



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2019-02
Date: September 18, 2019
Recommendation: Conditional approval

PLANNING STAFF REPORT

Site: 21 Eastman Road

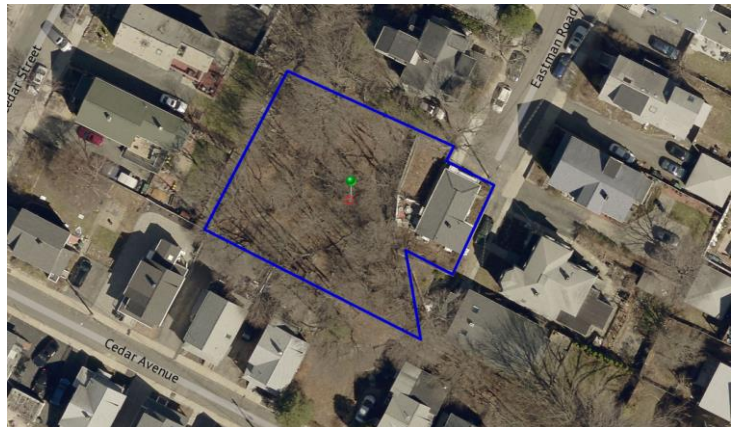
Applicant / Owner Name: F. Michael Byrnes
Applicant / Owner Address: 82 Mill Street, Lincoln, MA 01773
Agent Name: Adam Dash, Esq.
Agent Address: 48 Grove Street, Suite 304, Somerville, MA 02144
City Councilor: Mark Niedergang

Legal Notice: Applicant and Owner, F. Michael Byrnes, seeks a special permit under the slope protection ordinance (agenda item 207122 ordained by the City Council on November 20, 2018) to perform necessary site work on a lot with a slope greater than 25% to construct a two-family dwelling and a variance for building height under SZO §5.5 and §8.5. RA Zone. Ward 5.

Dates of Public Hearing: Zoning Board of Appeals – September 18, 2019

I. PROJECT DESCRIPTION

1. Subject Property: The subject property consists of one parcel of 11,562 square feet that is currently vacant. It once contained a single family house that was recently demolished. The lot has a steep slope with the exception of a relatively flat area that is closest to the end of Eastman Road. The site also includes a six-foot tall retaining wall at the crest of the slope.



2. Proposal: The proposal is to construct a two-family dwelling with four parking spaces. The proposed building will comply with all dimensional

requirements except for height. The proposed height is 39.8 feet where the maximum allowed height in the RA district is 35 feet.

3. Green Building Practices: The application states that the proposal will comply with the stretch energy code.

4. Comments:

Engineering: The proposal first submitted a building permit in 2018 that included a very similar civil design plan, which was approved by the Engineering Department. Since the civil design plan hasn't changed much, the Engineering Department does not have any comments.

City Councilor: Councilor Niedergang has coordinated numerous neighborhood meetings.

II. FINDINGS FOR SPECIAL PERMIT (Slope Protection, agenda item 207122 ordained by the City Council on November 20, 2018):

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 and §8.9.5 of the Ordained (but yet to be codified) Slope Protection Ordinance 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."*

Section 8.9.5 of the Ordained (but yet to be codified) Slope Protection Ordinance states that *the SPGA may grant a special permit to utilize areas with natural slopes exceeding 25%, if the SPGA finds that the proposal satisfies the purposes set forth in Section 8.9.1, as well as all the findings required for granting a Special Permit under all other relevant sections of the Somerville Zoning Ordinance.*

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 protect health; to secure safety from fire, panic and other dangers; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; to conserve the value of land and buildings; to adequately protect the natural environment; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality.

The purpose of the slope protection ordinance is:

- (a) To preserve and enhance the landscape by encouraging the maximum retention of natural topographic features, such as drainage swales, streams, slopes, ridge lines, rock outcroppings, vistas, natural plant formations and trees;
- (b) To minimize the effects of grading to ensure that the natural character of steep slopes is retained;
- (c) To minimize water runoff and soil erosion problems incurred in grading of steep slopes; and
- (d) To encourage innovative architectural, landscaping, circulation and site design;
- (e) To help protect structures and properties at the base of a slope below construction from damage from erosion, mudslides, rockslides, falling trees, and other harms.

