



City of Somerville

ZONING BOARD OF APPEALS

City Hall 3rd Floor, 93 Highland Avenue, Somerville MA 02143

DECISION

PROPERTY ADDRESS: 21 Cherry Street
CASE NUMBER: ZBA 2016-25-R1-11/20
OWNER: LaCourt Realty, LLC (c/o Mouhab Rizkallah)
OWNER ADDRESS: 30 College Ave, Somerville, MA 02144

DECISION DATE: November 18, 2020

REQUIRED PERMITS: Revision to previously issued Special Permit

DECISION: There are denials and approvals associated with this petition. See below

This decision summarizes the findings made by the Zoning Board of Appeals regarding the development review application submitted for 21 Cherry Street.

LEGAL NOTICE

LaCourt Realty, LLC seeks to revise plans and conditions of a previously-approved Special Permit (ZBA 2016-25). Plan revision requests include the garage, floorplan, one window, exterior stairs, and a door. Specific condition change requests include a request for ZBA approval of a landscaping plan (condition #27) and the removal of conditions 21, 23, and 30.

RECORD OF PROCEEDINGS

On November 18, 2020 the Zoning Board of Appeals held a public hearing advertised in accordance with MGL 40A and the Somerville Zoning Ordinance (SZO). Present and sitting at the public hearing were ZBA Members Susan Fontano, Danielle Evans, Josh Safdie, and Anne Brockelman. Elaine Severino recused herself from these proceedings and left the meeting.

Mouhab Rizkallah of LaCourt Foundation provided an overview of the requested changes to the plans approved by the ZBA in 2017 as part of case number ZBA **2016-25**, requesting that the changes be approved. The Applicant requested that the Board review the Special Permit revision proposal against the zoning code adopted on December 12, 2019 and not against the previous zoning code under which the original Special Permit was granted. The Applicant was advised that the proposed changes could only be reviewed under the auspices of the zoning code under which the Special Permit had been approved and not under the auspices of the new zoning code that was adopted on December 12, 2019.

The Board heard comments from members of the public and addressed written public comments received by email. The Board discussed each of the proposed change requests in detail. Those change requests were as follows:

1. **Garage:**

- The applicant proposes to not install the approved garage doors and to leave the area an open carport (all other garage-related issues such as size/dimensions are under the purview of ISD at this time and are not part of this Special Permit revision application).

2. **Stairs:**

- Remove one set of exterior stairs on right elevation.
- Remove stairs on front elevation leading from first level deck to grade.

3. **Floorplan:**

- Alter locations of interior stairs.
- One additional bedroom was constructed in violation of condition #21. The applicant does not appear to have indicated this additional bedroom in their submitted "as-built" plans. The limitation on the bedroom count is codified in condition # 21 which reads as follows:

| | | | | |
|----|--|--------------|-----|--|
| 21 | The building shall be maintained with no more than 6 units and no more bedrooms than indicated on the plans approved by the ZBA. | CO/Perpetual | ISD | |
|----|--|--------------|-----|--|

4. **Remove condition #23:**

- The applicant requests that condition #23 be removed. This condition requires that a deck not be constructed on the rear elevation. Negotiations with abutters in 2016-2017 resulted in the applicant agreeing to the neighbors' request to not have a deck on the rear of the building. The condition reads as follows:

| | | | | |
|----|--|--------------|-----|--|
| 23 | There shall be no deck provided above the rear addition on the property. Only a Juliet balcony shall be allowed. | CO/Perpetual | ISD | |
|----|--|--------------|-----|--|

5. **Remove condition #30:**

- The applicant requests that condition #30 be removed. This condition requires that a patio not be installed in the rear yard. Negotiations with abutters in 2016-2017 resulted in the applicant agreeing to the neighbors' request to not have a patio in the rear yard. The condition reads as follows:

| | | | | |
|----|---|--------------|-----|--|
| 30 | No patio shall be installed in the rear yard. | CO/Perpetual | ISD | |
|----|---|--------------|-----|--|

