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Mayor

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CITY OF SOMERVILLE

Office of Strategic Planning & Community Development

TO: Somerville Planning Board
FROM: Planning & Zoning Division
DATE: September 30, 2020
RE: 34 St. James Avenue

This memo summarizes the development review application submitted for 34 St. James Avenue, identifies any additional discretionary or administrative development review that is required by the Somerville Zoning Ordinance, and provides related analysis or feedback as necessary. The application was deemed complete on September 15, 2020. It is scheduled for a public hearing on October 14, 2020.

LEGAL NOTICE

Applicants and Owners, Mona Kotecha and Nikhil Shanbhag, request the removal of condition #10 from the previously granted special permit ZBA 2013-39.

SUMMARY OF PROPOSAL

Applicants Mona Kotecha and Nikhil Shanbhag desire to finish the basement of the duplex building type at 34 St James Ave. The property is currently regulated by a previously issued Special Permit (ZBA 2013-39) that remains in effect. This special permit authorized the alteration of a non-conforming structure and included a list of permit conditions. The applicant is requesting to be released from Condition #10, which reads: "The basement shall not be used for bedrooms or sleeping quarters and only 46 net square feet may be allowed as additional finished space."

ANALYSIS

In 2013, the existing structure at 34 St. James Avenue was nonconforming to the minimum lot area and right-side setbacks of the 2013 Somerville Zoning Ordinance. A Special Permit was required to maintain a portion of the right-side building foundation within the setback. In issuing this Special Permit, the ZBA included a condition (#10) to limit the area of finished basement and restrict its use.

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On December 12, 2019, the Somerville Zoning Ordinance governing the previously issued Special Permit was repealed and replaced by an entirely new ordinance. When a new zoning ordinance is adopted, all previously issued Special Permits and their permit conditions must be reviewed when additional development is proposed under the new ordinance. Previously issued Special Permits and their conditions remain valid only if the same Special Permit is required by the new version of the zoning ordinance. If a new ordinance does not require a specific type of Special Permit where the same was previously required, the conditions of any of those previously issued Special Permits are absolved as an effect of the Somerville City Council adopting a more permissive ordinance. On the other hand, if a new ordinance maintains a requirement for a specific type of special permit or is more restrictive than the previous ordinance, than those previously issued Special Permits and their conditions remain in effect unless action is taken by the issuing review board.

Condition #10 of Special Permit ZBA 2013-39 restricts the finished area and use of the basement. The new Somerville Zoning Ordinance does not regulate or restrict Floor Area Ratio or the use of basements in anyway, which allows all property owners in all zoning districts to finish basements and use them for any permitted use by-right. This deregulation of finished basements was an important objective of the new zoning ordinance adopted in 2019.

The Special Permit required by the zoning in place in 2013 was to alter a nonconforming structure. The new zoning ordinance adopted is even more strict in that it sets specific rules for the modification of a nonconforming building and does not otherwise offer a special permit for modifications outside of those specifically specified. Due to this more restrictive standard of the new ordinance, the City of Somerville's Solicitors Office has advised the Planning & Zoning Division that action by the ZBA is necessary because the permit conditions of ZBA 2013-39 are tied to a Special Permit to alter a nonconforming building that is not even offered by the new zoning ordinance.

FINDING CONSIDERATIONS

There are no findings necessary for the removal of a permit condition.

P&Z Staff does not believe that the removal of Condition #10 from ZBA 2013-39 would contradict any of the findings made previously by the ZBA for the issuance of that permit. Outside of the remaining issue regarding Condition #10, the permit is effectively closed as the previous property owner exercised the entitlements of the permit to reconstruct the duplex. All other permit conditions were satisfied and final sign off (Condition #14) was provided by Staff confirming that the proposal was constructed in accordance with the approved plans.