



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 201984
Site: 269 Washington Street
Date of Decision: September 4, 2019
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: September 18, 2019

ZBA DECISION

Site: 269 Washington Street

Applicant Name: J.T. Scott
Applicant Address: 269 Washington Street, Somerville, MA 02143
Owner Name: JTSRE Holdings, LLC
Owner Address: 35 Prospect Street, Somerville, MA 02143
City Councilor: J.T. Scott

Legal Notice: Applicant, JTSRE Holdings, LLC, and Owner, J.T. Scott, seek special permits under §4.4.1 to legalize a unit, construct a deck* and stairs within the rear yard setback. Parking relief under Article 9 of the SZO. NB zone. Ward 2.

* The deck re-build is by-right as the post-fire deck dimensions have not changed. No special permit is needed for its re-build.

<u>Zoning District/Ward:</u>	NB zone, Ward 2.
<u>Zoning Approval Sought:</u>	SZO §4.4.1, Article 9
<u>Date of Application:</u>	August 1, 2019
<u>Date(s) of Public Hearing:</u>	9/4/2019
<u>Date of Decision:</u>	September 4, 2019
<u>Vote:</u>	5-0



Case # ZBA 2019-84 was opened before the Zoning Board of Appeals in the 3rd Floor Community Room of the Visiting Nurses Association (VNA), 259 Lowell Street, Somerville, MA, on September 4, 2019. 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 September 4, 2019 the Zoning Board of Appeals took a vote.

I. PROJECT DESCRIPTION

1. **Subject Property:** The locus presents a 2 ½-story mixed-use structure flanked on the left by a right-of-way leading to the former church at 300 Somerville Avenue. Current conditions also show a pre-existing, non-conforming front-yard parking pad on the left elevation of the property. A rear egress stair is currently built partially on the property of the 300 Somerville Avenue church lot.

There is no existing Certificate of Occupancy (CO) for this structure. There are two residential units and a commercial suite of offices. One of the residential units is owner-occupied. The offices operate from 8:00am – 8:00pm. 269 Washington Street presents a 3,868 square foot lot in the NB district.

2. **Proposal:** In May, 2018, 269 Washington Street experienced a fire. As a result of this fire, it was discovered that work performed by a previous owner was undertaken without building permits. The overall purposes of this project are to repair the fire-damaged unit, legalize prior unauthorized work, bring the building up to code compliance per insurance requirements, construct a spiral egress stairs within the rear yard setback, and seek parking relief. Out of this scope-of-work, the following items require zoning relief:

- Construct egress stair in rear yard setback (**special permit**)
- Parking relief for two (2) spaces (**special permit**)

3. **Green Building Practices:**
None listed on the application

II. FINDINGS FOR SPECIAL PERMITS (SZO Articles 4 & 9)

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §5.1.4 of the Somerville Zoning Ordinance (SZO). Also, 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 the relevant sections of the SZO 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.”*



Nature of Application:**Article 9 of the SZO**

Dwelling Unit	Bdrs.	Parking Req.
Unit 1	2	1.5
Unit 2	1	1.5

Total: 3.0

The amount of parking required for this site, before and after the fire, is three (3.0) spaces; the pre- and post-fire bedroom count is not changing. The pre-existing parking pad at the left front elevation of the property is approximately 12 feet in width and approximately 19 feet in length. Given these dimensions, this parking pad can accommodate only one vehicle. By providing one on-site space, this leaves two (2) spaces of parking relief needed.

In order to grant the parking relief, the following criteria must be assessed:***1. Increase in traffic volumes***

While there may be some up-tick in construction traffic to and from the site during the construction phase of the project, the Board finds that such increase in traffic would diminish once the project is completed.

Though it is always possible that any future tenants of the office suites will have vehicles, this area is expected to be a very public transportation-dependent corridor due to the construction of the Union Square Green Line "T" stop.

2. Increased traffic congestion or queueing of vehicles

See item #1 above.

3. Change in the types of traffic

There will be some construction-type traffic during the construction phase of the project. After this phase of the project is completed, traffic in the area is expected to continue to be the residential and business-related traffic that currently exists in the square.

4. Change in traffic patterns and access to the site

The traffic pattern in the area will not change as a result of this project. The site will be accessed from the same location as current.

5. Reduction in on-street parking

It is possible that granting relief for 2.0 parking spaces could create an increase in on-street parking in the area, depending on the number of vehicles owned by any future households or

office staff on the site. Such residents/employees will need to negotiate obtaining off-site parking spaces of their own volition.

Not providing on-site parking in this area is consistent with the City's goals in transformational and transportation-focused areas of the City. This property is within walking distance of the in-progress Union Square Green Line "T" stop.

6. *Unsafe conflict of motor vehicle and pedestrian traffic*

Entry and exit of any vehicle parked on the parking pad provides the opportunity for vehicular/pedestrian/bicycle conflict in this congested city artery. However, as this parking pad is pre-existing, the proposed project does not increase or diminish this potential conflict.

§4.4.1 of the SZO

This portion of the SZO 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."

Rear egress stairs

The applicant is required to construct a second means of egress for one of the units. To accomplish this, the Applicant proposes a spiral stair at the rear of the property. As the main body of the building rests within the rear yard setback, the spiral staircase will as well. The setback for this NB-districted property should be 12 feet. The spiral egress stair will be less than that.

A note regarding the legalization of the one-bedroom unit

It was determined during the fire investigation that, of the two existing residential units in the structure, the one-bedroom unit had been illegally created by a previous owner. The NB zone allows at least two units and the minimum lot area per dwelling unit ratio has not been exceeded for this site. Therefore, this unit can exist by-right, but with the proper building permits and subsequent COs being issued. There is no special permit needed to legalize this unit. However, the legal existence of this unit triggers the need for parking relief on the site. Parking relief was discussed in an earlier section.

