



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

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Case #: ZBA 2016-103
Site: 39 Russell Street
Date of Decision: October 19, 2016
Decision: Petition Approved with Conditions
Date Filed with City Clerk: November 2, 2016

ZBA DECISION

Applicant Name:	Gwen Simpkins, Delaporte Development
Applicant Address:	82 Dover Street, #3, Somerville, MA 02144
Property Owner Name:	T.P. Fodor
Property Owner Address:	7531 17 th Street NW, Washington, DC 20012
Agent Name:	N/A

Legal Notice: Applicant Gwen Simpkins and Delaporte Development seek to make alterations to a nonconforming structure under SZO 4.4.1 and a Special Permit with Site Plan Review under to establish a 3rd single family dwelling as a principle structure and at 39 Russell Street.

<u>Zoning District/Ward:</u>	RB zone/Ward 6
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	August 18, 2016
<u>Date(s) of Public Hearing:</u>	10/5 & 10/19/16
<u>Date of Decision:</u>	October 19, 2016
<u>Vote:</u>	5-0

Appeal #ZBA 2016-103 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.



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DESCRIPTION:

Proposal is to demolish rear structure and replace it with a single family home located off the rear lot line. The home will be four bedrooms with a basement and level above. There will be a subgrade garage accommodating two standard parking spaces, with two more parking spaces between the new structure and the existing homes. The placement of a residence behind another residence is an atypical situation and generally something not supported by staff. This case is not anticipated to set any type of precedence for dwelling units in a rear yard. The proposed zoning will not allow principle structures to be placed in the rear yard of another structure.

FINDINGS FOR SPECIAL PERMIT WITH SITE PLAN REVIEW (SZO §5.2 & §4.4.1):

In order to grant a special permit with site plan review, the SPGA must make certain findings and determinations as outlined in §5.2.5 of the SZO. This section of the report goes through §5.2.5 in detail.

1. **Information Supplied:**

The Board finds that the information provided by the Applicant conforms to the requirements of §5.2.3 of the SZO and allows for a comprehensive analysis of the project.

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 with site plan review.”*

The applicant is seeking to establish a third principle structure on the site, an SPSR condition was enacted by the 1997-10 ZBA decision and further supported by a court ruling.

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.

Though perhaps used as a garage now it was at one time a business of sort the alteration of the rear garage structure triggers 4.4.1 as it is non-conforming with side and rear setbacks.

In considering a special permit under §4.4. staff finds the construction of a third principle dwelling unit is not in keeping with the surrounding neighborhood as there are no other known situations such as this in the immediate area, though three dwelling units are allowed in the RB Zone.

3. **Purpose of District:** *The Applicant has to ensure that the project “is consistent with the intent of the specific zoning district as specified in Article 6”.*

6.1.2. RB - Residence Districts.

Purpose. 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.

The site and project are unique in that the single lot currently has two single family detached homes, and is seeking to add a third. While the unit count is allowed by right within the RB zone having three separate structures on a single lot will have an adverse impact on density and privacy for abutting neighbors. Neighbors have mostly supported the project at the time of this report.

4. **Site and Area Compatibility:** *The Applicant has to ensure that the project “(i)s designed in a manner that is compatible with the existing natural features of the site and is compatible with the characteristics of the surrounding area, and that the scale, massing and detailing of the buildings are compatible with those prevalent in the surrounding area”.*

Surrounding Neighborhood: the surrounding neighborhood is an eclectic mix of single, two, and three family homes in a variety of architectural styles. The proposed design is in harmony, but a third principle structure on the lot is not harmonious with the character of the neighborhood.

Impacts of Proposal (Design and Compatibility): The design is compatible with surrounding architecture in general form and detail.

5. Functional Design: *The project must meet “accepted standards and criteria for the functional design of facilities, structures, and site construction.”*

The project meets accepted standards for functionality. While having a diminished street presence it is aesthetically pleasing.

6. Impact on Public Systems: *The project will “not create adverse impacts on the public services and facilities serving the development, such as the sanitary sewer system, the storm drainage system, the public water supply, the recreational system, the street system for vehicular traffic, and the sidewalks and footpaths for pedestrian traffic.”*

The project is conditioned to comply with the city storm water policy.

7. 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.”*

No adverse environmental impacts are anticipated with respect to items 1-4 as outlined above as a result of the proposed construction.

8. Consistency with Purposes: *“Is consistent with: 1) the purposes of this Ordinance, particularly those set forth in Article 1 and Article 5; and 2) the purposes, provisions, and specific objectives applicable to the requested special permit with site plan review which may be set forth elsewhere in this Ordinance, such as, but not limited to, those at the beginning of the various sections.”*

The proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to The purposes of the Ordinance are 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 facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; to conserve the value of land and buildings; to preserve the historical and architectural resources of the City; to adequately protect the natural environment; to encourage the most appropriate use of land throughout the City; 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.

