



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
**JOSEPH A. CURTATONE**  
**MAYOR**

*PLANNING DIVISION*

**STAFF**

GEORGE PROAKIS, *PLANNING DIRECTOR*  
LORI MASSA, *SENIOR PLANNER*  
ADAM DUCHESNEAU, *PLANNER*  
DAWN PEREIRA, *ADMINISTRATIVE ASSISTANT*  
FREDERICK J. LUND, *SENIOR DRAFTSMAN*

**Case #:** ZBA 2011-30  
**Date:** May 4, 2011  
**Recommendation:** Conditional Approval

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**PLANNING STAFF REPORT**

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**Site:** 187 Elm Street (Pizzeria Posto)

**Applicant Name:** Alpine Restaurant Group, Inc.  
**Applicant Address:** 187 Elm Street, Somerville, MA 02144  
**Property Owner Name:** 187 Elm St, LLC  
**Property Owner Address:** 332 River St, Suite D, Woonsocket, RI 02895  
**Agent Name:** none  
**Alderman:** Rebekah Gewirtz

Legal Notice: Applicant, Alpine Restaurant Group, Inc. and owner 187 Elm St, LLC seek a Special Permit with Design Review to revise the requirements in a condition related to operating hours that is attached to permit ZBA 2009-48. The original special permit was to establish a restaurant with outdoor seating (§7.11.10.1.2.b).

Zoning District/Ward: NB/6

Zoning Approval Sought: Special Permit with Design Review §5.3.8 & 7.11.10.1.2.b

Date of Application: March 31, 2011

Dates of Public Hearing: Zoning Board of Appeals May 4, 2011

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**I. PROJECT DESCRIPTION**

1. Subject Property: The subject parcel contains two contiguous parcels, which constitute 6,569 square feet. There is a one-story structure and nine parking spaces on the lot. In November of 2009 the Zoning Board of Appeals granted a special permit with design review to establish a restaurant with outdoor seating with 50 seats inside and 20 seats outside. The restaurant, Pizzeria Posto, received their final inspection on April 6, 2010 and opened on April 8, 2010. The Zoning Board of



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143  
(617) 625-6600 EXT. 2500 • TTY: (617) 666-0001 • FAX: (617) 625-0722

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Appeals issued a variance in July 2010 from parking requirement in order to increase the seating capacity of the restaurant to 98.

2. Proposal: The proposal is to revise the requirements of condition 12 attached to permit ZBA 2009-48. Condition 12 states, “[a]ll operations of the restaurant shall end at 11pm.” The Planning Board added this recommended condition at the public meeting at the request of a neighbor and the ZBA approved the condition. The Applicant agreed to it at the time; however, after operating the restaurant, he realized that the 11pm close time was limiting his ability to run a successful business. For example, the Applicant stated that customers have chosen to leave the restaurant even at an early seating because when they were informed of the closing time they realized that it would prohibit their ability to have a long, relaxing dinner. The Applicant is requesting to be open until 1am seven days a week. If condition 12 were struck, the Applicant would have the ability to be open until 1am, which is the typical closing time under state regulations that is allowed for restaurants that have liquor licenses.

3. Clarification of Condition: If a condition related to hours of operations remains, the Board should clarify the interpretation because it is causing disagreement in practice. All operations of the restaurant closing can be interpreted to mean that patrons are not served after 11pm, that patrons must be out of the restaurant at 11pm or that all of the restaurant staff must be out at 11pm. Staff interpret the condition to mean that patrons cannot be served after 11pm. The Rules and Regulations of the Licensing Commission address this issue with the follow language, which can serve a reference to clarify the condition:

*Licensees may have persons, including employees, on the premises only during the following hours:*  
(1) *The hours on the license, except that patrons who are already on the premises prior to the official closing hour may remain on the premises and consume food and beverage served before the official closing hour for up to one-half hour after the official closing hour; provided, however, that no new patrons are admitted after the official closing hour and that no beverages are served after the official closing hour and that no food is served after the official closing hour. No employee or owner shall serve any alcoholic beverages before the official opening hour or after the official closing hour, provided, however, that any alcoholic beverages served prior to the official closing hour must be consumed no later than one-half hour after the official closing hour;*  
(2) *Personnel may be on the premises after the official closing hour and prior to the official opening hour but only if they are actively engaged in cleaning, making repairs to, or providing security for such premises or preparing food for the day's business or opening or closing the business in an orderly manner. No other persons, friends, or relatives may be on the premises with the owners, managers or employees of licensed premises during the hours when the public is excluded from the premises...*

4. Nature of Application: Since a Certificate of Occupancy has been issued for the restaurant, the Applicant must seek a new special permit under the restaurant with outdoor seating (§7.11.10.1.2.b) use to revise the hours of operations condition.

