



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

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Case #: ZBA 2015-105
Site: 378 Highland Avenue
Date of Decision: February 17, 2016
Decision: Petition Approved with Conditions
Date Filed with City Clerk: February 23, 2016

ZBA DECISION

Applicant Name:	Christos Poutahidis
Applicant Address:	147 Willow Avenue, Somerville, MA 02144
Property Owner Name:	Christos Poutahidis
Property Owner Address:	147 Willow Avenue, Somerville, MA 02144
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145

<u>Legal Notice:</u>	Applicant and Owner, Christos Poutahidis Management, LLC seek a Special Permit with Design Review to change uses from a bakery to a fast food restaurant, and a special permit to modify parking requirements.
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<u>Zoning District/Ward:</u>	NB zone/Ward 6
<u>Date of Application:</u>	November 16, 2015
<u>Date(s) of Public Hearing:</u>	1/6, 1/20, 2/3 & 2/17/16
<u>Date of Decision:</u>	February 17, 2016
<u>Vote:</u>	4-0

Appeal #ZBA 2015-105 was opened before the Zoning Board of Appeals in the Aldermanic Chambers on January 6, 2016. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L. c. 40A, sec. 11 and the Somerville Zoning Ordinance. After one hearing of deliberation, the Zoning Board of Appeals took a vote.



DESCRIPTION:

The proposal is to convert the existing bakery use to a fast-food restaurant use with 8 seats.

FINDINGS FOR SPECIAL PERMIT (SZO §7.11 & §9.4):

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

1. Information Supplied:

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

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

Nonconforming Use:

Per Section 7.11 of the SZO, a fast-food use in an NB zone requires a Special Permit with Design Review.

Nonconforming Structure:

The structure is currently nonconforming with respect to the following dimensional requirements: maximum ground coverage, rear yard setback, landscaped area, and rear yard. None of these nonconforming dimensions will be impacted by the proposal.

In considering a special permit under §4.4 or 4.5 of the SZO, Staff find that the alterations and use proposed would not be substantially more detrimental to the neighborhood than the existing structure or use. The fast-food restaurant will provide a low-cost dining solution at the perimeter of Davis Square, and will likely attract pedestrian activity.

Section 5.1.5 – Design Review - of the SZO, states that: certain special permit applications shall also require design review in accordance with the following provisions. The requirement for design review as a part of the special permit application will be noted elsewhere in this Ordinance by the designation "special permit with design review" or "SPD".

In addition to the standard findings and determinations for special permit review (Section 5.1.4.), the SPGA shall also review and make a positive determination that an SPD application is in substantial conformance with the following guidelines. The guidelines are intended to serve as a general basis for the SPGA and Applicant alike to discuss the design merits of a project, but are not intended to inhibit design creativity when the special permit application otherwise conforms to all other substantive review criteria.

A. Design Guidelines for Business Zones. The following guidelines are intended to promote certain urban design principles and physical building characteristics within business districts. These guidelines are not intended to discourage innovative architectural design solutions. Rather, they provide general standards for the massing, siting and articulation of buildings for developers and architects to work from. They also provide parameters for dialogue between the Applicant and SPGA on design issues. The guidelines are particularly applicable to smaller and infill sites within a streetscape, while for larger buildings on highly visible sites (especially those directly facing on major squares) they are intended as a beginning basis upon which the SPGA will judge proposals.



1. *Maintain a strong building presence along the primary street edge, continuing the established streetwall across the front of the site so as to retain the streetscape continuity; however, yards and setbacks as required by Article 8 shall be maintained.*

While the existing structure conforms to this design standard, the adjacent lot used for parking does not, and as such could be improved to provide a more continuous and engaging frontage.

2. *Differentiate building entrances from the rest of the primary street elevation, preferably by recessing the entry from the plane of the streetwall or by some other articulation of the elevation at the entrance.*

(NA)

3. *Make use of the typical bay widths, rhythms and dimensions prevalent in buildings adjacent to the site, especially in new construction or substantial redevelopment.*

(NA)

4. *Clearly define these bay widths, rhythms and dimensions, making them understandable through material patterns, articulations and modulations of the facades, mullion design and treatment, etc.*

(NA)

5. Provide roof types and slopes similar to those of existing buildings in the area.

(NA)

6. *Use materials and colors consistent with those dominant in the area or, in the case of a rehabilitation or addition, consistent with the architectural style and period of the existing building. Use of brick masonry is encouraged, but not considered mandatory.*

Brick is a common material in the area in both buildings and in pedestrian seating areas and sidewalks. The strategic use of brick masonry could help to improve the pedestrian experience of the area, and also help better tie-in the businesses at 378 Highland to the architecture and experience of Davis Square.

