



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

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MICHAEL A. CAPUANO, ESQ.
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GERARD AMARAL, (ALT.)

Case #: PB 2017-18
Site: 654 Mystic Avenue
Date of Decision: August 17, 2017
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: August 30, 2017

PLANNING BOARD DECISION

Applicant Name:	Anthony Fava & Ryan Hunt
Applicant Address:	11 Elkins Street, Suite 205, Boston, MA 02127
Property Owner Name:	654 Mystic LLC
Property Owner Address:	11 Elkins Street #250, Boston, MA 02127
Agent Name:	Gordon E. Meyer & Associates, P.C.
Agent Address:	8 Winchester Street, Boston, MA 02116

Legal Notice: Applicants, Anthony Fava & Ryan Hunt, along with Property Owner, Fieldcom Realty Trust, seek Design and Site Plan Review per Section 8.8 and 5.4 of the SZO for lot splits to divide one lot into three lots.

<u>Zoning District/Ward:</u>	BB zone/Ward 4
<u>Zoning Approval Sought:</u>	§8.8 & §5.4
<u>Date of Application:</u>	May 18, 2017
<u>Date(s) of Public Hearing:</u>	August 17, 2017
<u>Date of Decision:</u>	August 17, 2017
<u>Vote:</u>	5-0



Appeal #PB 2017-14 was opened before the Planning Board at Somerville City Hall on August 17, 2017. 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. After one hearing of deliberation, the Planning Board took a vote.¹

DESCRIPTION:

The Applicant proposes to divide this parcel at 654 Mystic Avenue into three lots. Lot 1, which would abut Moreland Street, is proposed at ~3,178 square feet. Lot 2, to the left, is proposed at ~3,251 square feet. Lot 3, which would abut 640 Mystic Avenue, is proposed at ~3,316 square feet. Further, the Applicant proposes three (3) dwelling units on each lot for a total of nine (9) dwelling units across the original parcel.

Lot size/lot size per dwelling unit: Since the BB zone does not have a minimum lot size requirement all of the proposed lots are buildable lots. The current proposal presents each of the nine dwelling units with a minimum of 1,000 sf each. This amount is greater than the minimum required lot area per dwelling unit ratio of 875 square feet. At 1.43, 1.40, and 1.28, the proposed dwelling units are well under the maximum-allowed FAR of 2.0 in this zone.

Front, rear and side yards: There are no side yard minimums required for this project as the side yards of this BB lot do not abut a residential district. The rear yard, because it abuts an RA district line, must be no less than 15 feet deep as per *SZO §8.5.i footnote 12*. The proposal complies with this requirement.

Landscaping/pervious/ground coverage: The majority of the existing parcel is covered with bituminous material, leaving approximately 1% “landscaped” under current conditions. The Applicant’s proposal would bring 45% landscaping or more to each of the proposed parcels.

Section 8.5.g footnote 5 allows the reduction of front yard setbacks, but for those setbacks to be no less than 10 feet. The Applicant’s proposal allows for 10’ to 15’ front yard setbacks.

With regard to pervious material, overall ground coverage and landscaping, the Applicant does not create any non-conformities and the proposal improves upon the existing conditions.

¹ The Planning Board approved a similar project as a subdivision with Design & Site Plan Review in December, 2016. Since that time, it was brought to the Planning Division’s attention that, in fact, the correct review to be requesting was for a “series of lot splits” and not a subdivision. The language in Chapter 6: Rules & Regulations Pertaining to Design & Site Plan Review was amended to address the circumstances under which the Planning Board would review lot splits. After that language was updated, the applicant re-applied to the Planning Board for lot splits, and this case was first heard on July 13th. The Board reviewed the case on July 13th, approved the lot splits and a decision was filed.

Subsequent to the July 13, 2017 Planning Board hearing, two issues were raised:

- a. The development team noted that the section numbers indicated in the staff report that was incorporated into the July 13th decision were incorrect. These errors were corrected on the filed decision and noted as such, but since the Board voted to accept the recommendation, it would be better to have a staff report that matched the correct section numbers, and allow the Board to take a position on the corrected staff recommendation.
- b. A neighbor filed a complaint about the open meeting law, regarding this item. The City responded to this complaint, and outlined why there was no violation of open meeting requirements for the July 13th Planning Board meeting. Nonetheless, in circumstances like this, sometimes applicants would prefer the opportunity to re-hear a case to ensure its legal status is solid.

After reviewing the circumstances surrounding the July 13th decision, the applicant for the 654 Mystic Avenue proposal elected re-submitted their application to the Planning Board for it to be heard once again. As this is considered a “new” filing, a new case number was assigned. This new case was heard on August 17, 2017, and this decision reflects that case.



Building height: Normally, in the BB zone, buildings may have a maximum height of 50 feet and be up to four stories. However, in cases such as 654 Mystic where the property abuts an RA district line, any structure (or portion of a structure) within thirty feet of that district line shall be limited to three stories and forty feet in height. The design of the proposed residences causes the roofline to step down as the building reaches the rear of the lot. The front-most portion of the building, which is 30-feet from the RA district line, is presented as 3 stories and 40 feet in height, complying with the district requirements.

