



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: **ZBA 2017-122-E1-12/18**
Site: **10-12 Ward Street**
Date of Decision: **January 9, 2018**
Decision: Petition Approved with Conditions
Date Filed with City Clerk: January 15, 2019

ZBA DECISION

Applicant Name: Block Properties, LLC
Applicant Address: 1330 Boylston St., Suite 600, Chestnut Hill, MA
Owner Name: 14 Ward Street, LLC
Owner Address: 1330 Boylston St., Suite 600, Chestnut Hill, MA
Agent: Sean O'Donovan
Agent Address: 741 Broadway, Somerville, MA
Alderman: J.T. Scott

Legal Notice: Applicant, Block Properties, and Owner, 14 Ward St LLC, seek re-approval of previously granted variances that included lot area per dwelling unit and Floor Area Ratio (FAR). Article 5 of the SZO. BA zone. Ward 2.

<u>Zoning District/Ward:</u>	BA zone. Ward 2.
<u>Zoning Approval Sought:</u>	§5.5 and §8.5
<u>Date of Application:</u>	November 17, 2017
<u>Date(s) of Public Hearing:</u>	January 9, 2019
<u>Date of Decision:</u>	January 9, 2019
<u>Vote:</u>	5-0

Appeal #ZBA2017-122-E1-12/18 was opened before the Zoning Board of Appeals at City Hall, Aldermanic Chambers, 93 Highland Avenue, 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 January 9, 2018, the Zoning Board of Appeals took a vote.



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DESCRIPTION:

The proposal is to demolish the existing, non-conforming residential and light industrial buildings on the site. Currently, a building situated on the Ward Street side of the property is 6.5 feet over the property line and resting on the abutting property. This will be removed, the encroachment corrected, and a non-conforming right side yard setback will be maintained.

The Applicant’s proposal for a replacement structure on the site is multi-fold. The proposed building will be comprised of two major sections (front and rear), each culminating at different heights. The front section of the new building (fronting on Ward Street) is proposed at three stories. The rear portion of the building is proposed at four stories.

The proposed structure will contain 24 dwelling units comprised of a studio along with one, two, and three bedrooms. Of these 24 units, four will be affordable through Article 13 of the SZO which addresses inclusionary housing for projects requiring SPSR. The Applicant will also make a fractional payment into the Somerville Affordable Housing Trust as per Article 13 of the SZO.

All vehicular parking is proposed for underneath the building. Twenty-four parking spaces are proposed as follows: 13 compact spaces and 11 standard spaces, two of which can be used as handicapped spaces. 24 sheltered bicycle spaces are also proposed.

As all bituminous matter is being removed from the site, this provides an opportunity for landscaping. To that end, the Applicant proposes increasing the amount of landscaping on the site from 0% to 19%

Included on the Ward Street façade of this building will be a series of interpretive signs approved by the Historic Preservation Commission (HPC) in order to document the history of the site as well as the history of the immediate area. The Applicant has entered into a Memorandum of Agreement (MOA) with the HPC ensuring the Applicant’s commitment to the installation of the interpretive signage. All content (text and images) and design of the signs will be determined by Preservation Planning Staff.

This project was designed in a manner that looks toward the proposed new zoning for this area of the City. As such, the project is substantially consistent with proposed zoning, but deviates in a number of key areas from current zoning. Therefore, the applicant is in need of variances for height and lot area per dwelling unit, building height and setbacks (rear and right side yard). Despite the compatibility with the new proposed code, the variances must stand on their own, under the current ordinance.

On February 14, 2018, the ZBA granted special permits and variances to the Applicant, Block Properties, LLC, for a project at 10-12 Ward Street. The Special Permits granted to the Applicant are still current. The purpose of the Applicant’s request before the ZBA on January 9, 2019, is to have the variances for the project re-approved prior to their expiration on February 14, 2018. Variances are valid for only one year, hence the proactive nature of the Applicant’s request to have those variances re-issued prior to their expiration.

