



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
JOSEPH A. CURTATONE
MAYOR

GEORGE J. PROAKIS
EXECUTIVE DIRECTOR

PLANNING DIVISION STAFF

SARAH LEWIS, *DIRECTOR OF PLANNING*
SARAH WHITE, *PLANNER/PRESERVATION PLANNER*
ALEX MELLO, *PLANNER*

Case #: ZBA 2016-89-R1-(11/14)

Date: December 12, 2018

Recommendation: Approval

MONIQUE BALDWIN, *ADMINISTRATIVE ASSISTANT*

PLANNING STAFF MEMORANDUM

Site: 43-45 Oak Street

Applicant Name: We Close the Deal, LLC
Applicant Address: 43-45 Oak Street, Somerville, MA 02143
Owner Name: We Close the Deal, LLC
Owner Address: 43-45 Oak Street, Somerville, MA 02143
Alderman: Jesse Clingan

Legal Notice: Applicants and Owners, We Close the Deal, LLC, seek a special permit under §5.3.1 of the SZO to revise a condition of the original special permit that required utilities to be buried underground. The Applicant requests to install the utilities above ground. RB zone. Ward 4.

Dates of Public Hearing: Zoning Board of Appeals – December 12, 2018

On November 2, 2016, the ZBA approved, with conditions, a special permit for 43-45 Oak Street to do the following: alter a non-conforming property under §4.4.1 and §9.5 of the SZO through “a renovation and expansion of a 2-story 4-unit residential building to 3-story 4-unit residential with finished basement and §9.5 for parking relief.” One of the conditions attached to the approval was Condition # 14 which stated:

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.

The Applicant seeks to revise their Special Permit by having this condition struck by the ZBA.

Under §5.3.8 of the SZO, a special permit may be revised as long as a Certificate of Occupancy (CO) or final sign-off has not yet been received. A CO has not been issued and a final sign-off has not been received for 43-45 Oak Street.

Highway, Lights & Lines, along with the Wiring Inspector, the City agencies and agents that have final jurisdiction over whether utilities are to be buried or allowed to go aerial, have determined that it is in the city's best interest to allow the utilities to remain overhead due to the significant amount of roadway and sidewalks that would need to be dug up to accomplish the utility burial. These departments further concluded that such disruption to the City streets and sidewalks, as well as to the neighborhood and adjoining properties was not in anyone's best interest.

Staff has this determination in writing from Steven MacEachern, the Superintendent of Highway, Lights & Lines who also works in coordination with the Wiring Inspector. This determination, together with Staff's original inquiry email into this matter is attached to this memo.

Staff has attached a memo from Steve MacEachern, Superintendent of Highway, Lights and Lines affirming that these lines must go aerial and not be buried.

In light of the above, Staff advises the ZBA to strike Condition #14 from the special permit. All other conditions attached to the original approval still apply.

Sarah White

From: Steven MacEachern
Sent: Monday, December 03, 2018 4:23 PM
To: Sarah White; John Power
Subject: RE: 43-45 Oak - Confirmation needed

Hi Sarah,

Yes we have reviewed this property and the ongoing project. It would be in the city's best interest to allow this project to remain overhead. To go underground would require digging up a fair amount of the roadway and sidewalk. This would further disrupt the neighborhood and surrounding property's. I have spoken with the wire inspector in ISD, we are in agreement on this change.

Steven MacEachern

Superintendent Highway Lights and Lines

City of Somerville



From: Sarah White
Sent: Friday, November 30, 2018 1:00 PM
To: Steven MacEachern <SMacEachern@somervillema.gov>; John Power <JPower@somervillema.gov>
Subject: 43-45 Oak - Confirmation needed
Importance: High

Steve/John –

The Applicants for a project at 43-45 Oak Street are looking to have a Condition #14 of their special permit removed. This condition requires all utilities to be buried and the Applicant wishes to have them above-ground. Is this something that you are ok with? I will need to know with an email confirmation in order for the applicant to be able to go forward with their application in front of the ZBA on December 12th. I would need this written confirmation from you no later than Tuesday, December 4 at 4:00pm. I've attached the decision so that you can see the condition and the plan set associated with the project as well.

Any questions, please let me know.

Have a good weekend.

