



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2019-114
Date: November 20, 2019
Recommendation: Conditional approval

PLANNING STAFF REPORT

Site: 453 Somerville Avenue

Applicant / Owner Name: Jack Saade
Applicant / Owner Address: P.O. Box 15303, Boston, MA 02215
City Councilor: J.T Scott

Legal Notice: Applicant and Owner, Jack Saade, seeks a special permit under SZO §7.11.1.c and parking relief under Article 9 to construct a four story mixed use building with five residential units and ground floor retail space. A Variance under SZO §5.5 and §8.6.12 for relief from the required rear yard setback. BA and RB Zone. Ward 2.

Dates of Public Hearing: Zoning Board of Appeals – November 20, 2019

I. PROJECT DESCRIPTION

1. Subject Property: The subject property is a 4,912 square foot lot with a former automotive repair building on it near the corner of Somerville Avenue and Granite Street. The 1,300 gross square foot, single story, flat roofed masonry building is situated at the extreme rear of the lot. Between the building and the Somerville Avenue streetscape is a parking area with nine off-street parking spaces. The lot is actually situated in two separate zoning districts with the building being located in an RB zoning district and the parking area located in a BA zoning district.



In September 2012, the ZBA granted, to a different owner and applicant, a permit to change the use of the site into a butcher shop and alterations to the building to accommodate such a use.

2. Proposal: The proposal is to demolish the single story masonry building in the rear of the site and construct a four-story mixed use building with ground floor retail space and five residential units. The proposed building will be constructed within the BA portion of the subject property. The project will include parking spaces at grade underneath the rear portion of the building and in the rear of the site behind the building.

3. Green Building Practices: The applicant has not decided on any green building practices as of the submittal of the application.

4. Comments:

City Councilor: Councilor Scott conducted one neighborhood meeting and has not offered a Planning Staff a written comment as of the publication of this report.

II. FINDINGS FOR SPECIAL PERMIT (SZO §7.11.1.c):

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."*

Article 7: Table of Permitted Uses

Section §7.11.1.c of the SZO requires a special permit for a five dwelling unit proposal in the BA district.

The ground floor is intended to be office or retail uses, which most are currently permitted as-of-right less than 2,500 square feet in the BA zoning district. Once a tenant is ultimately selected, the use and associated parking will be evaluated again to determine if the relief differs from office or retail.

Article 9: Off-street Parking and Loading

	<i>Existing</i>		<i>Proposed</i>	
Unit #1	-	-	2 BR	1.5 spaces
Unit #2	-	-	2 BR	1.5 spaces
Unit #3	-	-	2 BR	1.5 spaces
Unit #4	-	-	2 BR	1.5 spaces
Unit #5	-	-	3 BR	2 spaces
Retail	-	-	400 s.f	1 spaces
Total		0 spaces		9 spaces

The proposal is to construct five dwelling units and 400 square feet of retail space which will require nine parking spaces. The proposal will add nine parking spaces under the building and in the rear of the site to meet the minimum number of required spaces. However, seven of the nine spaces proposed have compact dimensions of 8'x18'.

SZO §9.13.b allows for sites where the design of a parking lot differs from the provisions of the SZO to apply for a special permit. Relief is being requested from providing the required 9'x18' dimensioned spaces.

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”. The 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.

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 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 lessen congestion in the streets; to protect health; to secure safety from fire, panic and other dangers; to provide adequate light and air; 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 BA district, which is, “to establish and preserve business areas bordering main thoroughfares that are attractive to a wide range of uses, including retail business and services, housing, government, professional and medical offices, and places of amusement. While it is anticipated that most users will arrive by motor vehicle, it is intended that the area should be safe for and conducive to 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 subject property is located on the north side of Somerville Avenue on the block between Granite Street and School Street. This stretch of Somerville Avenue includes a wide range of building heights and styles. Three-story flat roofed buildings are immediately adjacent to the site on Somerville Avenue. The proposal includes similar programming and massing to a recently approved mixed use building at 471 Somerville Avenue.

Impacts of Proposal (Design and Compatibility): The proposed four story building includes a typical storefront glazing system with a driveway to the at grade parking under and behind the building. Floors two and three include balconies for the residential units along the front façade. The top floor will be stepped back from the front edge of the building five feet to create a balcony for the top unit. The top floor will also be stepped back 7.5 feet from the rear edge of the building. The proposed parking spaces will be on the ground level behind the first floor and in the rear of the building. Staff finds that the proposed design is compatible with the characteristics of the built and unbuilt surrounding area.

