



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2017-50-R1(01/19)
Date: ~~April 3, 2019~~ **May 1, 2019**
Recommendation: Amend condition

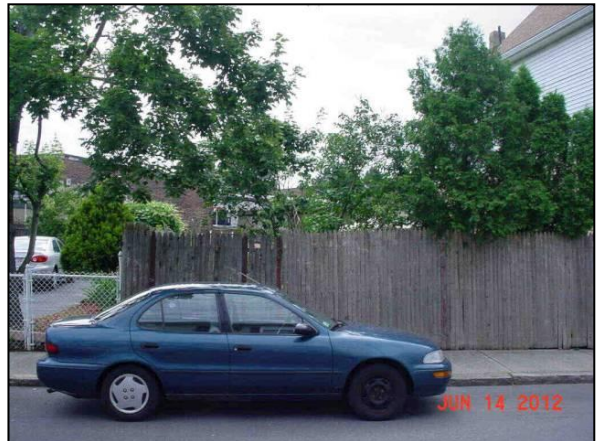
Updated PLANNING STAFF MEMO

Site: 84 Franklin Street

Applicant & Owner Name: 84 Franklin LLC
Applicant & Owner Address: 12 Oakley Road,
Belmont, MA
Agent: Chris Poli
Agent Address: 12 Oakley Road Belmont, MA
02478

Ward Councilor: Matthew McLaughlin

Legal Notice: Applicant, Novo Development Holdings, LLC, and Owner, 84 Franklin Street, LLC, seek relief under §5.3.8 of the SZO to revise a previously-granted Special Permit. RB zone. Ward 1.



Dates of Public Hearing: ~~April 3, 2019~~ **May 1, 2019**

This staff report has been updated. Items that no longer apply have been ~~struck through~~ and new text is **highlighted in yellow**.

I. DESCRIPTION

Background

On April 4, 2018, the ZBA granted Special Permits and a Special Permit with Site Plan Review (SPSR) to 84 Franklin Street. The crux of the approval centered around the construction of a second principal

structure on the same lot. Twenty-four (24) conditions were attached to the approval. (Decision attached to this staff memo for reference.)

In the intervening months, one of the conditions, condition #13, was violated by the Applicant. Condition #13 of the original approval states as follows:

13	The Applicant shall retain a certified arborist, and show proof to the City thereof, to assess the fruit trees located in the disputed land area with 82 Franklin Street. Irrespective of the outcome of the property dispute, the Applicant shall present to the City a plan that the Applicant shall implement to protect the fruit trees and their root systems from construction impacts.
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The Applicant failed to protect the root system of a peach tree located in the disputed land area with 82 Franklin Street. During and immediately subsequent to excavation for the foundation of the new structure, the root system of this tree was significantly damaged. Informal consultation with the City arborist¹ by Planning Staff confirmed Staff's concerns regarding the future viability of this tree. In the City arborist's opinion, the peach tree may or may not live up to another two or so years due to the damage its root system has experienced.

The Applicant has informed Planning Staff that protecting the tree roots would have prevented them from constructing the foundation of the new building in the required location. Once the excavation work for the foundation was performed, heavy rains ensued. This resulted in site erosion, which exposed the roots of the fruit tree. **Staff notes that the Applicant should have consulted with Planning Staff on this issue prior to undertaking an action that violated a condition of their approval.**

The Applicant is now before the ZBA, as directed by Planning Staff, to amend Condition #13 in order to address the issue of this tree.

On April 3, 2019, the Applicant appeared before the ZBA regarding this issue. The ZBA took discussed the condition violation with the Applicant and took testimony from the public, most importantly, from the affected abutter, Rose Krueger, at 82 Franklin Street.

In the intervening weeks, the Applicant and Ms. Krueger have met to discuss a mutually-agreeable resolution to this condition violation. This resolution was submitted to Planning Staff for review.

Staff has re-worded the agreed-to resolution such that it is in language typically used for ZBA conditions. Staff has also eliminated from the condition the quoted cost of a replacement tree that was provided in correspondence from the abutter. Cost of trees varies from provider to provider and the City will not engage in setting a baseline or maximum price for what is paid for plantings. Further, Staff has required that additional documentation be uploaded to CitizenServe as part of the revised condition.

The updated condition language appears in the "Matters Within ZBA Purview" later in this memo.

¹ NOTE: The City Arborist does not and will not assess trees on private property. The City Arborist is responsible only for City-owned trees. The City arborist reviewed photos of the tree root damage as a professional courtesy to Planning Staff colleagues only.

