

CITY OF SOMERVILLE

Office of Strategic Planning & Community Development



Joseph A. Curtatone
Mayor

George J. Proakis
OSPCD Executive Director

TO: Somerville Zoning Board of Appeals (ZBA)
FROM: Planning & Zoning Staff
DATE: November 10, 2020
RE: 21 Cherry Street (ZBA#2016-25-R1-11/20)

This memo summarizes the application submitted for 21 Cherry Street to revise a previously- granted Special Permit and provides related analysis or feedback as necessary.

The previously-granted Special Permit was approved under the previous zoning ordinance which was in effect until December 12, 2019. It is under that zoning ordinance that the revisions to the Special Permit must be requested and against which the revision requests are assessed.

The application is scheduled for a public hearing on November 18, 2020.

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.

SUMMARY OF PROPOSAL

The applicant requests revisions to multiple aspects of their ZBA Special Permit approved on May 17, 2017. The original Special Permit granted relief under §4.4.1 of the SZO (modifications to non-conforming structures). Condition #1 of the ZBA Decision requires that the approved project be built in accordance with the plans approved by the ZBA and that any changes to the plans that are not *de minimis* in nature must be approved by the relevant SPGA (ZBA).

The applicant has already implemented several of these changes without receiving prior permission from the ZBA (or Planning Staff, where required).

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The following constitute the changes for which the applicant seeks approval from the ZBA under this revision application:

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	
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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	
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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	
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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/Plng
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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's application states that they seek to alter a door. However, Staff is unable to determine where this has been indicated on the submitted plans. The applicant will need to provide this information.

ADDITIONAL DOCUMENTS PROVIDED TO ZBA

In addition to this Staff memo, the following documents are provided to the ZBA in their e-packets in order to assist in their evaluation of the Special Permit revision request:

- Decision (May 17, 2017)
- Plans (associated with May 17, 2017 decision)
- As-built survey (submitted by applicant on October 27, 2020)
- Amended plans (submitted by applicant on October 4, 2020)
- As-built elevations (submitted by applicant on October 27, 2020)

ANALYSIS

General Background

In 2016, the Applicant applied for a Special Permit to significantly alter the structure at 21 Cherry Street. The structure was non-conforming in that it was a pre-existing 6-unit building in a zone (RA) where a maximum of two might be allowed (possibly three via a special residential conversion). Additional non-conformities on the property included lot area per dwelling unit (d.u.), left yard setback, right yard setback, front yard setback.

Between 2016 when the Initial application for zoning relief was submitted and the date the Special Permit was granted, many, often lengthy, meetings were held between abutters and the applicant with the inclusion of the Ward 5 City Councilor and Planning Staff.

The final proposal (plans and conditions) that the applicant presented to the ZBA was the outgrowth of over a year-and-a-half of meetings and design changes. That final proposal was agreed-to at the -May 3, 2017 meeting. The final proposal was -a compromise, negotiated in good faith between the applicant and the abutters, and codified via the plans and conditions approved by the ZBA. This is noted in the Decision document:

On Wednesday, May 3, 2017, a 3-hour joint meeting was held to work through lingering issues. The outcome of this meeting was that the Applicant would amend his design plans to reflect the changes verbally agreed to at the conclusion of this meeting. On Tuesday evening from 5:30 – 7:00, a second joint meeting was held in which the design changes were reviewed and some final changes discussed. All of the changes agreed to during those meetings are reflected in the updated plan set that accompanies this updated staff report.

On May 17, 2017, the ZBA granted the applicant a *conditional* Special Permit to alter the property according to the final proposal negotiated between the abutters and applicant. The plans approved by the ZBA are shown in the plan set in the ZBA's e-packet with the filename *Cherry St 21 - Final Combined Plan Sets for May 17 2017 ZBA Hearing*. The conditions are codified in the Decision which is also provided in the ZBA's e-packet.

Building permit #B17-001444 was issued on September 7, 2017. During the course of construction, the applicant made changes to the exterior and interior of the building as well as to the site without first receiving approval from Planning Staff (landscaping plan), without first applying for *de minimis* changes, and without first applying for a revision to the ZBA (all other modifications).

