



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.)
POOJA PHALTANKAR, (ALT.)

Case #: ZBA 2018-39
Site: 130 Walnut Street
Date of Decision: June 6, 2018
Decision: Appeal Denied;
ISD permit upheld
Date Filed with City Clerk: June 7, 2018

ZBA DECISION

Applicant (Appellant) Name: Justin Rank
Applicant (Appellant) Address: 134 Walnut Street, Somerville, MA 02143
Property Owner Name: Garrett Realty, LLC
Property Owner Address: 47 Hillcrest Road, Weston, MA 02493
Agent Name: n/a
Agent Address: n/a

Legal Notice: Applicant, Justin Rank of 134 Walnut Street, seeks an Administrative Appeal under §3.1.9, §3.2, and §3.2.3 of the SZO and M.G.L. Chapter 40A §8 of a decision by the Inspectional Services Department (ISD) to issue a building permit for the property at 130 Walnut Street. The owner of 130 Walnut Street is Garrett Realty. RB zone. Ward 4.

Zoning District/Ward: RB zone/Ward 4
Zoning Approval Sought: §3.1.9, §3.2, §3.2.3, M.G.L. Chapter 40A §8
Date of Application: March 14, 2018
Date(s) of Public Hearing: April 4, April 18, May 2, May 16, June 6, 2018
Date of Decision: June 6, 2018
Vote: 5-0

Appeal #ZBA 2018-39 was opened before the Zoning Board of Appeals at Somerville City Hall on April 4, 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. At the June 6, 2018 ZBA hearing, the ZBA 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. GROUNDS FOR APPEAL

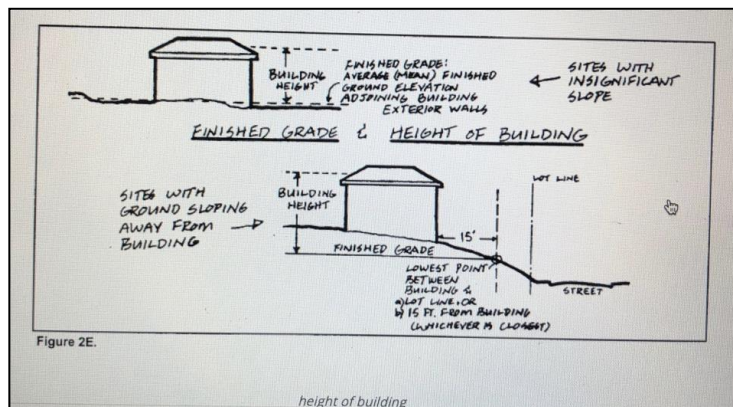
Justin Rank (hereafter referred to as “Mr. Rank”), individually, is an abutter to the property at 130 Walnut Street. The property at 130 Walnut Street is the subject of this appeal. Mr. Rank alleges that the building permits¹ issued by the Inspection Services Division (ISD) were wrongly granted and should be revoked.

Mr. Rank enumerates his complaints as follows:

1 - Mr. Rank alleges that: “This is an appeal under Somerville Zoning code sections 3.1.9, 3.2 and 3.2.3 for Building Permit #B17-002419 issued by the City of Somerville on 2/21/2018 and Building Permit #B18-000328, to which comments are attached to the original Permit. For the reasons stated below, this Permit does not meet the requirements of the Somerville Zoning Ordinance and requires relief to be granted by the Zoning Board of Appeals either through a special permit or a variance. We would like to point out that the “approved” plans in connection with the original Permit have been revised multiple times since the issuance of the Permit due to violations of the SZO, which would require a special permit. As a result, we have been working with a moving target for this appeal.”

