



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2017-57
Site: 21 Walnut Street
Date of Decision: September 27, 2017
Decision: Petition Approved with Conditions
Date Filed with City Clerk: September 29, 2017

ZBA DECISION

Applicant Name: Leo Silva*
Applicant Address: 376 Sunderland Road, #13, Worcester, MA 01604
Property Owner Name: Sharon Rotondo as Trustee of the Desmond Irrevocable Trust
Property Owner Address: 21 Walnut Street, Somerville, MA 02143
Agent Name: N/A

Legal Notice: Applicant, Gilmar Costa, and Owner, Sharon Rotondo as Trustee of the Desmond Irrevocable Trust, seek a Special Permit under §4.4.1 to increase the nonconforming floor area ratio (FAR) by finishing a portion of the attic and constructing a dormer on the left side of the roof of the nonconforming three-family dwelling. A Special Permit under §9.13 for parking relief is also being sought.

**Since the legal advertising of this project the Applicant has changed from Gilmar Costa to Leo Silva of Innovation Home Improvement Construction. Sharon Rotondo as Trustee of the Desmond Irrevocable Trust has submitted a letter, on file at the Planning office, stating that she grants Mr. Silva permission to apply for permits on her behalf.*

Zoning District/Ward: RA zone. Ward 3.
Zoning Approval Sought: §4.4.1 & §9.13
Date of Application: June 8, 2017
Date(s) of Public Hearing: September 27, 2017
Date of Decision: September 27, 2017
Vote: 4-0



Appeal #ZBA 2017-57 was opened before the Zoning Board of Appeals at the Visiting Nurse Association on September 27, 2017. 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.

DESCRIPTION:

The proposal is to finish a portion of the attic in the front of the house and construct a gable dormer on the left side of the hipped roof.

FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1 and §9.13):

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."*

Article 4: Nonconforming Uses and Structures.

The structure is currently nonconforming with respect to the use as a three-family dwelling and the following dimensional requirements: lot area, lot area per dwelling unit, landscaped area, pervious area, floor area ratio (FAR), front yard setback, left and right side yard setback, street frontage, and the number of parking spaces.

The proposed gable dormer will be within the required left side yard setback. The requirement is 7'4" for this 42-foot wide narrow lot and the existing house is set back 7 feet from the left property line. The dormer is proposed to be in line with the exterior wall of the first and second floor and will not encroach any further into the required setback than the existing structure.

The proposal will also impact the FAR. The current dimension is 0.83 (3,519 nsf), the proposal will increase it to 0.96 (4,050 nsf), and the requirement in the district is 0.75 (3,150 nsf). The proposal will increase the FAR by 0.13 or 531 net square feet. This alteration to a nonconforming structure requires the Applicant to obtain special permits under §4.4.1 of the Somerville Zoning Ordinance (SZO).

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/use proposed would not be substantially more detrimental to the neighborhood than the existing structure/use. The proposal would allow the homeowner to take advantage of the unfinished attic space to construct two bedrooms that will be added to an existing dwelling unit. The proposal has been designed with setbacks that minimally impact the neighbors and the requirements for ground coverage and rear yard setback will continue to be conforming to the requirements of the SZO.

Article 9: Off-Street Parking and Loading.

	<i>Existing</i>		<i>Proposed</i>	
Unit #1	2 BRs	1.5 spaces	4 BRs	2 spaces
Unit #2	1 BR	1.5 spaces	1 BR	1.5 spaces
Unit #3	4 BRs	2 spaces	4 BRs	2 spaces
Total	5 spaces		5.5 spaces round up to 6	

SZO §9.13 allows for sites with nonconforming parking to apply for a Special Permit to modify parking requirements if the total number of spaces is six or fewer. The locus is currently nonconforming with respect to the number of required off-street parking spaces as five spaces are required and one is provided in the tandem driveway. The proposal to add two bedrooms in the attic for Unit #1 increases the parking requirement by one space to a total of six. Since the locus does not currently have sufficient off-street parking, SZO §9.4.2 requires the proposal to only provide spaces for only the increase in net floor area. The increase in net floor area contains two additional bedrooms added to Unit #1, which increases the locus' parking requirement by one space. The owner does not have any additional land to add a parking space and is requesting relief from providing one parking space.

In considering a special permit under §9.13 of the SZO “the SPGA may grant such a special permit only when consistent with the purposes set forth in Section 9.1, and upon reaching the findings and determinations set forth in Section 5.1.4”. The Board finds that granting the requested Special Permit is consistent with the purposes of SZO §9.1 and will not cause detriment to increased traffic volumes, traffic congestion of queuing of vehicles, changes in the type of traffic, change in traffic patterns and access to the site, reduction in on-street parking, or unsafe conflicts of motor vehicles and pedestrian traffic.

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 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 protect health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to conserve the value of land and buildings; to preserve the historical and architectural resources of the City; 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.



The proposal is consistent with the purpose of the RA district, which is, “to 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.” The existing three-family dwelling has existed for a number of years and the proposed modifications will not be incompatible or inconvenient 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: Land uses within the immediate vicinity of the locus include two-, three-, and multi-family dwellings, a playground, and the Somerville Recreation building.

Impacts of Proposal (Design and Compatibility): The proposed alterations include a modest gable dormer on the left side of the hipped roof. Windows on the existing structure use a 9-over-9 black muntin pattern, which should be translated on the new dormer windows.

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

7. 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.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Elaine Severino, and Josh Safdie with Danielle Evans, Anne Brockelman, and Pooja Phaltankar absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit. Elaine Severino seconded the motion. Wherefore 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 for the construction of a dormer and finishing of a portion of the attic to add two-bedrooms to Unit #1. 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>June 8, 2017</td> <td>Initial application submitted to the City Clerk’s Office</td> </tr> <tr> <td>(August 15, 2017)</td> <td>Modified plans submitted to OSPCD (P-1, P-2, and P-3)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	June 8, 2017	Initial application submitted to the City Clerk’s Office	(August 15, 2017)	Modified plans submitted to OSPCD (P-1, P-2, and P-3)
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Any changes to the approved site plan or elevations/use 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	
Design				
5	Applicant shall provide final material samples for siding, trim, windows, and doors to Planning Staff for review and approval prior to the issuance of a building permit. The new windows on the dormer shall follow a 9-over-9 black muntin pattern to match the windows that currently existing on the rest of the structure.	BP	Plng.	
Site				
6	Landscaping shall be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Plng. / ISD	
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.	Cont.	ISD	
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	To the extent possible, all exterior lighting must be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	Plng.	
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*
Richard Rossetti, *Clerk*
Elaine Severino
Josh Safdie

Attest, by the case City Planner: _____

Alexander C. Mello

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 _____

