



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2018-03
Site: 111 Cedar St
Date of Decision: April 4, 2018
Decision: Petition Approved with Conditions
Date Filed with City Clerk: April 18, 2018

ZBA DECISION

Applicant / Owner Name: 111 Cedar Street, LLC
Applicant / Owner Address: 103 Hemenway Street, Suite B2, Boston, MA 02115
Agent Name: Richard G. DiGirolamo, Esq.
Agent Address: 424 Broadway, Somerville, MA 02145
Alderman: Mark Niedergang

Legal Notice: Applicant/Owner, 111 Cedar Street, LLC, seeks a Special Permit under SZO §4.4.1 to alter a nonconforming structure by constructing a three-story rear deck and stairs as well as finishing a portion of the basement. The proposal also requires a Variance under SZO §5.5, §8.5, and §8.6 because it will violate the allowed encroachments into the required rear yards for decks. RB Zone. Ward 5.

<u>Zoning District/Ward:</u>	RB Zone. Ward 5
<u>Zoning Approval Sought:</u>	§4.4.1, §5.5, §8.5, and §8.6
<u>Date of Application:</u>	January 3, 2018
<u>Date(s) of Public Hearing:</u>	2/14/18, 3/7/18, 3/21/18, 4/4/18
<u>Date of Decision:</u>	April 4, 2018
<u>Vote:</u>	5-0

Appeal #ZBA 2018-03 was opened before the Zoning Board of Appeals in the Aldermanic Chambers of Somerville City Hall, 93 Highland Avenue. 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.



I. DESCRIPTION:

The proposal is to construct a three-story rear deck and stairs and to finish the basement. The property will undergo interior renovations that will convert the structure from three-families to two-families.

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.

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."*

The structure is currently nonconforming with respect to the following dimensional requirements: lot area, lot area per dwelling unit, ground coverage, landscaped area, pervious area, floor area ratio (FAR), front yard setback, left yard setback, right yard setback, street frontage, and the number of parking spaces.

The proposal to finish the basement by adding 921 square feet of net floor area and construct a three-story rear deck will impact the following nonconforming dimensions: FAR, left yard setback, and right yard setback. The current dimension of the FAR will increase from 1.15 to 1.58, where 1.0 is the allowed maximum. The left yard and right yard setbacks are currently 6'-2" and 1'-3" respectively and will remain as such as the proposed deck will be less than the width of the existing structure. The proposed deck will be setback 7'-1" from the left property line and 1'-6" from the right property line.

The proposal will convert the existing three-family into a two-family dwelling and will add landscaping on the site. Such activities will bring the site more towards conformance with the requirement for lot area per dwelling unit. The site currently has 721 s.f of lot area per dwelling unit and removing one unit will give the site 1,081.3 s.f of lot area per dwelling unit. The proposed landscaping requirements will bring the site's landscaping and pervious area percentages from 18% to 41.3%.

These alterations to a nonconforming structure requires the Applicant to obtain special permits under §4.4.1 of the Somerville Zoning Ordinance (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 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 of the SZO, the Board finds that the alterations proposed would not be substantially more detrimental to the neighborhood than the existing structure/use. The proposed modifications would allow for the two proposed units to have outdoor access directly from their respective units. The proposal has been designed with setbacks that minimally impact the neighbors.

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 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 encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality.

The proposal is consistent with the purpose of the RB district, which is, *"to establish and preserve medium density neighborhoods of one-, two- and three-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."*

Surrounding Neighborhood: The subject parcel is located on Cedar Street between the blocks of Hudson Street and Highland Avenue. The surrounding structures are similar in size, scale, and type.

Impacts of Proposal (Design and Compatibility): The rear decks project 6 feet from the rear of the structure and include a spiral stair from the second story to the first that projects an additional 5 feet. Overall, the rear decks will be compatible with the design of the existing structure and the surrounding neighborhood.

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

6. 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.

III. FINDINGS FOR VARIANCE

Normally the required rear yard in the RB district is 20 feet. However, this is a shallow lot with a depth of 66 feet and the SZO allows a rear yard reduction of 3 inches for every foot that the lot is less than 100 feet deep. Therefore, the lot is allowed a 102 inch (or 8'-6") rear yard reduction that leads to a required rear yard setback of 11'-6". The existing structure currently meets this requirement as it is more than 14' from the rear property line. Decks and stairs are allowed to encroach within a required rear yard up to ¼ of the required setback; however, not any less than 10 feet. A Variance (§5.5) is sought to create a new



nonconformity by constructing a three-story rear deck and a spiral stair that, at a minimum, will be within 3.9 from the rear property line. The proposed stairs will be 3.9 feet from the rear property line and the deck will be 8.4' from the rear property line.