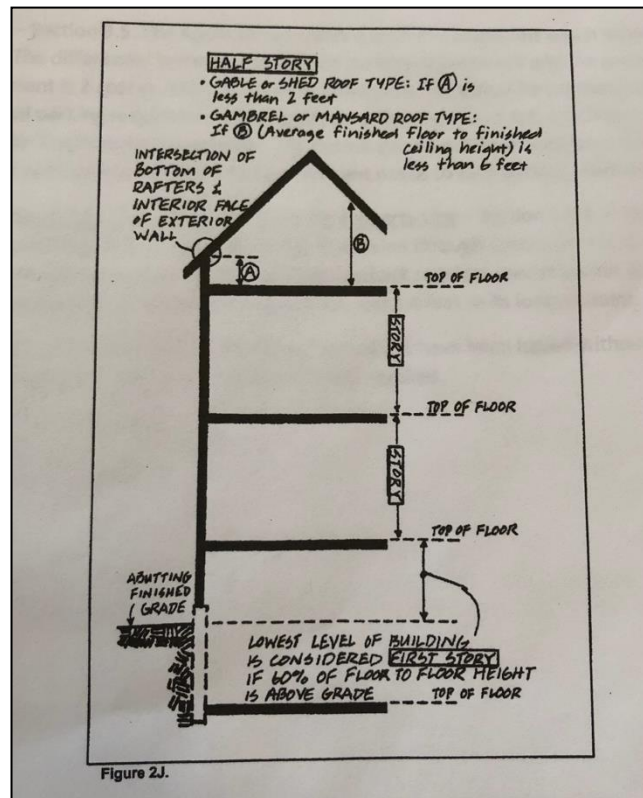
2 - Mr. Rank alleges that: “The sections of SZO listed below were not met and, as a result, the Permit is invalid per 780 CMR 105.4 (Validity of Permit) and should be immediately revoked under 780 CMR 105.6 (Suspension or Revocation). “Permits presuming to give authority to violate or cancel the provisions of this code or authorized to suspend or revoke a permit issued under the provisions of this code wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this code.” 780 CMR 105.6”

3 - Mr. Rank alleges that: “Grade and Height – Sections 2.2.66/8.5. the improper grade was used to determine grade and height of the building and the new addition. The approved plans use a grade and height immediately abutting the property using the formula of a site with an insignificant slope. As this property has a significant slope, the provisions of Section 2.2.66 should have been applied. Under Section 2.2.266, the finished grade to determine compliance should be measure 15’ from the building at the lowest point. This would put the building over the height allowance in an RB zone under Section 8.5, which requires a variance under Section 5.5. (see Figure 2E of SZO below).”



¹ Mr. Rank references building permits #B17-002419 and #B18-000328 and cites the date of issuance as 2/21/2018.

4 - Mr. Rank alleges that: “Dimensional Requirements – Section 2.2.14/8.5 SZO was not properly followed in determining the number of stories for the addition. The maximum allowable stories in an RB zone is three. The plans that were approved depicts a four-story building, which requires a variance under Section 5.5 (see Figure 2J of SZO) The grade immediately abutting the addition will be entirely above-ground due to the required parking configuration (after denial of a cub cut by the Engineering Department), making it a story as described in SZO and depicted in the figure below.”



5 - Mr. Rank alleges that: “Historic Commission Review – This property exceeded all thresholds for Historic Commission Review under the Demolition Review Ordinance. Per the the Demolition Review Ordinance, the property would need to undergo historic commission review before issuance of any future building permit in which the building will be substantially demolished”. Under Section 2.9 of the Demolition Review Ordinance, the City defines what would not constitute demolition: routine maintenance, interior renovations, removal of construction of porches, decks, windows or other types of renovations for which Commission approval is generally not required. With the entire roof coming off and raised approximately 3’ with the addition of a shed “dormer” (which actually becomes the new roofline), one whole side of the house being demolished, and new structural engineering being completed throughout the residence, this more than exceeds the threshold fo “substantial demolition”. Despite exceeding all triggers within the ordinance, the City did not follow proper protocol and a legal review/public hearing never took place. A letter determining whether Historic Commission Review was required was issued by Hans Jensen on 1/18/18 and shows the City did not properly

interpret the ordinance. Please see the attached photos for the condition of the structure at the time of this appeal.

The building is historically and architecturally significant both by itself and in the context of a group of buildings or structures, and therefore it is in the public interest to be preserved or rehabilitated rather than to be demolished. We have signatures of about 30 of the area neighbors in 20 houses surrounding the property requesting that it be preserved and rehabilitated and objecting to the large addition at the back of the house.

In addition, the house is at least 50 years old, and is a significant building importantly associated with two historic persons.”

6 - Mr. Rank alleges that: *“Parking – Section 9.5. the Applicant proposes a total of 7 bedrooms which would require 5 parking spaces. The differential between the current parking requirement and the proposed parking requirement is 2 spaces. With the existing conditions, the parcel has no means of providing the additional parking requirement. The Applicant proposed a curb cut, which was denied by the City of Somerville Engineering Department. The Permit should not have been issued prior to confirming the required parking was feasible and the Applicant needs to seek parking relief through a special permit.”*

7 - Mr. Rank alleges that: *Dormer Not More Than Eight Feet from the Property Line – Section 4.4.1. A nonconforming two-family dwelling unit may alter a nonconforming dimension through a special permit approval. Therefore, the addition of the dormer within the right-side setback requires special permit approval. The current right-side setback is .04 inches at its shortest point and 1.4 feet at its longest point.*

For the reasons stated above, the Permit should not have been issued without the issuance of a special permit or variance and should be immediately revoked.”

