



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2017-90
Site: 45 Kent Street
Date of Decision: April 17, 2019
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: May 1, 2019

ZBA DECISION

Site: 45 Kent Street

Owner/Applicant Name: Angela Schifano
Owner/Applicant Address: P.O. Box 784596, Winter Park, FL 34778

Legal Notice: Owner and Applicant, Angela Schifano, seeks Special Permits under §7.11 of the SZO to increase the number of units from two to three; under §4.4.1 to increase the non-conforming left side yard setback, and for an upward extension of both the non-conforming rear and non-conforming left side yard setbacks by increasing the height of the building by approximately 10 feet; t increase the FAR and GFA by more than 25%; Parking relief under Article 9 of the SZO. RC zone. Ward 2.

<u>Zoning District/Ward:</u>	RC zone. Ward 2.
<u>Zoning Approval Sought:</u>	SZO §7.11 and Article 9
<u>Date of Application:</u>	August 7, 2017
<u>Date(s) of Public Hearing:</u>	April 17, 2019
<u>Date of Decision:</u>	April 17, 2019
<u>Vote:</u>	4-0

Case # ZBA 2017-90 was opened before the Zoning Board of Appeals in the Aldermanic Chambers at Somerville City Hall on April 17, 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 April 17, 2019 the Zoning Board of Appeals took a vote.

I. DESCRIPTION:

The Applicant proposes increasing the number of units on the site from two to three. An addition to the front of the property is proposed which will upwardly and linearly exacerbate the non-conforming left side yard setback, reducing it from 2.0 feet to 1'9". A third story will be added to the structure. The construction of the third story will create an upward extension of the non-conforming rear yard setback. The right elevation exterior staircase will be removed and second- and third-story decks constructed. The second-story deck will rest on the top of the single-story garage, retaining the connected status of the garage and house.

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:

The Board 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."

Left side yard setback

The RC zone requires a left side yard setback of 10 feet for a three-story residential building. The existing left side yard setback is two (2) feet. The Applicant proposes decreasing that setback by three inches to one foot, nine inches (1'9"). The construction of a left front façade addition intended to accommodate a three-story interior stairwell, is the driver for the exacerbation of the left side yard setback.

The construction of this left front addition will also create an upward extension of the non-conforming left side yard setback as the addition will be three stories in height. The location of the proposed left front elevation addition is sited such that left-abutting parcels of 45 Kent Street present their rear building facades to the new addition.

The non-conforming left side yard setback will also be exacerbated by the addition of the third story onto the existing house. The building height will increase from 22'6" to 32'8".

The maximum building height in the RC zone is 40', therefore the proposed new height complies.

Generally, the Board finds that the left front addition is well-proportioned and well-articulated architecturally. However, the Board finds that it is misplaced on the façade. The overall appearance of the front façade of the building could be improved if the addition were to be centered on the façade as opposed to being corralled to the far left corner of the building.

The Board finds that converting this structure to a three-story building is consistent with numerous other three-story structures in the vicinity including the immediate right-abutting property. Further, there are several triple-deckers in the immediate area. A directly-abutting property along Beacon Street is a four-story structure. Additional three-story buildings are also present in the immediate area along Beacon Street as well as along Kent Court.

Increase in GFA by more than 25%

Section 4.4.1 of the SZO allows for the GFA of a property to be increased by more than 25% through Special Permit. Through the construction of the front elevation addition and the construction of a third story, the GFA will increase by more than 25%.

Rear yard setback

The existing rear yard currently presents a setback of 2'7". The Applicant proposes an upward extension of this non-conformity through the construction of a third story and of second- and third-story right elevation decks that maintain the non-conforming lot line at the rear.

Parking Relief (Article 9)

Section 9.13 of the SZO allows Applicants to request relief from providing all required parking on a site under Special Permit. In the case of 45 Kent Street, two (2.0) parking spaces of relief are needed. Under current conditions, only two legal parking spaces are provided. Those parking spaces are located as follows: one in the single-car garage and the other along the left portion of the driveway.

The Applicant proposes widening the existing driveway leftward in order to accommodate a new parking space. However, by doing so, the Applicant would not be providing a legal parking space, but a tandem space. The Board does not support widening the driveway to the detriment of green space and due to the fact that an illegal parking space would be created.

The total number of parking spaces of relief needed is two (2). The assessment for this appears immediately below:

Dwelling Area	Existing Bdrs.	Parking Req.	Dwelling Area	Proposed Bdrs.	Parking Req.
Unit 1	2	1.5	Unit 1	2	1.5
Unit 2	2	1.5	Unit 2	2	1.5
Unit 3	n/a	n/a	Unit 3	2	1.5
Total: 3.0			Total: 4.5		

*Parking formula: New Parking Req. – Old Parking Req. = new spaces required**

45 Kent Street: 4.5 – 3.0 = 1.5 (rounded to 2.0) spaces

Relief for 2.0 spaces is needed.

**When this result is < 1 or a negative number, no parking relief is required.*

Other determinations

Abutters can expect typical noises and odors associated with the construction phase of a project.