7. *When parking lots are provided between buildings, abutting the primary street and breaking the streetwall, provide a strong design element to continue the streetwall definition across the site, such as a low brick wall, iron works or railing, trees, etc.*

The existing parking lot breaks the streetwall, but doesn't incorporate any design elements to continue the streetwall across the site. The applicant should work with an architect to design a seasonal seating area that would replace on-site the parking space closest to the sidewalk during spring, summer and fall. This seating area would open up to the sidewalk, but be separated from the parking by a low temporary wall. The paving material for the first 8-16' of the existing parking lot should also be differentiated from the rest of the lot. This seasonal seating on-site could serve as the impetus for the applicant to also install a Parklet in the on-street parking space directly across the sidewalk from the on-site seating area. These improvements would not only help to define the streetwall in a creative and engaging way, but would help to activate the site by encouraging more pedestrian and bicycle traffic, as well as business for the establishments. As a compromise solution the Applicant has agreed to provide funds toward a parklet stabilization fund, and also to make various site improvements with respect to screening.

Existing parking lot.

8. *Locate transformers, heating and cooling systems, antennae, and the like, so they are not visible from the street; this may be accomplished, for example, by placing them behind the building, within enclosures, behind screening, etc.*

(NA)

9. *Sites and buildings should comply with any guidelines set forth in Article 6 of this Ordinance for the specific base or overlay zoning district(s) the site is located within.*



B. Specific District Standards and Guidelines. All developments within the NB 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. *When a fourth floor is included, provide a minimum five (5) foot deep setback from the front lot line building wall, such as a balcony or deck, for the purpose of promoting a scale appropriate to surrounding neighborhoods.*
(NA)

2. *Give preference to locating on-site, off-street parking at the rear of the lot, behind the building or below street level, providing vehicular access from either a side street or alley where possible.*

The present solution—parking on the adjacent lot—seems to be the most reasonable solution for the time being. However, the existing parking lot could be improved with striping, and a fence to screen it from the adjacent parcel located at 374 Highland Avenue. The lot could also be upgraded to better manage stormwater, and to provide seasonally accessible seating for patrons.

Nonconforming Parking:

Per Section 9.4 – Nonconformity with Respect to Parking Requirements, and Section 9.4.1 *Changes in use, with no change in floor area*—the establishment of a fast-food use with 8 seats requires an additional 2 spaces of parking relief over the existing bakery use.

Per Section 9.13, the SPGA may grant a special permit modifying certain parking/loading standards of this Article 9, but only in those specific cases itemized as "a" through "f" below. This form of relief may be applied in this case, as the number of spaces of relief required is fewer than six, per case "a" below:

- a. Modification of Parking Requirement for Nonconforming Structures and Lots. Where the total number of parking spaces required by this Ordinance is six (6) or fewer, the requirements for lots or sites that are nonconforming with respect to parking as specified in Section 9.4 may be modified.

The conversion from a bakery use to a fast-food restaurant with seating only requires 2 spaces of parking relief, and staff does not find that this parking relief would be substantially more detrimental to the neighborhood. The SPGA may grant such a special permit only upon reaching the findings and determinations set forth in Section 5.1.4, with finding "b" of said Section 5.1.4 being based upon an analysis that the requested modification of parking/loading standards of this Article 9 complies with the specific, stated standards as may be set forth for the specific relief requested upon a determination that the relief does not cause detriment to the surrounding neighborhood through any of the following applicable criteria:

- 1) increase in traffic volumes;

The relief of 2 spaces of parking is not anticipated to cause detriment to the surrounding neighborhood through increased traffic volumes.

- 2) increased traffic congestion or queuing of vehicles;

The relief of 2 spaces of parking is not anticipated to cause detriment to the surrounding neighborhood through increased traffic congestion or queuing of vehicles.

- 3) change in the type(s) of traffic;

The relief of 2 spaces of parking is not anticipated to cause detriment to the surrounding neighborhood through a change in the type of traffic.

