



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

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Case #: ZBA 2018-194
Site: 47 Oliver Street
Date of Decision: June 19, 2019
Decision: *Approved with Conditions*
Date Filed with City Clerk: July 3, 2019

ZBA DECISION

Site: 47 Oliver Street
Applicant Name: North America Development, LLC
Applicant Address: 93 Broadway, Somerville, MA 02145
Owner Name: Selma P. Damasceno
Owner Address: 47 Oliver Street, Somerville, MA 02145
City Councilor: Matthew McLaughlin

Legal Notice: Applicant, North America Development, and Owner, Selma P. Damasceno, seek special permits under §4.4.1 of the SZO to alter a non-conforming property including increasing the Gross Floor Area (GFA) by more than 25%, upward and linear extension of the non-conforming left side yard setback through the construction of a large rear addition. Number of units to increase from two to three. Parking relief under Article 9 of the SZO. RB zone. Ward 1.

<u>Zoning District/Ward:</u>	RB zone. Ward 1.
<u>Zoning Approval Sought:</u>	SZO §4.4.1 and Article 9
<u>Date of Application:</u>	December 20, 2018
<u>Date(s) of Public Hearing:</u>	2/20, 3/6, 3/20, 4/3, 4/17, 5/1, 5/15, 6/5, 6/19
<u>Date of Decision:</u>	June 19, 2019
<u>Vote:</u>	5-0

Case number # **ZBA 2018-194** was opened before the Zoning Board of Appeals in the Council Chambers at Somerville City Hall. 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 June 19, 2019, the Zoning Board of Appeals took a vote.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
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I.PROJECT DESCRIPTION

The entire property will be overhauled. Details follow and the triggers for special permitting are indicated.

- all bituminous material will be removed from the lot
- the concrete walkway along the left side of the property will be removed and the area will be landscaped
- the roofline of the original portion of the structure will be raised and changed from gable to flat
- the street-facing portion of the building will somewhat simulate a triple-decker appearance
- the number of units on the property will increase from 2 to 3
- the existing rear additions will be removed
- two flat-roofed additions will be constructed. The first of these additions will follow the existing, non-conforming left side yard setback. The second of these additions will step in slightly from the left line of the building. Each of these additions will house one residential unit. The new building will be constructed in the manner of a townhouse with one residential unit built behind the other, running “shotgun” down the lot toward the rear of the parcel.
- roof decks are proposed for each unit with separate head houses for each
- the front elevation single-story bay will become a three-story bay
- pervious pavers are proposed for the new driveway
- two side-by-side parking spaces are proposed and one garage space under the rear
- the area at the rear of the building originally proposed for three parking spaces is now proposed as green space

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 RB zone requires a 10-foot side yard setback for a three-story building (footnote 7 of Section 8.5.H of the SZO). The existing left side yard setback is 3.8 feet toward the front of the property and 4.1 feet toward the rear. The Applicant proposes maintaining this existing 3.8’ setback for the first and second townhouse unit. The third townhouse unit will step further away from the property line, but the Board cannot find where this new distance has been indicated on the plan set.

However, when a townhouse structure is proposed, as is the case with 47 Oliver, the following rule applies as cited in footnote 9 Section 8.5.H of the SZO:

Side yards for townhouse buildings: Whenever a building of two (2) or more townhouse units is built with a common fire wall with another dwelling, the side yards shall be at least fifty (50) percent greater than the minimum widths prescribed above in footnote 7. [Emphasis, the Board]

Therefore, in the case of 47 Oliver Street, the minimum required setback should be at 15 feet. The existing conditions are significantly under this amount.

Gross Floor Area (GFA)

When the GFA of a property is increased by more than 25%, a special permit is required. Due to the increased space created by the construction of a full third story along with the increase in footprint and living area due to two new additions at the rear of the building, the GFA will increase by more than 25%.

Parking

The Board noted in the “Proposal” section of this report that the property is already non-conforming with regard to legal parking spaces. The Applicant proposes that the property continue to be non-conforming with regard to parking. The assessment regarding relief for number of parking spaces appears below:

Unit #	Existing BDR	Existing Req. Pkg.	Unit #	Proposed BDR	Proposed Req. Pkg.
#1	2	1.5	#1	3	2.0
#2	3	2.0	#2	3	2.0
#3	n/a	n/a	#3	3	2.0

TOTAL: 4.0
 (rounded from 3.5)

TOTAL: 6.0

Formula: *new parking requirement – old parking requirement = # additional spaces needed*

47 Oliver: 6.0 – 4.0 = 2.0 spaces of relief needed

Other determinations



This portion of Oliver Street is a two-way street bound by Glenn and Cross Streets. Most of the structures on this portion of Oliver Street are 2 ½-story gable-fronted residential buildings with the occasional two-story and older, multi-plex interloper. There is minimal green space and an excessive amount of bituminous material on the private properties along this street.