The Board also makes findings regarding the following:

Adequacy of municipal water supply and sewer capacity

As there is no increase in bedroom count, there is no anticipated impact on the water and sewer systems.

Noise, odor

The neighborhood can anticipate the additional noise and odor that goes hand-in-hand with construction projects such as this. In a densely-built urban environment, this may be particularly noticeable. However, any uptick in noise and/or odor(s) is expected to be temporary in nature and is expected to last only for the duration of the major construction portion of the project.



Scale

The construction of the rear spiral egress stairs will have the most visual impact on the rear-abutting property. As there is already a larger, existing egress stair in this location, there is not expected to be a significant change in the visual impact.

On-street parking

Parking has already been addressed earlier in this assessment.

Shading

The building is not being expanded through additions nor through an increase in height or dormers. Therefore, the Board does not anticipate that any additional shadowing of abutting properties will occur as a result of this project.

Visual effects and neighborhood character

The exterior of the property is changing minimally as a result of this project and, therefore, minimal-to-no visual impact is expected as result of any special permits granted.

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”.*

The Board finds that the proposed project is compatible with the purpose of the NB district which is: “[t]o establish and preserve areas for small-scale retail stores, services and offices which are located in close proximity to residential areas and which do not have undesirable impacts on the surrounding neighborhoods.”

269 Washington Street will retain its pre-fire mixed use with two (2) residential units and multiple small-scale office spaces. Both of these uses are compatible with the purposes of the NB zoning district as noted above.

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”.*

The Board has addressed this item earlier in the report.

5. 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 Board finds that the proposal is consistent with the general purposes of the Ordinance as set forth under § 1.2, which includes, but is not limited to, promot[ing] 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 facilitate the adequate provision of transportation, water, sewerage, schools, parks and other

public requirements; to conserve the value of land and buildings; 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.

6. SomerVision Plan:

The propose project is largely a post-fire repair and code-compliance undertaking that will have no real impact on SomerVision.

7. 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.*

The proposal will not add to the City’s affordable housing stock.

III. DECISION

Present and sitting were Members Orsola Susan Fontano, Drew Kane (*Alt*), Danielle Evans, Josh Safdie, and Anne Brockelman. Upon making the above findings, Danielle Evans made a motion to approve the request for a Special Permit. Elaine Severino seconded the motion. The Zoning Board of Appeals voted **5-0** to **APPROVE** the request **WITH CONDITIONS**. The following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
1	Approval is to construct a rear egress stair within the rear yard setback, 2 parking spaces of relief and the legalization of a pre-existing, one-bedroom residential unit.	CO / BP	ISD/PIng.	
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>August 1, 2019</td> <td>Initial application submitted to the City Clerk’s Office</td> </tr> </tbody> </table>			
Date (Stamp Date)	Submission			
August 1, 2019	Initial application submitted to the City Clerk’s Office			
	Any changes to the approved site plan or elevations/use that are not <i>de minimis</i> must receive SPGA approval.			
Engineering				
2	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 1 st to April 1 st and there is a list of streets that have additional opening restrictions.	BP	Eng.	



3	The applicant must comply with the: "Policy for new connections to and modifications to existing connections to the municipal sewer and drainage system stormwater management and infiltration/inflow mitigation." The Applicant shall work with Engineering to meet this condition and provide the required fees/mitigation.	BP	Eng.	
Construction Impacts				
4	The Applicant shall post the names and phone numbers of the contractors, including the general contractor, at the site entrance where it is visible to and readable by passersby on the public way (public sidewalk).	During Construction	ISD	
5	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
6	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	
7	All construction materials and equipment shall be stored on-site. 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				
8	Applicant shall provide material samples for siding, trim, windows, and doors and the like to Planning Staff for their review and approval prior to construction. No vinyl, including PVC, shall be allowed. Preference given to natural materials.	BP	Plng.	
Site				
9	Any landscaping shall be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Plng. / ISD	
10	All trash, recycling, mechanicals, including transformers, shall be screened from the public way and from the view of abutting properties. All screening materials shall be submitted to Planning Staff for their review and approval prior to ordering and installation.	BP	Plng/ISD	
Miscellaneous				
11	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	



12	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.	Ongoing	ISD / Plng.	
13	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	
14	All construction waste shall be stored neatly on-site and carted away on a regular basis.	During construction	ISD	
15	Food waste shall be removed from the site daily.	During construction	ISD	
16	Rodent baiting shall be performed as-necessary.	During construction	ISD	
17	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, including deliveries.	During construction	ISD	
18	All future occupants of the commercial space shall be subject to ISD and Planning Staff reviews to ensure compliance with all zoning a building code regulations. Zoning relief may also be necessary.	Perpetual	ISD/Planning	
Public Safety				
19	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements including, but not limited to, sprinkling/fire suppression.	CO	FP	
20	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.	
21	Barbeques, grills, chimineas, and the like are not permitted on decks or porches per Somerville fire safety regulations.	Perpetual	ISD/Fire Prevention	
22	Utility meters shall not be installed on the front façade of the structure	CO	ISD/Plng	
23	All venting and piping shall be wrapped or painted to match the color of the portion of the building from which they protrude.	CO	ISD/Plng	
Final Sign-Off				
24	The Applicant shall contact the Zoning Review Planner 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.(Zoning Review Planner)	



ATTEST, BY THE ZONING BOARD OF APPEALS:

Orsola Susan Fontano, *Chair*
Danielle Evans, *Clerk*
Drew Kane (*Alt*)
Anne Brockelman
Josh Safdie
Elaine Severino

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 _____

