



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2019-49
Site: 48 Berkeley Street
Date of Decision: August 7, 2019
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: August 21, 2019

ZBA DECISION

Site: 48 Berkeley Street
Applicant/Owner Name: Kevin Gorham, Goodwin Berkeley, LLC
Applicant/Owner Address: 77 Willard St., Quincy, MA 02169
City Councilor: Ben Ewen-Campen

Legal Notice: Applicant and Owner, Kevin Gorham / Goodwin Berkeley, LLC, seeks special Permits to alter a non-conforming property including constructing a dormer within the right side yard setback. Parking relief under Article 9*. RA zone. Ward 3.

*After the publication of this ad, it was determined that parking relief is not needed for this project. The only relief needed is a special permit to construct a dormer within the right side yard setback.

<u>Zoning District/Ward:</u>	RA zone, Ward 3.
<u>Zoning Approval Sought:</u>	SZO §4.4.1
<u>Date of Application:</u>	December 5, 2018
<u>Date(s) of Public Hearing:</u>	8/7
<u>Date of Decision:</u>	August 7, 2019
<u>Vote:</u>	4-0

Case # ZBA 2019-49 was opened before the Zoning Board of Appeals in the Council Chambers at Somerville City Hall. 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 7, 2019 the Zoning Board of Appeals took a vote.



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I. PROJECT DESCRIPTION

1. **Subject Property:** The locus presents a non-conforming three-unit, 2 ½- story residential structure in the RA zoning district. The structure rests on a 5,263 lot in Ward 3.
2. **Proposal:** The applicant proposes a complete overhaul of the property, including the construction of a dormer within the non-conforming right side yard setback, which requires a special permit.
3. **Green Building Practices:** The application states the following: *“Massachusetts IRC code applicable due to separate metering of services. Window U-value .32 max, roof/ceiling R-49, exterior walls R-20, basement walls R-17.”*

4. Comments:

Ward Councilor: Councilor Ben Ewen-Campen is aware of the project and has held a neighborhood meeting.

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

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. The Board advises the Applicant that future submissions need to be better labelled.

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 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.”*

Section 4.4.1 of the SZO allows for legally-existing, non-conforming one- and two-family residences to be enlarged by Special Permit as long as the proposed changes do not create a situation that is more detrimental to the site or surrounding neighborhood than current conditions. In the case of 48 Berkeley Street, it is a legally pre-existing, non-conforming three-family residential structure in a zone where a two-unit residential structure is the maximum allowed.

Right side yard setback

The applicant proposes constructing a shed dormer within the right side yard setback on the rear portion of the building. However, as presented, the proposed dormer length is just over the allowed 50% eave length allowed in the RA zone. Therefore, to ensure compliance with this regulation, a condition has been



added requiring the dormer to be reduced in length by a minimum of three (3) inches. Other than this, the Board finds the inclusion of the dormer to be an appropriate addition to this rear roof plane of the house, allowing for the applicant to achieve additional head room and a small increase in the amount of usable space on this level.

Other determinations

Abutters can expect typical noises and odors associated with the construction phase of a project.

This project, as with all others, will need to be reviewed by the Engineering Division for their sign-off prior to the granting of a building permit. The Engineering Division will determine if any measures need to be taken by the Applicant to address any impacts on the municipal water and sewer system.

As the number of units in the building is remaining the same, the Board does not anticipate an increase in the number of vehicles entering and leaving the site. There is no anticipated change in traffic pattern resulting from this project. There is no anticipated increase in the queueing of vehicles in the area. Should unit residents possess more than one vehicle per unit, area residents can expect an increase in on-street parking needs.

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 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.

The purpose of the RA zone 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."*

Berkeley Street is replete with 2 ½-story gable-fronted houses in various stages of repair and alteration. The Applicant's proposal does not change the nature of the site or area from a use perspective. Overall, the proposal provides improvements in terms of visual changes, upgraded landscaping, and permeability.

5. Housing Impact:

Will not add to the City's stock of affordable housing.

Will not increase the number of available housing units.



6. SomerVision:

The proposal will result in the rehabilitation and upgrade of an existing property. The parcel will be improved such that all impervious, bituminous material will be removed from the site in order to improve the percolation of stormwater through the property. The site will be re-landscaped with an emphasis on native species. No additional units will be added to the City’s housing stock.

