



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

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POOJA PHALTANKAR, (ALT.)

**Case #: ZBA 2017-133**  
**Site: 197 Elm Street**  
**Date of Decision:** January 31, 2018  
**Decision:** Petition Approved with Conditions  
**Date Filed with City Clerk:** February 14, 2018

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**ZBA DECISION**

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**Applicant Name:** Nookie and Sons, LLC  
**Applicant Address:** 25 Hubbard Ave, #2, Cambridge, MA 02140  
**Owner Name:** Panos Van G Trustee and Bev Realty Trust  
**Owner Address:** P.O. Box 52, Belmont, MA 02178  
**Agent Name:** Kristen Scanlon, Scanlon Law, LLC  
**Agent Address:** 30 Rows Wharf, Suite 600, Boston, MA 02110  
**Alderman:** Lance Davis

**Legal Notice:** Applicant, Nookie and Sons, LLC, and Owner, Panos Van G Trustee and Bev Realty Trust, seek a Special Permit with Design Review under SZO §7.11.10.2.2.b and a Special Permit under SZO §9.13\* for parking relief to establish a café with seasonal outdoor seating. NB Zone. Ward 6.

\* - A Special Permit for parking relief is not required.

<u>Zoning District/Ward:</u>	NB Zone. Ward 6
<u>Zoning Approval Sought:</u>	§7.11.10.2.2.b
<u>Date of Application:</u>	December 22, 2017
<u>Date(s) of Public Hearing:</u>	January 31, 2018
<u>Date of Decision:</u>	January 31, 2018
<u>Vote:</u>	4-0

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Appeal #ZBA 2017-133 was opened before the Zoning Board of Appeals in the Visiting Nurse Association Community Room, 259 Lowell Street. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L. c. 40A, sec. 11 and the Somerville Zoning Ordinance. After one hearing of deliberation, the Zoning Board of Appeals took a vote.



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**DESCRIPTION:**

The proposal is to establish a new fast-order food establishment with a café type restaurant with seasonal outdoor seating on their own property. It is anticipated to have 20 employees and a total indoor/outdoor occupancy of 60. The proposed hours of operation are 7:00 A.M – 7 P.M daily.

**FINDINGS FOR SPECIAL PERMIT (SZO §7.11.10.2.2.b):**

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."*

*Article 7: Permitted Uses*

Pursuant to SZO §7.11.10.2.2.b a fast order food establishment with no drive-up service of 2,500-4,999 square feet of gross floor, conducted in part or in whole outside and enclosed building, area in the NB zoning district requires a special permit with design review.

A fast order food establishment is defined as “*an establishment whose primary business is the sale of food for consumption on or off the premises which is: (a) primarily intended for immediate consumption rather than for use as an ingredient or component of meals; (b) available upon a short waiting time; (c) packaged or presented in such a manner that it can be readily eaten inside or outside the premises where it is sold; and, (d) which, because of the nature of the operation, causes or is a major contributor to a large volume or frequent turnover of vehicular traffic.*”

*Section 6.1.4. NB - Neighborhood Business Districts*

*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.*
- 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 NB specific district standards and guidelines do not apply as there is no fourth floor nor is there any on-street parking for the site.

*Article 9: Off-Street Parking and Loading.*

There is a driveway at the site leading to the house at 197R Elm Street. It does not appear wide enough for two-way access. There is room for two to four cars parked in tandem in the driveway, though this blocks access to the house. The driveway would not be available for customer parking. On-street parking



is available on Elm Street, and there is a municipal parking lot within 300 feet at Cutter Square. The Applicant is grandfathered for the required parking and does not require parking relief to establish the use.

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

The proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to promote the health, safety, and welfare of the inhabitants of the City of Somerville; to provide for and maintain the uniquely integrated structure of uses in the City; to protect health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to conserve the value of land and buildings; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality.

The proposal is consistent with the purpose of the 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."

