



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2018-87
Site: 144 Highland Avenue
Date of Decision: December 12, 2018
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: December 19, 2018

ZBA DECISION

Applicant / Owner Name: Matthew McCarthy and Gregory McCarthy
Applicant / Owner Address: 94 Bradlee Ave, Swampscott, MA 01907 and 7 Addison Street, Arlington, MA 02476
Agent Name: Richard G. DiGirolamo, Esq.
Agent Address: 424 Broadway, Somerville, MA 02145
Alderman: Ben Ewen-Campen

Legal Notice: Applicants and Owners, Matthew McCarthy and Gregory McCarthy, seek a Special Permit per SZO §4.4.1 and §7.11.1.C to construct an addition greater than 25% of the existing gross floor area to a nonconforming structure in order to establish a fifth dwelling unit on the site. A Special Permit per SZO 9.13 is also being sought for parking relief. RC Zone. Ward 3.

<u>Zoning District/Ward:</u>	RC Zone. Ward 3.
<u>Zoning Approval Sought:</u>	§4.4.1 and §7.11.1.C
<u>Date of Application:</u>	July 18, 2018
<u>Date(s) of Public Hearing:</u>	9/5, 9/17, 10/3, 10/17, 10/24, 11/7, 11/28, 12/12
<u>Date of Decision:</u>	December 12, 2018
<u>Vote:</u>	5-0

Appeal #ZBA 2018-87 was opened before the Zoning Board of Appeals in the Aldermanic Chambers at Somerville City Hall on September 5, 2018. 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 December 12, 2018 the Zoning Board of Appeals took a vote.



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

The proposal is to construct a side and rear addition to the existing structure and reconfigure the layout of the existing four units.

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 §5.1.4 of the SZO. This section of the report goes through §5.1.4 in detail.

1. **Information Supplied:**

The Board finds that the information provided by the Applicant conforms to the requirements of §5.1.2 of the SZO and allows for a comprehensive analysis of the project with respect to the required Special Permits.

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."*

Article 4: Nonconforming Uses and Structures

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."

The structure is currently nonconforming with respect to the dimensional requirements for lot size and left side yard setback, neither of which will be affected by the proposal.

Section 4.4.1 states that "Alteration, reconstruction, extension or structural change to a nonconforming one- or two-family structure not affecting the nonconforming aspect of the one- or two-family structure and where the alteration, reconstruction, extension, or structural change will comply with all current dimensional requirements of the zoning ordinance, and provided any such alteration, reconstruction, extension or structural change does not increase the Gross Floor Area of the dwelling by more than twenty-five percent (25%)."

The total increase in gross floor area (GFA) will be greater than 25%. The existing GFA is 4,075 s.f and the proposal is to add 1,673 s.f that will increase the GFA to 5,748 s.f, or 41% of the existing structure.

In considering a special permit under §4.4 of the SZO, the Board finds the alterations proposed would not be substantially more detrimental to the neighborhood than the existing structure. The proposal will allow for an addition that meets dimensional requirements. The proposal has been designed with setbacks that minimally impact the neighbors and the requirements for lot area per dwelling unit, ground coverage, landscaped area, pervious area, floor area ratio (FAR), building height, front yard, rear yard, and right side yard setbacks, and street frontage will continue to be conforming to the requirements of the SZO.



Article 9: Off-Street Parking and Loading

	<i>Existing</i>		<i>Proposed</i>	
Unit #1	1 BR	1.5 spaces	2 BR	1.5 spaces
Unit #2	1 BR	1.5 spaces	2 BR	1.5 spaces
Unit #3	1 BR	1.5 spaces	2 BR	1.5 spaces
Unit #4	1 BR	1.5 spaces	2 BR	1.5 spaces
Total	6 spaces		6 spaces	

The site currently provides only one parking space for the four units. The proposal is to change the layouts of the units that will add one bedroom to each unit, which will not increase the number of required parking spaces. The proposal is to provide three compact spaces in the rear of the site. SZO §9.13 allows for sites seeking to modify parking area design standards to apply for a Special Permit. SZO §9.11 requires the Applicant to provide spaces that are at least 9’x18’. The proposed three spaces would be 8’x16’ with a 20-foot back-out area. Relief is being requested to modify the parking design standards.

In considering a special permit under §9.13 of the SZO “the SPGA may grant such a special permit only when consistent with the purposes set forth in Section 9.1, and upon reaching the findings and determinations set forth in Section 5.1.4”. The Board finds that granting the requested Special Permit is consistent with the purposes of SZO §9.1 and will not cause detriment to increased traffic volumes, traffic congestion of queuing of vehicles, changes in the type of traffic, change in traffic patterns and access to the site, reduction in on-street parking, or unsafe conflicts of motor vehicles and pedestrian traffic.