This project, as with all others, will need to be reviewed by the Engineering Division for their sign-off prior to the granting of a building permit. The Engineering Division will determine if any measures need to be taken by the Applicant to address any impacts on the municipal water and sewer system.

It is possible that the increase in number of units from two to three will add additional vehicles to the street/immediate area, especially as only two parking spaces can be legally provided on-site at the completion of the 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."*

The Board finds that, in general, the proposal is consistent with the purposes of the RC zone which are "[t]o 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."*

The Board has addressed the question of site and area compatibility in a previous section of this report.

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 proposal adds one residential, market-rate unit to the City's housing stock.

III.DECISION:

Present and sitting were Members Orsola Susan Fontano, Danielle Evans, Drew Kane and Elaine Severino. Upon making the above findings, Danielle Evans made a motion to approve the request for a Special Permit. Elaine Severino seconded the motion. The Zoning Board of Appeals voted **4-0** to **APPROVE** the request **WITH CONDITIONS**. The following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
1	Approval is for upward and linear extension of the left side yard setback and the upward extension of the rear yard setback. Increase in GFA by more than 25%. Parking relief for two (2) spaces.	BP/CO	ISD/Plng.	
	<table border="1"> <thead> <tr> <th>Date</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>April 12, 2017</td> <td>Application submitted to City Clerk's office.</td> </tr> </tbody> </table> <p>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.</p>			
Date	Submission			
April 12, 2017	Application submitted to City Clerk's office.			
Engineering				
2	The Applicant shall comply with all Engineering Division requirements and submit their plans to the Engineering Division for their review and sign-off prior to the issuance of a building permit.	BP	Engineering/ISD	
3	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." The Applicant shall work with Engineering to meet this condition and provide the required fees/mitigation.	CO	Eng.	
4	The Applicant must contact the Engineering Department to obtain a street address for the third unit prior to a building permit being issued.	BP	Eng	
5	The Applicant shall conduct a survey of the foundations of the houses of the immediately-abutting property owners prior to the start of construction and document their findings. These findings shall be submitted to the Planning Department and ISD as public record. The Applicant then shall survey these same properties after the completion of construction (but prior to the issuance of a CO) to document post-construction conditions. Any damage to the abutting foundations shall be the responsibility of the Applicant to remediate.	BP/CO	Eng.	
Design				
6	The single-bay garage shall be re-sided.	CO	ISD/Plng	
7	Windows shall be added to the second-story of the front addition. A window shall be added to the left of the new front door. All proposed windows, their specific location, design and materials therefore shall be reviewed and approved by Planning Staff prior to the issuance of a building permit.	BP	ISD/Plng	
8	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	

Construction Impacts				
9	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	
10	All construction materials and equipment shall 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	
11	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 from the public way.	During Construction	ISD	
12	Construction shall be limited to M-F 7:30am – 5:00pm. No weekend construction or construction-related work shall occur. This includes deliveries.	During Construction	ISD	
13	All construction equipment shall be stored on-site should best efforts to store construction equipment off-site fail.	During Construction	ISD	
Public Safety				
14	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
15	The building shall be sprinkled.	CO	FP	
16	All exterior lighting on the site shall be downcast and shall not cast light onto surrounding properties in any fashion.	CO	ISD	
17	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/PlngFP	
Site				
18	The large tree in the front yard shall be retained.			
19	An arborist shall be hired by the Applicant to create and implement a strategy for protecting the tree and its roots during the construction process.	BP	ISD/Plng	
20	All bituminous material as well as all concrete shall be removed from the site and pervious pavers or similar shall be installed.	CO	ISD/Plng	
21	All materials to be used for hardscaping, fencing, and similar shall be submitted to Planning Staff for their review and approval prior to the issuance of a building permit.	BP	ISD/Plng	
22	The driveway shall NOT be widened.			
23	A landscaping plan shall be submitted to planning staff for their review and approval prior to the issuance of a building permit. While some grass shall be retained in the front yard, quality plantings need to also be installed.	BP	ISD/Plng	
24	The location of mechanical equipment such as AC units has not been indicated on the site plan. The Applicant must present a site plan to planning staff showing the location of	BP/CO	ISD/Plng	

	mechanicals. Mechanicals shall not be installed in the front yard or atop the single-story garage. Mechanicals shall be screened.			
25	The location of garbage and recycling has not been indicated on the site plan. The Applicant must present a site plan to planning staff showing the location of garbage/recycling. Garbage/recycling shall not be stored in the front yard or against abutting properties. Garbage and recycling shall be screened.	BP/CO	ISD/Plng	
Miscellaneous				
26	Venting and piping shall be painted the same color as the exterior of the house from which they protrude.	CO	ISD/Plng	
27	Electrical/utility meters shall not be installed on the front façade of the house.	CO	ISd/Plng	
Final Sign-Off				
28	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/Plng.	

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Danielle Evans, *Clerk*
Elaine Severino
Drew Kane (Alt.)

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 _____