In order to grant a variance the Board must make certain findings and determinations as outlined in §5.5.3 of the SZO.

1. *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.”*

Applicant’s response: The proposal is for two (2) residential units. Currently the premises are three (3) residential dwellings. The proposal is to eliminate the third unit so as to have two (2) large units with decks to accommodate more family living spaces. The lot is somewhat sloped in the rear thus making it difficult for larger unit projects.

Board’s response: The lot could be considered shallow relative to other lots in the same RB zoning district surrounding the site. The subject lot has an average depth of approximately 65 feet. The lots directly adjacent to the site have an average depth of 63 feet and 66 feet. Lots within the district along Hudson Street have depths that range from 60 feet to 87 feet. Other nearby lots on Cedar Street within the district are 92 feet deep.

2. *“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.”*

Applicant’s response: The proposal will not be injurious to the neighborhood, as it will provide larger housing units to the area. This will be an asset to this area of Somerville that has many smaller residential spaces.

Board’s response: It could be considered reasonable relief for units to have access to the outdoors via a six foot deck with a compact viral stair to have access to the ground.

3. *“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.”*

Applicant’s response: This is a neighborhood with many two (2) family residences. The proposal is harmonious with the neighborhood as it is an RB zoning district which is a mixed use residential neighborhood. The proposal will make the most efficient use of the lot which is sloped in the back of lot.

Board’s response: The Board finds that rear decks and compact spiral stairs are very common in Somerville and this particular proposal would be in harmony with the general purpose and intent of the SZO and it will not be injurious to the neighborhood or detrimental to the public welfare.



DECISION:

Special Permit under §4.4.1 AND Variance under §5.5

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Elaine Severino, Danielle Evans, Josh Safdie, Anne Brockelman and Pooja Phaltankar. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit and Variance. 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						
1	Approval is for the construction of a three-story rear porch and stair as well as to finish the basement. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/Plng.							
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>January 3, 2018</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>March 2, 2018</td> <td>Modified plans submitted to OSPCD (A-0, D-1.1, D-1.2, D-2.1, D-2.2, A-1.1, A-1.2, A-2.1, and A-2.2)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	January 3, 2018	Initial application submitted to the City Clerk's Office	March 2, 2018	Modified plans submitted to OSPCD (A-0, D-1.1, D-1.2, D-2.1, D-2.2, A-1.1, A-1.2, A-2.1, and A-2.2)
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Any changes to the approved (site plan or elevations/use) that are not <i>de minimis</i> must receive SPGA approval.										
Pre-Construction										
2	The Applicant must contact the Engineering Department to obtain a street address prior to a building permit being issued.	BP	Eng.							
3	If required by the Engineering Department, the proposed basement finished floor elevation shall not be less than is 1 foot above the Seasonal High Ground Water elevation. If necessary, 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.							
Construction Impacts										
4	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.	During Construction	Plng.							
5	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							



6	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	
Design				
7	Applicant shall provide final material samples for siding, trim, windows, and doors to Planning Staff for review and approval prior to the issuance of a building permit.	BP	Plng.	
8	An exterior light and electrical receptacle is required for the first (or all) level of the porch and an electrical receptacle is required for the second level (if there is no access to the ground).	Final sign off	Wiring Inspector	
Site				
9	Landscaping shall be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Plng. / ISD	
Miscellaneous				
10	Garbage and recycling locations shall be clearly indicated on site plans. Storage areas shall be inside of the structure or shall be fully screened from view from both the public way and abutters by an appropriate material reviewed and approved by staff. The location shall not impact any parking, landscaping, or egress.	BP	Plng.	
11	Granting of the applied for use or alteration does not include the provision for short term rental uses, such as AirBnB, VRBO, or the like. Separate approvals are needed for the aforementioned uses.	Ongoing	ISD / Plng.	
12	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.	Cont.	ISD	
Public Safety				
13	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
14	Per Somerville fire safety regulations, grills, barbecues, chimineas and the like are NOT permitted on decks or porches.	Perpetual	FP/ISD	
15	To the extent possible, all exterior lighting must be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	Plng.	
Final Sign-Off				
16	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*
Elaine Severino
Daniel Evans
Josh Safdie

Attest, by City Planner: _____

Alexander Mello

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 _____