II. FINDINGS FOR VARIANCES (SZO §5.5 & §8.5)

Section 5.5.3 of the SZO states that: “...a variance from the requirements of this Ordinance may be authorized by the Board of Appeals only for reasons of practical difficulty and substantial hardship, and only where the Board finds that all of the following conditions apply:



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- a. *There are special circumstances relating to soil conditions, shape or topography of land or structures which especially affect such land or structures but not affecting generally the zoning district in which it is located, causing a substantial hardship, financial or otherwise.*
- b. *The specific variance as may be granted by the Board is the minimum variance that will grant reasonable relief to the owner, and is necessary for a reasonable use of the building or land.*
- c. *The granting of the variance will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. In addition to considering the character and use of the nearby buildings, the Board, in making its findings, shall take into account the number of persons residing or working in such buildings or upon such land, and the present and probable future traffic conditions.”*

Applicant and Board responses to these criteria appear below:

- a. *There are special circumstances relating to soil conditions, shape or topography of land or structures which especially affect such land or structures but not affecting generally the zoning district in which it is located, causing a substantial hardship, financial or otherwise.*

Applicant: “The soil conditions recognized is in [sic] environmental conditions know [sic] as “REC”. Soil removal at excavation will require additional testing and soil removal thus necessitating costly LSP involvement and soil removal costs.”

Board Response: The Board can neither confirm nor deny information regarding contamination of the soil. The Board can, however, confirm that the parcel in question is an odd-shaped lot that crosses two zoning districts, requiring the Applicant to comply with two sets of dimensional criteria. This circumstance alone establishes a unique situation that impacts this site and does not impact others in either zoning district.

- b. *The specific variance as may be granted by the Board is the minimum variance that will grant reasonable relief to the owner, and is necessary for a reasonable use of the building or land.*

Applicant: “The developmet [sic] program as submitted allows the applicant to construct a building that will cover all remediation costs and adhere to the new proposed zoning “overhaul” as published by the City Administration while achieving more affordable units to increase the inclusionary housing stock. The expense to remediate the build additional inclusionary units is very costly.”

Board Response: The variances requested – one for height and one for lot area per dwelling unit – would allow the Applicant to construct a residential building that is compatible with city planning efforts for this area while improving existing non-conformities under the existing zoning code (such as landscaping, pervious area, and setbacks). By allowing the Applicant to construct a portion of the new building at a height of four stories rather than three, the Applicant is able to increase the residential density such that four new affordable housing units can be brought online. The relief



provided will also allow for the Applicant to make a substantial fractional payment into the Somerville Affordable Housing Fund. The improvement of this site, the creation of 20 market-rate units, the creation of 4 affordable units, and a fractional payment all are significant contributions to SomerVision goals. The project will meet the City’s new 20% inclusionary housing requirement. With the 20% inclusionary regulation going forward ahead of the new zoning, this is one area where the zoning has not caught up to the level of density that may be required in order to build a viable project. Therefore, without the ability to make these adjustments at this time, this would be a much more difficult project to accomplish.

c. The granting of the variance will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. In addition to considering the character and use of the nearby buildings, the Board, in making its findings, shall take into account the number of persons residing or working in such buildings or upon such land, and the present and probable future traffic conditions.”

Applicant: “The granting of the variance requested will be in harmony with the existing surrounding residential neighborhood and will replace a private impervious parking lot. Further, this development is in line with Somerville Zoning Overhaul as proposed for this zoned area.”