- 4) change in traffic patterns and access to the site;

The relief of 2 spaces of parking is not anticipated to cause detriment to the surrounding neighborhood through a change traffic patterns or access to the site.

- 5) reduction in on-street parking;

The relief of 2 spaces of parking is not anticipated to cause detriment to the surrounding neighborhood through a reduction in on-street parking.

- 6) unsafe conflict of motor vehicle and pedestrian traffic.



The relief of 2 spaces of parking is not anticipated to cause detriment to the surrounding neighborhood by creating unsafe conflict of motor vehicle and pedestrian traffic.

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 I, and (2) the purposes, provisions, and specific objectives applicable to the requested special permit which may be set forth elsewhere in this Ordinance, such as, but not limited to, those purposes at the beginning of the various Articles."*

The proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to providing for and maintaining the uniquely integrated structure of uses in the City.

The proposal is consistent with the purpose of the NB district, which is, to 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.

In considering a special permit under §9.13 of the SZO the SPGA may grant such a special permit only when consistent with the purposes set forth in Section 9.1, which are:

a. to promote traffic safety by assuring adequate places for storing of motor vehicles off the street, and for their orderly access and egress to and from the public street;

Adding parking space markings will help to improve the orderliness of parking.

b. increase the traffic-carrying capacity of streets and highways in the City and obtain a more efficient utilization of on-street curbside parking;

By providing a seasonal seating area in one of the existing parking spaces on-site, the applicant would encourage pedestrian and bicycle activity to the site, potentially reducing the demand for parking in the area.

c. reduce hazards to pedestrians;

Differentiating paving material at the front of the parking area and adding pedestrian seating would help to slow the traffic of automobiles entering and exiting the parking lot, thereby improving pedestrian safety.

d. protect adjoining lots and the general public from nuisances and hazards such as:

1)noise, glare of headlights, dust and fumes resulting from the operation of motor vehicles,

2)glare and heat from parking lots,

3)lack of visual relief from expanses of paving,

4)accelerated run-off of surface water from land covered by impervious materials;

1) Adding a fence along the southeastern property line would help screen the adjacent parcel from noise, glare of headlights, dust and fumes. 2) Using a mix of paving materials in portions of the parking area would help to reduce heat in the summer and help mitigate storm water drainage. 3) the seating area at the front of the lot, combined with differentiated paving materials, and the new fence, would help provide visual relief to adjoining lots and the general public from what would otherwise be an expanse of asphalt. 4) Accelerated run-off of surface water would be mitigated by a mix of impermeable and permeable paving materials placed strategically on the lot. Under the compromise solution, other than the screening, none of these other benefits would be attained on-site; however the applicant's contribution to a parklet stabilization fund would eventually allow the city to work with a more interested business to improve the pedestrian experience around the major commercial districts of Somerville.

e. increase the number of locations bicycles can be safely secured in order to:

1)promote bicycle use throughout the City as a means to reduce motor vehicle traffic congestion, and

2)encourage more active lifestyles as a means to improve public health and welfare, and

3)prevent theft and vandalism of bicycles.

1) By providing racks for bicycles on site, the project will help to promote bicycle use and reduce motor vehicle traffic congestion. 2) By providing bike racks, and a seasonal outdoor seating area, the project will



encourage pedestrian activity in the area. 3) Providing bike racks will also help prevent theft and vandalism of bicycles.

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."*

Surrounding Neighborhood:

The surrounding neighborhood consists of a variety of structures and uses as it is at the intersection of a Central Business District, Neighborhood Business District, and Residential B District. The conversion to a fast-food use is compatible with the mix of dining establishments in the area. However, the deep lot, used only for parking that fronts Highland Avenue is relatively inconsistent for the area, and not necessarily compatible with the goals of increasing pedestrian activity around Davis Square.

Impacts of Proposal (Design and Compatibility): The design of the storefront and interior will have minimal impacts on the surrounding area, and is compatible with existing storefront designs in the area. The incorporation of seasonal seating, bike parking, fencing, and other improvements (as conditioned), will improve the compatibility of the site design with the surroundings.

