



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
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EXECUTIVE DIRECTOR

PLANNING DIVISION  
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**Case #: ZBA 2018-162**  
**Site: 62 Flint Street**  
**Date of Decision:** February 20, 2019  
**Decision:** *Petition Approved with Conditions*  
**Date Filed with City Clerk:** March 6, 2019

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**ZBA DECISION**

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**Site:** 62 Flint Street  
**Applicant Name:** Derek Snare  
**Applicant Address:** 158 Central Street, Somerville, MA 02145  
**Owner Name:** Jose Moreira  
**Owner Address:** 62 Flint Street, Somerville, MA  
**City Councilor:** Matthew McLaughlin

**Legal Notice:** Applicant, Derek Snare, and Owner, Jose Moreira, seek a variance\* to convert from a conforming FAR to a non-conforming FAR under §5.5 and §8.5 of the SZO. Special permits including the upward extension of the non-conforming left side yard setback. \*\* RB zone. Ward 1.

**Zoning District/Ward:** RB zone. Ward 1.  
**Zoning Approval Sought:** SZO §5.5 and §8.5  
**Date of Application:** October 26, 2018  
**Date(s) of Public Hearing:** 1/9, 1/23, 2/6, 2/20  
**Date of Decision:** February 20, 2019  
**Vote:** 4-0

\*Since the publication of this legal ad, Planning Staff has worked with the Applicant to alter the proposal such that only a special permit is required for the project.

\*\*Since the publication of this legal ad, the project has been altered such that the zoning relief needed is only for construction of a roof deck within the rear and right side yard setbacks and the increase in the non-conforming FAR.



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Case # ZBA 2018-109 was opened before the Zoning Board of Appeals in the Council Chambers at Somerville City Hall. 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 February 20, 2019 the Zoning Board of Appeals took a vote.

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## **I. PROJECT DESCRIPTION**

The Applicant proposes a substantial interior renovation. The triggers for special permitting are as follows:

- Increase the non-conforming FAR from 1.02 to 1.4 by finishing the basement.
- Construct a roof deck within the right and rear yard setbacks.

## **II. FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1 & Article 9):**

*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:**

Staff 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."*

#### **Right side yard setback**

The RB zone requires a right yard setback of 8 feet. The existing setback is non-conforming at 1.4 feet. The Applicant proposes constructing a rear roof deck above an existing addition. Given that the lot, at 2,315 square feet of land, is practically devoid of quality outdoor living space. Therefore, Staff has no objection to the construction of a rear roof deck in order to provide more meaningful outdoor space. However, Staff finds that the proposed roof deck needs to be pulled in further from the right edge of the rear addition in order to encroach less on the property line. The plan set does not indicate how far back from the property line the deck railing will be. Therefore,



Staff has included a condition that the roof deck can be constructed no closer to the right property line than five (5) feet.

### **Rear yard setback**

The RB zone requires a rear yard setback of 20 feet. This property is already non-conforming with a rear yard setback of 2.3 feet at its shortest point. The length of the roof deck does not appear on the plans. The plot plan and Sheet 6 of the Proposed Plan Set appear to show the roof deck terminating at the very edge of the roof, essentially, ending 2.3 feet from the property line. Yet, Sheet 8 of the plan sheet appears to show the roof deck slightly set back from the edge of the building. Further, the roof deck is proposed to include the entirety of the flat roof onto which it would be constructed. Staff finds that the length and depth of this roof deck would add too much visual massing and allow for excessive opportunity for undue congregation of people and up-tick in noise so close to abutting properties. Therefore, Staff has added a condition that requires the rear roof deck to be no greater than ten (10) feet deep and then (10) feet in length. Staff finds that the reduction in size will reduce the visual impact from abutting properties, somewhat reduce the ability for viewing of neighboring properties from the roof deck, yet still allow the second floor residents to have additional outdoor space.

### **FAR**

The property is already non-conforming with regard to FAR as it currently measures at 1.02 in a zone where 1.0 is conforming. By finishing the basement and adding a small left elevation addition (outside of the setback) in order to accommodate a bathroom, the FAR will increase to 1.4.

### **Other determinations**

Flint Street presents numerous Mansard and gable-fronted 2 ½-story structures. One early 1970s small, block apartment building is also found. Staff is not able to detect other rear roof decks on either side of the street at this time. Lot sizes on Flint street range from the smallest (a piece of unbuilt land) measuring approximately 871 square feet to the largest at approximately 12,632 square feet. Most lots on the street are in the 2,000+ to 5,000+ square foot size with a few in the 6,000-8,000+ square foot size interspersed among them.

The roof deck will be visible to right-, left-, and rear-abutting properties.