Board Response: Earlier in this report, the Board enumerated the positive impacts that this proposed project would have on the surrounding area. The project will contribute much-needed housing, including affordable housing units. The project serves as a gateway location into the Boynton Yards neighborhood that is anticipated to be a site for substantial new development. The area is very mixed in use from light industrial/commercial (auto body and Gentle Giant Moving facility, Somerville Brewing Company) to urban residential in the form of mostly two-, three-, and multi-family residential structures. Further, new construction at the corner of Ward and Medford Streets sees the erection of larger, 3-story buildings with both residential and commercial spaces. This immediate area is bounded by an active train line. The residential use of this building is consistent with other buildings in this area both large and small. The addition of 24 dwelling will have some impact on traffic conditions. However, the Board does not presume that each of the 24 units will have cars nor that all vehicle-dependent residents of the new building will be entering and exiting the site at the same time during the day. The Board finds that by providing 24 parking spaces underneath the building, the Applicant has made good efforts to ensure that new residents have as little impact as possible on the on-street parking in the neighborhood.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Elaine Severino, Josh Safdie, and Anne Brockelman. Upon making the above findings, Danielle Evans made a motion to approve the request for a Variance. Elaine Severino seconded the motion. 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
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1	Approval is for the construction of 24 dwelling units, four of which shall be affordable.	CO / BP	ISD/Plng.							
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>November 17, 2017</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>January 3, 2018</td> <td>Modified plans submitted to OSPCD</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	November 17, 2017	Initial application submitted to the City Clerk's Office	January 3, 2018	Modified plans submitted to OSPCD
	Date (Stamp Date)				Submission					
November 17, 2017	Initial application submitted to the City Clerk's Office									
January 3, 2018	Modified plans submitted to OSPCD									
Any changes to the approved site plan or elevations/use that are not <i>de minimis</i> must receive SPGA approval.										
Affordable Housing/Linkage										
2	Affordable Housing Implementation Plan (AHIP) should be approved by the OSPCD Housing Division and executed prior to issuance of Building Permit. Affordable units shall be provided on-site.	BP	Housing							
3	Written certification of the creation of affordable housing units, any fractional payment required, or alternative methods of compliance, must be obtained from the OSPCD Housing Division before the issuance of a Certificate of Occupancy (C.O.). No C.O. shall be issued until the OSPCD Housing Division has confirmed that the Affordable Housing Restriction has been approved and recorded and the developer has provided the promised affordable units on-site.	CO	Housing							
4	No Certificate of Occupancy shall be issued until the OSPCD Housing Division has confirmed that: (for Condominium Projects) the Condominium Documents have been approved and the Developer has agreed to a form of Deed Rider for the Affordable Unit(s), or (for Rental Projects) the Developer has agreed to and executed a Memorandum of Understanding for Monitoring of the Affordable Unit(s).	CO	Housing							
5	Affordable Housing payments shall be required to be paid to the Somerville Housing Trust Fund before a CO is issued.	CO	Housing							
Pre-Construction										
6	The Applicant must contact the Engineering Department to obtain street addresses prior to a building permit being issued.	BP	Eng							
7	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 Stormwater Management Policy.	BP	Eng.							



8	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.	
9	<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>b) 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	
10	The Applicant shall submit a proposed drainage report to the City's Engineering department, (stamped by a registered PE if requested by the City Engineer) that demonstrates compliance with the City's stormwater policy.	BP	Eng.	
11	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	
12	The Applicant shall 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	



13	The Applicant shall conduct a survey of foundations and buildings adjacent to the site and across the street (Horace Street and immediately-abutting Medford Street properties) prior to construction and shall address concerns about impact to these structures from project construction.	BP	Plng. / ISD	
14	The Applicant shall conduct a survey of the houses of the abutting property owners prior to excavation of the site, and document their findings. These findings shall be submitted to the Planning Department as public record. The Applicant then shall survey any damage to the abutting property owner's houses after excavation and reimburse the property owners for any damages.	BP	Plng. / ISD	
Construction Impacts				
15	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.	
16	Approval is subject to the Applicant's and/or successor's right, title and interest in the property.	Cont.	Plng.	Deed submitted & applicatio n formed signed
17	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	
18	All construction materials and equipment shall 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				
19	Applicant shall provide final material samples for siding, trim, windows, and doors and the like to Planning Staff for their review and approval prior to construction.	BP	Plng.	
20	An exterior light and electrical receptacle is required for the first (or all) level of porches and an electrical receptacle is required for the second level (if there is no access to the ground).	Final sign off	Wiring Inspector	
21	Any rooftop mechanical equipment shall be screened so as it is not visible at ground level.	CO	Plng.	
Site				
22	Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Plng. / ISD	
23	There shall be a minimum of one tree for each 1,000 sf of required landscaped area under SZO §10.3.	Perpetual	Plng. / ISD	