There are multiple other issues with this project that are currently being addressed by the Inspectional Services Department (ISD) and are not in the purview of the ZBA through this revision application. The only items under the ZBA's purview at this time are those listed in this staff memo under the section "Summary of Proposal".

Assessment of Proposed Changes

While a few changes to the approved project are reasonably in keeping with the residential neighborhood in terms of site and area compatibility, others are not or are in direct conflict with specific conditions and/or agreed-to terms with abutters codified In the Decision. These items are discussed below:

- a) Those changes which Planning Staff finds to be not detrimental to the Site and Area Compatibility and to be improvements to the exterior design are the following:
 - Removal of the right elevation exterior stair
 - Inclusion of right elevation ground-level rail and balusters
 - Inclusion of front elevation portico, front step rails, and rails along right elevation steps leading from the public sidewalk.

- b) Those changes which Planning Staff finds to have no consequence on the Site and Area Compatibility:
 - Change in window size on right elevation
 - Removal of stairs leading from the first-level front elevation deck to ground level

- The following specific interior arrangements only: re-locating stairs, change in room sizes, change in room locations.
- c) Those changes which Planning Staff cannot find identified in the plans provided by the applicant for this Special Permit revision application:
- Alterations to a door
- d) Those changes which Planning Staff finds to be detrimental to the Site and Area Compatibility and/or in violation of ZBA conditions, and/or contrary to the design, plans, and terms negotiated between the applicant and abutters and codified in the ZBA decision are the following:

- Garage (carport)

The approved project converted the previously-existing (open) carport into a two-bay garage with garage bay doors. The applicant has, instead, constructed an open carport. As noted in the initial ZBA decision, front-facing garages/carports are an oddity on Cherry Street. While generally not compatible with the area, the proposal to create an enclosed garage allowed for a visual improvement to an otherwise dark, gaping utilitarian space facing the public way. The garage doors should be installed.

- Additional bedroom

Due to interior photos provided by the applicant to ISD, Planning Staff knows that the applicant has constructed one more bedroom than that which was permitted by the ZBA. This is in violation of 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	
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As noted earlier, unless Planning Staff has missed the call-out for this additional bedroom in the plan set, the applicant's plans submitted for this Special Permit revision do not appear to reflect or highlight this additional bedroom. This is not Planning Staff's responsibility to identify; it is the applicant's responsibility to identify such issues when requesting ZBA approval to a change in floor plans. Depending on the unit that is impacted (for example, if it is the two-bedroom unit), then this could potentially affect parking relief as well.

- 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	
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Decks, particularly in an urban setting, are intended to provide residents access to quality outdoor space. In the case of 21 Cherry Street, the inclusion of a rear deck will add additional visual massing to the rear of the property. This portion of the property is in close proximity to the residential structure at the rear of the left-abutting lot as well as to the residential structure at the front of the left-abutting lot. All unit residents at 21 Cherry Street are able to access outdoor space in the rear yard. The previously-agreed to and conditioned Juliet balconies should be installed.

- Remove condition #27

The Applicant seeks to remove the highlighted portion from condition #27, noted below, by having the ZBA approve the landscaping proposal Included with their e-packets.

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/Plng
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During the course of the project the applicant did not submit a landscaping plan to Planning Staff as required by condition #27. The applicant installed 938 square feet of pea stone in the rear yard without the approval of Planning Staff or the ZBA.

Planning Staff does not consider a rear yard mostly covered in pea stone to be "landscaping". While some hardscaping and some stone can be used to compliment plantings or provide a walkway to navigate there through, Staff is hard-pressed to understand how 938 square feet of pea stone meets the definition of landscaping. The definition of landscaping in the previous zoning ordinance emphasizes landscaping as being comprised of *plantings* at the outset of the definition.

