



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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DREW KANE, (ALT.)

Case #: ZBA 2019-23
Site: 44 Park Street
Date of Decision: April 17, 2019
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: April 26, 2019

ZBA DECISION

Site: 44 Park Street
Applicant Name: Dawn Lorino, Director of Bigelow Coop Daycare
Applicant Address: 44 Park Street, Somerville, MA 02143
Owner Name: Belam II LLC
Owner Address: 15 Ward St, Somerville, MA 02144
Agent Name: Ann Fullerton
Agent Address: 23 Josephine Ave, Somerville, MA 02144
City Councilor: J.T. Scott

Legal Notice: Applicant, Dawn Lorino, and Owner, Belam II LLC, seek a Special Permit to remove a paving material condition included in a Special Permit approval from 2011. RC Zone. Ward 2.

<u>Zoning District/Ward:</u>	RC Zone. Ward 2.
<u>Zoning Approval Sought:</u>	SZO §5.3.8
<u>Date of Application:</u>	February 28, 2019
<u>Date(s) of Public Hearing:</u>	April 17, 2019
<u>Date of Decision:</u>	April 17, 2019
<u>Vote:</u>	4-0

Case # ZBA 2019-23 was opened before the Zoning Board of Appeals in the Council Chambers at Somerville City Hall on April 17, 2019. 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 April 17, 2019 the Zoning Board of Appeals took a vote.



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

The proposal is to change the material of the teardrop in the parking area from pervious pavers to granite cobblestones in order to reduce maintenance requirements. The project requires zoning relief because the teardrop area's material was the subject of a condition in a *de minimis* change to a previous special permit approval.¹

II. FINDINGS FOR SPECIAL PERMIT (SZO §5.1.4):

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."*

The structure is currently nonconforming with respect to the following dimensional requirements: lot area, ground coverage, landscaped area, and pervious area.

The proposal will not impact any non-conforming dimensions. The project requires zoning relief only because the material to be used in the teardrop area was a subject of discussion in a previous special permit approval.

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.”

In considering a special permit under §4.4 of the SZO, the Board finds that the alterations proposed would not be substantially more detrimental to the neighborhood than the existing conditions. The new paving material is expected to require significantly less maintenance than the existing conditions but will not reduce the usefulness of the teardrop for traffic control and will not limit the ability of the Fire Department to access the rear of the property. The proposal has been designed to minimally impact the neighbors and the pervious area and landscaped area will continue to be conforming to the requirements of the SZO. Lastly, the Engineering Division reviewed the proposed material change and confirmed that this change will not negatively impact the drainage/permeability of the teardrop area.

¹ The *de minimis* approval letter is dated August 28, 2012 and is a revision to case number ZBA 2011-83. The 5th revision listed in the letter is the one relevant to this case.



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: to promote the health, safety, and welfare of the inhabitants of the City of Somerville; to provide for and maintain the uniquely integrated structure of uses in the City; to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; to conserve the value of land and buildings; to adequately protect the natural environment; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality.

The proposal is consistent with the purpose of the RC district, which is, *"To establish and preserve a district for multi-family residential and other compatible uses which are of particular use and convenience to the residents of the district."*

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: To the north of the subject property are the MBTA commuter rail tracks and a mixture of residential and commercial uses. To the south, east and west are mostly residential neighborhoods with one- and two-family homes.

Impacts of Proposal (Design and Compatibility): Changing the material of the teardrop area of the driveway is not expected to affect its ability to improve the circulation pattern in the parking lot, or to restrict the Fire Department’s access to the property. There are no other changes to the site being made.

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

6. 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.*

III.DECISION:

Present and sitting were Members Orsola Susan Fontano, Danielle Evans, Drew Kane and Elaine Severino. Upon making the above findings, Danielle Evans made a motion to approve the request for Special Permit. Elaine Severino seconded the motion. The Zoning Board of Appeals voted **4-0** to **APPROVE** the request **WITH CONDITIONS**. The following conditions were attached:



#	Condition	Timeframe for Compliance	Verified (initial)	Notes
1	Approval is for removing the pervious pavers in the teardrop area and replacing them with granite cobblestones. 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>February 28, 2019</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> </tbody> </table>			
Date (Stamp Date)	Submission			
February 28, 2019	Initial application submitted to the City Clerk's Office			
Any changes to the approved plans that are not <i>de minimis</i> must receive SPGA approval.				
Construction Impacts				
2	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.	
3	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	
4	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	
5	For the convenience of and respect for the neighborhood, during the construction phase, construction work shall not begin prior to 7:30am and shall finish no later than 5pm Monday through Friday. There shall be no construction or construction-related work performed on weekends or holidays, including deliveries.	During Construction	ISD	
Design				
6	Applicant shall provide final material samples for paving to Planning Staff for review and approval prior to the issuance of a building permit.	BP	Plng.	
Miscellaneous				
7	Granting of the applied for use or alteration does not include the provision for short term rental uses, such as AirBnB, VRBO, or the like. Separate approvals are needed for the aforementioned uses.	Ongoing	ISD / Plng.	
8	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				
9	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
10	Per Somerville fire safety regulations, grills, barbecues, chimineas and the like are NOT permitted on decks or porches.	Perpetual	FP/ISD	
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*
Danielle Evans, *Clerk*
Elaine Severino
Drew Kane (Alt.)

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 _____