Matters Outside of ZBA Purview

There are other on-going private property disputes between the owners of 84 Franklin and 82 Franklin. These issues involve, among other things, the loss of two raspberry bushes from the 82 Franklin St. property which slid into the foundation pit, and damage to fencing. Neither of these issues are under the purview of the ZBA.

These issues as well and similar might be brought up by the abutter and/or Applicant during the ZBA hearing. However, these issues are **NOT** in the ZBA’s purview to assess, negotiate, or alleviate and cannot be entertained by the ZBA. These are private matters that the City cannot and will not get involved in, the Planning Department, ISD, and the ZBA included. These and related matters can only be addressed between the conflicting parties (82 and 84 Franklin) and their attorneys.

Matters Within ZBA Purview

The only item that is under the ZBA’s purview is the matter of amending Condition #13. Staff recommends revising Condition #13 as follows (revision language in *red bold italics* below):

Due to violating the original terms of Condition #13, the Applicant shall retain a certified arborist to assess the damage to the root structure of the peach tree. The arborist shall submit to Planning Staff, through CitizenServe, their assessment of the tree. If the arborist determines that, due to the damage done to the tree, it is reasonable to conclude that said damage will result in the imminent death of the tree within the next 2 years, then the Applicant shall, at the conclusion of the project, but before the issuance of a Certificate of Occupancy do the following:

- Plant a peach tree of the same species in a location mutually agreeable to the Applicant and the owner of 82 Franklin Street.*
- The tree shall be of a caliper of 3 inches (no greater than 3 inches). While this is smaller than the caliper of the existing tree, a 3-inch caliper tree requires a minimum three-foot diameter root ball in order to survive transplant.*
- The Applicant shall enter into a contract with a certified, insured company to regularly water and otherwise maintain the tree for one year, starting at transplant, to help ensure the survival of the transplanted tree.*
- The Applicant shall upload this signed contract to CitizenServe prior to the issuance of the Certificate of Occupancy.*

#	Condition	Compliance timeframe	Sign-off
13	<p>a. Retain existing peach tree and existing plum tree</p> <p>b. Hire professional arborist to assess root damage to existing peach tree and existing plum tree. Resulting report shall be uploaded to CitizenServe and all recommendations from that report shall be implemented by Applicant via the arborist or an insured, professional landscaper. Proof of implemented recommendations shall be provided through CitizenServe in photographic format and through detailed receipt of work from arborist or professional landscaper.</p>	<p>All sub-items of this condition shall be completed prior to the issuance of a CO except for the following:</p> <p><i>Item c</i> to be completed on or</p>	ISD/Ping

<p>c. Hire professional arborist or insured, professional landscaper to prune existing peach tree and existing plum tree on or before May 5, 2019 (per original arborist report that was uploaded to CitizenServe prior to the issuance of the original building permit)</p> <p>d. Protect the root systems of the existing peach tree and existing plum tree during construction (in accordance with original arborist report that was uploaded to CitizenServe prior to the issuance of the original building permit).</p> <p>e. Plant two new trees:</p> <ol style="list-style-type: none"> 1. New tree #1: peach tree of 2 - 2.5" caliper. To be planted in a location mutually-agreeable to the abutter at 82 Franklin St and the Applicant. If this tree is near the construction zone for 84 Franklin, a root protection plan shall be created by the certified arborist, implemented by the Applicant, and uploaded to CitizenServe. 2. New tree #2: cherry tree or another tree recommended by certified arborist. 2 – 2.5" caliper. To be planted in a location mutually agreeable to the abutter at 82 Franklin St and the Applicant. If this tree is near the construction zone for 84 Franklin, a root protection plan shall be created by the certified arborist, implemented by the Applicant, and uploaded to CitizenServe. <p>f. Contract with an insured, professional landscaper to mulch (non-dyed), water, and fertilize the two new trees and the existing peach and plum trees for one year starting when the new trees are planted.</p> <p>g. Upload tree maintenance contract to CitizenServe.</p> <p>h. Should either or both of the new trees fail within 18 months of planting, they shall be replaced by the Applicant.</p>	<p>before May 5, 2019</p> <p><i>Item d</i> to be completed prior to the re-start of construction</p> <p><i>Item h</i> within 18 months after planting, but only if new trees fail.</p>	
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II. RECOMMENDATION

Staff recommends that the original Condition #13 be struck from the approval and that the new language indicated above for a new Condition #13 be inserted in its place.