Abutters can expect typical noises and odors associated with the construction phase of a project. There is also the possibility that there may be an up-tick in noise due to the ability for residents and their guests to congregate on the proposed rear deck.

Some might argue that the inclusion of another bathroom could put an additional burden on the city sewer system or water supply. 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. Lastly, as the property is remaining a two-family, staff does not anticipate any change in traffic volume 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."***

Staff finds that the proposal is consistent with the purposes of the RB zone which are “[t]o 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.”

There is no part of this proposal, as conditioned, that Staff finds to be inconsistent with the purposes of the RB 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."***

Staff has addressed the question of site and area compatibility in a previous section. Staff has also conditioned the project to require a landscaping plan for the property and that the driveway will be re-done in pervious pavers.

**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 locus has very limited outdoor ground space. The inclusion of a (more limited in size) rear roof deck will allow for reasonable outdoor space for second-floor residents.

### III.DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, and Elaine Severino. Upon making the above findings, Danielle Evans made a motion to approve the request for a Special Permit and Variance. 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
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1	Approval is for the construction of a rear deck within the rear and right yard setbacks, as conditioned, and the increase in the non-conforming FAR.	BP/CO	ISD/Plng.									
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>October 26, 2018</td> <td>Application submitted to City Clerk's office.</td> </tr> <tr> <td>December 6, 2018</td> <td>Updated plans submitted to OSPCD</td> </tr> <tr> <td>January 16, 2019</td> <td>Revised plans submitted to OSPCD</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	October 26, 2018	Application submitted to City Clerk's office.	December 6, 2018	Updated plans submitted to OSPCD	January 16, 2019	Revised plans submitted to OSPCD
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January 16, 2019	Revised plans submitted to OSPCD											
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.												
<b>Engineering</b>												
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									
	The Applicant must comply with all Engineering requirements pertaining to finishing basements.	BP	Engineering/ISD									
<b>Design</b>												
3	The building shall be re-sided and trim replaced/repared along with the front porches. If original wood siding is extant on the building and is in good condition, it shall be retained.	CO	ISD/Plng									
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. Vinyl-based products will not be considered.	BP	ISD/Plng									
5	<p>The rear roof deck shall be constructed as follows:</p> <ul style="list-style-type: none"> <li>• 5 feet from the right property line</li> <li>• 10 feet deep</li> <li>• 10 feet in length</li> </ul> <p>Plans must be submitted to ISD reflecting these dimensions prior to the issuance of a building permit.</p>	BP/CO	ISD/Plng									
<b>Construction Impacts</b>												



6	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	
7	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	
8	The name(s) and contact information of all entities working on the site shall be posted in an area easily-visible from the public way for the passing public to read.	During Construction	ISD	
9	Construction shall be limited to M-F 7:30am – 5:00pm. No weekend construction or construction-related work shall occur.	During Construction	ISD	
<b>Site</b>				
10	The property shall be re-landscaped. A landscaping plan shall be submitted to Planning Staff for their review and approval prior to the issuance of a building permit.	BP	ISD/PInG	
11	All bituminous material shall be removed from the property. The driveway shall be 8 feet in width and shall be constructed of pervious pavers. Any land made newly-available due to the removal of bituminous material and the reduction in driveway depth shall be converted to landscaping. This shall be shown in the landscaping plan required in Condition #10.	CO	ISD/PInG	
12	All hardscaping to be used on the property shall first be reviewed and approved by Planning Staff prior to the issuance of a building permit.	BP	ISD/PInG	
13	All garbage and recycling shall be stored out-of-view of the public way and shall be screened	Perpetual	ISD/PInG	
<b>Public Safety</b>				
14	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
15	All exterior lighting on the site shall be downcast and shall not cast light onto surrounding properties in any fashion.	CO	ISD	
16	In accordance with City of Somerville ordinances, no grills, barbeques, chimineas or the like shall be allowed on decks and porches. This shall be written into any rental agreements or condo documents. Proof thereof shall be presented to Planning Staff/ISD prior to the issuance of a Certificate of Occupancy (CO)	CO/Perpetual	ISD/PInGFP	
<b>Miscellaneous</b>				
17	Venting and piping shall be painted the same color as the exterior of the house from which they protrude.	CO	ISD/PInG	
18	Utility meters shall not be installed on the front (Flint Street) façade of the structure.	CO	ISD/PInG	
<b>Final Sign-Off</b>				



19	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/Pln g.	
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Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*  
Danielle Evans, *Clerk*  
Elaine Severino  
Richard Rossetti

Attest, by the Administrative Assistant:

\_\_\_\_\_  
Monique Baldwin

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 \_\_\_\_\_