Staff finds that the proposal will preserve and enhance the landscape by retaining a large portion of the natural topography and stone walls. The slope will be stabilized to receive native plants and grasses that are better suited for slopes. Trees will also be planted around the sites perimeter. The proposed improvements include grading and landscaping elements that are designed to minimize soil erosion problems. Stormwater infiltration chambers and the landscaping elements will reduce stormwater flows and volume compared to what is currently experienced under existing conditions. The site provides an innovative architectural program and site design by integrating the building into the slope. To help protect structures and properties at the base of the slope the proposal includes a retaining wall, a stormwater infiltration system, and slope stabilization techniques that will reduce erosion and stormwater flow and rates.

The proposal is consistent with the purpose of the RA district, which is, *“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.”*

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 subject property is located on the southwestern end of Eastman Road as it terminates. Eastman Road is a dead-end street that is off of the southern side of Highland Avenue just east of Cedar Street. Eastman Road contains mostly single and two-family dwellings with one three-family dwelling. The street contains single, 1.5, two, 2.5, and three story structures.

Impacts of Proposal (Design and Compatibility): The proposed two-family dwelling is compatible with the surrounding land uses. The design includes a flat roofed structure that reads as two stories from the front and left side and three stories from the right side and rear due to the slope. From a technical zoning perspective, the height of the building is two stories. Although the form of the building is much wider than those in the area, the building is trying to utilize the flat area and maintain a low profile along Eastman Road. The propped footprint of the structure is able to conform to setback, landscaping, ground coverage, and floor area requirements.

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

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.

<i>SomerVision Summary</i>	<i>Existing</i>	<i>Proposed</i>
<i>Dwelling Units:</i>	1	2
<i>Parking Spaces:</i>	2	4

III. FINDINGS FOR VARIANCE (§5.5 and §8.5)

A Variance (§5.5) is sought to construct a building that is measure to be 39.8 feet above average finished grade in the RA zoning district, which has a maximum height requirement of 35 feet. The proposal complies with all of the other dimensional requirements required by Article 8 of the SZO.

In order to grant a variance the Board must make certain findings and determinations as outlined in §5.5.3 of the SZO.

1. *There are “special circumstances relating to soil conditions, shape or topography of land or structures which especially affect such land or structures but not affecting generally the zoning district in which it is located, causing substantial hardship, financial or otherwise.”*

Applicant’s response: The property is of an unusual shape, contains a steep slope, relies on retaining walls due to the slope and soil, and has only 28.4 feet of frontage onto Eastman Road. These hardships make it difficult to construct a project which is both zoning compliant and harmonious with the neighborhood. There is no other property in the neighborhood of the size, shape, slope and frontage as this one. These hardships require retaining walls for the project. By lowering the retaining wall and moving it away from the property line, the calculated height of the project changes and requires a variance. While parts of the building were reduced in height, it was not feasible to reduce the building height enough to avoid a height variance. Had the hardships with the lot not existed, then no variance would have been required.

Staff’s response: Staff finds that there are special circumstances relating to the shape and topography of the land that directly affects how the height of the building is being calculated. These circumstances create a hardship by making it unfeasible to construct a building that complies with the height requirement. There are structures on slopes in the zoning district but none appear to be affected to the extent that the subject property is.

2. *“The variance requested is the minimum variance that will grant reasonable relief to the owner, and is necessary for a reasonable use of the building or land.”*

Applicant’s response: The variance sought allows Applicant to use the property for a two family dwelling, which is the minimum practical use for the property, especially in light of the hardship in building a project on a steeply sloped lot with retaining walls, an unusual shape and limited frontage such as this. While parts of the building were reduced in height, it was not feasible to reduce the building height enough to avoid a height variance.

Staff’s response: Staff finds that given the hardship of building a project on such a steep slope with retaining walls and on a lot with a unique shape, a two family dwelling is the minimum relief necessary to grant the owner reasonable relief.

3. *“The granting of the variance would be in harmony with the general purpose and intent of this Ordinance and would not be injurious to the neighborhood or otherwise detrimental to the public welfare.”*

Applicant’s response: Allowing the variance makes the project harmonious with the Somerville Zoning Ordinance and not injurious to neighborhood because lowering the retaining wall and moving it away from the abutter reduces the neighborhood impacts of the project. The proposed two family dwelling is in harmony with the purpose of the RA zoning district in which the property is located.

Staff's response: Staff concurs with the Applicant that the proposal is harmonious with the general purpose and intent of the SZO and will not be injurious to the neighborhood or otherwise detrimental to the public health.