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>	0	5
<i>Affordable Units:</i>	0	0
<i>Commercial Sq. Ft.:</i>	0	400
<i>Estimated Employment:</i>	0	Future tenant TBD
<i>Parking Spaces:</i>	unknown	9

III. FINDINGS FOR VARIANCE

A Variance (§5.5) is sought to violate SZO §8.6.12, which states “*where a lot in a business or industrial district abuts a lot or district line in a RA, RB, or RC district, no building in the business or industrial district shall be erected closer to the residential line than one-third (1/3) the height of the said building, but not less than fifteen (15) feet.*” The lot is split zoned with the front portion of the lot being in the BA zone and the rear portion being in the RB district. The proposed building will be completely within the BA portion of the lot and will be setback 0 feet from the residential district line. However, the proposed building will be located 25.57 feet from the rear property line, which is located in the RB zoning district.

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 characteristic of the lot that imposed the hardship is not the topographic or the soil condition that normally are the causes of hardship, rather in this instance the peculiarity is related to odd circumstance where there is a conflicting record of the zoning classification of the rear portion of the parcel that lot is not BA.

To the contrary, the assessor record, attached is a copy, informs that the entire 4912 square feet of the parcel is zoned as BA. Nothing in the assessor record mentioned or even hints that the rear portion is zoned RB. This discrepancy is the primary cause of this odd circumstance that may require variance.

There is no logic that the existing commercial building where most of it sits on the rear portion of the parcel, the 1315 square feet portion of the 4912 square feet, could be zoned "RB" and not BA as the 3597 square feet of the front portion of the parcel.

This is the reason why a variance may be warranted as an alternative of determining that this zoning discrepancy was simply a blunder specifically when there is, and I could not find any, no reason that justify zoning the rear portion as RB as oppose to BA as most of the parcel is zoned.

Nevertheless, it must be stressed out that if a variance would be necessary, it will be totally consistent with the intent of zoning and will be in harmony of not only the zoning but in harmony with the characteristic of the neighborhood. It should be noted that the SPGA granted identical approval for constructing 5 residential units and one commercial space at 471 Somerville Avenue, less than a block away. This further suggests that this proposal is indeed in harmony with: the character and condition of the neighborhood, and of course the intent of zoning ordinance.

In reference the questionnaire that inquire whether the zoning discrepancies "affect other [abutting] properties or any other properties, the answer is none, and no other property is subject to this discrepancy (emphasis added).

Staff's response: The subject property is presented with a special circumstance in that the property is split zoned (RB and BA district), which is a condition that does not generally affect the zoning district which it is located.

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 answer to the first portion regarding the "minimum approval necessary to grant relief", it should be emphasized that the applicant seeks a determination that the rear portion's classification as "RB" was simply a blunder. In the alternative of considering this suggestion, then the request turns to establish setting the line to be used as a benchmark to determine the rear setback.

The suggestion presented here, and is reasonable, that the rear line of the parcel, would be the 49.71 side (or 50.17 as determined by actual field surveying which was recently done, attached is a copy of the certified plot plan conducted by Hancock Associates). This line is the common line with the abutting property at 22 Knapp Street, which is zoned RB.

This is reasonable suggestion because the entire lot consists of one element of 4,912 sq. ft., see copy of the assessor's record, attached is hereto, and shows that its entirety as one unit of 4912 sq ft and zoned as BA.

Then if applying that the lot's back line to be used the benchmark to evaluate the rear setback requirement, that is the common line between this parcel and the rear abutter at 22 Knapp Street, then the required rear setback of the proposal meets the zoning requirement that instructs that the rear setback is at least 16 feet (10 + 2 feet of each floor above ground). And regarding the top floor, the zoning ordinance requires that is at least 30 from abutter property, this proposal also meets this requirement and provides that the top floor is set between 33 and 38 feet.

And as far as the second portion of the questionnaire B, the 'Variance' results in a reasonable use of the land.

The 'variance' if were to be warranted (as oppose or alternative to what discussed above that the rear portion's classification was a simple blunder), such variance truly " results in a reasonable use of the land".

This discrepancy has already contributed significant hardship of not able to utilizing the 1,300 plus sqft for residential building uses.

The controversial 1315 sqft should provide a Floor Area Ration("FAR") of 2, instead, pursuant to my past discussions with the office of planning, Alex recently, and Sara and George previously before elevated to higher position, all took the position that the 1315 sqft portion will have a FAR of 1 and not 2 because the discrepancy regarding its zoning classification.

Put it differently, if the 1315 sqft portion is evaluated to be a BA zone as the assessor's record informs, it would provide a FAR of 2. This discrepancy has caused me the losses of not able to utilize of badly needed 1315 sqft of housing uses. I accepted this hardship without asking a variance that allows the use of FAR of 2 of this 1315 sqft portion.

Nevertheless, the instant variance that is being sought, that is to use the rear common line with the abutter of 22 Knapp Street as the benchmark line to evaluate the setback requirements will provide me the "reasonable use of the land" that supplemental questionnaire B asks.

Keep in mind that I, pursuant to several conversations with the planning officials, I have reduced the footprint of the proposed building and revised it not to extend beyond the 3,597 sqft portion of the parcel that unquestionably zoned as BA.