9. Preservation of Landform and Open Space: *The Applicant has to ensure that “the existing land form is preserved in its natural state, insofar as practicable, by minimizing grading and the erosion or stripping of steep slopes, and by maintaining man-made features that enhance the land form, such as stone walls, with minimal alteration or disruption. In addition, all open spaces should be designed and planted to enhance the attractiveness*



of the neighborhood. Whenever possible, the development parcel should be laid out so that some of the landscaped areas are visible to the neighborhood.”

The project will maintain a balance of open space currently on the lot, however it will shift the visible open space to behind the structure and out of public view.

10. Relation of Buildings to Environment: *The Applicant must ensure that “buildings are: 1) located harmoniously with the land form, vegetation and other natural features of the site; 2) compatible in scale, design and use with those buildings and designs which are visually related to the development site; 3) effectively located for solar and wind orientation for energy conservation; and 4) advantageously located for views from the building while minimizing the intrusion on views from other buildings.”*

The proposed structure occupies roughly the same volumetric space as the existing and is outside of all setbacks. The 3rd principle structure introduces an interesting if not a disharmonious massing scheme that is atypical for the neighborhood.

11. Storm water Drainage: *The Applicant must demonstrate that “special attention has been given to proper site surface drainage so that removal of surface waters will not adversely affect neighboring properties or the public storm drainage system. Storm water shall be removed from all roofs, canopies, and paved area, and routed through a well-engineered system designed with appropriate storm water management techniques. Skimming devices, oil, and grease traps, and similar facilities at the collection or discharge points for paved surface runoff should be used, to retain oils, greases, and particles. Surface water on all paved areas shall be collected and/or routed so that it will not obstruct the flow of vehicular or pedestrian traffic and will not create puddles in the paved area. In larger developments, where practical, the routing of runoff through sheet flow, swales or other means increasing filtration and percolation is strongly encouraged, as is use of retention or detention ponds. In instances of below grade parking (such as garages) or low lying areas prone to flooding, installation of pumps or other devices to prevent backflow through drains or catch basins may be required.”*

The storm water infiltration system will be reviewed by the City Engineering staff to ensure compliance with the City’s Storm water policy, and will implement any mitigation method or payment in lieu of that is deemed necessary by the engineering department.

12. Historic or Architectural Significance: *N/A*

13. Enhancement of Appearance: *The Applicant must demonstrate that “the natural character and appearance of the City is enhanced. Awareness of the existence of a development, particularly a non residential development or a higher density residential development, should be minimized by screening views of the development from nearby streets, residential neighborhoods of City property by the effective use of existing land forms, or alteration thereto, such as berms, and by existing vegetation or supplemental planting.”*

The new structure will replace a moldering garage which is overgrown and frequented by transient persons and vandals. New and improved landscaping will be installed enhancing the appearance to abutters and people on the public way.

14. Lighting: *With respect to lighting, the Applicant must ensure that “all exterior spaces and interior public and semi-public spaces shall be adequately lit and designed as much as possible to allow for surveillance by neighbors and passersby.”*

The lighting will be appropriate to the proposed residential use, conform to dimensions specified in the SZO, and is conditioned not to interfere with neighboring properties.

15. Emergency Access: *The Applicant must ensure that “there is easy access to buildings, and the grounds adjoining them, for operations by fire, police, medical and other emergency personnel and equipment.”*



According to fire prevention there is inadequate access to the proposed structure. The code for driveway width access for fire apparatus is 18 feet. Fire prevention has typically allowed that requirement to be reduced to 14 feet if the building has a sprinkler system. This plan does not satisfy either requirement. However as the structure is a 1-story single family with full suppression fire prevention is willing to accept the proposal.

16. Location of Access: *The Applicant must ensure that “the location of intersections of access drives with the City arterial or collector streets minimizes traffic congestion.”*

Access is granted via an easement between two single family structures. The easement is only 12’-6” and will be used as the main access for all three residential units.

17. Utility Service: *The Applicant must ensure that “electric, telephone, cable TV and other such lines and equipment are placed underground from the source or connection, or are effectively screened from public view.”*

All new service will be underground.

18. Prevention of Adverse Impacts: *The Applicant must demonstrate that “provisions have been made to prevent or minimize any detrimental effect on adjoining premises, and the general neighborhood, including, (1) minimizing any adverse impact from new hard surface ground cover, or machinery which emits heat, vapor, light or fumes; and (2) preventing adverse impacts to light, air and noise, wind and temperature levels in the immediate vicinity of the proposed development.”*

Minimal negative impacts are anticipated as a result of the proposed project and residential use. Open spaces will be designed and planted to enhance the site permeability and quality of landscaping.

19. Signage: N/A

20. Screening of Service Facilities: *The Applicant must ensure that “exposed transformers and other machinery, storage, service and truck loading areas, dumpsters, utility buildings, and similar structures shall be effectively screened by plantings or other screening methods so that they are not directly visible from either the proposed development or the surrounding properties.”*

All required parking will be indoors, as will garage and recycling. If the design is not conducive to the storage of garbage and recycling inside it will be conditioned to be screened by a staff approved material in a staff approved location.