Best,

Sarah M. White

City Planner / Preservation Planner

Office of Strategic Planning and Community Development
City of Somerville
93 Highland Avenue
Somerville, MA 02143
617.625.6600 x2534
swhite@somervillema.gov

PLANNING OFFICE HOURS:

M-W 8:30AM – 4:30PM

Th 8:30am – 7:30pm

F 8:30am – 12:30pm



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
JOSEPH A. CURTATONE
MAYOR

MICHAEL F. GLAVIN
EXECUTIVE DIRECTOR

PLANNING DIVISION

ZONING BOARD OF APPEALS MEMBERS

ORSOLA SUSAN FONTANO, CHAIRMAN
RICHARD ROSSETTI, CLERK
DANIELLE EVANS
ELAINE SEVERINO
JOSH SAFDIE
ANNE BROCKELMAN, (ALT.)

Case #: ZBA 2016-89
Site: 43 Oak Street
Date of Decision: November 2, 2016
Decision: Petition Approved with Conditions
Date Filed with City Clerk: November 15, 2016

ZBA DECISION

Applicant Name:	We Close the Deal, LLC
Applicant Address:	320 Washington Street, Suite #3FF, Brookline, MA 02445
Property Owner Name:	We Close the Deal, LLC
Property Owner Address:	320 Washington Street, Suite #3FF, Brookline, MA 02445
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145

Legal Notice: Applicant/Owner, We Close The Deal LLC, seeks a Special Permit under SZO §4.4.1 to approve a renovation and expansion of a 2-story 4-unit residential building to 3-story 4-unit residential with finished basement and §9.5 for parking relief.

<u>Zoning District/Ward:</u>	RB zone/Ward 2
<u>Zoning Approval Sought:</u>	§4.4.1 & §9.5
<u>Date of Application:</u>	July 25, 2016
<u>Date(s) of Public Hearing:</u>	10/5, 10/19 & 11/2/16
<u>Date of Decision:</u>	November 2, 2016
<u>Vote:</u>	4-0

Appeal #ZBA 2016-89 was opened before the Zoning Board of Appeals at Somerville City Hall on October 5, 2016. 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 Zoning Board of Appeals took a vote.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
(617) 625-6600 EXT. 2500 • TTY: (617) 666-0001 • FAX: (617) 625-0722
www.somervillema.gov

DESCRIPTION:

The proposal includes an addition of a full third floor, partial finishing of the basement to include bedrooms, and a full renovation of the existing structure. The number of units remains the same (4) however the bedroom counts change to 2 2-bedroom units and 2 3-bedroom units.

FINDINGS FOR SPECIAL PERMIT (SZO §5.1):

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."*

Nature of Application: 6.1.2. RB - Residence Districts

This alteration to a nonconforming structure requires the Applicant to obtain special permits under §4.4.1 of the Somerville Zoning Ordinance (SZO). The structure is currently nonconforming with respect to the following use / dimensional requirements:

Lot Area: the current size is 4,602 square feet which is under the required minimum of 7,500 s.f. The lot size is a result of the irregular shape of the lot and the non-conforming Street Frontage of 12.4' as opposed to the minimum 50' required in the RB zone.

Yards: the existing Front Yard, not including the narrow length of the entrance way is 5.4' at the shallowest point instead of the required 15'. (From the front property line at the street, including the narrow portion of the lot, the front of the structure is setback approximately 52'.) The Side Yards are approximately one foot on the left side while the right side yard is 12.2' and the requirements state a minimum of 8' one side and 17'.

Section 4.4.1 states that "[l]awfully existing one-and two-family dwellings which are only used as residences, which are nonconforming with respect to dimensional requirements, may be enlarged, extended, renovated or altered by special permit granted by the SPGA in accordance with the procedures of Article 5."

In considering a special permit under §4.4 or 4.5 of the SZO, the Board finds the proposed renovation and alteration is not substantially more detrimental to the neighborhood than the existing nonconforming building. The building will not additionally impact traffic volumes or congestion, the adequacy of municipal water supply and sewer capacity, noise, odor, scale, on-street parking, shading, visual effects or neighborhood character.

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 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 protect and promote a housing stock that can accommodate the diverse household sizes and life stages of Somerville residents at all income levels, paying particular attention to providing housing affordable to individuals and families with low and moderate incomes; and to preserve and increase the amenities of the municipality.

The proposal is consistent with the purpose of the district, which is, "To establish and preserve medium density neighborhoods of one-, two- and three-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts."

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.

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: Oak Street is a residential area between Union Square and Inman Square (Cambridge). The neighborhood is made up of single-, two-, and three-family residential buildings, some of which have been converted to apartments. Most are wood-frame structures with siding that vary in height from 2-1/2 to 3 stories tall. Many have driveways for on-site parking as Oak Street is narrow and has parking only on one side.

