



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2016-83-R1-0317
Site: 59 Berkeley Street
Date of Decision: April 19, 2017
Decision: Petition Approved with Conditions
Date Filed with City Clerk: May 3, 2017

ZBA DECISION

Applicant Name:	Jon M. DeMartinis
Applicant Address:	21 Sagamore Road, Arlington, MA 02476
Property Owner Name:	Jon M. DeMartinis
Property Owner Address:	21 Sagamore Road, Arlington, MA 02476
Agent Name:	Adam Dash, Esq.
Agent Address:	48 Grove Street, Suite 304, Somerville, MA 02144

Legal Notice: Applicant and Owner, Jon M. DeMartinis, seeks a revision to a Special Permit under §5.3.8 of the SZO in order to add a shed dormer, finish basement space for Unit 1 (therefore increasing the FAR (SZO §4.4.1), and modifying a condition of the previous Special Permit.

<u>Zoning District/Ward:</u>	RA zone/Ward 3
<u>Zoning Approval Sought:</u>	§5.3.8 & §4.4.1
<u>Date of Application:</u>	March 1, 2017
<u>Date(s) of Public Hearing:</u>	April 19, 2017
<u>Date of Decision:</u>	April 19, 2017
<u>Vote:</u>	5-0

* This property received a Special Permit from the ZBA in November, 2016. The Applicant has come back requesting to modify some portions of the original Special Permit.



Appeal #ZBA 2016-83-R1-0317 was opened before the Zoning Board of Appeals at Somerville City Hall on April 19, 2017. 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:

Proposal is to build two small rear additions, demolish an interior staircase and add two more on-site parking spots. The project will have three two-bedroom units. This original proposal was approved in November, 2016. The Applicant requests to amend the original Special Permit in the following manner:

- Add a shed dormer to the front portion of the left elevation roof in order to provide head room for the existing stairwell from the second to third floors;
- Finish a portion of the basement for the use of Unit 1. This dimensional change will increase the overall net floor area by 450 square feet. The Net floor area will thus increase from the previously-approved 3,038 square feet to 3,488 square feet. This results in a .09 change in the FAR, increasing the FAR from the previously-approved .61 to the proposed .70. This FAR is still under the .75 maximum that is allowed in the RA zone.
- Amend Condition #5 to remove review by the Design Review Committee (DRC) and require materials review and approval by Planning Staff.

FINDINGS FOR SPECIAL PERMIT (SZO §5.3.8):

Section 5.3.8: Revision of Special Permit states that “subsequent to a special permit, special permit with design review, or special permit with site plan review being granted by the SPGA, revisions in the plan may be made prior to the granting of the Certificate of Occupancy, in accordance with the following procedures and applicable law, ordinances, and regulations.”

The proposed changes to the project at 59 Berkeley Street were determined not to be *de minimis* in nature. The increase in FAR and the addition of a dormer are not considered minor details or final touches and are alterations that anyone with a familiarity of the project would notice. Therefore, the proposed changes have been remanded to the ZBA for their review, deliberation, and determination. Further, because no Certificate of Occupancy has yet been issued, the Applicant may request a revision to the previously-issued Special Permit.



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 finds that that the information provided by the Applicant for the requested revision to the previously-granted Special Permit conforms to the requirements of §5.1.2 and §5.3.8 of the SZO and allows for a comprehensive analysis of the project with respect to the revision to the Special Permit.

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 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 or 4.5 of the SZO, the Board finds that the proposed alterations would not be substantially more detrimental to the neighborhood than the existing structure. The proposed design and bulk are in line and harmonious with surrounding structures the proposal will create a better use of space within the building.

In considering a revision to the special permit the Board finds that the dormer proposed on the left elevation has been designed to be as minimally impactful as possible to the exterior of the structure in order to accommodate the code-required head height for the stairwell in that space. This proposed dormer, in combination with the previously-approved dormer, measure to significantly less than 50% of the roof plane to which they are attached.

The Applicant proposes to finish only a portion of the basement as living space for one of the units. Finishing a basement is a common manner in which property owners can achieve additional living space with minimal-to-no-impact on the exterior of the property or abutting parcels. The Board thus finds that the proposed dormer and proposed partial finishing of the basement comply with the standards of the ordinance in that they are not substantially more detrimental to the neighborhood than the existing non-conforming building.