FINDINGS FOR SPECIAL PERMIT (SZO §5.4):

Site Plan Approval under §5.4

Section 5.4.1 and 8.8² of the SZO allows the Planning Board to consider approval of lot splits under Section 5.4 of the Ordinance, as follows:

- a. *SZO Section 5.4.6(A) and (B) indicates the basis under which a Design and Site Plan Review shall be approved or may be disapproved.*

- *Section 5.4.6(A) indicates that the board shall make any positive findings indicated for the specific district for which the process is applied.*

No specific findings are identified in the SZO for this district. The proposed use and structures are permitted by-right in this zoning district.

- *Section 5.4.6(B) indicates that the Board may only deny an application when:*
 - i. *The submission fails to furnish adequate information required for review*

A complete submission shall include the information in item 4.C of Chapter 6 of the Rules and Regulations (Rules and Regulations Pertaining to Design and Site Plan Review).

The Board finds that the Applicant has submitted documentation satisfying the requirements via the application documents, architectural, landscaping, and engineering plans and related reports.

- ii. *The imposition of reasonable conditions would not ensure compliance to the standards, as applicable*

The Board finds that the conditions outlined in the table at the end of this report to be reasonable and shall be implemented on this project. All future plans and associated documents that are submitted to the City of Somerville for review/approval/permitting henceforth regarding the development of this land shall reflect these conditions.

- iii. *the submittal, although proper in form, includes or creates an intractable problem so intrusive on the needs of the public in one regulated aspect or another and cannot be adequately mitigated.*

² Section 8.8 was added to the Zoning Ordinance per vote of the Board of Aldermen on June 8, 2017. Section 8.8 reads “In all zoning districts, unless the regulations for a specific zoning district state otherwise, all subdivisions, lot splits, lot mergers and lot line adjustments require Design & Site Plan Review per Section 5.4 of the ordinance.”

The Board finds that, as conditioned, the project has no intractable problems. The project proposal complies with the requirements of the SZO.

DECISION:

Present and sitting were Members Joseph Favaloro, Michael Capuano, Dorothy Kelly Gay, Rebecca Lyn Cooper and Gerard Amaral with Kevin Prior absent. Upon making the above findings, Gerard Amaral made a motion to approve the request for a Special Permit. Dorothy Kelly Gay seconded the motion. Wherefore the Planning Board voted **5-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes								
1	<p>Approval is for the division of parcel 46/C/1 into three lots of the following approximate dimensions: Lot One 3,178 ± sf; Lot Two 3,251 ± sf, Lot Three 3,316 ± sf.</p> <p>Approval is conditional upon using the three lots to build the structures submitted on the attached and referenced plans.</p> <p>No building permit shall be issued until the plan set is updated so that the design matches the renderings dated May 10, 2017.</p> <table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>July 31, 2017</td> <td>Application filed with City Clerk.</td> </tr> <tr> <td>July 31, 2017</td> <td>Schematic dated May 10, 2017 submitted to OSPCD (plan set)</td> </tr> <tr> <td>July 31, 2017</td> <td>Accessibility letter, Phase 1 & Phase 2 Environmental Assessment statements, copy of new planning board rules, Accessibility Letter, & 640 Mystic Ave Staff Report (ZBA) submitted to OSPCD</td> </tr> </tbody> </table> <p>ANY other changes to the approved plans shall be submitted to Planning Staff for their review prior to implementation of said changes. Planning Staff shall determine if the changes proposed are <i>de minimis</i> in nature or if the proposed changes require Planning Board review.</p> <p>The use of these lots for any purpose or structure other than those shown on these plans will be subject to review and approval of the Planning Board.</p>	Date (Stamp Date)	Submission	July 31, 2017	Application filed with City Clerk.	July 31, 2017	Schematic dated May 10, 2017 submitted to OSPCD (plan set)	July 31, 2017	Accessibility letter, Phase 1 & Phase 2 Environmental Assessment statements, copy of new planning board rules, Accessibility Letter, & 640 Mystic Ave Staff Report (ZBA) submitted to OSPCD	BP	Plng.	
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2	Trash and recycling storage for all 9 units shall be located inside of the structures.	Perpetual	Plng./ ISD	
3	For developments with 7 or more residential units or commercial development, the Owner/Applicant is required to hire a private company to remove trash and recycling on a regular basis.	Perpetual	ISD/Planning	
4	All snow shall be carted off-site.	Perpetual	ISD/Planning	
5	The Applicant shall submit to Planning Staff certified copies of the recorded/registered documents.	Building Permit	Plng.	
6	There shall be no parking in the front yard of any of the parcels. All front yards shall be landscaped/patio area and shall contribute to and not detract from landscaping and pervious surface calculations.	Perpetual	Plng./ ISD	
7	The Applicant shall present updated civil plans to the Planning Office and to the City's Engineering Department depicting how much fill will be added to the site, of what the fill is comprised, where the fill comes from, and detailing engineering renderings of what the actual finished grade will be. Planning and Engineering must sign off on these plans before any permits are issued for work on the site.	BP/site prep	Plng/Engineering/ISD	
8	The roof shall remain flat and there shall be no roof decks permitted on the site.	Perpetual	ISD/Planning	
9	Landscaping shall be installed exactly as rendered on the plans dated October 20, 2016. There shall be no reduction in plant count or changes in plant type without prior submission to and approval by Planning Staff	CO	Plng/ISD	
10	The applicant shall ensure that all landscape/pervious calculations match submitted plans.	BP	Plng/ISD	
11	<p>Prior to the start of construction, an engineering report shall be submitted on the retaining wall at the back of the lot. The engineering report shall:</p> <ul style="list-style-type: none"> • Present a plan for addressing the structural integrity of the existing retaining wall in relation to the proposed project; • Be presented to the City Engineer for review and sign off prior to the issuance of a building permit. <p>Implementation of engineering plan:</p> <ul style="list-style-type: none"> • The engineering plan shall be followed exactly as signed off by the City Engineer • The City Engineer shall sign off on all work performed on the existing or new retaining wall. 	BP	Plng/Engineering	
12	All environmental reports and testing shall be submitted to Planning Staff as they are completed. Staff reserves the right to ask that these reports be "peer reviewed" by a city consultant at the cost of the Applicant.	BP	Plng/Engineering	