5. Surrounding Neighborhood: The property is located in a neighborhood business district on the edge of Davis Square’s central business district. There are commercial uses along Elm Street and a residential neighborhood to the north and east.

6. Impacts of Proposal: The restaurant has been in operation for one year and has received no complaints related to noise or disturbances except for a complaint that the restaurant has violated its 11pm closing time. The extension of the operating hours will not change the type of venue in operation and will likely not change the type of patrons and therefore, the extended operating hours is not anticipated to negatively impact the neighborhood.

7. Comments:

*Ward Alderman:* Alderman Gewirtz was contacted and states that, "It is a reasonable request and I support it. I've met with Joe [the Applicant] and feel confident he is running a good business and is respectful of the neighbors and neighborhood."

## **II. FINDINGS FOR SPECIAL PERMIT (SZO §5.1):**

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §5.1.4 of the SZO. This section of the report goes through §5.1.4 in detail.

1. Information Supplied: The Staff finds that the information provided by the Applicant conforms to the requirements of §5.1.2 of the SZO and allows for a comprehensive analysis of the project with respect to the required Special Permits.

2. Compliance with Standards: The Applicant must comply "with such criteria or standards as may be set forth in this Ordinance which refer to the granting of the requested special permit."

If the condition regarding the closing time was struck or altered, the restaurant would still be under the regulation of the Licensing Commission and the State law for closing time of 1am for restaurants with liquor licenses. In general, while it is under the purview of the ZBA to set hours of operation, Staff is recommending that the hours of operation are set by the Licensing Commission and/or State laws in this case as is typical with most restaurants in the City because this location is not deemed to require further restrictions. The location is in a commercial zoning district and is not different than other locations in Somerville where commercial districts abut residential districts and restaurants operate successfully after 11pm.

3. Consistency with Purposes: The Applicant has to ensure that the project "is consistent with (1) the general purposes of this Ordinance as set forth in Article 1, and (2) the purposes, provisions, and specific objectives applicable to the requested special permit which may be set forth elsewhere in this Ordinance, such as, but not limited to, those purposes at the beginning of the various Articles."

As an independent neighborhood-serving restaurant, the proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to providing for and maintaining the uniquely integrated structure of uses in the City. The restaurant is also consistent with the purpose of the district, which is, "[t]o establish and preserve areas for small-scale retail stores, services and offices which are located in close proximity to residential areas and which do not have undesirable impacts on the surrounding neighborhoods."

4. Site and Area Compatibility: The Applicant has to ensure that the project "(i)s designed in a manner that is compatible with the characteristics of the built and unbuilt surrounding area, including land uses."

The restaurant has been in operation for one year and has received no complaints related to noise or disturbances except for a complaint related to compliance with condition 12 limiting the hours of operation and the interpretation of the condition. The extension of the operating hours will not change the type of activities occurring at the venue and will likely not change the type of patrons at the restaurant. Any issues with the current operation restaurant should be discussed at the public hearing and addressed; however, the impacts of the restaurant are not anticipated to change.

Changing the operating hours will allow the restaurant to be more successful and continue to be viable in this location that has had a high turnover rate of restaurants in the past. It would be beneficial to the City

and the neighborhood for the property to succeed. The use here is relatively quiet, and no negative impacts are anticipated.

**III. RECOMMENDATION**

**Special Permit under §5.3.8 & 7.11.10.1.2.b**

Based on the materials submitted by the Applicant, the above findings and subject to the following conditions, the Planning Staff recommends **CONDITIONAL APPROVAL** of the requested **SPECIAL PERMIT**.