5. Adverse 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.*

Impacts of Proposal (Environmental): The proposed use triggers the need for a Special Permit with Design Review, as well as an adjustment of parking requirements. This places the existing parking lot under scrutiny that it has never previously had. While there are no anticipated adverse environmental impacts that would be higher than levels already experienced, there is an opportunity to improve the existing conditions. As such, minimal alterations to the site (as conditioned) will help to reduce the level of illumination and glare, reduce emissions, and reduce storm water runoff, while also providing outdoor seating area for patrons and encouraging pedestrian activity.

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

Impacts of Proposal (Circulation): As conditioned, the proposal would improve the efficiency of the existing parking, and slow vehicle traffic entering and exiting the parking lot to improve pedestrian safety.

6. Fast food establishments: *In special permit applications for fast-order, take-out or automobile oriented food service establishments, there shall be establishment of a need for such a facility in the neighborhood or in the City, and impacts on traffic circulation, parking and visual, physical, or historical characteristics of the particular location shall not be detrimental.*

There are no other authentic gyro restaurants in the area that make traditional Greek gyros using the methods, ingredients and offering the same variety of toppings that OPA Greek Yeeros intends to offer. The impacts on traffic circulation, parking, visual, physical or historical characteristics from the change in use from bakery to fast-food restaurant are not anticipated to be detrimental to the surrounding location.

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

8. SomerVision Plan: *Complies with the applicable goals, policies and actions of the SomerVision plan, including the following, as appropriate: Preserve and enhance the character of Somerville's neighborhoods, transform key opportunity areas.*



DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Anne Brockelman with Elaine Severino and Josh Safdie absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit. Danielle Evans seconded the motion. Wherefore the Zoning Board of Appeals voted **4-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	Approval is for the establishment of a fast-food use, and site improvements. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/Plng.							
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>11/16/2015</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>12/31/2015</td> <td>Modified plans submitted to OSPCD (1-2)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	11/16/2015	Initial application submitted to the City Clerk's Office	12/31/2015	Modified plans submitted to OSPCD (1-2)
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Any changes to the approved (site plan or elevations/use or conditions) that are not <i>de minimis</i> must receive SPGA approval.										
Construction Impacts										
2	The applicant shall post the name and phone number of the general contractor at the site entrance where it is visible to people passing by.	During Construction	Plng.							
3	Approval is subject to the Applicant's and/or successor's right, title and interest in the property.	Cont.	Plng.	Deed submitted, application form signed						
4	The Applicant shall at their expense replace any existing equipment (including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheel chair ramps, granite curbing, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity. All new sidewalks and driveways must be constructed to DPW standard.	CO	DPW							
5	All construction materials and equipment must be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P							
Design										



6	Applicant will provide a site improvement plan to Planning Staff for approval. The plan will include the following: 1) removal of all chain link fencing and lot closure gate 2) removal of all objects other than refuse containers from perimeter of lot 3) adding parking stripes to lot for more efficiency 4) construction of a new fence, specific design to be coordinated with planning staff prior to receiving Certificate of Occupancy.	Design: Temporary Certificate of Occupancy Construction : June 2016	Plng. ISD.	
7	Applicant shall provide payment to the City for the establishment of a Parklet Stabilization Fund in the amount of \$3,000	Temporary Certificate of Occupancy	Plng.	
Site				
8	Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Plng. / ISD	
9	All new sidewalks will be installed by the Applicant in accordance with the specifications of the Highway Superintendent. Specifically, all driveway aprons shall be concrete;	CO	Plng.	
Traffic and Parking				
10	Applicant shall provide parking relief to the City in the form of two IPS Parking Meters, to be installed in the immediate vicinity of the site in collaboration with Traffic and Parking.	CO	Traffic and Parking	
Miscellaneous				
11	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	
Public Safety				
12	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
13	To the extent possible, all exterior lighting must be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	Plng.	
Final Sign-Off				
14	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	Plng.	

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Richard Rossetti, *Clerk*
Danielle Evans
Anne Brockelman (Alt.)

Attest, by the Administrative Assistant:

Dawn M. Pereira

Copies of this decision are filed in the Somerville City Clerk's office.
Copies of all plans referred to in this decision and a detailed record of the
SPGA proceedings are filed in the Somerville Planning Dept.

CLERK'S CERTIFICATE

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 3.2.10.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on _____ in the Office of the City Clerk, and twenty days have elapsed, and

FOR VARIANCE(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ any appeals that were filed have been finally dismissed or denied.

FOR SPECIAL PERMIT(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

Signed _____ City Clerk Date _____

