



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 2018-95
Site: 76-78 Rogers Ave
Date of Decision: September 17, 2018
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: September 26, 2018

ZBA DECISION

Applicant / Owner Name: Colin & Jessica Macdonald
Applicant / Owner Address: 76-78 Rogers Avenue, Somerville, MA 02144
Agent Name: Bruce Draper
Agent Address: 27 Shandel Drive, Tewksbury, MA 01876
Alderman: Mark Niedergang

Legal Notice: Applicants and Owners, Colin & Jessica Macdonald, seek Special Permits under §4.4.1 of the SZO for the following: upward and linear extension of the non-conforming right side yard setback by adding a second-story rear deck; the enlargement of an existing, non-conforming right elevation dormer within the right side yard setback, the enclosure of a non-conforming second-story front porch* within front and right side yard setbacks, and increase the non-conforming FAR. RA zone. Ward 5.

*Since the publication of this legal notice, the proposal to enclose the second-story front porch has been removed from the scope of the project.

<u>Zoning District/Ward:</u>	RA Zone. Ward 5.
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	July 19, 2018
<u>Date(s) of Public Hearing:</u>	September 17, 2018
<u>Date of Decision:</u>	September 17, 2018
<u>Vote:</u>	4-0

Appeal #ZBA 2018-95 was opened before the Zoning Board of Appeals in the Aldermanic Chambers, Somerville City Hall, 93 Highland Ave, Somerville, MA. 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 September 17, 2018, 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

I. DESCRIPTION:

In addition to interior reconfiguration and the addition of a single dormer on the left elevation, the Applicant’s proposal includes the reconstruction and extension of a dormer along the main roof plane on the right elevation, and a second-story, partially-covered deck. The triggers for zoning relief are as follows:

Right side yard setback

The existing right side yard setback is non-conforming at 2.9 feet in a zone where a minimum setback of eight (8) feet is required.

Existing conditions present a right elevation dormer that also terminates 2.9 feet from the property line. The Applicants propose re-building the existing dormer and extending it such that its length is no greater than 50% of the length of the roof plane to which it is to be attached. As this dormer resides within the setback, a special permit is needed for its reconstruction and extension.

The Applicants further propose constructing a second-story, partially-covered rear deck within the right side yard setback. Though the proposed deck will slightly step in from the right façade of the main house, the right side of the deck will still rest within the right side yard setback. The proposed second-story deck results in the linear (from the rear façade of the house toward the rear yard) and upward extension of the non-conforming right side yard setback. Extending these non-conformities also require zoning relief in the form of special permits under §4.4.1 of the SZO.

FAR

The FAR of the existing structure is 1.25 in a zone where .75 is the maximum FAR allowed. Through interior reconfiguration, the reconstruction/lengthening of the right elevation dormer, combined with the creation of a single left elevation dormer, the FAR will increase to 1.32.

II. FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1):

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." 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."*



Section 4.4.1 of the SZO allows for legally-existing, non-conforming one- and two-family residences to be enlarged by Special Permit as long as the proposed changes do not create a situation that is more detrimental to the site or surrounding neighborhood than current conditions.

As noted earlier in this report, the trigger for special permitting is the work being done within the non-conforming right side yard setback (see “Proposal” above) and the increase in the non-conforming FAR.

Right side yard setback

Dormer The existing right elevation dormer is 17’ 7” in length. The applicant proposes re-building this dormer such that its pitch is 4/12 and the length is increased to 23’ 3” or, a total increase in length of 5’ 6”. At 23’ 3”, the proposed dormer is no greater than 50% of the roof plan to which it will be attached (46’ 6 ½”). The increase in pitch will provide the Applicants with greater ceiling height in this portion of the ½-story while the increased dormer length will allow for the opening of eave space for the inclusion of a new bathroom.

Increasing the pitch and dormer length will bring additional bulk/massing to this portion of the structure that is 2.9 feet from the property line. However, similarly designed and situated residential structures which are replete on both sides of Rogers Avenue, present lengthy shed dormers on the ½-story elevation that is closest to the property line.¹ While less massing is always preferred in such circumstances, the Board finds that the proposed increase in dormer length is minimal and will allow the Applicants to make some interior changes that will improve the livability of the interior space.

Second story rear deck As noted earlier in this report, the existing right side yard setback is 2.9 feet in a zone where a minimum 8-foot setback is required. The Applicants propose a linear and upward extension of the non-conforming right side yard setback through the construction of a second-story, partially-covered deck. The right line of the proposed deck appears to terminate further away from the right property line than 2.9 feet, but still within the side yard setback, thus requiring zoning relief.

Aerial views of Rogers Avenue along with Josephine Avenue and Highland Road, two streets immediately running parallel to Rogers, reveal a multitude of second-story open and covered decks resting in close proximity to property lines. The construction of the proposed second-story deck will allow for one or more individuals to congregate in an elevated location that is in close proximity to the right property line. The proposal does, however, allow for the Applicants to gain additional seasonal outdoor living space on a small lot.