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 The purposes of the Ordinance are 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 facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; to conserve the value of land and buildings; to preserve the historical and architectural resources of the City; to adequately protect the natural environment; to encourage the most appropriate use of land throughout the City; to protect and promote a housing stock that can accommodate the diverse household sizes and life stages of Somerville residents at all income levels, paying particular attention to providing housing affordable to individuals and families with low and moderate incomes; and to preserve and increase the amenities of the municipality.

The proposal is consistent with the purpose of the 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.

The Board finds that the proposed changes to the previously-granted Special Permit are equally consistent with the purposes of the ordinance.

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 proposed design fits with the general character of the surrounding neighborhood.

The Board finds that the addition of a dormer is not inconsistent with several other properties on the street. Berkeley Street presents several other residential structures that have dormers that are clearly not original to the buildings. The addition of this small dormer to the left elevation of 59 Berkeley Street will not be substantially more detrimental to the site or neighborhood than the existing conditions currently extant on the property.

5. Adverse environmental impacts: *The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.*

None

6. Vehicular and pedestrian circulation: *The circulation patterns for motor vehicles and pedestrians which would result from the use or structure will not result in conditions that create traffic congestion or the potential for traffic accidents on the site or in the surrounding area.*

None

6. Fast food establishments: *In special permit applications for fast-order, take-out or automobile oriented food service establishments, there shall be establishment of a need for such a facility in the neighborhood or in the City, and impacts on traffic circulation, parking and visual, physical, or historical characteristics of the particular location shall not be detrimental.*

N/A

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

The proposal will not create new affordable housing units.



8. 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, transform key opportunity areas, preserve and expand an integrated, 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; and, make Somerville a regional employment center with a mix of diverse and high-quality jobs. The areas in the SomerVision map that are designated as enhance and transform should most significantly contribute towards the SomerVision goals that are outlined in the table below. The areas marked as conserve are not expected to greatly increase the figures in the table since these areas are not intended for large scale change.*

The improvements proposed to this property will enhance the streetscape and surrounding neighborhood by upgrading the exterior aesthetics of the building.

9. Impact on Affordable Housing: *In conjunction with its decision to grant or deny a special permit for a structure of four or more units of housing, the SPGA shall make a finding and determination as to how implementation of the project would increase, decrease, or leave unchanged the number of units of rental and home ownership housing that are affordable to households with low or moderate incomes, as defined by HUD, for different sized households and units.*

Project has no impact.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Elaine Severino and Pooja Phaltankar with Josh Safdie absent. 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 **5-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes				
	Approval is to change three components of the original Special Permit set: add a shed dormer to the left elevation to accommodate head height, finish part of the basement to increase for the use of Unit 1, thereby increasing the FAR and amend Condition #5 to have Planning Staff review and approve materials for the project rather than the DRC. This approval is based upon the following application materials and the plans submitted by the Applicant: <table border="1" data-bbox="246 1495 885 1633"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>March 1, 2017</td> <td>Revision application submitted to City Clerk’s office.</td> </tr> </tbody> </table> Any changes to the approved project that are not <i>de minimis</i> must receive SPGA approval.	Date (Stamp Date)	Submission	March 1, 2017	Revision application submitted to City Clerk’s office.	BP/CO	ISD/Plng.	
Date (Stamp Date)	Submission							
March 1, 2017	Revision application submitted to City Clerk’s office.							
1	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.	BP	PLNG					



2	Approval is subject to the Applicant's and/or successor's right, title and interest in the property.	CO	PLNG	
3	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	
4	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.	BP	T&P	
5	Applicant shall provide material samples for all exterior elements (windows, doors, trim, siding, etc.) for the review and approval of Planning Staff prior to the issuance of a building permit.	BP	PLNG	
6	A detailed landscape and site plan shall be provided for staff review and approval. Plan shall include location of trash and recycling which shall be screened by a staff approved material.	BP	Plng.	
7	The basement area shall never be used as another living unit – permanent or temporary – and shall never be fully finished or outfitted to be such unless the City zoning changes to allow it by-right.	CO/Perpetual	ISD	
Final Sign off				
	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, *Clerk*
Danielle Evans
Elaine Severino
Pooja Phaltankar (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 _____

