



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
**JOSEPH A. CURTATONE**  
**MAYOR**

GEORGE J. PROAKIS  
EXECUTIVE DIRECTOR

PLANNING DIVISION  
**ZONING BOARD OF APPEALS MEMBERS**

ORSOLA SUSAN FONTANO, CHAIRMAN  
DANIELLE EVANS, *CLERK*  
DREW KANE, (ALT)  
ELAINE SEVERINO  
JOSH SAFDIE  
ANNE BROCKELMAN

**Case #: ZBA 2019-27**  
**Site: 65 Bailey Road**  
**Date of Decision:** August 21, 2019  
**Decision:** *Petition Approved with Conditions*  
**Date Filed with City Clerk:** August 27, 2019

---

**ZBA DECISION**

---

**Applicant / Owner Name:** Jose F. Couto & Ligia L. Couto  
**Applicant / Owner Address:** 65 Bailey Road, Somerville, MA 02145  
**Agent Name:** none  
**Agent Address:** none  
**City Councilor:** Jesse Clingan

**Legal Notice:** Applicants and Owners, Jose F. and Ligia L. Couto, seek Special Permits under §4.4.1 of the SZO to alter a non-conforming structure by constructing a dormer within the left side yard setback. Parking relief under Article 9. RA zone. Ward 4.

|                                   |                            |
|-----------------------------------|----------------------------|
| <u>Zoning District/Ward:</u>      | RA zone. Ward 4            |
| <u>Zoning Approval Sought:</u>    | SZO §4.4.1                 |
| <u>Date of Application:</u>       | March 13, 2019             |
| <u>Date(s) of Public Hearing:</u> | 6/5, 6/19, 7/17, 8/7, 8/21 |
| <u>Date of Decision:</u>          | August 21, 2019            |
| <u>Vote:</u>                      | 4-0                        |

---

Appeal # **ZBA 2019-27** was opened before the Zoning Board of Appeals in the City Council Chambers at Somerville City Hall on June 5, 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 August 21, 2019, the Zoning Board of Appeals took a vote.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143  
(617) 625-6600 EXT. 2500 • TTY: (617) 666-0001 • FAX: (617) 625-0722  
[www.somervillema.gov](http://www.somervillema.gov)

## **I. PROJECT DESCRIPTION**

**1. Subject Property:** The locus presents a two-family residential structure in the RA zone. The building is sited on a 4,050 square foot lot. This structure looks directly onto the concrete decking of the elevated portion of I-93.

**2. Proposal:**

The Applicant proposes maintaining the two-family nature of the structure. There will be no changes to the first and second stories of the house. The existing finished attic space will be expanded through the construction of two dormers. The attic area will present a family room, two bedrooms, bathroom and substantial storage/HVAC equipment area. The total number of bedrooms for Unit Two will increase by two (2). However, as the existing conditions already present three bedrooms<sup>1</sup>, this does not increase the parking requirement. Three or more bedrooms max out the parking requirement at 2.0. There is no parking relief required.

Left side yard setback

The RA zone requires a left side yard setback of eight (8) feet. The existing setback is 6.3 feet. The applicant proposes constructing a length-compliant dormer that is also 6.3 feet from the left property line. Even with the side setback reduction allowance for properties with narrow lots (those less than 50 feet wide), the proposal still triggers the need for a special permit.

**3. Green Building Practices:**

The application states the following: *“The entire attic project will be constructed with the latest construction material, including all LEDs, spray foam, energy efficient faucets, 3 energy efficient windows and siding that reduces glare while blending with the façade of the building and neighborhood.”*

## **II. FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1 & Article 9):**

*In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §4.4.1 of the SZO. This section of the report goes through §4.4.1 in detail.*

**1. Information Supplied:**

The Board finds that the information provided by the Applicant conforms to the requirements of §4.4.1 of the SZO.

**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 4.4.1 of the SZO

*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*

<sup>1</sup> Two labelled bedrooms and an office which is counted as a bedroom per the SZO.



*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.”*

**Left side yard setback**

The RA zone requires a left side yard setback of 8 feet. The existing setback in the proposed dormer location is 6.3 feet. The Applicant proposes retaining this setback to construct a dormer that will support a new family room and bath.

This property is located directly across from the elevated road bed of I-93. This is the view from the front of the house as well as from specific angles on the left and right elevations. 65 Bailey Road is indicated in red in the aerial image below.



The dormer will be visible from the left-abutting and rear-abutting properties. There are no other structures on this portion of Bailey Road that present matching dormers of any size.

Despite the increase in bedroom count, there is not expected to be an increase in –on-street parking. The attic-level bedrooms are for the use of persons already occupying the second-and-third-floor unit. Abutters can expect typical noises and odors associated with the construction phase of a project, but the existence of this rear basement entry will not in itself add to noises and odors in the neighborhood.

Typically, the Board is not in favor of creating “wings” on either side of a residential structure such as this. It should be noted that the right elevation dormer can be built by-right. However, the Board also takes into account the particularly challenging street on which this property is found and the limited visibility these “wings” will have from the front elevation in particular, given the siting of the house across from the elevated highway deck.