The 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 provided to the Planning Staff during the public hearing process.

#	Condition	Timeframe for Compliance	Verified (initial)	Notes										
1	<p>Approval is to establish a restaurant with outdoor seating (§7.11.10.1.2.b) with 98 seats inside and 20 seats outside. This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>March 31, 2011, May 11, 2010, Oct 2, 2009</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>Aug 10, 2009 as modified by plans stamped (May 27, 2010)</td> <td>Plans submitted to OSPCD (A1.1: roof plan, A1.0: floor plan)</td> </tr> <tr> <td>Sept 11, 1996</td> <td>Plans submitted to OSPCD (landscape plan)</td> </tr> <tr> <td>May 11, 2010</td> <td>Traffic Memo</td> </tr> </tbody> </table> <p>Any changes to the approved site plan, elevations or use that are not <i>de minimis</i> must receive ZBA approval.</p>	Date (Stamp Date)	Submission	March 31, 2011, May 11, 2010, Oct 2, 2009	Initial application submitted to the City Clerk's Office	Aug 10, 2009 as modified by plans stamped (May 27, 2010)	Plans submitted to OSPCD (A1.1: roof plan, A1.0: floor plan)	Sept 11, 1996	Plans submitted to OSPCD (landscape plan)	May 11, 2010	Traffic Memo	BP/CO	PIng.	
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2	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP											
3	The 9 <sup>th</sup> parking space by the dumpster shall be marked as indicated on the landscape plan.	CO	PIng.											
4	The site shall comply with the landscaping plan.	CO	PIng.											

5	The planters, or similar barrier, separating the outdoor dining area and the sidewalk shall be placed so that pedestrians can comfortably step in between them if more space is needed on the sidewalk to pass someone. The planters, or similar barrier, shall be movable so that in cool weather they could be pushed toward the building or removed to allow for a wider sidewalk.	CO	Plng.	
6	To the extent possible, all new exterior lighting must be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	Plng.	
7	Applicant will screen the dumpster and recycling receptacles with fencing that totally encloses them and blocks views of them.	CO	Plng.	
8	An Outdoor Seating and Goods License is required from the Board of Alderman to encumber the sidewalk.	annually	BOA	
9	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	
10	The Applicant is encouraged to hire locally and urge employees to commute to work on foot, bicycle or use public transportation.	Cont.	Applicant	
11	There shall only be one dumpster for trash on-site. There may be recycling receptacles within the fencing enclosure for the dumpster.	Cont.	ISD	
12	<del>All operations of the restaurant shall end at 11pm.</del>	<del>Cont.</del>	<del>ISD</del>	
<del>13</del> 12	The Applicant shall make his best faith efforts, including collaboration with the Traffic and Parking Director or his designee, to secure additional designated parking spaces should any become available in the Davis Square area in the future, through the Business Program or other meas.	Cont.	Owner / Tenant	
14 13	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final sign-off on the building permit to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	Plng.	
<del>15</del> 14	The Applicant shall install a bicycle rack in an area to be approved by the Planning Staff.	CO	Plng.	
16 15	The Applicant shall submit a site plan that includes a bike rack, a 4' pedestrian clearance from any obstruction in the sidewalk and the approved 1996 landscaping to be approved by Planning Staff.	CO	Plng.	

## Conditions of Approval for the parking variance:

2	For pedestrian safety the Applicant shall purchase of 5 Pedestrian Impact Recovery Systems to be delivered to the City for installation in various and appropriate crosswalks along pedestrians corridors in the Davis Square area to the restaurant.	CO	Plng. / T&P	
3	For pedestrian and bicycle safety, the Applicant shall provide \$2,500.00 to the City for pavement markings to be installed in the area specified in condition 2.	CO	Plng. / T&P	
4	To encourage turnover rates at parking spaces in the vicinity of Davis Square, the Applicant shall purchase twenty \$20.00 Somerville Parking Meter Cards from Traffic and Parking. These Parking Meter Cards would be for sale at the same price by the business owner to patrons of the establishment and any other individuals.	CO	Plng. / T&P	
5	The Applicant shall post signage in the parking lot to inform patrons that the parking spaces are available for them to use.	CO	Plng.	
6	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	Plng.	

