



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

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DREW KANE, (*ALT.*)

**Case #: ZBA 2019-93**  
**Site: 50 Inner Belt Road**  
**Date of Decision:** September 18, 2019  
**Decision:** *Approved with Conditions*  
**Date Filed with City Clerk:** September 25, 2019

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**ZBA DECISION**

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**Site:** 50 Inner Belt Road

**Applicant Name:** Commodore Builders  
**Applicant Address:** 404 Wyman Street, Waltham, MA 02451  
**Owner Name:** Penna Realty Associates, LLC  
**Owner Address:** 228 Andover Street, Wilmington, MA 01887  
**City Councilor:** Matt McLaughlin

Legal Notice: Applicant, Commodore Builders, and Owner, Penna Realty Associates, LLC, seeks a Variance under SZO §5.5 and §10.7 to construct an eight foot tall fence. IA Zone. Ward 1.

|                                   |                    |
|-----------------------------------|--------------------|
| <u>Zoning District/Ward:</u>      | IA Zone. Ward 1.   |
| <u>Zoning Approval Sought:</u>    | SZO §5.5 and §10.7 |
| <u>Date of Application:</u>       | August 7, 2019     |
| <u>Date(s) of Public Hearing:</u> | September 18, 2019 |
| <u>Date of Decision:</u>          | September 18, 2019 |
| <u>Vote:</u>                      | 5-0                |

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Case number ZBA 2019-93 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 September 18, 2019, the Zoning Board of Appeals took a vote.



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**I. PROJECT DESCRIPTION**

The proposal is to construct an eight foot tall fence around the front and two sides of the subject property and a ten foot tall privacy fence within the site.

**II. FINDINGS FOR SPECIAL PERMIT (§5.5 and §10.7):**

A Variance (§5.5) is sought to install an eight foot tall fence and a ten foot tall fence. The SZO §10.7 states that fences may not be more than six (6) feet high above the existing grade.

In order to grant a variance the Board must make certain findings and determinations as outlined in §5.5.3 of the SZO.

1. *There are "special circumstances relating to soil conditions, shape or topography of land or structures which especially affect such land or structures but not affecting generally the zoning district in which it is located, causing substantial hardship, financial or otherwise."*

*Applicant's response:* The property is bordered by a few different fences. In terms of the surrounding land, the MBTA train tracks are right next to the property. They sit about 12 feet above the building and have a direct view into the building area. The building parking lot is a large open area that can be accessed by anyone. There is currently no fence or physical barrier between the elevated train tracks and the property. A strong steel fence would not only provide security for the secure data center, but also provide security for those who park and sit in the parking lot bordered by the unfenced train tracks.

*Board response:* The adjacency of elevated railroad tracks is a special circumstance.

2. *"The variance requested is the minimum variance that will grant reasonable relief to the owner, and is necessary for a reasonable use of the building or land."*

*Applicant's response:* The uniqueness of the tenants of 50 Inner Belt Road is the main reason why they feel a fence is necessary. As a data center and enterprise internet provider, INAP, and therefore 50 Innerbelt Road houses sensitive data and routes sensitive internet traffic through it. Their customers are comprised of health care companies and banking / financial institutions, and companies conducting ecommerce. These companies require PCI and HIPPA compliancy. To that point, physical security is evaluated against their business requirements. Controlling access into the parking lot and the ability to reach the building entrances / exits is a critical criterion to which they are evaluated against when it comes to winning a new customer deal or retaining an existing customer. They have had multiple incidents in their parking lot where they have had to deal with trespassers on the property and their customers have taken note of this. This fence is critical to prevent trespassers, but also to meet their customers' physical security needs.

Additionally, the fences of the properties adjacent to 50 Inner Belt Road have fences of the following heights: an overall 9'0" wire fence (7'8" not including the barbed wire at the top) and a 7'6" fence wire fence. Installing a fence that is not similar in height to those surrounding will not only look odd, but will undermine the purpose of building the fence, which is an atmosphere of sound security that INAP requires. As this is necessary for INAP to continue to work in this area, this should fall under reasonable use of the land.



*Board response:* The proposed fence is the minimum relief necessary and reasonable to keep the data center secure.

3. “The granting of the variance would be in harmony with the general purpose and intent of this Ordinance and would not be injurious to the neighborhood or otherwise detrimental to the public welfare.”

*Applicant’s response:* Building this fence will not only create a feeling of security to the company, but it will not negatively impact the area. The fence is the only aspect of the construction proposed. No parking spots will be eliminated, and there will be no encroachment onto the sidewalk or road. It will cause no change to those who are allowed to enter the property, but will only privatize the property as required by the tenant. This is also not a barbed wire fence which could pose physical risk to anyone who attempts to climb it. The fence will make the area look organized as it will be similar in height to any fences around it, and secure yet not overtly threatening.

*Board response:* The proposed fence in this industrial neighborhood will be in harmony with the general purpose and intent of this Ordinance. Also, it will not be injurious to the neighborhood or detrimental to the public welfare.

**III. DECISION**

Present and sitting were, Susan Fontano, Danielle Evans, Anne Brockelman, Elaine Severino, and Drew Kane. Upon making the above findings, Danielle Evans made a motion to approve the requested 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 |  |
|-----------------------------|--|--------------------------|--------------------|-------|--|
| 1                           | Approval is for the construction of fences. This approval is based upon the following application materials and the plans submitted by the Applicant:  | BP/CO                    | ISD/Plng.          |       |  |
|                             | <b>Date (Stamp Date)</b>   |                          |                    |       | <b>Submission</b>  |
|                             | August 7, 2019   |                          |                    |       | Initial application submitted to the City Clerk’s Office |
|                             | June 26, 2019  |                          |                    |       | Proposed site plan                                       |
|                             | April 17, 2015   |                          |                    |       | Fence detail   |
|                             | Any changes to the approved site plan that are not <i>de minimis</i> must receive SPGA approval.   |                          |                    |       |  |
| <b>Construction Impacts</b> |  |                          |                    |       |  |
| 2                           | 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                |       |  |
| <b>Miscellaneous</b>        |  |                          |                    |       |  |



|                       |  |                |             |  |
|-----------------------|--|----------------|-------------|--|
| 3                     | 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         |  |
| <b>Public Safety</b>  |  |                |             |  |
| 4                     | The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.   | CO             | FP          |  |
| <b>Final Sign-Off</b> |  |                |             |  |
| 5                     | 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.       |  |
| <b>Miscellaneous</b>  |  |                |             |  |
| 6                     | The fences can never be solid and must remain see-through.   | Perpetual      | ISD / Plng. |  |
| 7                     | The perimeter fence may be no taller than seven feet in height.  | Perpetual      | ISD / Plng. |  |
| 8                     | The portion of the perimeter fence at the intersection must be cut back to not impair visibility. The applicant must submit an updated plan showing this feature to Planning Staff prior to the issuance of a building permit.   | BP/ Perpetual  | ISD / Plng. |  |



Attest, by the Zoning Board of Appeals:

Susan Fontano, *Chair*  
Danielle Evans, *Clerk*  
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 \_\_\_\_\_

