



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

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Case #: ZBA 2017-120
Site: 8-10 Appleton St
Date of Decision: March 7, 2018
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: March 15, 2018

ZBA DECISION

Applicant / Owner Name: Trio Enterprises, LLC
Applicant / Owner Address: 60 Highland Avenue, Somerville, MA 02144
Agent Name: Richard G. DiGirolamo
Agent Address: 424 Broadway, Somerville, MA 02145
Alderman: Lance Davis

Legal Notice: Applicant and Owner, Trio Enterprises, LLC, seeks a Special Permit under §4.4 to alter a nonconforming structure that had previously been damaged by a fire by modifying porches, windows, landings, and finishing a portion of the basement. RA Zone. Ward 6.

<u>Zoning District/Ward:</u>	RA Zone. Ward 6.
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	October 26, 2017
<u>Date(s) of Public Hearing:</u>	1/17/18, 1/31/18, 2/14/18, 3/7/18
<u>Date of Decision:</u>	March 7, 2018
<u>Vote:</u>	4-0

Appeal #ZBA 2017-120 was opened before the Zoning Board of Appeals in the Aldermanic Chambers, City Hall, 93 Highland Avenue. 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 four hearings of deliberation, the Zoning Board of Appeals took a vote.



DESCRIPTION:

The Applicant is requesting changes to the reconstruction of the building that include the following:

- proposed rear porch off of the third floor;
- a new side entry, steps, and landing for the first floor unit;
- enlarged and redesigned front porch, steps, and landing;
- window enlargements and adjustments;
- addition of a skylight; and
- proposed additional net square footage in the basement for a family room and bathroom.

FINDINGS FOR SPECIAL PERMIT (SZO §4.4):

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."*

Section 4.4.2 states that *"If a lawful nonconforming building or use shall have been damaged by fire, explosion, catastrophe, or an Act of God, such building may be rebuilt or restored by right and used again subject to the following provisions:*

a. no lawful nonconformity shall be increased in area or degree of nonconformity beyond the state existing prior to the fire, explosion, catastrophe or Act of God.

b. such reconstruction or restoration shall be duly commenced within twenty-four (24) months of the date such damage occurred, and shall be continued in a timely fashion to completion. In the event such reconstruction or restoration is not commenced within twenty-four (24) months, the nonconforming use or structure shall be deemed abandoned and shall not thereafter be returned to said nonconforming use, and any new structure shall be subject to all applicable provisions and standards of this Ordinance."

Before, the structure was damaged by the fire in January 2017 it was nonconforming with respect to the following dimensional requirements: use, lot size, lot area per dwelling unit, floor area ratio (FAR), front yard setback, left side yard setback, and the number of parking spaces. The proposal to rebuild the structure with the aforementioned alterations will impact the following nonconforming dimensions: FAR, front yard setback, and left side yard setback. These alterations to a nonconforming structure requires the Applicant to obtain special permits under §4.4.1 of the Somerville Zoning Ordinance (SZO).

	<i>Existing</i>	<i>Proposed</i>	<i>Required</i>
FAR	0.78 (4,273 n.s.f)	1.01 (5,576 n.s.f)	0.75 (4,125 n.s.f)
Front yard setback	9.6 feet	6.8 feet	15 feet
Left yard setback	5.5 feet	5.5 feet	8 feet



Section 4.4.1 states that “[l]awfully existing nonconforming structures other than one- and two-family dwellings may be enlarged, extended, renovated or altered only by special permit authorized by the SPGA in accordance with the procedures of Article 5. The SPGA must find that such extension, enlargement, renovation or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming building. In making the finding that the enlargement, extension, renovation or alteration will not be substantially more detrimental, the SPGA may consider, without limitation, impacts upon the following: traffic volumes, traffic congestion, adequacy of municipal water supply and sewer capacity, noise, odor, scale, on-street parking, shading, visual effects and neighborhood character.”

In considering a special permit under §4.4 of the SZO, the Board finds that the alterations/use proposed would not be substantially more detrimental to the neighborhood than the existing structure/use. The proposal will allow for the reconstruction of a building that was previously damaged by fire with alterations that enhance the livability of the structure. The proposal has been designed with setbacks that minimally impact the neighbors and the requirements for ground coverage, landscaped area, pervious area, height, rear yard setback, right yard setback, and frontage will continue to be conforming to the requirements of the SZO.

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 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 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 surrounding area is comprised of single, two-, and three-family dwellings.

Impacts of Proposal (Design and Compatibility): The proposed alterations are in keeping with the existing size and scale of the previous structure as well as the surrounding neighborhood.

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, and encourage a balanced mix of safe, affordable and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups.

DECISION:

SPECIAL PERMIT (SZO §4.4)

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Elaine Severino, and Josh Safdie. 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 **4-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	Approval is for alterations to the reconstruction of the previously razed structure. 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 26, 2017</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>October 11, 2017</td> <td>Modified plans submitted to OSPCD (T1.1, T1.2, Z1.1, Z1.2, Z1.3, A0.1, A1.0, A1.1, A1.2, A1.3, A1.4, A2.1, BP2.1, A2.2, BP2.2, A2.3, BP2.3, A2.4, and BP2.4)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	October 26, 2017	Initial application submitted to the City Clerk's Office	October 11, 2017	Modified plans submitted to OSPCD (T1.1, T1.2, Z1.1, Z1.2, Z1.3, A0.1, A1.0, A1.1, A1.2, A1.3, A1.4, A2.1, BP2.1, A2.2, BP2.2, A2.3, BP2.3, A2.4, and BP2.4)
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Any changes to the approved site plan elevations/use that are not <i>de minimis</i> must receive SPGA approval.										
Pre-Construction										
2	If required by the Engineering Department, the proposed basement finished floor elevation shall not be less than is 1 foot above the Seasonal High Ground Water elevation. If necessary, 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.							
3	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							
4	The Applicant shall conduct a survey of foundations and buildings adjacent to the site prior to construction and shall address impacts to such structures caused by construction of the project.	BP	Plng. / ISD							



Construction Impacts				
5	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.	
6	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	
7	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	
8	Construction vehicles shall not block any public way.	During Construction	T&P	
9	Construction debris, equipment, and staging areas shall be kept on the subject property and shall be kept clean.	During Construction	ISD	
Design				
10	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.	
11	An exterior light and electrical receptacle is required for the first (or all) level of the porch and an electrical receptacle is required for the second level (if there is no access to the ground).	Final sign off	Wiring Inspector	
Site				
12	Landscaping shall be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Plng. / ISD	
13	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				
14	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	

15	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.	
16	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.	
17	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.	
18	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				
19	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
20	Per Somerville fire safety regulations, grills, barbecues, chimineas and the like are NOT permitted on decks or porches.	Perpetual	FP/ISD	
21	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				
22	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
Elaine Severino
Josh Safdie

Attest, by City Planner: _____
Alex 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 _____