II. BACKGROUND

1. Subject Property

The subject property is a gable-fronted, 2 ½-story, two-family residential structure located in the RB zone. The parcel is located at the corner of Walnut and Radcliffe Streets with the front façade of the dwelling facing Walnut Street.

2. History

- **Summer – Fall 2017:** In the summer of 2017, the current owners of 130 Walnut Street, Garrett Realty, applied for Special Permits to make alterations to the residential structure on this site, including constructing a rear addition in order to add a third unit. Planning Staff met with the Applicants and worked with them for several weeks to alter their initial proposal. A neighborhood meeting was held at the project site in the fall of 2017 which Planning Staff attended.



- **Late Fall – Early Winter 2017**: The property owner, Garrett Realty, appeared before the ZBA on at least two occasions to present their Special Permit proposal. After these hearings, Garrett Realty then decided to pursue by-right options for this site.
- **January 18, 2018**– Letter from Hans Jensen, Zoning Review Planner, is issued to Mr. Rank in response to submitted comments and a petition from Mr. Rank regarding the by-right project proposal for 130 Walnut Street. In his letter to Mr. Rank, Hans Jensen explains the analysis that is performed to determine whether the application for 130 Walnut Street is in regulatory compliance in order to receive a building permit. Hans Jensen’s letter addresses four issues: 1. Building height; 2. Parking; 3. Historic Commission review; 4. Stretch (energy) code.
- **February 21, 2018** – Building permits for “by-right” project issued by City of Somerville Inspectional Services Division (ISD). Garrett Realty subsequently withdraws their original application for Special Permit relief from ZBA consideration.
- **Late February – Early March 2018** – Significant work commences on the property.
- **January – March 2018** – On more than one occasion, Mr. Rank speaks with Hans Jensen, Zoning Review Planner, in person regarding his concerns about building height, parking, historic commission review. Each time, Hans Jensen explains the analysis that is performed to determine whether the application for 130 Walnut Street is in regulatory compliance.

On one occasion, Planner/Preservation Planner, Sarah White, also spoke with Mr. Rank in-person in the Planning Office regarding why the by-right proposal for this site does not trigger Historic Preservation Commission (HPC) review.

- **March 14, 2018** – Appeal application contesting the issuance of the building permit filed with the City Clerk by Mr. Rank.
- **April 18, 2018** – Appeal hearing opened by ZBA. Testimony taken and case continued to May 2, 2018.

III. APPEAL

1. **Role of the ZBA:** In an administrative appeal hearing, the ZBA hears appeals of the decision of the Superintendent of Inspectional Services. The process for such appeals is set out in MGL 40A, Section 8 and Section 3.2 of the SZO. An appeal may be taken by any person aggrieved by an order or decision of the Superintendent of Inspectional Services. The ZBA must determine whether to affirm the ISD decision or overturn it and why.

The Board believes that Mr. Rank has status as an aggrieved party in this circumstance and that the appeal is properly before the Board.

2. **Analysis of the Appeal:** OSPCD staff (planner and preservation planner), in consultation with staff from the Inspectional Services Division (ISD), reviewed:

- 1) the appeal application from Mr. Rank;
- 2) the file for the property at the Inspectional Services Division (ISD);



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
(617) 625-6600 EXT. 2500 • TTY: (617) 666-0001 • FAX: (617) 625-0722
www.somervillema.gov

- 3) pertinent sections of the SZO
- 4) historic preservation regulations

In his appeal, Mr. Rank has put forth seven main arguments and supporting claims. All have been noted above in Section I, "Grounds for Appeal." A discussion of each of these arguments and supporting claims appears below:

1 - Mr. Rank alleges that: "This is an appeal under Somerville Zoning code sections 3.1.9, 3.2 and 3.2.3 for Building Permit #B17-002419 issued by the City of Somerville on 2/21/2018 and Building Permit #B18-000328, to which comments are attached to the original Permit. For the reasons stated below, this Permit does not meet the requirements of the Somerville Zoning Ordinance and requires relief to be granted by the Zoning Board of Appeals either through a special permit or a variance. We would like to point out that the "approved" plans in connection with the original Permit have been revised multiple times since the issuance of the Permit due to violations of the SZO, which would require a special permit. As a result, we have been working with a moving target for this appeal."