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 proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to promote the health, safety, and welfare of the inhabitants of the City of Somerville; to provide for and maintain the uniquely integrated structure of uses in the City; to lessen congestion in the streets; to protect health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to conserve the value of land and buildings; to adequately protect the natural environment; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality.

The proposal is consistent with the purpose of the RC district, which is, “to 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."*

Surrounding Neighborhood: The subject property is located on the southern side of Highland Avenue between the blocks of Central Street and Trull Lane. This is a neighborhood with a range of uses that include multi-family residential dwellings, a restaurant, convenience store, fast order-food establishments, and retail stores.



Impacts of Proposal (Design and Compatibility): The design of the proposed addition will be integrated into an exterior overhaul of the property that will include new siding, windows, doors, and trim. The proposed materials will be an improvement over existing conditions and will enhance the aesthetics of the site.

5. Housing Impact: Will not create adverse impacts on the stock of existing affordable housing.
6. SomerVision Plan: Complies with the applicable goals, policies and actions of the SomerVision plan, including the following, as appropriate: Preserve and enhance the character of Somerville’s neighborhoods.

III.DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Josh Safdie, Danielle Evans, and Anne Brockelman. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit with conditions. Anne Brockelman 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 for the construction of a side and rear addition. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/Plng.							
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>July 18, 2018</td> <td>Initial application submitted to the City Clerk’s Office</td> </tr> <tr> <td>November 7, 2018</td> <td>Plans submitted to OSPCD (T-1, Z-1, Z-2, A-0, A-1, A-2, A-3, A-4, A-5, A-6, EC-1, EC-2, and EC-3)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	July 18, 2018	Initial application submitted to the City Clerk’s Office	November 7, 2018	Plans submitted to OSPCD (T-1, Z-1, Z-2, A-0, A-1, A-2, A-3, A-4, A-5, A-6, EC-1, EC-2, and EC-3)
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Any changes to the approved site plan or elevations/use that are not <i>de minimis</i> must receive SPGA approval.										
Pre-Construction										
2	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.							
Construction Impacts										
3	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.	During Construction	Plng.							



4	The Applicant shall at their 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	
5	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	
6	For the convenience of and respect for the neighborhood, during the construction phase, construction work shall not begin prior to <u>7:30am</u> and shall finish no later than <u>5pm</u> Monday through Friday. There shall be no construction or construction-related work performed on weekends or holidays.	During Construction	ISD	
Design				
7	Applicant shall provide final material samples for siding, trim, windows, and doors to Planning Staff for review and approval prior to the issuance of a building permit.	BP	Plng.	
Site				
8	Landscaping shall be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Plng. / ISD	
9	The driveway must be constructed of permeable pavers. The Applicant must submit a landscape plan to be reviewed and approved by Planning Staff showing different paver patterns for the driveway and walkways.	CO	Plng. / ISD	
Miscellaneous				
10	Gas and electric meters shall not be on the front of the structure. Gas and electric meters may be located on the side of the structure but shall be screened from the street by a hardy, staff approved evergreen planting. Utilities shall not be located adjacent to windows and shall not impact any parking, landscaping, or egress. The provisions of this condition may be waived by staff if the applicant submits a letter from the utility, signed by a utility representative, on utility letterhead, indicating that there is no feasible alternative to placing meters in violation of this condition.	CO	ISD	
11	Electrical conduits on the exterior facades of buildings shall be painted to match the wall material to which they are attached. Conduits are not allowed on the front of any structure.	CO	Plng.	



12	Garbage and recycling locations shall be clearly indicated on site plans. Storage areas shall be inside of the structure or shall be fully screened from view from both the public way and abutters by an appropriate material reviewed and approved by staff. The location shall not impact any parking, landscaping, or egress.	BP	Plng.	
13	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.	Ongoing	ISD / Plng.	
14	The Applicant, its successors and/or assigns, shall be responsible for maintenance of both the building and all on-site amenities, including landscaping, fencing, lighting, parking areas and storm water systems, ensuring they are clean, well kept and in good and safe working order.	Cont.	ISD	
Public Safety				
15	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
16	Per Somerville fire safety regulations, grills, barbecues, chimineas and the like are NOT permitted on decks or porches.	Perpetual	FP/ISD	
17	To the extent possible, all exterior lighting must be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	Plng.	
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	Plng.	



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Richard Rossetti, *Clerk*
Danielle Evans
Josh Safdie
Anne Brockelman

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 _____