13	ALL materials proposed for the exterior of the new construction will be presented to Planning Staff for their review and approval PRIOR TO their installation	CO	Planning/ISD	
14	A new hydrant shall be installed on Ash Avenue. Said hydrant and its <u>exact</u> location shall be shown on revised civil plans.	BP	Fire Prevention/Planning/ISD	
15	The electric, telephone, cable TV and other such lines and equipment shall be placed underground from the source or connection. The utilities plan shall be supplied to the Wiring Inspector before installation.	BP	Wiring Inspector/Electrical	
16	The Applicant shall meet all of Fire Prevention's requirements	CO	Fire Prevention	
17	ALL exterior lighting on ALL facades of the building shall be downcast and shall not cast light only any abutting properties.	CO/Perpetual	ISD/Planning	
18	The Applicant shall consult with Lights and Lines to determine the need/location for transformers/conduits and the like on the property and/or the upgrade of any pole/line capacity.	BP	Lights & Lines	
19	The Applicant shall work with the Sustainable Neighborhoods Initiative coordinator to review air handling and filtration systems in the building. Air intakes shall not be located between the building and Mystic Avenue, shall provide adequate filtration systems to address the particulates that typically come off I-93. The final plan for particulate handling shall be submitted to Planning/ISD prior to the issuance of a building permit.	BP	ISD/Sustainable Neighborhoods/Planning	
20	The project shall be subject to the city stormwater policy, including the required removal of infiltration and/or inflow based upon providing either construction to reduce the inflow/outflow or a mitigation payment as established by the City Engineer's office.	BP	Engineering/Planning/ISD	
21	Any venting pipes shall be wrapped to match the color of the roofing material through which it protrudes or shall be painted to match the color of the siding through which it protrudes.	Perpetual	Planning/ISD	
22	There shall be no venting on the Mystic Avenue façade of the buildings.	Perpetual	Planning/ISD	
23	All greenery shall be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Planning/ISD	
24	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.	Perpetual	Planning/ISD	
25	Storm water runoff shall not be routed into the City sewer system. Plans for such runoff must be approved by the Engineering Department and shall not create storm water maintenance issues for abutting properties or the City.	BP	Engineering	

26	The Applicant must provide an accessibility narrative prior to the issuance of a building permit.	BP	ISD/PIng.	
27	The Applicant shall provide notice of intent to strictly comply with applicable State and Federal regulations regarding air quality including without limitation continuous dust control during demolition and construction.	BP	PIng/OSE	
28	Notification must be made, within the time period required under applicable regulations, to the Massachusetts Department of Environmental Protection (DEP) if there is any release of oil, hazardous materials, or regulated hazardous substances at the site. The City's OSE office, Fire Department and the Board of Health shall also be notified.	BP	OSE/FP/B OH	
29	Any new curb cuts shall be poured in accordance with the specifications of the Highway Superintendent	CO	Eng./High ways/Plan ning/ISD	
30	Venting from the garage shall be on the front of the building, and not adjacent to abutting properties at the side or rear	CO/Perpetual		
31	The design of the wall (required by condition #8) shall incorporate the design of the French drain that will collect water by the wall and discharge it.	BP/Perpetual	Eng./Plan ning/ISD	
32	The garage area in the back yard shall be covered by a minimum of 18 inches of dirt.	CO/Perpetual	Planning/I SD	
33	Each unit shall include two deeded parking spaces. The remaining two parking spaces in each garage shall be available to visitors of all three of the units that share the garage.	CO/Perpetual	Planning/I SD	



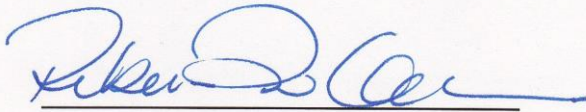
Attest, by the Planning Board:



Joseph Favaloro



Dorothy A. Kelly Gay



Rebecca Lyn Cooper



Gerard Amaral



Michael A. Capuano, Esq.



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 _____