6. **Approval of landscaping plan:**

- By requesting that the submitted landscaping proposal be approved, the Applicant effectively seeks to remove the highlighted portion from condition #27, noted below.

| | | | |
|----|---|----|----------|
| 27 | <p>Since the entire property is being overhauled, a full landscaping plan must be submitted to Planning Staff for their review and approval prior to installation of plantings and hardscape.</p> <p>Landscaping shall be installed between the left property line and the left side of the rear addition. The Applicant shall work with Planning Staff and the immediate abutter to determine the design, plantings and other materials to be installed/implemented.</p> | CO | ISD/PInG |
|----|---|----|----------|

7. Window

- The applicant seeks to change the size of one window on the right elevation from a one-over-one double-hung to a small, square window.

8. Door

- The applicant seeks to change the location of a door on the left rear elevation of the building.

FINDINGS

The original Special Permit was issued under the version of the Somerville Zoning Ordinance (SZO) that was in effect until December 12, 2019. The Special Permit revision requests were evaluated under the version of the SZO that was in effect until December 12, 2019, and the finding considerations from that previous version of the Somerville Zoning Ordinance apply.

- The Board finds that the following changes are not more detrimental to the neighborhood than the previously approved plans:
 - Stairs - Remove one set of exterior stairs on right elevation. Remove stairs on front elevation leading from first level deck to grade.
 - Floor plan - Alter locations of interior stairs, change in room locations and change in room sizes
 - Window - change the size of one window on the right elevation from a one-over-one, double-hung to a small, square window
 - Door - change the location of a door on the left rear elevation of the building

The Board finds that these changes are compatible with the neighborhood and with the intent of the ordinance. Specifically, these requested changes meet the findings regarding "Site and Area Compatibility" which requires that a project "(i)s designed in a manner that is compatible with the characteristics of the built and unbuilt surrounding area, including land uses."

The Board finds that the following requested changes are more detrimental than what was approved. These conditions were found to be necessary conditions to make the proposal compatible with the neighborhood and removing them will make the project not in keeping with the neighborhood, specifically as pertains to the "Site and Area Compatibility" component of the zoning code under which the Special Permit was issued. The garage doors were an improvement over the previous (open) carport. Keeping the bedroom count down is necessary as this already non-conforming 6-unit building isn't allowed in the RA zone; keeping the bedroom count down keeps the number of occupants down to be more in keeping with the neighborhood scale. The Board notes that the resulting project, including specific conditions, was part of a negotiated outcome discussed with the neighbors.

DECISION

Following public testimony and consideration of the statutory requirements to approve or deny a revision to a previously issued Special Permit, Danielle Evans moved to **DENY** the request to remove conditions from the original Special Permit. Seconded by Anne Brockelman. The Board voted **4-0**, with Elaine Severino recused, to **DENY** the following revisions to the special permit:

- Garage (request to not install the garage door)
- Remove condition #21
- Remove condition #23
- Remove condition #30
- Approval of landscaping plan (part of condition #27)

Following public testimony and consideration of the statutory requirements to approve or deny a revision to a previously issued Special Permit, Danielle Evans moved to **APPROVE** the request for changes to the exterior stairs, specific floor plan changes, changes to a window, and changes to an exterior door. Seconded by Anne Brockelman. The Board voted **4-0**, with Elaine Severino recused, to **APPROVE** the following revisions to the special permit:

- Stairs - Remove one set of exterior stairs on right elevation. Remove stairs on front elevation leading from first level deck to grade.
- Floor plan - Alter locations of interior stairs, change in room locations and change in room sizes
- Window - change the size of one window on the right elevation from a one-over-one, double-hung to a small, square window
- Door - change the location of a door on the left rear elevation of the building

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chair*
Danielle Evans, *Clerk*
Elaine Severino
Josh Safdie
Anne Brockelman



Attest, by the Planning Director:

Sarah Lewis

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. 15.5.3.

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 _____