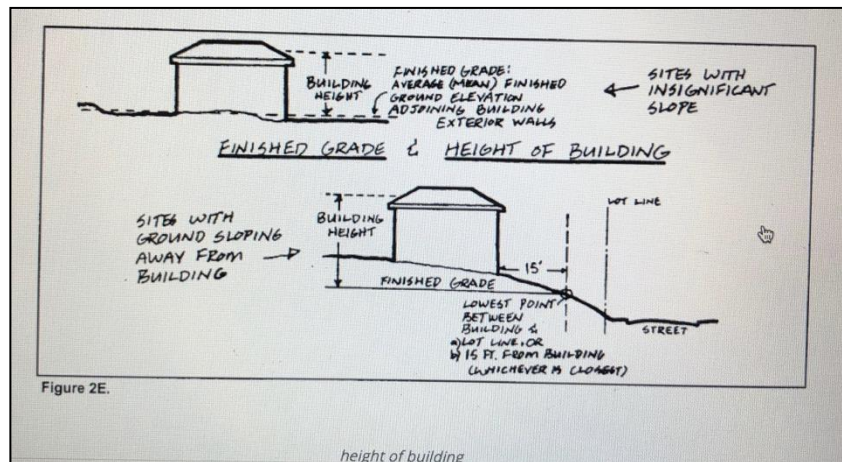
Board Response: It is not clear to the Board to what "violations" Mr. Rank is referring. It is common with both by-right and zoning relief projects to have additional documentation submitted to ISD after the issuance of a building permit. This may be due to a number of reasons including, but not limited to, conditions being placed on the issuance of the permit. Such conditions may be placed on both by-right and special permit projects by ISD and may require additional documentation to be provided at a future time. Development projects are on-going activities. As projects move forward, it is not uncommon that the City may require further documentation to be provided by an Applicant, particularly if an Applicant finds that they need to alter their original proposal in some fashion.

2 - Mr. Rank alleges that: "The sections of SZO listed below were not met and, as a result, the Permit is invalid per 780 CMR 105.4 (Validity of Permit) and should be immediately revoked under 780 CMR 105.6 (Suspension or Revocation). "Permits presuming to give authority to violate or cancel the provisions of this code or authorized to suspend or revoke a permit issued under the provisions of this code wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this code." 780 CMR 105.6"

Board Response: The Board finds that the permit was not issued in error and will explain this position in its responses to Mr. Rank's additional allegations.

3 - Mr. Rank alleges that: "Grade and Height – Sections 2.2.66/8.5. the improper grade was used to determine grade and height of the building and the new addition. The approved plans use a grade and height immediately abutting the property using the formula of a site with an insignificant slope. As this property has a significant slope, the provisions of Section 2.2.66 should have been applied. Under Section 2.2.266, the finished grade to determine compliance should be measure 15' from the building at the lowest point. This would put the building over the height allowance in an RB zone under Section 8.5, which requires a variance under Section 5.5. (see Figure 2E of SZO below)."





Board Response: In both in-person conversations as well as in his letter, Zoning Review Planner, Hans Jensen, addressed Mr. Rank’s question regarding grade and height multiple times. Planning Staff and the Zoning Review Planner both found that, despite the presence of a short retaining wall at the right rear of the property, 130 Walnut does not present a “significant slope.”² Due to both natural and human-altered topography, Somerville is replete with properties containing some amount of slope to the land. As the photos below will hopefully help to illustrate, any slope to the parcel at 130 Walnut is minimal and the Board finds that the Zoning Review Planner’s application of “insignificant slope” standards to his review of the by-right application is accurate. Therefore, when determining the finished grade to the height of the building, the measurement should be taken at the finished ground elevation adjoining the building exterior walls and not 15 feet from the building at the lowest point as contended by Mr. Rank.

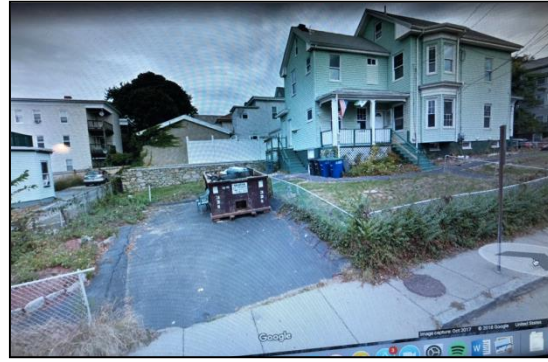
² Section 2.2.66 of the SZO incorporates Figure 2E (a drawing) that is referenced by Mr. Rank in his appeal. This figure, included above in this decision includes the descriptor “insignificant slope.” The purpose of this descriptor is to showcase the difference between sites where there is little to no slope to the land and those where land slopes away from a building. The intent of this figure is not to demonstrate what constitutes an “insignificant slope” of land versus a “significant slope” of land.

