



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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PLANNING DIVISION

ZONING BOARD OF APPEALS MEMBERS

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Case #: ZBA 2019-77
Site: 11R Dane Street
Date of Decision: October 2, 2019
Decision: *Approved with Conditions*
Date Filed with City Clerk: October 16, 2019

ZONING BOARD OF APPEALS DECISION

Site: 11R Dane Street

Applicant Name: 7 Dane Street, Somerville, MA 02143
Applicant Address: 6 Lexington Street, 3rd floor, Waltham, MA 02452
Owner Name: 11R Dane St., Somerville, MA 02143
Owner Address: same as applicant

Legal Notice: Applicant, 7 Dane Street, Somerville, MA 02143, and Owner, 11 R Dane Street, Somerville, MA 02143, seek special permits under §4.4.1 to substantially alter a non-conforming property including reducing the non-conforming landscaping area, increasing the GFA by more than 25%, further decrease the non-conforming pervious area, create an upward extension of the non-conforming left, right, and rear yard setbacks. Parking relief under Article 9 including shared drive. RC zone. Ward 2.

<u>Zoning District/Ward:</u>	RC Zone. Ward 2.
<u>Zoning Approval Sought:</u>	SZO §4.4.1, Article 9
<u>Date of Application:</u>	June 6, 2019
<u>Date(s) of Public Hearing:</u>	October 2, 2019
<u>Date of Decision:</u>	October 2, 2019
<u>Vote:</u>	5-0

Case number ZBA 2019-77 was opened before the Zoning Board of Appeals in the Council Chambers of City Hall at 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. On October 2, 2019, the Zoning Board of Appeals took a vote.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
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I. PROJECT DESCRIPTION

1. **Subject Property:** The locus presents a 2 ½-story, two-family residential structure sited on a 1,942 square foot lot in the RC zoning district. The lot is mostly covered with structure and bituminous material save for a small portion on the left elevation of the lot. The site contains two parking spaces. The locus shares an access drive with the right-abutting property at 7 Dane Street. The lot is essentially a ‘flag pole’ lot: a long, thin strip of land (the “pole”) leads from the street and “unfurls” into a rectangular land area (the “flag”) at the rear of the property.

2. **Proposal:** The applicant proposes a complete overhaul of the property, though it will remain a two-family. Key components of the project are listed below and the triggers for special permitting are identified:

- Remove all bituminous material from the property and re-landscape
- Install pervious pavers for driveway and parking area
- Gut-renovation of interior
- Increase the GFA by more than 25% (**special permit**)
- Upward extension of the non-conforming rear and left side yard setbacks (**special permit**)
- Increase the right side yard setback non-conformity from 3’6” to 0 feet (**special permit**)
- Upward extension of the non-conforming right side yard setback (**special permit**)
- Shared access drive with left-abutting property (7 Dane Street) (**special permit**)
- Decrease the non-conforming landscaping % from 15% to 10% (**special permit**)

4. Green Building Practices:

The Applicant has included the following information relative to green building practices:

“Will not exceed the stretch code.”

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 §4.4.1 of the SZO. This section of the report goes through §4.4.1 in detail.

1. Information Supplied:

The Board finds that the information provided by the Applicant conforms to the requirements of §4.4.1 of the SZO.

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 of the 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.”

Increase the GFA by more than 25%

Due to the reconfiguration of the interior space (including finishing the basement), along with the construction of the rear addition, the GFA of the property will increase by more than 25%.

Right side yard setback

The RB zone requires a right side yard setback of 8 feet. The existing right side yard setback is 3’6” from the property line. The Applicant proposes reducing this right side yard setback further to 0 feet. Normally, the Board is not supportive of such a reduction. However, given the nature of the site, the abutting property at 7 Dane Street which is owned by a related owner, and the fact that the two properties have shared and continue to share a long access drive, the Board is supportive of both the further reduction in the setback as well as the upward extension of this non-conformity.

This property and area is so challenged that the Board fully supports the upward extension of the non-conforming setback and does not support having the applicant step in the main façade of the building further. The Board does not find that the upward extension of this non-conforming setback will be detrimental to the site or neighborhood. The overall project will provide a much-needed visual improvement to the area while upgrading the quality of housing available here.

Rear yard setback

The existing rear yard setback is .75 feet in a zone where 20 feet is normally required. The applicant proposes an upward extension of this non-conforming setback through the construction of a full third story. The Board reiterates its position noted in the discussion of the right side yard setback above regarding the challenging nature of this site and area.

Left side yard setback

The existing left side yard setback is non-conforming at 1.75 feet. This non-conformity will be extended upward through the construction of a full third story. The Board reiterates its position noted in the discussion of the right side yard setback above regarding the challenging nature of this site and area.

Parking spaces

No relief is needed for parking spaces. The bedroom count between the existing and proposed conditions is remaining the same at two. The property will continue to provide two parking spaces.

Relief for shared access drive

Section 9.9.a of the SZO states, in part, that “...[parts] of a driveway may be partly on another lot or may straddle a lot line where there is a recorded easement or lease allowing such right of use and provided the SPGA grants a special permit...” There is an existing shared access drive situation between 7 Dane Street and 11R Dane Street. However, because of the development proposal on this property and the need to continue this shared access situation, this requirement of a recorded easement must be met if shared access is granted by the SPGA. The Board is supportive of continuing this shared access situation with a recorded easement.