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

Due to the conversion of the structure from a two-family to a three-family, the introduction of another residential unit on the site along with the inclusion of additional bathrooms and added persons living on the parcel, there will be more demand placed on the City's water supply and sewer system. Because this project will need to be reviewed by the Engineering Department prior to the granting of a building permit, they will determine if any measures need to be taken by the Applicant to address any impacts, including possible payments.

In general, taken independently, the increase of one residential unit, even one with one or more vehicles associated with it, would not substantially increase the traffic volume in the immediate area. Due to residents coming and going from any property at staggering times, additional traffic congestion is not anticipated. It is certainly possible that there will be additional cars parked along Oliver Street. The Board noted the parking situation on Oliver Street at the outset of this report. This area is well-served by several bus routes and is about a 16-minute walk to the Sullivan Square T Station where additional bus routes can be picked up.

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 proposed 3-family use is consistent with the purposes of the RB zone which are "[t]o 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." However, please refer to the Board's earlier comments regarding the particular aspects of this proposal that the Board finds does not meet the findings necessary for conditional approval, irrespective of its general compliance with being a 3-family proposal in a zone that permits 3-family structures.

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 the Comments portion of this report. The Board reiterates those findings here.

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:

While the proposal will add one additional residential unit to the City's available housing stock, will improve the appearance of the structure on the property and remove the bituminous material, the Board finds that the proposal could do much better in terms of providing quality outdoor space for the building's future residents. Earlier in this report, the Board proposed a way in which this improvement could be realized.

III.DECISION:

Present and sitting were, Susan Fontano, Danielle Evans, Josh Safdie, Anne Brockelman, Elaine Severino, and Drew Kane. 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 **5-0** to **APPROVE** the request **WITH CONDITIONS**. The following conditions were attached:



#	Condition	Timeframe for Compliance	Verified (initial)	Notes										
1	Approval is to increase the number of dwelling units from one to three, upward extension of the non-conforming left side yard setback, increase in GFA by more than 25%, relief for two parking spaces.	BP/CO	ISD/PIng.											
	<table border="1"> <thead> <tr> <th>Date</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>December 20, 2018</td> <td>Application submitted to City Clerk's office.</td> </tr> <tr> <td>February 5, 2019</td> <td>Updated plans submitted to OSPCD</td> </tr> <tr> <td>March 15, 2019</td> <td>Updated plans submitted to OSPCD</td> </tr> <tr> <td>May 15, 2019</td> <td>Updated plans submitted to OSPCD</td> </tr> </tbody> </table>				Date	Submission	December 20, 2018	Application submitted to City Clerk's office.	February 5, 2019	Updated plans submitted to OSPCD	March 15, 2019	Updated plans submitted to OSPCD	May 15, 2019	Updated plans submitted to OSPCD
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May 15, 2019	Updated plans submitted to OSPCD													
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.														
Engineering														
2	<p>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."</p> <p>The Applicant shall work with Engineering to meet this condition and provide the required fees/mitigation including, but not limited to I/I payments.</p>	BP	Engineering/ISD											
3	The Applicant must comply with all Engineering requirements pertaining to finishing basements.	BP/CO	Engineering/ISD											
Design														
4	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/PIng											
Construction Impacts														



5	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	
6	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	
7	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.	During Construction	ISD	
8	Construction shall be limited to M-F 7:30am – 5:00pm. No weekend construction or construction-related work shall occur, including finish work and deliveries.	During Construction	ISD	
9	A construction traffic management plan shall be submitted to Traffic and Parking for their review and Approval.	BP	ISD/T&P	
Site				
10	The driveway and any parking area shall be constructed of permeable pavers or pea stone, or similar, based on the review and approval of Planning Staff.	BP	ISD/Plng	
11	All hardscaping to be used on the property shall first be reviewed and approved by Planning Staff prior to the issuance of a building permit.	BP	ISD/Plng	
12	All bituminous material and/or cement used for driveways, walkways, parking areas, patios, and the like shall be removed from the property.	CO	ISD/Plng	
13	All garbage and recycling shall be stored out-of-view of the public way and shall be screened.	Perpetual	ISD/Plng	
14	An updated landscape/site plan shall be submitted to the ZBA indicating the location of the recycling/garbage storage areas.	BP	ISD/Plng	
Public Safety				
15	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	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, including roof decks. 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	
18	The building shall be sprinkled.	CO	ISD/FP	
Miscellaneous				
19	Venting and piping shall be painted or wrapped the same color as the exterior of the house from which they protrude. Venting and piping shall not protrude from the Oliver Street façade of the building.	CO	ISD/Plng	
20	Utility meters shall not be installed on the front façade of the structure.	CO	ISD/Plng	
21	All new or enlarged window openings that are located 3 feet or less from a property line are required to be fire-rated, inoperable per building code. The Applicant shall work with ISD to ensure compliance.	CO	ISD	
Final Sign-Off				
22	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:

Susan Fontano, *Chairman*
Danielle Evans, *Clerk*
Josh Safdie
Elaine Severino
Anne Brockelman
Drew Kane (Alt.)

Attest, by the Planner: _____

Sarah White

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 _____

