. Tandem parking spaces in the garage shall be deeded as a pair to a residential unit and shall not be divided so that one tandem space is owned or used by a different unit than the other tandem space.	Cont.	ISD	
36	Bike storage/parking shall be provided for each unit on the wall behind the unit's assigned parking space.	Cont.	ISD	
Environmental				
37	The applicant shall complete all of the work plan tasks indicated by the peer review consultant (Nangle Consulting Associates) in their report. Reports establishing the status of complete items, and all test results shall be submitted to the City and the peer review consultant for review. If required by Planning Staff, the peer review consultant shall monitor on-site testing for compliance with the work plan.	Prior to Building Permit	Planning Staff	
38	<u>If the peer review consultant is retained to monitor the on-site work by the Applicant, the Applicant shall incur and pay all costs associated with the peer review consultant's work.</u>	<u>BP</u>	<u>Plng.</u>	
39	Notification must be made, within the time period required under applicable regulations, to the Massachusetts Department of Environmental Protection (DEP) if there is any release of oil, hazardous materials, or regulated hazardous substances at the site. The City's OSE office, Fire Department and the Board of Health shall also be notified. The Applicant shall continue to provide copies of all environmental reports regarding soil and groundwater conditions to the Planning Staff upon their completion.	CO	OSE/FP/BOH	
40	The Applicant shall submit to Planning Staff their submittal for LEED certification for the residential portion of the building and energy star certification for the building.	CO	Plng.	
41	<u>The applicant shall complete soil testing for drainage. Testing shall be conducted at the proposed location for the infiltration system. Soil analysis shall be</u>	<u>BP</u>	<u>Engineeri ng</u>	

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
	completed using methods outlined and approved within the Massachusetts Stormwater Regulations. Results shall be provided to the City Engineer's office for review.			
42	The Applicant shall contribute \$5,600 to the Street Tree Mitigation Fund for installation of a tree(s) in Davis Square.	CO	Png.	
Site Operations				
43	The Applicant, its successors and/or assigns, 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	
Post Operations				
44	VFW Post use shall be restricted to members, auxiliary members and guests of members. The second floor of the building shall be private members quarters. Sponsored events including non-members are not allowed on the second floor.	Cont.	ISD	
45	Sponsored events are allowed in the first floor hall, but all events shall be sponsored by the VFW Post or one of its members.	Cont.	ISD	
46	No events shall continue past 1:00 AM Friday, Saturday and Sunday nights and 12:00 AM Monday through Thursday nights.	Cont.	ISD	
47	The VFW Post shall only have one event in the hall, whether post sponsored, member sponsored or community service, occurring at any given time.	Cont.	ISD	
48	The occupant load for the first floor of the VFW Post shall not exceed the seated capacity of the largest room in the current VFW Post building (125 with tables and chairs), except that four events per year may reach the standing capacity of the largest room (190).	Cont.	ISD	
49	The VFW Post shall make best efforts to maintain the existing 50/50 split between community service and post or member sponsored events.	Cont.	ISD	
50	The average number of guests per event in 2009 was approximately 80. In future years, the VFW Post shall make best efforts to adhere to this average number of guests per event over the course of a year.	Cont.	ISD	
51	Amplified performance music within the VFW Post shall only be ancillary to other events (i.e. DJ or band for a reception). No amplified music concerts shall be allowed.	Cont.	ISD	
52	An acoustical engineer shall design the wall systems of the Post building to assure compliance with the	BP/ Cont.	ISD / Png.	

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
	Somerville noise ordinance. The wall system shall at a minimum include the elements described in Exhibit D – updated, as attached to the supplemental information memo and dated September 24, 2010. The Applicant or VFW Post shall survey the noise outside of the building for the first three amplified performances to measure sound levels at predetermined locations and to submit a report to OSPCD. If complaints are received the Applicant shall retain the acoustical consultant for further sound study as required by OSPCD. Sound measurements shall not exceed levels set by the Somerville Noise Control Ordinance.			
53	There shall be no amplification at any time in any room on the second floor of the building.	Cont.	ISD	
54	Security cameras shall be installed in both VFW Post parking lots and entry areas and connected with the central security system within the Post building. Cameras shall record activity in the lots and entry areas. Recordings shall be maintained for a minimum period of 7 days and upon request made available to the Somerville Police Department.	Cont.	ISD	
55	The alcohol within the VFW building shall remain in locked cabinets when a bartender is not at the bar. The first floor function area shall remain locked when functions are not underway or being set up or cleaned up.	Cont.	ISD	
56	The VFW Post shall secure the required Special Permit and license for any commercial parking in the lot. The commercial parking license for the VFW Post shall not exceed 15 vehicles.	Cont.	ISD	
57	The commercial parking area, if approved, shall only operate between the hours of 6:00 AM and 6:00 PM. All vehicles that rent space to park in this facility must vacate by 6:00 PM allowing all VFW Post spaces to be used for event parking.	Cont.	ISD	
58	When events are expected to have greater than 100 patrons the VFW shall request a police detail or private security detail.	Cont.	ISD	
59	The first-floor windows in the Post portion of the building shall not be operable.	Cont.	ISD	
60	The Applicant shall work with the owner at 353 Summer Street to provide legal access from the rear egress door to Summer Street. The Applicant shall provide a permanent easement across his property from the abutter's door to Summer Street.	BP/Cont.	ISD	
61	The Post shall inform patrons that loitering in the parking area is strictly prohibited. The Post shall be	Cont.	ISD	

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
	responsible for clearing any visitors and their vehicles from the parking area 30 minutes after the conclusion of any event.			
62	The side yard beside the Post portion of the building shall be a passive landscaped area, and shall only be used for small gatherings. No outdoor Post events are allowed, and no events, setup for events, storage of equipment or any other organized activity or use is allowed in this area.	Cont.	ISD	
Zoning Compliance				
63	Construction shall commence within two years of the end of the appeal period of this application but may be tolled for a time period during which an appeal is active. No additional extensions shall be allowed unless granted by the ZBA. The Applicant shall construct the building in an expeditious manner, and shall not allow more than one year to elapse between completion of either the residential or commercial portion of the structure and start of construction of the other portion of the structure .	-	PIng.	
64	The applicant shall establish adequate parking for any future use of the existing Post building at 371 Summer Street , and shall not use the site as a function facility. Upon completion of the new Post, the Post shall surrender the Certificate of Occupancy on the current Post site, and shall establish through a covenant with the City that any use requiring more than fifteen parking spaces shall seek relief from parking requirements through the appropriate permit granting authorities.	CO	PIng.	
65	Per this approval, the lots at 343, 345, 349, and 351 Summer Street shall become permanently merged for zoning purposes, as they will have a building that cross their lot lines. No building permit shall be issued until the Applicant provides evidence that all land is in common control. The Applicant shall establish a deed restriction indicating that the parcels cannot be sold independently, and this restriction shall be reviewed and approved by the Law Office and OSPCD.	BP/Cont.	PIng.	
Final Review				
66	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.	