



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2018-65-R1-10/19
Site: 41 Myrtle Street
Date of Decision: November 6, 2019
Decision: *Approved with Conditions*
Date Filed with City Clerk: November 8, 2019

ZBA DECISION

Site: 41 Myrtle Street

Applicant Name: JC Mercer Development
Applicant Address: 4 Sharon Street, Tewksbury, MA 01876
Owner Name: 41 Myrtle Street Realty Trust
Owner Address: 76 State Street, Newburyport, MA 01950
Agent Name: Sean T. O'Donovan, Esq.
Agent Address: 741 Broadway, Somerville, MA 02144

Legal Notice: Applicant, JC Mercer Development, and Owner, 41 Myrtle Street Realty Trust, seek a revision under SZO §5.3.8 to revise a previously approved special permit by altering the site plan. A special permit under SZO §9.13 is also required to modify parking design standards. RB Zone. Ward 1.

<u>Zoning District/Ward:</u>	RB Zone. Ward 1.
<u>Zoning Approval Sought:</u>	SZO §5.3.8 and §9.13
<u>Date of Application:</u>	September 4, 2019
<u>Date(s) of Public Hearing:</u>	November 6, 2019
<u>Date of Decision:</u>	November 6, 2019
<u>Vote:</u>	5-0

Case number ZBA 2018-65-R1-10/19 was opened before the Zoning Board of Appeals in the 3rd Floor Community Room of Visiting Nurse Association at 259 Lowell Street. 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 November 6, 2019, the Zoning Board of Appeals took a vote.



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I. PROJECT DESCRIPTION

The request is to accept revisions to the previously approved site plan. There were surveying mistakes made in the field during construction that resulted in an enlarged rear deck and the rear garage being built further away from the rear lot line. The Applicant also installed fewer permeable pavers in the driveway than what was approved.

II. FINDINGS FOR SPECIAL PERMIT (SZO §5.3.8):

Section 5.3: Procedures for Special Permits and Special Permits with Site Plan Review

Revisions that are not de minimis shall be subject to the full notice and hearing provisions of §5.3.2 of this Ordinance, but shall not be subject to review by additional boards, departments, city agencies or commissions except as requested by the SPGA or upon the recommendation of the Planning Director. Applicable findings shall be made in accordance with the type of permit(s) being revised.

The findings made under the previous Special Permit approved by the ZBA in June of 2018 (ZBA 2018-65) are not applicable to this proposal except for compliance with standard under Article 9: Off-Street Parking and Loading. The original approval granted relief for the number of parking spaces. Due to the shift of the garage location the back-up aisle dimension between the garage and the deck decreased from 20 feet to 16'-10" at its lowest point.

SZO §9.13.b allows for sites where the design of a parking lot differs from the provisions of the SZO to apply for a special permit. Relief is being requested from providing the required 20-foot aisle.

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.

Also, it is conditioned that the Applicant installs the missing permeable pavers in front of the garage.

III. DECISION

Present and sitting were, Susan Fontano, Danielle Evans, Anne Brockelman, Elaine Severino, and Josh Safdie. Upon making the above findings, Danielle Evans made a motion to approve the requested special permit. 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 to modify the previously approved site plan. 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>September 4, 2019</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> </tbody> </table>			
Date (Stamp Date)	Submission			
September 4, 2019	Initial application submitted to the City Clerk's Office			
	Any changes to the approved site plan or elevations/use that are not <i>de minimis</i> must receive SPGA approval.			
2	All other conditions of approval from ZBA 2018-65 remain in effect.	CO	ISD/Plng.	
3	The Applicant must install the permeable pavers according to the original special permit approval.	CO	ISD/Plng.	
Final Sign-Off				
4	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:

Susan Fontano, *Chair*
Danielle Evans, *Clerk*
Josh Safdie
Anne Brockelman
Elaine Severino

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 _____