III. DECISION

Present and sitting were Members Orsola Susan Fontano, Drew Kane, Danielle Evans, and Anne Brockelman. Upon making the above findings, Danielle Evans made a motion to approve the request for a Special Permit. Elaine Severino seconded the motion. 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 right side yard setback.	BP/CO	ISD/Plng.							
	<table border="1"> <thead> <tr> <th>Date</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>April 24, 2019</td> <td>Initial application submitted to the City Clerk’s Office</td> </tr> <tr> <td>June 18, 2019</td> <td>Revised plan set submitted to OSPCD</td> </tr> </tbody> </table>				Date	Submission	April 24, 2019	Initial application submitted to the City Clerk’s Office	June 18, 2019	Revised plan set submitted to OSPCD
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June 18, 2019	Revised plan set 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>										
Design										
2	All exterior materials, including, but not limited to windows, doors, siding, roofing, trim, and the like, shall be submitted to Planning Staff for their review and approval prior to the issuance of a building permit.	BP	Planning Staff / ISD							
3	The proposed right elevation dormer must be reduced by a minimum of three (3) inches from the proposed plan length in order for it to conform to zoning regulations which state that dormers in this zone cannot be longer than 50% of the (unbroken) roof plane to which they are attached. Updated plans must be submitted to Planning Staff through the Zoning Review Planner for review and approval prior to the issuance of a building permit.	BP	Planning Staff / ISD							
Engineering										



4	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 to April and there is a list of streets that have additional opening restrictions.	BP	Eng	
5	New sanitary connection flows over 2,000 GPD require a removal of infiltration and/or inflow by the Applicant. This shall be achieved by submitting a mitigation payment, established by the City Engineers Office, to the City based on the cost per gallon of I/I to be removed from the sewer system and a removal ratio of 4:1. If a different ratio of removal or mitigation payment amount is adopted by the Board of Aldermen prior to the Applicant receiving a Certificate of Occupancy, payment will be adjusted to the BOA rate. The Applicant shall work with Engineering and meet this condition before a certificate of occupancy is issued.	BP	Eng.	
6	The Applicant must contact the Engineering Department to obtain a street address prior to a building permit being issued.	BP	Eng.	
7	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.	
8	The Applicant shall submit a proposed drainage report, stamped by a registered PE in Massachusetts that demonstrates compliance with the City's stormwater policy.	BP	Eng.	
9	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." The Applicant shall work with Engineering to meet this condition and provide the required fees/mitigation.	BP	Eng.	
Construction Impacts				
10	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	
11	All construction materials and equipment shall be stored on-site. 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	

12	The Applicant shall develop a demolition plan in consultation with the City of Somerville Inspectional Services Division. Full compliance with proper demolition procedures shall be required, including timely advance notification to abutters of demolition date and timing, good rodent control measures (i.e. rodent baiting), minimization of dust, noise, odor, and debris outfall, and sensitivity to existing landscaping on adjacent sites.	Demolition Permitting	ISD	
13	The Applicant shall ensure that all food waste is removed from the project site on a daily basis.	During construction	ISD	
14	Construction and construction-related work shall occur between 7:30am and 5:00pm Monday through Friday only. No construction or construction-related work shall occur on the weekends or holidays. This includes, but is not limited to, deliveries, finish work, and landscaping.	During construction	ISD	
15	There shall be no idling of construction or construction-related vehicles on the property or street prior or post working hours. Out of respect for the neighbors, construction personnel shall not play loud music or engage in loud conversations prior, during, or post the allowed construction hours.	During construction	ISD	
16	Rodent baiting/control shall be undertaken as-needed and as-determined by ISD.	During construction	ISD	
Site				
17	Landscaping shall be installed and maintained in compliance with the American Nurserymen's Association Standards;	CO & Perpetual	Plng. / ISD	
18	All mechanical equipment shall be screened from the view of the street and from abutting properties. ISD requires 3-foot radius around all condensers and a minimum 3-foot setback of these condensers from any property line.	CO & Perpetual	Plng. / ISD	
19	All venting shall be painted or wrapped to match the color of the portion of the house from which it protrudes.	CO & Perpetual	Plng. / ISD	
20	All garbage and recycling shall be screened from the view of the street and abutting properties.	CO & Perpetual	Plng. / ISD	
21	All materials to be used for landscaping, driveways, sidewalks, parking, fencing and similar shall be submitted to Planning Staff for their review and approval prior to ordering.	Prior to ordering	Plng. / ISD	
Public Safety				
22	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
23	As per City regulations, there shall be no grills or similar cooking/heating equipment allowed on any decks or porches at any time.	Perpetual	FP/ISD	
24	All smoke detectors shall be hard-wired.	CO	Fire Prevention / ISD	
25	The building shall be sprinkled.	CP	FP/ISD	
Miscellaneous				



26	Conduits, venting/exhaust pipes shall NOT be placed on the front façade of the building. All such items shall be painted or wrapped to match the color of the portion of the building from which they protrude.	CO	ISD/Plng	
27	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 hard, 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 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/Plng	
28	Electrical conduits on the exterior of buildings shall be painted to match the color of the facade material to which they are attached. Conduits are not allowed on the front of any structure.	CO	ISD/Plng	
29	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.	Perpetual	ISD	
30	Any damage done to abutting properties as a result of the construction process shall be resolved between the disputing parties as a private matter.	During construction /perpetual	Private parties	
Final Sign-Off				
31	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, *Chair*
Danielle Evans, *Clerk*
Drew Kane
Anne Brockelman

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 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 _____