Further, the use of figures (drawings) in the SZO are for illustrative purposes only, not regulatory purposes. The second paragraph of the Preface of the SZO specifically addresses the use of figures in the ordinance: “There are also Figures (illustrations and diagrams) appearing in this document, enclosed within black-line boxes. These figures are intended to aid in understanding certain sections of the Somerville Zoning Ordinance, but the FIGURES ARE NOT A PART OF THE LEGALLY ADOPTED ORDINANCE. [emphasis contained in preface text]”

As a further point of clarification, during the April 18, 2018 ZBA hearing, Alderman William White accurately stated that the term “significant” does not appear in the language of the zoning ordinance in Section 2.2.66 where lot slopes are discussed. As it was explained during the ZBA hearing, and is re-iterated here again, the term “significant slope” is used because this was the terminology used by the Appellant, Mr. Rank, in his appeal of the by-right building permit issued by ISD. Specifically, in his appeal to the ZBA, Mr. Rank stated: “As this property has a significant slope, the provisions of Section 2.2.66 should have been applied.” [emphasis, Board]. The Board will continue to use this terminology to be consistent with the Appellant’s language use.



2009



The Zoning Review Planner applied Section 2.2.66 of the SZO when determining if the proposed building height complied with the height limits of the RB zone. §2.2.66 of the SZO states the following:

“Height of Building. The vertical distance measured from the finished grade adjoining an exterior wall of a building to the highest point of roof beams of the top story in the case of a flat roof, to the deck line of a mansard roof, and to the average height between the plate and ridge of a gable, hip or gambrel roof.”

The development team has submitted two sets of documents prepared by their engineer. The first, dated March 30, 2018, and included in the ZBA packets, presents the proposed finished grade to which the development team is required to adhere. This March 30, 2018 document states that the building height, measured from the edge of the building (against the foundation) will be 33’7” at the completion of the project.



The second document presented by the development team (pages 5 and 6 of the ZBA packet) illustrates the final building height at 33’7 7/8” when measured from the edge of the building foundation. This is consistent with the information presented in the March 30, 2018 document as well.

Even though this land does not slope, the engineer also included measurements for the final building height with the final average grade measured at 15’ off of the foundation. Even at this distance, the final building height of 40’ complies with the height limit in the RB zoning district of 40’ and complies with §2.2.63 of the SZO which states as follows:

“Grade, Finished. For purposes of this Ordinance, unless specifically defined elsewhere in this Ordinance, finished grade shall be the elevation of the reference plane representing the average finished ground line adjoining a building at all the exterior walls. When the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest point within the area between the building and the lot line or, when the lot line is more than fifteen (15) feet from the building, between the building and a point fifteen (15) feet from the building. Average finished grade of a parcel with more than one (1) building located thereon shall be the average of all the individual finished grades calculated for each building located on said parcel. [emphasis, Board]

In conclusion, in both scenarios (one that measures the building height at the foundation and one that assumes that the land slopes away from the building), the proposed building height complies with the height limits of the RB zone.

During the April 18, 2018 ZBA hearing, Staff noted to the Board that any applicant is allowed to bring in fill at the end of a project in order to meet building height requirements that are determined by calculating



average finished grade. Property owners are not precluded from doing this to meet height requirements. It was stated during the public comment portion of the April 18, 2018 ZBA hearing that if everyone brought in fill at the end of a project to adjust their average finished grade in order to meet height restrictions, that the City could end up being riddled with exceptionally tall buildings.

The Board disagrees with this assumption primarily due to the fact that, in conjunction with building height requirements, the City’s residential zoning districts (RA, RB, and RC) as well as the NB, CBD, BA, IP and OS districts, all have maximum story limitations that must work in concert with building height requirements. The Board was reminded by Staff of a few additional points. For many building projects, especially large, complex construction projects, fill is typically brought in to alter the topography of a building site for innumerable reasons such as adjusting grade, fixing inclines, improving soil quality, etc.

