



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

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**Case #: ZBA 2017-35**  
**Site: 120 Washington Street**  
**Date of Decision: June 7, 2017**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: June 8, 2017**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Mark Food Enterprise, Inc.
<b>Applicant Address:</b>	120 Washington Street, Somerville, MA 02143
<b>Property Owner Name:</b>	ITS Realty, LLC
<b>Property Owner Address:</b>	87 Baker Street, Belmont, MA 02478
<b>Agent Name:</b>	Sean T. O'Donovan, Esq.
<b>Agent Address:</b>	741 Broadway, Somerville, MA 02144

Legal Notice: Applicant, Mark Food Enterprises, Inc., and Owner, ITS Realty LLC, seek a Special Permit under Section 9.13 of the Somerville Zoning Ordinance (SZO) for parking relief to construct a patio to locate twenty-four outdoor dining seats.

<u>Zoning District/Ward:</u>	IA zone/Ward 1
<u>Zoning Approval Sought:</u>	§9.13
<u>Date of Application:</u>	April 13, 2017
<u>Date(s) of Public Hearing:</u>	June 7, 2017
<u>Date of Decision:</u>	June 7, 2017
<u>Vote:</u>	5-0

Appeal #ZBA 2017-35 was opened before the Zoning Board of Appeals at the Somerville High School Auditorium on June 7, 2017. 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.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143  
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**DESCRIPTION:**

The proposal is to increase the seating count by 24 outdoor seats, which will bring the total from 152 seats to 176 seats. The Applicant proposes to construct a raised brick faced patio with a black ornamental railing along the Washington Street and New Washington Street sides of the building. The patio will include eight tables with three seats at each table. No new parking spaces are being proposed.

**FINDINGS FOR SPECIAL PERMIT (SZO §9.13):**

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 9: Off-Street Parking and Loading.*

SZO §9.13 allows for sites with nonconforming parking to apply for a Special Permit to modify parking requirements if the total number of spaces is less than six. The locus is currently nonconforming with respect to the number of required off-street parking spaces as 38 spaces are required for the existing restaurant and only 21 spaces provided.

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 lessen congestion in the streets; 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; and to preserve and increase the amenities of the municipality.

The proposal is consistent with the purpose of the IA district, which is, "to establish and preserve areas for industrial and related uses which are not incompatible with commercial uses; uses which are most appropriately located as neighbors of industrial uses including living and studio space for artists; and uses which are necessary to service the immediate needs of industrial establishments in those areas, and accessory uses to industrial uses such as day care centers, cafeterias, health facilities, and the like.

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, and upon reaching the findings and determinations set forth in Section 5.1.4". Granting Oliveria's Restaurant an increased seating capacity is in harmony with the SZO because it allows a small business owner to adapt and grow their business. It will not be injurious to the neighborhood since most patrons walk to the restaurant after Sunday church services. In addition to the parking provided onsite, there's some on street parking available on New Washington Street. In the proposed zoning code, this area is within the Neighborhood TOD area and has a parking maximum of 1 space per 100 square foot. They can provide up to 48



spaces but are not required to provide any parking. Staff finds that granting the requested Special Permit is consistent with the purposes of SZO §9.1 and will not cause detriment to increased traffic volumes, traffic congestion of queuing of vehicles, changes in the type of traffic, change in traffic patterns and access to the site, reduction in on-street parking, or unsafe conflicts of motor vehicles and pedestrian traffic.

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 locus is located at the intersection of Washington Street and New Washington Street in an industrial district. There are residential dwellings and commercial establishments across Washington Street.

*Impacts of Proposal (Design and Compatibility):* The proposed patio will have a brick faced façade that will be located in the front yard along Washington Street and wrap around the side of the building along New Washington Street. A black metal ornamental railing will sit onto the perimeter edge of the raised patio. The proposed brick will complement the existing structure and the black railing will complement the railing currently on the stoop of the front entrance.

5. 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):* The circulation patterns for pedestrians and motor vehicles will not change as a result of the proposal.

6. 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, and make Somerville a regional employment center with a mix of diverse and high-quality jobs.



**DECISION:**

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Elaine Severino, Josh Safdie with Pooja Phaltankar absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	Approval is for a parking special permit of six spaces. 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>April 13, 2017</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>June 1, 2017</td><td>Modified plans submitted to OSPCD (Perspective views, exterior patio proposed floor plan, and foundation plan/section)</td></tr></table>				Date (Stamp Date)	Submission	April 13, 2017	Initial application submitted to the City Clerk's Office	June 1, 2017	Modified plans submitted to OSPCD (Perspective views, exterior patio proposed floor plan, and foundation plan/section)
	Date (Stamp Date)				Submission					
	April 13, 2017				Initial application submitted to the City Clerk's Office					
June 1, 2017	Modified plans submitted to OSPCD (Perspective views, exterior patio proposed floor plan, and foundation plan/section)									
Any changes to the approved plan that is not <i>de minimis</i> must receive SPGA approval.										
2	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP							
3	The Applicant shall apply for any and all necessary licenses.	CO	City Clerk							
4	The Applicant shall update their certificate of occupancy.	CO	ISD							
5	Applicant shall provide final material samples for railings and patio façade to Planning Staff for review and approval prior to the issuance of a building permit.	BP	Plng.							
6	The Applicant shall install two signs, a sign at the entrance of the primary parking lot indicating additional parking on the ancillary lot and a sign at the ancillary lot indicating that the parking is for Olivera's Steakhouse.	CO	Plng							
7	Seating capacity shall not exceed 176 seats for the entire restaurant. The approved 24 outside seats cannot be relocated inside during the off-season.	Cont.	ISD/ Plng.							
Final Sign-Off										
8	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  
Elaine Severino  
Josh Safdie

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 \_\_\_\_\_

