



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
**JOSEPH A. CURTATONE**  
**MAYOR**

GEORGE J. PROAKIS  
EXECUTIVE DIRECTOR

Planning Division  
**ZONING BOARD OF APPEALS MEMBERS**  
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DANIELLE EVANS, *CLERK*  
ELAINE SEVERINO  
JOSH SAFDIE  
DREW KANE (ALT.)

**Case #:** ZBA 2017-50-R1(01/19)  
**Site:** 84 Franklin Street  
**Date of Decision:** May 1, 2019  
**Decision:** *Petition Approved with Conditions*  
**Date Filed with City Clerk:** May 15, 2019

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**ZBA DECISION**

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**Site:** 84 Franklin Street

**Owner Name:** 84 Franklin LLC  
**Owner Address:** 12 Oakley Road, Belmont, MA  
**Applicant Name:** Novo Development Holdings, LLC

**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.

<u>Zoning District/Ward:</u>	RB zone. Ward 1.
<u>Zoning Approval Sought:</u>	SZO §5.3.8
<u>Date of Application:</u>	March 12, 2019
<u>Date(s) of Public Hearing:</u>	4/3, 4/17, 5/1
<u>Date of Decision:</u>	May 1, 2019
<u>Vote:</u>	5-0

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Case # **ZBA 2017-50-R1 (01/19)** was opened before the Zoning Board of Appeals in the City Council Chambers at Somerville City Hall on April 3, 2019. 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 May 1, 2019, the Zoning Board of Appeals took a vote.



**I.DESCRPTION:**

**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 arborist<sup>1</sup> 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

<sup>1</sup> 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.



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.

**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 below):

#	Condition	Compliance timeframe	Sign-off
13	<ul style="list-style-type: none"> <li>a. Retain existing peach tree and existing plum tree</li> <li>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.</li> <li>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)</li> <li>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).</li> <li>e. Plant two new trees:                             <ul style="list-style-type: none"> <li>1. <b><u>New tree #1:</u></b> peach tree of 2 - 2.5” caliper. To be</li> </ul> </li> </ul>	<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 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>	ISD/Plng



	<p>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> <p>2. <b><u>New tree #2:</u></b> 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> <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>		
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**II. FINDINGS FOR REVISION TO A SPECIAL PERMIT (SZO §5.3.8):**

The Board finds that the updated Condition #13 serves as sufficient remediation for the violation of the original Condition #13.

**III.DECISION:**

Present and sitting were Members Orsola Susan Fontano, Danielle Evans, Drew Kane and Anne Brockelman. Upon making the above findings, Susan Fontano made a motion to approve the request for Special Permits. Josh Safdie seconded the motion. The Zoning Board of Appeals voted **5-0** to **APPROVE** the change to Condition #13 as outlined above in this decision. All other conditions attached to the original approvals for case ZBA2017-50 shall remain in effect.



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*  
Danielle Evans, *Clerk*  
Josh Safdie  
Anne Brockelman  
Drew Kane (Alt.)

Attest, by the Planner: \_\_\_\_\_

Sarah White

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 \_\_\_\_\_