Lastly, at the April 18, 2018 ZBA hearing, the ZBA requested that Staff provide the Board with a few examples of other projects where building height/average finished grade resulted in by-right projects. One such project is 640 Mystic Avenue, which the ZBA heard on administrative appeal in 2017. Fill is being brought in to this site to achieve the correct final building height based on the average finished grade. In the case of 640 Mystic, the ZBA upheld ISD’s issuance of a building permit for this site.³ The image below is for illustrative purposes only as a reminder of the project:



Left: 640 Mystic proposed design

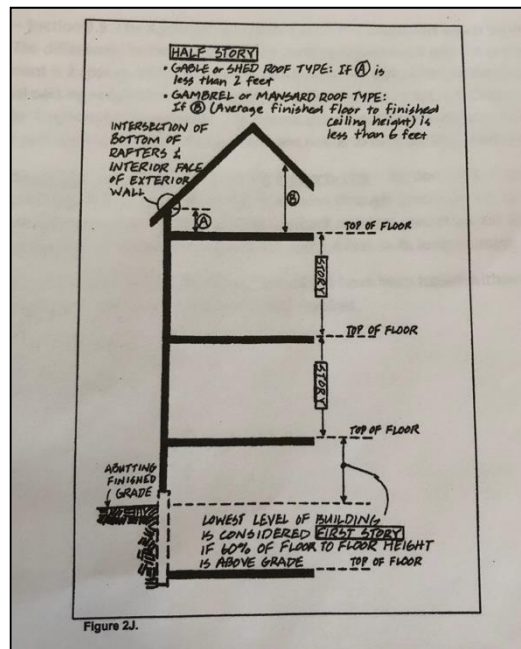
A second recent example is 52 Porter Street. In this case, the proposal is a by-right addition to the structure. The parcel presents a retaining wall and a drop in grade at the rear of the property. However, the proposed building height does not exceed that allowed in this zone when calculated against average finished grade. The image below shows an aerial view of the parcel with the retaining wall identified on the latter half of the property.

³ The Appellant for this project had several other contentions in their administrative appeal beyond building height/average finished grade.





4 - Mr. Rank alleges that: “Dimensional Requirements – Section 2.2.14/8.5 SZO was not properly followed in determining the number of stories for the addition. The maximum allowable stories in an RB zone is three. The plans that were approved depicts a four-story building, which requires a variance under Section 5.5 (see Figure 2J of SZO) The grade immediately abutting the addition will be entirely above-ground due to the required parking configuration (after denial of a cub cut by the Engineering Department), making it a story as described in SZO and depicted in the figure below.”



Board Response: The portion of the proposed building that brings into question the height of the building is the exposed basement foundation that will be part of the new addition at the rear of the existing structure. A significant amount of basement foundation is exposed as presented in the renderings submitted by Garrett Realty, the property owner. Under Section 2.2.14 of the SZO (inserted immediately below), a basement is not considered a story unless its ceiling is five feet or more above the average finished grade abutting the building.

The Board acknowledges that some of the renderings provided by the project Applicant are challenged in that they do not show the basement exposure in relation to the average finished grade. That said, it is

allowable for a project proponent to bring in fill, construct a small, raised garden bed or similar around a structure at the end of a project in order to achieve the proper calculation of average finished grade to building height.

Further, Hans Jensen, Zoning Review Planner, stated in his letter to Mr. Rank on 1/18/2018 as follows: “the height issue came up with a previous version of the plans during the ZBA hearing. It is a reflection of the way the drawings are rendered. The foundations are being shown in their entirety without a mean grade line. We will ask the applicant to add this line to ensure that the project is compliant. But, based on our preliminary understanding of the grade and the foundation, we believe that it is.”

Since the issuance of Mr. Jensen’s letter, the development team for 130 Walnut Street has issued documentation, signed and stamped by their civil engineer, attesting to the grading plan and elevation calculations for 130 Walnut Street including, but not limited to:

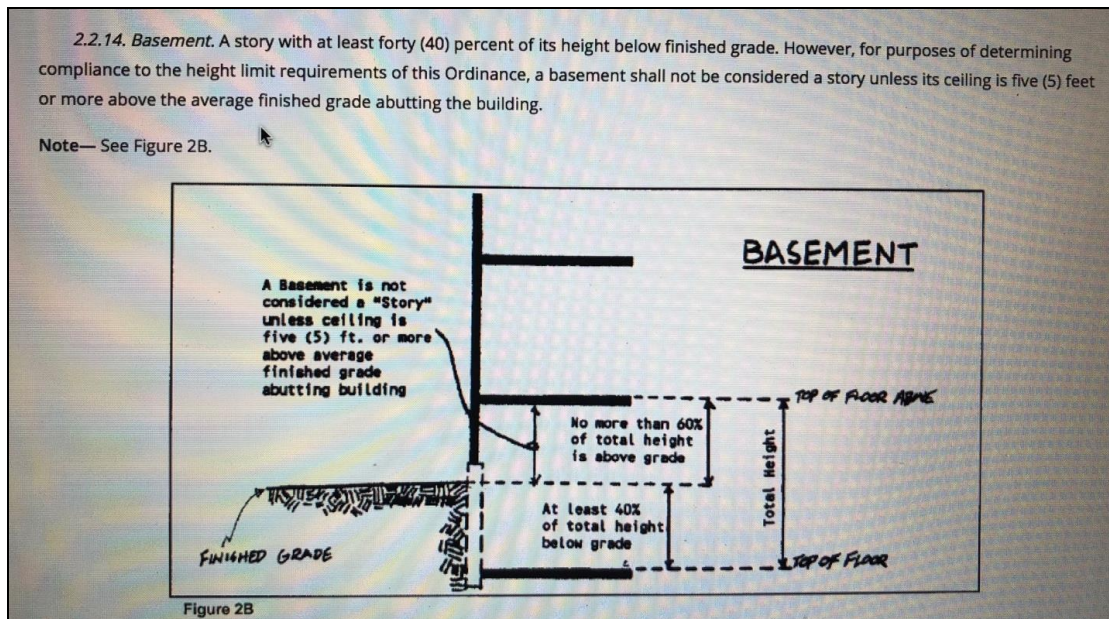
- Distance of basement ceiling above grade: 4.1 feet
- % of foundation covered: 45.8%
- Building height from edge of building: 33.7 feet⁴

The Board refers again to the document in the packets dated March 30, 2018 and to pages 5 and 6 of their packet set. The Board reiterates that the Zoning Review Planner correctly determined that the building height was correctly determined in relation to average finished grade. The Board further confirms that the Zoning Review Planner correctly determined that, in the case of 130 Walnut Street, the area at the ground level of the addition is not considered a story. As stated in §2.2.14, “...for purposes of determining compliance to the height limit requirements of this Ordinance, a basement shall not be considered a story unless its ceiling is five (5) feet or more above the average finished grade abutting the building.”

In the stamped statement of March 30, 2018 provided by the development team’s engineer, it is stated states that the distance of the basement ceiling above grade will be 4’1”, thus below the five foot limit outlined in this section of the zoning. An applicant must comply with all such statements in their submitted documents. At the end of the project, if the development team does not comply with the ceiling height requirement based on the average finished grade abutting the building, then no Certificate of Occupancy (CO) shall be issued.

⁴ In the RB zone, a building height of 40 feet is allowed.





5 - Mr. Rank alleges that: “Historic Commission Review – This property exceeded all thresholds for Historic Commission Review under the Demolition Review Ordinance. Per the the Demolition Review Ordinance, the property would need to undergo historic commission review before issuance of any future building permit in which the building will be substantially demolished”. Under Section 2.9 of the Demolition Review Ordinance, the City defines what would not constitute demolition: routine maintenance, interior renovations, removal of construction of porches, decks, windows or other types of renovations for which Commission approval is generally not required. With the entire roof coming off and raised approximately 3’ with the addition of a shed “dormer” (which actually becomes the new roofline), one whole side of the house being demolished, and new structural engineering being completed throughout the residence, this more than exceeds the threshold for “substantial demolition”. Despite exceeding all triggers within the ordinance, the City did not follow proper protocol and a legal review/public hearing never took place. A letter determining whether Historic Commission Review was required was issued by Hans Jensen on 1/18/18 and shows the City did not properly interpret the ordinance. Please see the attached photos for the condition of the structure at the time of this appeal.

The building is historically and architecturally significant both by itself and in the context of a group of buildings or structures, and therefore it is in the public interest to be preserved or rehabilitated rather than to be demolished. We have signatures of about 30 of the area neighbors in 20 houses surrounding the property requesting that it be preserved and rehabilitated and objecting to the large addition at the back of the house.

In addition, the house is at least 50 years old, and is a significant building importantly associated with two historic persons.”

Board Response: The Staff Planner for 130 Walnut Street, who is also a Preservation Planner for the City, spoke with Mr. Rank in-person in the Planning Office in late February/early March of 2018 regarding the criteria that will trigger a property to be brought before the Historic Preservation

Commission (HPC) for demolition review. Prior to discussing HPC criteria with Mr. Rank, the Planner/Preservation Planner discussed this same criteria with the Zoning Review Planner, Hans Jensen, when 130 Walnut was submitted for review as a by-right project.