Landscaping

The site currently presents 15% in a zone where 25% landscaping is required. The applicant proposes further increasing the non-conforming nature of the landscaping to 10%. The Board is typically not favorable to decreasing the landscaping %. However, this site is challenged. The ZBA may want to consider having the applicant install permanent planters. Though this does not increase the landscaping % under current zoning code, it could still help visually “green” a small portion of the site.

Additional findings

Additional shading from the project is anticipated to be minimal. Further, the right-abutting building (7 Dane Street) is owned by a related entity and will also be undergoing renovations under special permit. The right-abutting property (7 Dane Street) has no objection to the proposal.

The upward extension, re-design, and re-skinning of this property will be visible from left, right, and rear-abutting properties as well as the public way of Somerville Avenue. The neighborhood is a mixture of one-, two-, and multi-unit properties of various styles and in various stages of repair. The neighborhood also presents a church, institutional building, and various other commercial structures.

There is an unprecedented amount of pavement on the parcels surrounding this site. A through-block bituminous parking lot to the rear of this building overwhelms the area. Overall, the proposal is not detrimental to the neighborhood but be a significant upgrade to both the structure and the site of an existing property.

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

Because this project will need to be reviewed by the Engineering Department prior to the granting of a building permit, they will determine if any measures need to be taken by the Applicant to address any impacts on the public sewer or water supply. Lastly, as the property is remaining a two-family, the Board does not anticipate any change in traffic volume, queuing, or congestion as a result of this project.

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 purposes of the RC zone which are “[t]o establish and preserve a district for multi-family residential and other compatible uses which are of particular use and convenience to the residents of the district”

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.”*

The Board has addressed the question of site and area compatibility in a previous section.

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

The proposal will not add to the existing stock of affordable housing.



6. SomerVision:

The proposal will allow for the improvement of an existing property. The permeability of the property will be improved with the removal of all bituminous material and an upgraded landscaping scheme.

III. DECISION

Present and sitting were, Susan Fontano, Danielle Evans, Anne Brockelman, Elaine Severino, Josh Safdie, and Drew Kane. Upon making the above findings, Danielle Evans made a motion to approve the requested special permit. Elaine Severino seconded the motion. The Zoning Board of Appeals voted **5-0** to **APPROVE** the request **WITH CONDITIONS**. The following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	Approval is to: upward extension of the non-conforming right, left, and rear yard setbacks; increase GFA of more than 25%; exacerbate the right side yard non-conformity; exacerbate the non-conforming landscaping percentage; shared access drive.	BP/CO	ISD/PIng.							
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>June 6, 2019</td> <td>Application submitted to City Clerk's office.</td> </tr> <tr> <td>September 9, 2019</td> <td>Supplemental documents (neighborhood meeting notice, neighborhood meeting sign-in sheet, green practice statement, and updated plan set) submitted to OSPCD</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	June 6, 2019	Application submitted to City Clerk's office.	September 9, 2019	Supplemental documents (neighborhood meeting notice, neighborhood meeting sign-in sheet, green practice statement, and updated plan set) submitted to OSPCD
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<p>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>										
Engineering										
2	<p>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."</p> <p>The Applicant shall work with Engineering to meet this condition and provide the required fees/mitigation.</p>	BP	Engineering/ISD							
3	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.							
Design										



4	All materials, including, but not limited to windows, exterior finishes, siding, and similar shall be submitted to, reviewed and approved by Planning Staff prior to the issuance of a building permit.	BP	ISD/Plng	
Construction Impacts				
5	The Applicant shall, at his 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/ISD	
7	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 on the public way.	During Construction	ISD	
8	<u>Construction shall be limited to M-F 7:30am – 5:00pm. No weekend construction or construction-related work shall occur.</u>	During Construction	ISD	
9	The Applicant shall at his 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	ISD/DPW	
Public Safety				
10	The Applicant or Owner shall meet all of the Fire Prevention Bureau’s requirements.	CO	FP	
11	In accordance with City of Somerville ordinances, no grills, barbeques, chimineas or the like shall be allowed on decks and porches.	CO/Perpetua l	ISD/PlngF P	
Site				
12	The Applicant shall submit an updated landscaping plan to Planning Staff through the Zoning Review Planner for review and approval prior to the issuance of a building permit showing the location of vegetation-screened mechanicals and of enclosed trash and recycling station.	BP	Plng/ISD	
13	All bituminous material shall be removed from the property.	CO	Plng/ISD	
14	Landscaping shall be installed and maintained in compliance with the American Nurserymen’s Association Standards;	Perpetual	Plng. / ISD	
15	Trash and recycling shall be stored behind the house and shall be screened with a cedar enclosure. The enclosure shall present a cedar roof as well. Latched doors shall secure the enclosure.	CO	Plng. / ISD	
Miscellaneous				



16	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.	Perpetual	ISD / Plng.	
17	All exterior lighting shall be confined to the subject property, case light downward and must not intrude, interfere, or spill onto neighboring properties.	Perpetual	ISD	
Final Sign-Off				
18	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	ISD/Plng.	



Attest, by the Zoning Board of Appeals:

Susan Fontano, *Chair*
Danielle Evans, *Clerk*
Josh Safdie
Anne Brockelman
Elaine Severino
Drew Kane (Alt.)

Attest, by 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 _____