21. Screening of Parking: Parking will be in a garage or obscured by the other principle structures.

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

22. SomerVision Plan: Creation of a new single dwelling unit

23. Impact on Affordable Housing: *In conjunction with its decision to grant or deny a special permit for a structure of four or more units of housing, the SPGA shall make a finding and determination as to how implementation of the project would increase, decrease, or leave unchanged the number of units of rental and home ownership housing that are affordable to households with low or moderate incomes, as defined by HUD, for different sized households and units.*

N/A



DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Elaine Severino and Anne Brockelman with Josh Safdie absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit with Site Plan Review. Elaine Severino seconded the motion. Wherefore 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								
	<p>This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>8.18-2016</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>8.17.16</td> <td>Modified plans submitted to OSPCD</td> </tr> <tr> <td>8.12.16 (rear elevations</td> <td>Modified plans submitted to OSPCD</td> </tr> </tbody> </table> <p>Any changes to the approved site plan and elevations that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	8.18-2016	Initial application submitted to the City Clerk's Office	8.17.16	Modified plans submitted to OSPCD	8.12.16 (rear elevations	Modified plans submitted to OSPCD	CO / BP	ISD/PIng.	
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8.12.16 (rear elevations	Modified plans submitted to OSPCD											
Affordable Housing/Linkage												
1	The structure shall be fully suppressed with a sprinkler system and have hardwired smoke detectors.	CO	FP									
2	The Applicant must contact the Engineering Department to obtain a street address prior to a building permit being issued.	BP	Eng									
3	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 Storm water Management Policy.	BP	Eng.									
4	New sanitary connection flows over 2,000 GPD require a removal of infiltration and/or inflow by the Applicant. This will be achieved by submitting a mitigation payment, established by the City Engineers Office, to the City based on the cost per gallon of I/I to be removed from the sewer system and a removal ratio of 4:1. If a different ratio of removal or mitigation payment amount is adopted by the Board of Aldermen prior to the Applicant receiving a Certificate of Occupancy, payment will be adjusted to the BOA rate. The Applicant shall work with Engineering and meet this condition before a certificate of occupancy is issued.	CO	Eng.									



5	<p>Because of the history of the site and the intended use, the Applicant shall, prior to issuance of any demolition permit and/or any building permit for the project, provide to the Planning Department and the Inspectional Services Division:</p> <p>a) a copy of the Response Action Outcome (RAO) Statement, signed by a Licensed Site Professional (LSP) and filed with DEP, verifying that a level of no significant risk for the proposed residential use has been achieved at the site; or</p> <p>if remediation has not reached the RAO stage, a statement signed by an LSP describing (i) the management of oil and hazardous materials/waste at the site, including release abatement measures intended to achieve a level of no significant risk for residential use at the site, treatment and storage on site, transportation off-site, and disposal at authorized facilities, (ii) a plan for protecting the health and safety of workers at the site, and (iii) a plan for monitoring air quality in the immediate neighborhood.</p>	Demolition Permit	Plng/ISD	
6	The Applicant shall submit a proposed drainage report, stamped by a registered PE in Massachusetts that demonstrates compliance with the City's storm water policy.	BP	Eng.	
7	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	
8	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	
9	The Applicant shall conduct a survey of foundations and buildings adjacent to the site prior to construction and shall address concerns about impact to these structures from project construction. The survey shall also include the location of any alleged underground foundation linkage between structures on the site.	BP	ISD/Plng	
10	The Applicant shall submit a proposed drainage report, stamped by a registered PE in Massachusetts that demonstrates compliance with the City's storm water policy.	BP	Eng.	



11	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.	
12	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
13	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	
14	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	
15	Applicant shall provide final material samples for siding, trim, windows, and doors (to the Design Review Committee for review and comment and) to Planning Staff for review and approval prior to construction.	BP	Plng.	
16	Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Plng. / ISD	
17	There shall be a minimum of one tree for each 1,000 sf of required landscaped area under SZO §10.3.	CO	Plng	
18	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	
19	Full civil plans with drainage and connections shall be reviewed and approved by engineering staff before the issuance of a permit.	BP	ENG	
20	The easement between buildings shall be kept clear at all times. There shall be no parking or storage of anything between the buildings.	CO/Perpetual		
21	Applicant will screen the dumpster with fencing that blocks any view of the dumpster itself.	CO	Plng.	
22	Snow from more than a 2" event shall be plowed and removed from the site.	Cont.	ISD.	
23	Applicant will screen the dumpster with fencing that blocks any view of the dumpster itself.	CO	ISD/plng	



24	Snow from more than a 2" event shall be plowed and removed from the site.	Cont.	ISD.	
25	Any transformers should be located as not to impact the historic building or landscaped area, and shall be fully screened.	Electrical permits & CO	CO	
26	Applicant will screen the dumpster with fencing that blocks any view of the dumpster itself.	CO	Plng.	



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Richard Rossetti, *Clerk*
Danielle Evans
Elaine Severino
Anne Brockelman (Alt.)

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 _____