Mr. Rank contends that the roofline of the building is being raised by 3 feet. However, it is the addition of the dormer that raises a portion of the building height by 3 feet. A dormer, no matter how lengthy, does not constitute the main roofline of a building. Despite the fact that the original roof of this building has been removed, it is being re-built to the same exterior dimensions as originally constructed. Thus, the original form of the roof, its height, and pitch are not being changed. The addition of dormers, however achieved and of whatever form and style, is often a challenging subject in the field of historic preservation. However, Somerville’s historic preservation ordinance and guiding policies do not allow for review by the HPC when dormers are being added to non-Local Historic District (LHD) buildings. The removal of portions of a roof in order to accommodate dormers is not considered “substantial demolition” under the current ordinance and, therefore, does not come under the purview of the HPC. This is our consistent interpretation of this regulation.

The Board reiterates that, the original roofline pitch, height and exterior dimensions will be re-built as they were found. A dormer, no matter how excellently or unfortunately designed, does not constitute a change in roofline under the City’s historic regulations. If the City were to apply this criterion of requiring demolition review to every homeowner in the City who wanted to add a dormer to a property over 50 years of age, then the City would severely impede the ability of countless homeowners to gain additional living space in their residences.

Given the age of some of the structures in the City, it is not uncommon nor is it unlawful for a property owner to rebuild a roof structure in order to replace challenged supportive elements such as beams, trusses, purlins, etc. It is also not uncommon that, in order to add dormers to a building, structural roofing elements need to be replaced in order to accommodate said dormers. Further, as this roof is being replaced in-kind (to the same height, exterior dimensions and pitch, this also would not be considered substantial demolition. Were the original roof form substantively altered by altering the style from gable to flat/Mansard/gambrel/, the height of the full gable area increased such that the pitch and/or width were altered, then substantial demolition might be considered.

6 - Mr. Rank alleges that: “Parking – Section 9.5. the Applicant proposes a total of 7 bedrooms which would require 5 parking spaces. The differential between the current parking requirement and the proposed parking requirement is 2 spaces. With the existing conditions, the parcel has no means of providing the additional parking requirement. The Applicant proposed a curb cut, which was denied by the City of Somerville Engineering Department. The Permit should not have been issued prior to confirming the required parking was feasible and the Applicant needs to seek parking relief through a special permit.”

Board Response: Mr. Rank has incorrectly calculated the parking requirements for existing and proposed conditions. Analysis of the bedroom/parking count is as follows and shows that no parking relief is needed:

Unit #	Existing BDR	Parking Req.	Proposed BDR	Parking Req.
1	1	1.5	3	2.0
2	3	2.0	2	1.5
3	n/a	n/a	2	1.5

Total: 3.5

Total: 5.0



Formula: New parking requirement - Old parking requirement = # of spaces of relief needed

130 Walnut: 5.0 – 3.5 = **1.5** spaces of relief needed

However, the Applicant proposes 4 on-site parking spaces. This is 2.5 more parking spaces that the Applicant is required to provide under their new proposal. Therefore, no parking relief is needed. The parking as-proposed is “by-right.”

7 - Mr. Rank alleges that: Dormer Not More Than Eight Feet from the Property Line – Section 4.4.1. A nonconforming two-family dwelling unit may alter a nonconforming dimension through a special permit approval. Therefore, the addition of the dormer within the right-side setback requires special permit approval. The current right-side setback is .04 inches at its shortest point and 1.4 feet at its longest point.

For the reasons stated above, the Permit should not have been issued without the issuance of a special permit or variance and should be immediately revoked.”

Board Response: The development team’s plans show that the dormer proposed for the right elevation of the building (which is the non-conforming side of the building) will be constructed 10’ 8-5/8” from the right property line. As the minimum required side yard setback is 8 feet, the proposed dormer conforms with this portion of Section 4.4.1 of the SZO. The construction of this dormer is, therefore, by-right.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Elaine Severino, and Anne Brockelman with Josh Safdie, and Pooja Phaltankar absent. Upon making the above findings, Richard Rossetti made a motion to deny the request for an Administrative Appeal. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to uphold ISD’s decision to issue a by-right building permit for 130 Walnut Street and to **DENY** the Appellant’s request to overturn ISD’s decision to issue the by-right building permit.

Attest, by the Zoning Board of Appeals:

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

Attest, by the 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 _____