FAR The existing structure is already significantly over the FAR limit for the RA zone (1.25 in a .75 zone). The enlarged right elevation shed dormer and left elevation single dormer are the exterior changes that make the proposed increase in FAR “noticeable” to the rest of the neighborhood. The remainder of the FAR increases stem from interior reconfiguration. As a result of all of the proposed changes, the FAR will increase to 1.32. The total increase in usable space created by the FAR increase is 245 square feet. The Board finds the proposed increase to be a very modest request that will result a more efficient use of interior space. The Board finds that the enlargement and creation of dormers to be consistent with similarly situated properties in the surrounding neighborhood.

¹ Such examples include 75, 69, 74, 79-81, 82 Rogers Avenue, among others. Unfortunately, some of the other similarly designed and situated structures along this street have shed dormers that exceed 50% of the roof plane to which they are attached. However, such dormers were constructed prior to the existence of the 50% dormer length regulation.



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 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 provide for and maintain the uniquely integrated structure of uses in the City; to lessen congestion in the streets; to protect health; 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 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 Board also finds that the proposal is consistent with the purpose of the RA district, which is, “[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 Board has discussed these findings above in “Compliance with Standards” and reiterates them here.

5. Housing Impact: Will not add to the City’s stock of affordable housing.

6. SomerVision: The proposal conforms to the purposes of SomerVision in that the proposed improvements to the property will allow for a resident family to have a better and more convenient use of interior and exterior space to the benefit of their household.

III. DECISION:

Special Permit under §4.4.1

Present and sitting were Members Orsola Susan Fontano, Elaine Severino, Anne Brockelman, and Josh Safdie. Upon making the above findings, Josh Safdie made a motion to approve the request for a Special Permit. Elaine Severino seconded the motion. 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 to reconstruct and lengthen a right elevation dormer within the right side yard setback, increase the FAR from 1.25 to 1.32, construct a left elevation single dormer, and construct a second story rear deck resulting in the upward and linear extension of the non-conforming right side yard setback.	BP/CO	ISD/Plng.															
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>July 19, 2018</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>July 30, 2018</td> <td>Revised plan set submitted to OSPCD</td> </tr> <tr> <td>July 31, 2018</td> <td>Updated information submitted to OSPCD</td> </tr> <tr> <td>August 24, 2018</td> <td>Updated existing and proposed plans submitted to OSPCD</td> </tr> <tr> <td>August 27, 2018</td> <td>Updated zoning data sheet submitted to OSPCD</td> </tr> <tr> <td>August 31, 2018</td> <td>Updated plan packet submitted to OSPCD</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	July 19, 2018	Initial application submitted to the City Clerk's Office	July 30, 2018	Revised plan set submitted to OSPCD	July 31, 2018	Updated information submitted to OSPCD	August 24, 2018	Updated existing and proposed plans submitted to OSPCD	August 27, 2018	Updated zoning data sheet submitted to OSPCD	August 31, 2018	Updated plan packet submitted to OSPCD
	Date (Stamp Date)				Submission													
	July 19, 2018				Initial application submitted to the City Clerk's Office													
	July 30, 2018				Revised plan set submitted to OSPCD													
	July 31, 2018				Updated information submitted to OSPCD													
	August 24, 2018				Updated existing and proposed plans submitted to OSPCD													
	August 27, 2018				Updated zoning data sheet submitted to OSPCD													
August 31, 2018	Updated plan packet 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																		
2	All exterior materials, including, but not limited to windows, doors, siding, roofing, trim, and the like, shall be submitted to Planning Staff for their review and approval prior to the issuance of a building permit. Vinyl siding, railings, balusters and similar shall not be approved.	BP	Planning Staff / ISD															
Construction Impacts																		
3	The Applicants 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	The applicants 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/ISD															



5	All construction materials and equipment shall be stored onsite. If occupancy of the street layout is required, such occupancy shall 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	
6	The Applicants 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 to April and there is a list of streets that have additional opening restrictions.	BP (only if opening the street is needed)	Eng	
7	The Applicants shall ensure that all food waste is removed from the project site on a daily basis.	During construction	ISD	
8	Construction and construction-related work shall occur between <u>7:30am and 5:00pm Monday through Friday only</u> . No construction or construction-related work shall occur on the weekends or holidays.	During construction	ISD	
9	Rodent baiting/control shall be undertaken as-needed.	During construction	ISD	
Site				
10	All mechanical equipment shall be screened from the view of the street and from abutting properties.	CO & Perpetual	Plng. / ISD	
11	All venting shall be painted or wrapped to match the color of the portion of the house from which it protrudes.	CO & Perpetual	Plng. / ISD	
12	All garbage and recycling shall be screened from the view of the street and abutting properties.	CO & Perpetual	Plng. / ISD	
Public Safety				
13	The Applicants shall meet the Fire Prevention Bureau's requirements.	CO	FP	
14	As per City regulations, there shall be no grills or similar cooking/heating equipment allowed on any decks or porches at any time.	Perpetual	FP/ISD	
15	All smoke detectors shall be hard-wired.	CO	Fire Prevention / ISD	
16	All exterior lighting shall be downcast and shall not cast illumination toward or onto abutting properties in any way.	CO	ISD	
Final Sign-Off				
17	The Applicants 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*
Josh Safdie
Anne Brockelman
Elaine Severino

Attest, by City 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 _____