Impacts of Proposal (Design and Compatibility): The Principal structure is in keeping with the surrounding structures. The property is located at a bend in the street which creates the irregular lot size and shape. Due to this irregularity, the principal structure seems visually large on the lot compared to the adjacent properties but the larger setback from the street helps reduce the sense of visual dominance.

Increasing the number of bedrooms in two of the units does not trigger additional parking requirements. However, as there is currently no on-site parking associated with the existing dwellings, the demand for on-street parking spaces will likely increase.

5. Adverse environmental impacts: *The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.*

Impacts of Proposal (Environmental): There are no adverse environmental impacts associated with this project.

6. Vehicular and pedestrian circulation: *The circulation patterns for motor vehicles and pedestrians which would result from the use or structure will not result in conditions that create traffic congestion or the potential for traffic accidents on the site or in the surrounding area.*

Impacts of Proposal (Circulation): There are no increases in pedestrian or vehicular circulation impacts associated with this project.

6. Housing Impact: *Will not create adverse impacts on the stock of existing affordable housing.*

Impacts of Proposal (Housing): There are no changes in the stock of existing affordable housing associated with this project.



7. 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, transform key opportunity areas, preserve and expand an integrated, balanced mix of safe, affordable and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups; and, make Somerville a regional employment center with a mix of diverse and high-quality jobs. The areas in the SomerVision map that are designated as enhance and transform should most significantly contribute towards the SomerVision goals that are outlined in the table below. The areas marked as conserve are not expected to greatly increase the figures in the table since these areas are not intended for large scale change.*

<u>SomerVision Summary</u>	<u>Existing</u>	<u>Proposed</u>
<i>Dwelling Units:</i>	4	4
<i>Affordable Units:</i>	0	0
<i>Commercial Sq. Ft.:</i>	0	0
<i>Estimated Employment:</i>	0	0
<i>Parking Spaces:</i>	0	0
<i>Publicly Accessible Open Space:</i>	0	0



DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Elaine Severino with Josh Safdie and Anne Brockelman absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals voted **4-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
1	Approval is for the full renovation including the addition of habitable space in the basement and a third floor. 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 25th, 2016</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> </tbody> </table>			
Date (Stamp Date)	Submission			
July 25 th , 2016	Initial application submitted to the City Clerk's Office			
Any changes to the approved site/building plans and elevations that are not <i>de minimis</i> must receive SPGA approval.				
Pre-Construction				
2	The Applicant shall complete the Site Plan Review Checklist and supply the information to the Engineering Office. The plans must comply with the City's Stormwater Management Policy.	BP	Eng.	
3	The Applicant must contact the Engineering Department to coordinate the timeline for cutting or opening the street and/or sidewalk for utility connections or other construction. There is a moratorium on opening streets from November 1st to April 1st and there is a list of streets that have additional opening restrictions.	BP	Eng	
4	The Applicant shall develop a demolition plan in consultation with the City of Somerville Inspectional Services Division. Full compliance with proper demolition procedures shall be required, including timely advance notification to abutters of demolition date and timing, good rodent control measures (i.e. rodent baiting), minimization of dust, noise, odor, and debris outfall, and sensitivity to existing landscaping on adjacent sites.	Demolition Permitting	ISD	
Construction Impacts				
5	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.	



6	Approval is subject to the Applicant's and/or successor's right, title and interest in the property.	Cont.	Plng.	Deed submitted & application formed signed
7	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	
8	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	
Design				
9	An exterior light and electrical receptacle is required for or all levels of the decks.	Final sign off	Wiring Inspector	
10	As per sheet A-101 of the Special Permit Set dated 08/15/2016, the basement storage/mechanical space must remain as labeled and not occupied until such a time as the zoning may change or another Special Permit is granted.	Perpetual	Plng. / ISD	
Site				
11	All trash and recycling containers will be fully screened or stored out of view from the public right-of-way.	Perpetual	Plng. / ISD	
12	Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards, and in accordance with SZO §10.2.2 and §10.6.2;	Perpetual	Plng. / ISD	
13	There shall be a minimum of one tree for each 1,000 sf of required landscaped area under SZO §10.3.			
14	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.	Installation of Utilities	Wiring Inspector	
Miscellaneous				
15	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				
16	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
17	Any transformers should be located as not to impact the building or landscaped area, and shall be fully screened.	Electrical permits & CO		



18	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.	
19	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.	CO	Plng/OS E	
Final Sign-Off				
20	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
Elaine Severino

Attest, by the Administrative Assistant:

Dawn M. Pereira

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 _____