The number of units in the house is not increasing, therefore the Board does not anticipate any change in traffic volume or congestion as a result of this project.

**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 Board finds that the proposal is generally consistent with the purposes of the RA zone which are “[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."***

The Board has addressed the question of site and area compatibility in a previous section. As a point of note, the Board has not conditioned this decision to require a full re-landscaping of the property nor the removal of the asphalt driveway to be replaced with pavers. Though these are typical conditions that are added to other, larger projects, the Board does not find that they are merited here. Conditions placed on a project should meet the test of “rough proportionality.” The Board finds that other requirements that we have grown accustomed to adding on other, larger projects, would be out-of-proportion with the relief request put forward in the case of 65 Bailey Road.

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

The proposal will not add to the existing stock of affordable housing.

### III. DECISION

Present and sitting were Members Orsola Susan Fontano, Elain Severino, Drew Kane, and Anne Brockelman. Upon making the above findings, the Zoning Board of Appeals voted **4-0** to **APPROVE** the request **WITH CONDITIONS**. The following conditions were attached:

| #   | Condition  | Timeframe for Compliance | Verified (initial) | Notes |            |            |                |   |              |                                  |
|---|--|--------------------------|--------------------|-------|------------|------------|----------------|---|--------------|----------------------------------|
| 1   | Approval is for the construction of a dormer within the left side yard setback.  | BP/CO                    | ISD/PIng.          |       |            |            |                |   |              |                                  |
|   | <table border="1"> <thead> <tr> <th>Date</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>March 13, 2019</td> <td>Application submitted to City Clerk's office.</td> </tr> <tr> <td>July 2, 2019</td> <td>Updated plans submitted to OSPCD</td> </tr> </tbody> </table>  |                          |                    |       | Date       | Submission | March 13, 2019 | Application submitted to City Clerk's office. | July 2, 2019 | Updated plans submitted to OSPCD |
|   | Date   |                          |                    |       | Submission |            |                |   |              |                                  |
| March 13, 2019  | Application submitted to City Clerk's office.  |                          |                    |       |            |            |                |   |              |                                  |
| July 2, 2019  | Updated plans submitted to OSPCD   |                          |                    |       |            |            |                |   |              |                                  |
| <p style="color: red;">Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive SPGA approval. Whether or not a change is <i>de minimis</i> in nature must be determined by the Planning Office.</p> |  |                          |                    |       |            |            |                |   |              |                                  |
| <b>Engineering</b>  |  |                          |                    |       |            |            |                |   |              |                                  |
| 2   | <p>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.”</p> <p>The Applicant shall work with Engineering to meet this condition and provide the required fees/mitigation.</p>   | BP                       | Engineering/ISD    |       |            |            |                |   |              |                                  |
| <b>Design</b>   |  |                          |                    |       |            |            |                |   |              |                                  |
| 3   | All materials, including, but not limited to windows, exterior finishes, siding, and similar shall be submitted to, reviewed and approved by Planning Staff prior to the issuance of a building permit.  | BP                       | ISD/PIng           |       |            |            |                |   |              |                                  |
| <b>Construction Impacts</b>   |  |                          |                    |       |            |            |                |   |              |                                  |
| 4   | The Applicant shall, at his 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                |       |            |            |                |   |              |                                  |
| 5   | 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/ISD            |       |            |            |                |   |              |                                  |



|                       |   |                     |                |  |
|-----------------------|---|---------------------|----------------|--|
| 6                     | <b><u>The name(s) and contact information of all entities working on the site shall be posted in an area easily-visible from the public way for the passing public to read.</u></b>   | During Construction | ISD            |  |
| 7                     | <b><u>Construction shall be limited to <b>M-F 7:30am – 5:00pm.</b> No weekend construction or construction-related work shall occur.</u></b>  | During Construction | ISD            |  |
| <b>Public Safety</b>  |   |                     |                |  |
| 8                     | The Applicant or Owner shall meet the Fire Prevention Bureau’s requirements.  | CO                  | FP             |  |
| 9                     | All exterior lighting on the site shall be downcast and shall not cast light onto surrounding properties in any fashion.  |                     |                |  |
| 10                    | In accordance with City of Somerville ordinances, no grills, barbeques, chimineas or the like shall be allowed on decks and porches.  | CO/Perpetua<br>l    | ISD/PlngF<br>P |  |
| <b>Final Sign-Off</b> |   |                     |                |  |
| 11                    | 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<br>off   | ISD/Pln<br>g.  |  |

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chair*  
 Anne Brockelman, *Acting Clerk*  
 Elaine Severino  
 Drew Kane, (Alt.)

Attest, by the Planner:

\_\_\_\_\_   
 Sarah White

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



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143  
 (617) 625-6600 EXT. 2500 • TTY: (617) 666-0001 • FAX: (617) 625-0722  
[www.somervillema.gov](http://www.somervillema.gov)

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 \_\_\_\_\_

