



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

*PLANNING DIVISION STAFF*

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SARAH LEWIS, *SENIOR PLANNER*  
SARAH LEWIS, *PLANNER / PRESERVATION PLANNER*  
DAWN PEREIRA, *ADMINISTRATIVE ASSISTANT*

**Case #:** ZBA 2016-74  
**Date:** September 7, 2016

**Recommendation:** Unable to Recommend

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**PLANNING STAFF REPORT**

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**Site:** 10 Beech Street, #3

**Applicant(s) & Owner(s) Name(s):** Mark Melenovsky & Weili Su  
**Applicant(s) Address:** 10 Beech Street, #3, Somerville, MA 02143  
**Alderman:** Robert J. McWatters

**Legal Notice:** Applicants and Owners, Mark Melenovsky & Weili Su, seek a Special Permit under SZO §5.3.8 to alter the conditions of a prior Special Permit to alter fence height from 4 feet to 6 feet.  
RB zone. Ward 3.\*

The property is located in Ward 6.

**Dates of Public Hearing:** September 7, 2016



*Unit #3 is at the rear of the above building. This property sits at the corner of Beech and Pitman Streets.*

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**I. PROJECT DESCRIPTION**

- Subject Property:** The subject parcel is a 3-story 5,004 square foot structure built in 2014/2015 containing 3 condo units. The unit in question, Unit #3 is the unit at the rear of the property and consists of a total of 1,583 square feet.
- Proposal:** The Applicants seek to remove a 4-foot fence separating their portion of the property from the rear abutting parcel on Somerville Avenue and replace it with a 6-foot fence. The

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Applicants have already changed out the fence and now seek *ex post facto* approval from the ZBA for a condition change to the Special Permit that was approved for this property in 2014.

- 3. **Impacts of Proposal:** The 4-foot fence that the Applicants removed was condition of the Special Permit for this property when the ZBA rendered its decision in 2014. The highlighted portion of condition #13 from the original Special Permit describes the fence as follows:

13	<p>The Applicant shall have a six foot fence the length and width of the driveway. <b>The Applicant shall have a four foot fence between the proposed building and the adjacent structure along Somerville Avenue.</b> There should be an appropriate transition between these two heights.</p>
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According to Planning Staff records, the Applicants came to the Planning Office on **September 4, 2015** to ask about replacing their 4-foot fence with a higher one. The Applicants were given a copy of the conditions attached to the Special Permit for this property and were informed by Planners that the only way they could do so was to appear before the ZBA and petition to change that condition of the Special Permit, but that they could not change the fence. The Applicants were also advised that they could, without going to the ZBA, use a variety of greenery whose height and thickness would further screen the area from the abutting property.

During a routine inspection in that area of the city earlier in the summer, an ISD official notices that the fence belonging to Unit 3 had been replaced with a 6-foot fence, yet, the Applicants had not filed an application to amend the Special Permit conditions. The Applicants were cited for a violation which has brought them before the ZBA for permission after-the-fact.

Typically, a 6-foot fence would not need either a building permit or a Special Permit. However, in this case, because the fence location and height was specified as a condition of the original Special Permit, the Applicants were required to seek relief (permission) to change the fence height from the ZBA – an then a building permit – before actually making the change. This was made clear to the Applicants on **September 4, 2015**. This was further made clear to the Applicants in an email from the Zoning Review Planner dated **September 9, 2015**.

This is the second fence violation at this property. Earlier this year, 10 Beech Street Unit 1 installed a 6-foot fence in their front yard on a corner. That unit, after being cited, applied for Variance from the ZBA, which was denied.

## II. FINDINGS FOR REVISION TO SPECIAL PERMIT (SZO §4.4.1):

The following findings for a special permit under §5.1.4 (*Findings and Determinations for Special Permits*) were used to evaluate the revision request.

### 1. **Information Supplied:**

Staff finds that the information provided by the Applicant conforms to the requirements of §5.1.2 of the SZO (*Information Required for Special Permits*) 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."**

Changes to the conditions of Special Permits must go back to the special permit granting authority (SPGA) for approval, in this case, the ZBA.

### 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 proposed change is not consistent with the purpose set forth under Section 4.1 which states that "...it is the stated purpose of this Article that nonconforming uses and structures are to be strictly regulated, and that the provisions of this Ordinance will be construed and interpreted in the light most favorable to limiting the continuation and/or/expansion of nonconforming uses and structures."

### 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."**

Somerville is a densely-built city, and this area is no exception. Staff finds that the additional height to the fence further encloses an already closely built-out space.

## III. RECOMMENDATION

### Special Permit under SZO §5.3.8

Based on the materials submitted by the Applicant and the above findings, Planning Staff is **UNABLE TO RECOMMEND** approval of the request to change the fence height.