



CITY OF SOMERVILLE, MASSACHUSETTS
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Case #: ZBA 2018-82-R2-19
Site: 80 Powder House Blvd
Date of Decision: May 15, 2019
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: May 23, 2019.

ZBA DECISION

Site: 80 Powder House Boulevard
Applicant / Owner Name: David J. Giller
Applicant / Owner Address: 59 Walpole St, #103, Canton, MA 02021
Agent Name: Adam Dash, ESQ
Agent Address: 48 Grove Street, Suite 304, Somerville, MA 02144
Alderman: Katjana Ballantyne

Legal Notice: Applicant and Owner, David J. Giller, seeks a Special Permit under §4.4.1 of the SZO to increase the non-conforming FAR from 1.04 to 1.23 by finishing the basement. Applicant/Owner also seeks a Revision to a Special Permit under §5.3.8 of the SZO as follows: revise Condition 10 of the prior ZBA decision restricting the property to two parking spaces as the Applicant wants to add a third parking space, so there would be two side-by-side spaces and one tandem space. RA zone. Ward 7.

<u>Zoning District/Ward:</u>	RA zone. Ward 7.
<u>Zoning Approval Sought:</u>	SZO §4.4.1 and §5.3.8
<u>Date of Application:</u>	February 13, 2019
<u>Date(s) of Public Hearing:</u>	3/20, 4/3, 4/17, 5/1, 5/15
<u>Date of Decision:</u>	May 15, 2019
<u>Vote:</u>	5-0

Case # ZBA 2018-82-R2-19 was opened before the Zoning Board of Appeals in the City Council Chambers at Somerville City Hall on March 20, 2019. 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. On May 15, 2019, the Zoning Board of Appeals took a vote.



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I. DESCRIPTION:

On August 8, 2018, the Applicant was granted a Special Permit by the ZBA to construct a second-story rear deck within the left side yard setback. The Applicant is now before the ZBA with two requests:

- a. increase the non-conforming FAR from 1.04 to 1.23 by finishing the basement
- b. remove condition #10 from the previously-granted special permit in order to add a third parking space to the site

II. FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1 and §5.3.8):

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."*

The non-conformity impacted by the Applicant’s proposal is the non-conforming FAR. The FAR is currently non-conforming at 1.04. The Applicant proposes finishing the basement and thus increasing the FAR to 1.23. As indicated in §8.5 of the SZO, in the RA zone, the FAR limit is .75. The proposal to further increase the non-conforming FAR requires a Special Permit (a discretionary permit) from the ZBA.

Section 4.4.1 states that “[l]awfully existing one-and two-family dwellings which are only used as residences, which are nonconforming with respect to dimensional requirements, may be enlarged, extended, renovated or altered by special permit granted by the SPGA in accordance with the procedures of Article 5.”

In considering a special permit under §4.4.1 of the SZO, Staff finds that the alterations proposed by increasing the FAR would not be substantially more detrimental to the neighborhood than the existing structure. The proposal to increase the FAR is a reasonable request in order to allow for future occupants of the first-story unit to have more usable interior space.

FAR (§4.4.1)

As regards FAR, at 1.04, the property is already significantly over the FAR limit of .75 for the RA zone. As stated in other parts of this report, with the exception of exterior stairs, areaways, or window wells as means of egress, finishing a basement has little-to-no negative impact on the site or the surrounding neighborhood. With limited exception, the visibility of the increased FAR is apparent only on the interior of the structure.

Revise Special Permit (original Condition #10) (§5.3.8)



History of parking proposals on this site: When the Applicant submitted their original request in the summer of 2018 to add a second-story deck within the left side yard setback, the Applicant also proposed adding two additional parking spaces to the site and extending the curb cut in order to accommodate the vehicular access to the parking area.

Planning Staff was very clear with the Applicant at the time that it would not support a total of four (4.0) parking spaces on the site for two residential units. This is well beyond the number of parking spaces that the ZBA approves on a per-unit basis.