IV. RECOMMENDATION

Special Permit under (Slope Protection, agenda item 207122 ordained by the City Council on November 20, 2018) and VARIANCE (§5.5 and §8.5)

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 and VARIANCE**.

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	Approval is for the construction of a two-family dwelling. 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>January 3, 2019</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>July 16, 2019</td> <td>Plans submitted to OSPCD (T1, Z1-Z5, AS1, A1-A9, and SH1-SH3)</td> </tr> <tr> <td>February 15, 2019</td> <td>Landscaping plans submitted to OSPCD (L1 and L2)</td> </tr> <tr> <td>March 13, 2019</td> <td>Civil Engineering Site Plan</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	January 3, 2019	Initial application submitted to the City Clerk's Office	July 16, 2019	Plans submitted to OSPCD (T1, Z1-Z5, AS1, A1-A9, and SH1-SH3)	February 15, 2019	Landscaping plans submitted to OSPCD (L1 and L2)	March 13, 2019	Civil Engineering Site Plan
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March 13, 2019	Civil Engineering Site Plan													
Any changes to the approved (site plan or elevations/use) that are not <i>de minimis</i> must receive SPGA approval.														
Pre-Construction														
2	The Applicant must contact the Engineering Department to obtain a street address prior to a building permit being issued.	BP	Eng.											
3	The proposed basement finished floor elevation shall not be less than is 1 foot above the Seasonal High Ground Water elevation. The seasonal high ground water elevation shall be determined by a Massachusetts certified soil evaluator and stated on a signed soil test pit log.	BP	Eng.											

4	The Applicant shall complete the Site Plan Review Checklist and supply the information to the Engineering Office. The plans must comply with the City’s Stormwater Management Policy.	BP	Eng.	
5	The Applicant shall submit a proposed drainage report, stamped by a registered PE in Massachusetts that demonstrates compliance with the City’s stormwater policy.	BP	Eng.	
6	The Applicant must contact the Engineering Department to coordinate the timeline for cutting or opening the street and/or sidewalk for utility connections or other construction. There is a moratorium on opening streets from November 1st to April 1st and there is a list of streets that have additional opening restrictions.	BP	Eng	
7	The applicant must comply with the Policy for new connections to and modifications to existing connections to the municipal sewer and drainage system stormwater management and infiltration/inflow mitigation. The Applicant shall work with Engineering to meet this condition and provide the required fees/mitigation.	BP	Eng.	
8	The Applicant shall conduct a survey of the houses of the abutting property owners prior to excavation of the site, and document their findings. These findings shall be submitted to the Planning Department as public record. The Applicant then shall survey any damage to the abutting property owner’s houses after excavation and reimburse the property owners for any damages.	BP	Plng. / ISD	
Construction Impacts				
9	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.	
10	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	
11	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	
12	For the convenience of and respect for the neighborhood, during the construction phase, construction work shall not begin prior to 7:30am and shall finish no later than 5pm Monday through Friday. There shall be no construction or construction-related work performed on weekends or holidays.	During Construction	ISD	
Design				
13	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.	
Site				

14	Landscaping shall be installed and maintained in compliance with the American Nurserymen’s Association Standards;	Perpetual	Plng. / ISD	
15	The electric, telephone, cable TV and other such lines and equipment shall be placed underground from the source or connection. The utilities plan shall be supplied to the Wiring Inspector before installation.	Installation of Utilities	Wiring Inspector	
Miscellaneous				
16	Gas and electric meters shall not be on the front of the structure. Gas and electric meters may be located on the side of the structure but shall be screened from the street by a hardy, staff approved evergreen planting. Utilities shall not be located adjacent to windows and shall not impact any parking, landscaping, or egress. The provisions of this condition may be waived by staff if the applicant submits a letter from the utility, signed by a utility representative, on utility letterhead, indicating that there is no feasible alternative to placing meters in violation of this condition.	CO	ISD	
17	Electrical conduits on the exterior facades of buildings shall be painted to match the wall material to which they are attached. Conduits are not allowed on the front of any structure.	CO	Plng.	
18	Granting of the applied for use or alteration does not include the provision for short term rental uses, such as AirBnB, VRBO, or the like. Separate approvals are needed for the aforementioned uses.	Ongoing	ISD / Plng.	
19	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				
20	The Applicant or Owner shall meet the Fire Prevention Bureau’s requirements.	CO	FP	
21	Per Somerville fire safety regulations, grills, barbecues, chimineas and the like are NOT permitted on decks or porches.	Perpetual	FP/ISD	
22	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				
23	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.	

