



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

MICHAEL F. GLAVIN  
EXECUTIVE DIRECTOR

PLANNING DIVISION

**ZONING BOARD OF APPEALS MEMBERS**

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RICHARD ROSSETTI, CLERK  
DANIELLE EVANS  
ELAINE SEVERINO  
JOSH SAFDIE  
ANNE BROCKELMAN, (ALT.)

**Case #: ZBA 2016-19**  
**Site: 10 Beech Street, #1**  
**Date of Decision: March 16, 2016**  
**Decision: Petition Denied**  
**Date Filed with City Clerk: March 29, 2016**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Elina & Jonas Heese
<b>Applicant Address:</b>	10 Beech Street, #1, Somerville, MA 02143
<b>Property Owner Name:</b>	Elina & Jonas Heese
<b>Property Owner Address:</b>	10 Beech Street, #1, Somerville, MA 02143
<b>Agent Name:</b>	N/A

Legal Notice: Applicants and Owners, Elina & Jonas Heese, seek a Variance under SZO §5.6.5.c to construct a 6-foot fence along the front and left property lines.

<u>Zoning District/Ward:</u>	RB zone/Ward 6
<u>Zoning Approval Sought:</u>	§5.6.5.c
<u>Date of Application:</u>	February 2, 2016
<u>Date(s) of Public Hearing:</u>	March 16, 2016
<u>Date of Decision:</u>	March 16, 2016
<u>Vote:</u>	4-0

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Appeal #ZBA 2016-19 was opened before the Zoning Board of Appeals at Somerville City Hall on March 16, 2016. 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 one hearing of deliberation, the Zoning Board of Appeals took a vote.



**DESCRIPTION:**

The Applicant is requesting a variance to construct a 6-foot fence along the Beech and Pitman corners of the lot which is on two one-way streets.

**FINDINGS FOR VARIANCE (SZO §5.5.3):**

In order to grant a Variance, the Board must make certain findings and determinations as outlined in §5.5.3 of the SZO. A variance can ONLY be granted if ALL of the conditions below set forth under §5.5.3 are met:

(a) 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.”

**Board’s Response:** There are no such special conditions present on the property. The application does not meet the standards for a variance under these conditions.

(b) 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.”

**Board’s Response:** The applicant does not meet the standards for a variance under the conditions set by item (b). The applicant already has a by-right means of reasonable relief. The applicant can construct a 3.5-foot fence within the first twenty feet of any corner as per §8.6.5.c of the SZO which states: “On any lot where front yards are required, all structures, fences or plantings greater than three-and-on-half (3 ½) feet above sidewalk level and within twenty (20) feet of any corner street line intersection shall be maintained so as not to interfere with traffic visibility across corners.”

(c) “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.”

**Board’s Response:** The Board finds that the applicant does not meet the standards set forth for a variance under the conditions set by item (c). A 6-foot fence is not in harmony with the surrounding neighborhood, would be injurious to pedestrian and vehicular traffic and is in complete contradiction to what is permitted under the SZO. The applicant has other means of reasonable accommodation by virtue of a 3 ½-foot fence that will provide separation of the yard from the street and will function to contain pedestrians to the sidewalk and garden occupants to the yard.



**DECISION:**

Present and sitting were Members Orsola Susan Fontano, Danielle Evans, Josh Safdie and Anne Brockelman with Richard Rossetti and Elaine Severino absent. Upon making the above findings, Danielle Evans made a motion to deny the request for a Variance. Anne Brockelman seconded the motion. Wherefore the Zoning Board of Appeals voted **4-0** to **DENY** the request. In addition the following conditions were attached:



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*  
Danielle Evans  
Josh Safdie  
Anne Brockelman (Alt.)

Attest, by the Administrative Assistant:

\_\_\_\_\_  
Dawn M. Pereira

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 \_\_\_\_\_

