



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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ELAINE SEVERINO
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ANNE BROCKELMAN, (ALT.)

Case #: ZBA 2018-113
Site: 26 Ossipee Road
Date of Decision: November 7, 2018
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: November 14, 2018

ZBA DECISION

Applicant Name: Todd Billet
Applicant Address: 24-26 Ossipee Road, #2, Somerville, MA 02144
Owner Name: Todd Billet
Owner Address: 24-26 Ossipee Road, #2, Somerville, MA 02144
Alderman: Katjana Ballantyne

Legal Notice: Applicant and Owner, Todd Billet, sees Special Permits under §4.4.1 of the SZO to alter a non-conforming property by constructing a roof deck on top of a single-story garage on the property line. RA zone. Ward 7.

<u>Zoning District/Ward:</u>	7
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	August 15, 2018
<u>Date(s) of Public Hearing:</u>	10/17, 10/24, 11/7
<u>Date of Decision:</u>	November 7, 2018
<u>Vote:</u>	5-0

Appeal #ZBA 2018-113 was opened before the Zoning Board of Appeals in the Aldermanic Chambers at Somerville City Hall on October 17, 2018. 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 7, 2018 the Zoning Board of Appeals took a vote.



DESCRIPTION:

The Applicant proposes creating additional outdoor living space for the second-third floor unit (Unit #2) by constructing a deck on the roof of the single-story garage. As noted above, the garage and house are already connected through the rear, second story deck.

FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1):

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."*

Regarding §4.4.1

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."

Rear yard setback

In the RA zone, a minimum rear yard setback of 20 feet is required. The connected structure at 26 Ossipee Road is already non-conforming with a rear yard setback of 3'0. The Applicant proposes increasing the rear yard setback to a minimum of five (5.0) feet from the property line. The proposal improves the non-conformity by 2.0 feet.

The rear of the property at 26 Ossipee Road is buttressed by a retaining wall topped by a vine-covered wood fence. The parcel abutting 26 Ossipee to the rear is further elevated due to a change in grade.

Left side yard setback

In the RA zone, a minimum left side yard setback of 8.0 feet is required. The existing left side yard setback varies from none to perhaps a foot at the rear of the garage structure. The Applicant proposes improving the left side yard setback to 5.0 feet. Views of the left abutting property from the proposed roof deck will be shielded via screening material.

Additional Determinations

In addition to the considerations discussed above, the Board does not anticipate that this proposal will increase noises or odors in this neighborhood. Regular construction-related noise can be expected on this site as the project is underway. However, this uptick in noises will be temporary in nature. The Board anticipates that any odors associated with this project will be construction-related and, post-construction, will be in keeping with those typically experienced by residents living in close proximity to each other. Abutters should expect normal noises associated with regular outdoor social activity.

There are no additional impacts on the municipal water supply expected as a result of this 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 the proposal is consistent with the purposes of the RA zone which are “[t]o establish and preserve quiet neighborhoods of one- and two-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts.”

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 area surrounding this Ossipee Road parcel contains other properties with exterior decks built atop single-story garage structures. While one of these decks is known to have been constructed through the special permitting process, it appears that others may not have been legally built. This being said, there is evidence that at least one garage rooftop deck in the general vicinity was legally permitted in 2008.

The ZBA must decide each proposal before it on its own merits, however, and not in comparison to past approvals or denials. The establishment of a rooftop deck through special permit in 2008 does not set a precedent for the ZBA to approve such a proposal in the future. Similarly, a denial of other rooftop decks does not set a precedent for the ZBA to deny such a proposal on other properties. The merits of each proposal presented to the ZBA should be considered individually for approval or not.

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 would provide the residents of the second-and-third-floor unit with additional outdoor living space.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Elaine Severino, and Anne Brockelman. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit with Site Plan Review and Variance. Elaine Severino seconded the motion. The Zoning Board of Appeals voted **5-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
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1	Approval is to construct a roof deck atop a connected, single-story garage structure and within the left and rear yard setbacks.	BP/CO	ISD/PIng.							
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>August 15, 2018</td> <td>Application submitted to City Clerk's office.</td> </tr> <tr> <td>October 30, 2018</td> <td>Updated plans submitted to OSPCD</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	August 15, 2018	Application submitted to City Clerk's office.	October 30, 2018	Updated plans submitted to OSPCD
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October 30, 2018	Updated plans submitted to OSPCD									
<p style="color: red;">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>										
Design										
1	All materials to be used on the garage roof deck project shall be submitted to, reviewed and approved by Planning Staff prior to the issuance of a building permit.	BP	ISD/PIng							
Construction Impacts										
2	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							
3	All construction materials and equipment must be stored <u>on the project site</u> . 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							
4	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 see.	During Construction	ISD							
5	Construction shall be limited to M-F 7:30am – 5:00pm. No weekend/holiday construction or construction-related work shall occur.	During Construction	ISD							
Public Safety										
6	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP							
7	All smoke detectors shall be hard-wired.	CO	Fire Prevention / ISD							
8	All exterior lighting on the site shall be downcast and shall not cast light onto surrounding properties in any fashion.	CO	ISD/PIng.							



9	In accordance with City of Somerville ordinances, no grills, barbeques, chimineas or the like shall be allowed on decks and porches. These requirements shall be written into any rental agreements or condo documents. Proof of the inclusion of this language shall be shown to Planning Staff prior to the issuance of a CO.	CO/Perpetua l	ISD/PlngF P	
Site				
10	The Applicant shall install additional plantings and screening materials as indicated on their ZBA plan set reviewed by the SPGA on November 7, 2018.	CO	ISD/Plng	
Final Sign-Off				
11	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
Anne Brockelman

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 _____