Therefore, to reiterate the granting of this 'variance' does indeed afford the "reasonable use of the land" as provided in questionnaire B, and should be granted.

The intent of zoning that top floor in BA zone be at least 30 feet from RB zoning, is to be 30 feet from abutting dwelling land. In this instance, the residential abutter of RB zone is 22 Knapp Street, and not the controversial 1315 sqft of this parcel of 453 Somerville Avenue that it cannot, and is not being used for residential uses. Therefore, the proposal meets this intent of the ordinance regarding the rear setback requirements.

Staff's response: Staff believes that the requested relief is the minimum necessary to grant reasonable use to the land.

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: This question is consistent with the guideline set forth in G.L.C 40A § 9 to grant special permit approval.

Here are the grounds that support issuing the approval and variance if warranted that will be consistent with the intent of the zoning.

Regarding the number of units. The number of unit, 5, is derived from the zoning dimensional requirement that instructs that the number of residential units be established by dividing the lot square footage by 875. That $4912/875 = 5.6$ units. Therefore proposing 5 residential units is indeed consistent with the intent of the zoning requirement.

4 floors is allowed in the BA zone, providing that the top floor is 30 feet from the abutter of 22 Knapp Street that is zoned RB. The proposal provide between 33 and 38 feet setback from 22 Knapp Street.

Regarding other setbacks, front and sides, the ordinance requires 0 on these setbacks. The proposal provides 2.5 and 3 feet respectively and meets these dimensional requirements.

The proposal proposed approximately 7900 sqft of building spaces, the ordinance allows 8,500 sqft.

The proposal will provide 14% of the lot of landscaping, currently there is none.

The proposal will provide 5 units with the required parking spaces. All units will be handicapped accessible. This proposal does indeed serve the public need and interest of providing not only 5 units housing but handicapped accessible.

Lastly regarding the parking spaces, and the required relief. I proposed that most of the parking spaces be compact spaces. This will encourage owning small cars that consume less energy and produce less pollution. This proposition will also contribute of larger landscaping area. Therefore relief to allow the parking spaces be compact serve the public interest and should be granted.

Staff's response: The intent of the zoning requirement is believed to keep structures in business districts at least 15 feet away from properties in residential districts, which this proposal meets. The proposed structure will be 27.57 feet away from the abutting residential property in the rear. Staff does not find that the proposal will be detrimental to the public welfare and is in harmony with the general purpose and intent of the Ordinance.

IV. RECOMMENDATION

Special Permit under §7.11.1.c and Variance §5.5 and §8.6.12

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
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1	Approval is for the construction of a four-story mixed use building with 5 residential units and ground floor retail. 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>October 3, 2019</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>November 4, 2019</td> <td>Modified plans submitted to OSPCD (1-15)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	October 3, 2019	Initial application submitted to the City Clerk's Office	November 4, 2019	Modified plans submitted to OSPCD (1-15)
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October 3, 2019	Initial application submitted to the City Clerk's Office									
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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 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.							
4	<p>Because of the history of the site and the intended use, the Applicant shall, prior to issuance of any demolition permit and/or any building permit for the project, provide to the Planning Department and the Inspectional Services Division:</p> <p>a) a copy of the Response Action Outcome (RAO) Statement, signed by a Licensed Site Professional (LSP) and filed with DEP, verifying that a level of no significant risk for the proposed residential use has been achieved at the site; or</p> <p>b) if remediation has not reached the RAO stage, a statement signed by an LSP describing (i) the management of oil and hazardous materials/waste at the site, including release abatement measures intended to achieve a level of no significant risk for residential use at the site, treatment and storage on site, transportation off-site, and disposal at authorized facilities, (ii) a plan for protecting the health and safety of workers at the site, and (iii) a plan for monitoring air quality in the immediate neighborhood.</p>	Demolition Permit	Plng/ISD							
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 develop a demolition plan in consultation with the City of Somerville Inspectional Services Division. Full compliance with proper demolition procedures shall be required, including timely advance notification to abutters of demolition date and timing, good rodent control measures (i.e. rodent baiting), minimization of dust, noise, odor, and debris outfall, and sensitivity to existing landscaping on adjacent sites.	Demolition Permitting	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	
16	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.	

17	The Applicant shall coordinate with the City Arborist on planting additional street trees along Somerville Avenue.	CO	City Arborist	
Miscellaneous				
18	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	
19	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.	
20	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.	
21	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.	
22	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				
23	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
24	Per Somerville fire safety regulations, grills, barbecues, chimineas and the like are NOT permitted on decks or porches.	Perpetual	FP/ISD	
25	Notification must be made, within the time period required under applicable regulations, to the Massachusetts Department of Environmental Protection (DEP) if there is any release of oil, hazardous materials, or regulated hazardous substances at the site. The City's OSE office, Fire Department and the Board of Health shall also be notified.	At time of release	OSE/FP/BOH	
26	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				
27	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.	