2.2.81. Landscaping. The improvement of land, generally for use as passive outdoor space, through the planting and maintenance of live plants including trees, shrubs, ground cover, flowers, or other, low-growing plants that are native or adaptable to the urban climatic conditions of Somerville. In addition, the term landscaping may include some natural or manufactured materials including, but not limited to, reflecting pools, works of art, walkways, screens, walls, fences, benches and other types of landscape or street furniture. Landscaping may also include other non-living materials used as components of a plan for improving outdoor space, such as rocks, pebbles, sand, bark mulch, landscape pavers, earthen mounds and the like, but excluding curbing and pavement for vehicular use.

Further, as evidenced in SZO Article 10 *Landscaping and Screening*, landscaping focuses on plantings such as shrubs and groundcover, trees (including number as well as caliper), native and naturalized specimens. Article 10 does not provide for large portions of a property being covered by non-living material in lieu of vegetation.

After being notified by ISD that they were out-of-compliance with condition #27, the applicant submitted the document now provided in the ZBA's e-packets to function as a

landscaping plan. The applicant was advised by Planning Staff that, while a start, the amount of pea stone used on the site did not constitute landscaping and that additional perennials, shrubs, trees and even grass should be incorporated. Staff provided the applicant with two landscaping plans from other zoning relief projects for the applicant to use as a guide when re-submitting an updated landscaping proposal.

Staff's role is to provide guidance for improvement and to advise on what is not acceptable (such as 938 square feet of pea stone in lieu of vegetation), which is what Staff did. Though this process can be iterative, it is the applicant's responsibility to do this work and be responsive to Staff concerns and recommendations - or to request relief from doing so from the ZBA. Engaging a quality landscape architect could help this applicant achieve an acceptable landscaping plan. The landscaping plan must comply with specifications set forth in SZO Article 10 *Landscaping and Screening*.

- 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	
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Any patio will be in close proximity to the residential structure at the rear of the left-abutting lot and the residential structure at the front of same. Additional hardscaping on the lot reduces the overall pervious area. Once the backyard area is improved with more landscaping, the property will provide conditions that are not only more consistent with multiple other properties on Cherry Street, but also convenient to site residents.

FINDING CONSIDERATIONS

As this is a revision to a Special Permit granted under the previous zoning ordinance, and as the proposed changes were determined not to be *de minimis* in nature, the findings required by the previous zoning ordinance apply. SZO §5.3.8 reads, in part:

Revisions that are not de minimis shall be subject to the full notice and hearing provisions of §5.3.2 of this Ordinance, but shall not be subject to review by additional boards, departments, city agencies or commissions except as requested by the SPGA or upon the recommendation of the Planning Director. Applicable findings shall be made in accordance with the type of permit(s) being revised.

The only applicable finding for the revision is the following:

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.”

[...]

Impacts of Proposal (Design and Compatibility):

Planning Staff has provided its position on each of the proposed changes in the previous section of this Staff memo and summarizes them below:

Garage

Deny. Require doors to be installed per originally-approved special permit.

Removal of the right elevation exterior stair

Allow.

Inclusion of right elevation ground-level rail and balusters

Allow.

Inclusion of front elevation portico, front step rails, and rails along right elevation steps leading from the public sidewalk.

Allow.

Change in window size on right elevation.

Allow.

Removal of stairs leading from the first-level front elevation deck to ground level

Allow.

The following specific interior arrangements only: re-locating stairs, change in room sizes, change in room locations.

Allow.

Alterations to a door

Require applicant to show in elevation via an updated elevation submission.

Additional bedroom

Deny. Require applicant to remove this unauthorized bedroom. (ref. Condition #21)

Remove condition #23

Deny. No rear deck should be permitted.

Remove condition #27

Deny. Landscaping proposal should not be approved. Leave intact the requirement for the applicant to provide a landscaping *plan* to Planning Staff for their review and approval. Require the removal of 938 square feet of pea stone illegally installed.

Remove condition #30

Deny. Leave intact the requirement that no patio be installed in the rear yard.

The ZBA must determine if each of the proposed changes meet the findings required for this property that received zoning relief under §4.4.1 of the previous zoning code.

CONDITIONS

Should the ZBA approve any of the applicant's requested changes, potential updates to the original condition set may be discussed at the November 18, 2020 or subsequent ZBA meetings.