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 contains a mixture of residential and commercial uses, reflective of its Neighborhood Business (NB) classification. There is a Residence A district behind and to the east of the property, while the Davis Square Central Business District begins three lots to the west. There are two other restaurants within the NB district on Elm Street, Palm Sugar Thai Cuisine and Posto, and there is a tea shop, eye care center, and a diaper lab across the street.

*Impacts of Proposal (Design and Compatibility):*

Special Permits with Design Review applications must meet the design guidelines under SZO §5.1.5. The design guidelines for business districts are as follows:

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



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.*
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.*
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.*

The Board finds that the above guidelines do not apply to the current proposal to change the use of this particular storefront in an existing building.

5. 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.*

The Board finds that the particular use is appropriate and needed in the area, as the site has been a fast order food establishment (Subway) serving submarine sandwiches and the like since 2004. The proposed café would still be considered a fast order food establishment albeit with a different menu that focused on coffee and café style items. There are minimal changes proposed to the building and, as conditioned, the building will not have a detrimental impact on the parking, visual, physical, or historical characteristics of the location. The Board finds that the proposed cafe is generally of less impact than other fast food chains, as the bulk of their menu does not require cooking, reducing odors and cooking waste. Planning Staff has recommended limiting the life of the special permit to the cafe restaurant in order to prevent an as-of-right change to a different fast food restaurant.

6. Housing Impact: Will not create adverse impacts on the stock of existing affordable housing.
7. 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 and make Somerville a regional employment center with a mix of diverse and high-quality jobs.

## **DECISION:**

### **Special Permit with Design Review under §7.11.10.2.2.b**

Present and sitting were Members Orsola Susan Fontano, Danielle Evans, Josh Safdie, and Anne Brockelman with Richard Rossetti, Elaine Severino, and Pooja Phaltankar absent. Upon making the above findings, Danielle Evans made a motion to approve the request for a **Special Permit**. Anne Brockelman 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 to allow a fast order food establishment, Revival Cafe. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/Plng.							
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>December 22, 2017</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>November 30, 2017</td><td>Plans submitted to OSPCD (G-001, G-002, A-010, A-101, A-200, and A-300)</td></tr></table>				Date (Stamp Date)	Submission	December 22, 2017	Initial application submitted to the City Clerk’s Office	November 30, 2017	Plans submitted to OSPCD (G-001, G-002, A-010, A-101, A-200, and A-300)
	Date (Stamp Date)				Submission					
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November 30, 2017	Plans submitted to OSPCD (G-001, G-002, A-010, A-101, A-200, and A-300)									
Any changes to the approved elevations/use that are not <i>de minimis</i> must receive SPGA approval.										
<b>Construction Impacts</b>										
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	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							
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.	During Construction	T&P							
<b>Design</b>										
5	Applicant shall provide final material samples for siding, trim, windows, and doors to Planning Staff for review and approval prior to the issuance of a building permit.	BP	Plng.							
<b>Site</b>										
6	Landscaping shall be installed and maintained in compliance with the American Nurserymen’s Association Standards;	Perpetual	Plng. / ISD							
<b>Miscellaneous</b>										
7	Garbage and recycling locations shall be clearly indicated on site plans. Storage areas shall be inside of the structure or shall be fully screened from view from both the public way and abutters by an appropriate material reviewed and approved by staff. The location shall not impact any parking, landscaping, or egress.	BP	Plng.							

8	Approval is for the fast order food establishment for the Applicant, Revival Café. A future tenant of this space for a fast order food establishment would have to come back to the ZBA for special permit approval in order to operate in this location.	Perpetual	ISD	
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	
<b>Public Safety</b>				
10	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
11	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.	
<b>Signage</b>				
12	Signage will be limited in size and location to that shown in the elevation diagrams. The sign shall not be internally illuminated. The storefront windows should not be blocked by more than 30% by interior storage, signage or window coverings.	CO/Cont.	Plng.	
<b>Final Sign-Off</b>				
13	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*  
Danielle Evans  
Josh Safdie  
Anne Brockelman (Alt.)

Attest, by City Planner: \_\_\_\_\_

Alexander C. Mello

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 \_\_\_\_\_