24	The Applicant shall submit a landscaping plan to Planning Staff for their review and approval prior to installation.	Prior to installation	Plng/ISD	
25	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	
26	All new sidewalks shall be installed by the Applicant in accordance with the specifications of the Highway Superintendent. Specifically, all driveway aprons shall be concrete;	CO	Plng.	
27	One tree must be planted and maintained according to National Nurseryman's Standards, and in accordance with SZO §10.2.2 and §10.6.2;	CO	Plng.	
28	Applicant shall supply 24 sheltered bicycle spaces.	CO	Plng.	
29	The subsurface of the fire lane and emergency access aisle shall be constructed to standards acceptable to the Fire Prevention Office	BP	Plng. / Fire	
Miscellaneous				
30	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.	Perpetual	ISD	
31	For developments with 7 or more residential units or commercial development, the Owner/Applicant is required to hire a private company to remove trash and recycling on a regular basis. Refuse shall be picked up frequently enough so that no trash is stored outside of the shed.	Perpetual	Plng./ISD	
32	Construction and construction-related activity shall occur between the hours of 7:30pm and 5:00pm Monday through Friday only. There shall be no construction or construction-related work occurring on weekends or holidays.	During construction	ISD	
33	There shall be no loitering by project workers on the project site. All personnel shall be respectful of abutting properties and shall not leave equipment or vehicles idling, shall not play loud music at the site, shall not engage in loud conversation prior to or after permitted working hours.	During construction	ISD	
34	All construction waste shall be stored neatly on-site and carted away on a regular basis.	During construction	ISD	
35	Food waste shall be removed from the site daily.	During construction	ISD	
36	Rodent baiting shall be performed as-necessary	During construction	ISD	
Public Safety				
37	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	

38	The Applicant shall submit a construction traffic management plan to the Traffic and Parking division for their review and approval. Plan should include delivery locations, delivery windows, anticipated number of vehicles, parking proposals and the like. Traffic and Parking shall be responsible for reviewing (if necessary, amending), and signing off on the plan.	BP	T&P	
39	Any transformers shall be fully screened and installed in a location approved by Lights and Lines	Electrical permits & CO	Lights and Lines	
40	Per City ordinance, no grills, barbeques, chimineas or similar cooking or heating devices shall be used or stored on decks, balconies or patios. These conditions shall also be written into any condo or rental documents. Proof of such inclusion shall be provided to the sign-off divisions.	Perpetual	ISD/Fire Prevention	
41	Notification must be made, within the time period required under applicable regulations, to the Massachusetts Department of Environmental Protection (DEP) if there is any release of oil, hazardous materials, or regulated hazardous substances at the site. The City's OSE office, Fire Department and the Board of Health shall also be notified.	At time of release	OSE/FP/BOH	
42	The Applicant shall be required to install an indicator at the entry/exit location to the site to inform passing pedestrians of exiting vehicles. Proposals for such indicators shall be submitted simultaneously to Planning, ISD, and Traffic and Parking for their review and approval.	CO	Plng/ISD/T&P	
43	All exterior lighting shall be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	Plng.	
Final Sign-Off				
44	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*
 Danielle Evans, *Clerk*
 Richard Rossetti
 Elaine Severino
 Anne Brockelman (Alt.)

Attest, by the Administrative Assistant:

 Monique Baldwin

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 _____