Further, the proposed new spaces would not have facilitated the easy maneuverability of parked vehicles when exiting/entering the property (see the green highlighted area in condition #9 below; this area was originally proposed to contain two additional parking spaces under the original summer, 2018 proposal). Moreover, the increase in parking spaces would have also dedicated the entire rear yard to parking, leaving no green space on this part of the parcel.

Additionally, in order to accommodate the added parking spaces, the curb cut would need to be extended. Planning Staff and its ISD counterpart were very clear with the Applicant that a widening of the curb cut would not be permitted. In order to widen a curb cut in the City of Somerville, three departments must unanimously agree to widen the cut: Engineering, Highways, and ISD/Planning. Each department has different criteria for approving or denying the widening of a curb cut, but all three must come to the independent conclusion that the curb cut should be allowed to be extended. In the case of 80 Powder House Boulevard, ISD/Planning did not agree to the widening of the curb cut. Doing so would have increased the potential for conflict between pedestrian and vehicular traffic along this street at the intersection with a busy thoroughfare. Because all three departments did not agree to widening the curb cut, the extension of the curb cut was denied.

Condition #9 was included in the original ZBA decision ensuring that land area originally slated for parking spaces would be turned into meaningful landscaping. Condition #10 was included in the original ZBA decision ensuring that the property was limited to the two (2.0) pre-existing, non-conforming parking spaces.

Revision request 2019: The Applicant has returned to the ZBA to remove Condition #10 from the Special Permit approval. As-proposed as seen on the site plan, this additional parking space would require a vehicle to drive over the curb in order to access the space. This is not permitted under any circumstances.

Both ISD/Planning stand by their original determination from the summer of 2018 that the curb cut shall not be extended due to the increased potential for conflict between pedestrian and vehicular traffic along this street. In addition, widening the curb cut would eliminate usable space available for on-street parking which the City is unwilling to see removed. Planning Staff does not support the widening of the curb cut nor removing Condition #10 in order to allow a third on-site parking space.

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."*



Staff finds that the proposal to increase the FAR 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 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 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.

Staff also finds that the increase in the FAR is consistent with the purpose of the RA district, which is, “[t]o 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: With the exception of exterior stairs or window wells for emergency egress purposes, the impacts of finishing a basement in order to create additional living space are on the interior of the structure. The basement cannot be used as a third unit or short- or long-term rental (see Conditions), therefore Staff finds that the proposed FAR increase will have no impact on the surrounding neighborhood from a visual or usability standpoint.

Impacts of Proposal (Design and Compatibility): Staff’s position regarding design and compatibility echo those stated immediately above in the “Surrounding Neighborhood” discussion.

5. Housing Impact:
Will not add to the City’s stock of affordable housing.

6. SomerVision Plan:
Finishing the basement will have no meaningful impact on the SomerVision plan, but will allow for more usable interior space for the occupants of one of the units on the site.

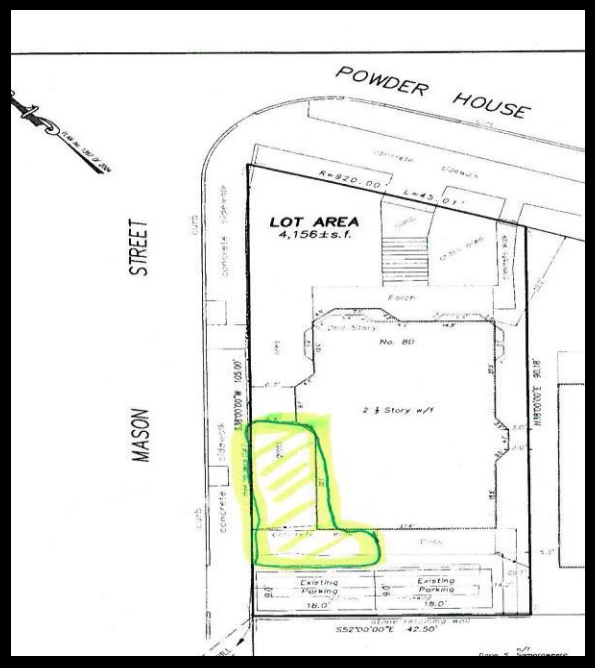
III.DECISION:

Present and sitting were Members Orsola Susan Fontano, Elaine Severino, Josh Safdie, Drew Kane and Anne Brockelman. Upon making the above findings, Susan Fontano made a motion to approve the request for Special Permits. Elaine Severino seconded the motion. The Zoning Board of Appeals voted **5-0** to **CONDITIONALLY APPROVE** the request for **REVISION** to special permit. The following conditions are attached:



#	Condition	Timeframe for Compliance	Verified (initial)	Notes
1	Approval is ONLY to increase the FAR by finishing the basement. NO additional on-site parking spaces shall be provided beyond the two existing spaces. All previous conditions from the August 8, 2018 special permit approvals stand and are included below along with additional conditions.	BP/CO	ISD/Plng.	
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>February 13, 2019</td> <td>Application to revise previously-awarded special permit submitted to City Clerk's Office</td> </tr> </tbody> </table> <p>Any changes to the approved elevations that are not <i>de minimis</i> must receive SPGA approval.</p>			
Date (Stamp Date)	Submission			
February 13, 2019	Application to revise previously-awarded special permit submitted to City Clerk's Office			
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	All construction materials, construction equipment and construction-related shall 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. Permits must be obtained for all dumpsters.	During Construction	T&P	
4	Construction shall occur from 7:30am – 5:00pm Monday-Friday ONLY. There shall be no construction or construction-related work allowed on the weekends or holidays.	During Construction	ISD	
Design				
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. Vinyl siding, decking, and railings shall not be permitted	BP	Plng./ISD	
Site				
6	The property shall be re-landscaped. A full landscaping plan shall be submitted to Planning Staff for their review and approval prior to the installation of any landscaping. Type and number of plantings and path materials shall be included in the landscaping plan.	Prior to installation/CO	ISD / Plng.	
7	All bituminous material shall be removed from the property. Pervious material shall be installed in the location where the two existing, non-conforming, tandem parking spaces are currently located at the rear of the property. Pervious material may include pervious pavers, pea stone, or similar. Proposed materials shall be submitted to Planning Staff for their review and approval prior to installation	Prior to installation/CO	ISD / Plng.	



8	All garbage and recycling areas shall be screened from public view. Screening materials shall be submitted to Planning Staff for their review and approval prior to installation. Location of garbage and recycling areas shall be indicated on the landscaping plan.	Prior to installation/ CO	ISD / Plng.	
9	<p>The areas indicated on the site plan in green shall be landscaped. Type and number of plantings for this area shall be included in the landscaping plan noted in Condition #6 above.</p> 	CO/Perpetua l	ISD/Pln g	
10	This property shall be limited to two existing, tandem (2) parking spaces (standard and or compact).	CO/Perpetua l	ISD/Pln g	
11	The site plan shall be updated to show the parking space dimensions.	BP	ISD/Pln g	
Engineering				
12	The Applicant shall 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.	
13	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.	
Miscellaneous				

14	Granting of the applied for use or alteration does <u>not</u> include the provision for short term rental uses, such as AirBnB, VRBO, or the like. Separate approvals are needed for the aforementioned uses.	Perpetual	ISD / Plng.	
15	The finished basement area shall be prohibited from being converted to an additional living unit.	Perpetual	ISD/Plng	
16	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	ISD/DPW	
Public Safety				
17	The Fire Prevention Bureau's requirements shall be met.	CO	FP	
18	The existing chain-link fence shall be removed from the perimeter of the property. If a new fence or plantings are installed at along the property along the Powder House/Mason Street frontages, they shall be no taller than 3 ½-feet per City regulations.	CO/Perpetual	ISD / Plng.	
19	Per Somerville fire safety regulations, grills, barbecues, chimineas and the like are NOT permitted on decks or porches.	Perpetual	FP/ISD	
20	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				
21	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*
Elaine Severino, *Acting as Clerk*
Josh Safdie
Anne Brockelman
Drew Kane (Alt.)

Attest, by the Administrative Assistant:

Monique Baldwin

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 _____

