



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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PLANNING DIVISION

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Case #: ZBA 2017-30
Site: 82 Willow Avenue
Date of Decision: November 29, 2017
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: November 30, 2017

ZBA DECISION

Applicant Name: Umesh and Dipti Mistri
Applicant Address: 357-359 Somerville Avenue, Somerville, MA 02143
Property Owner Name: Umesh and Dipti Mistri
Property Owner Address: 357-359 Somerville Avenue, Somerville, MA 02143
Agent Name: None

Legal Notice: Applicants / Owners, Umesh and Dipti Mistri, seek a Special Permit under §4.4.1 to make various alterations that include a complete renovation of the interior and exterior of the nonconforming three-family structure, a Special Permit under §9.13 for parking relief, and a Variance under §5.5 and Article 8 for creating a new nonconformity by constructing a rear addition and decks into the required rear yard setback. Ward 6. NB zone.

Zoning District/Ward: NB Zone. Ward 6
Zoning Approval Sought: §4.4.1 (SP), §9.13(SP), and §5.5(V)
Date of Application: March 30, 2017
Date(s) of Public Hearing: 10/18/17, 11/8/17, and 11/29/17
Date of Decision: 11/29/17
Vote: 5-0

Appeal #ZBA 2017-30 was opened before the Zoning Board of Appeals in the Aldermanic Chambers located on the second floor of Somerville City Hall, 93 Highland Avenue. 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 three hearings of deliberation, the Zoning Board of Appeals took a vote.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
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DESCRIPTION:

The proposal will include a full gut renovation of the entire interior and exterior of the dwelling. One unit (four bedrooms) will occupy the basement and first floor, a second unit (two bedrooms) will occupy the second floor, and a third unit (three bedrooms) will occupy the third floor. The proposal also includes a six foot one-story addition in the rear of the structure with a deck extended off of that for another eight feet. The second floor will include a deck above the first story rear addition and the third floor will include a smaller deck that is stepped back above the second floor. In total, the rear portion of the structure is proposed to extend toward the rear property line 14 additional feet, including the deck, from the existing rear wall. Other exterior alterations include changing the fenestration patterns on the left, right, and rear elevations and constructing a ramp on the right to access the front porch to accommodate a disabled son of the Applicants/Owners who will be occupying the ground floor and basement unit.

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 following dimensional requirements: left side yard setback and the number of parking spaces.

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.”

The proposal is to make alterations to the nonconforming structure within the required left side yard, which is 1/3 the height of the building (or 12 feet) for a lot in the NR district that abuts a lot in the RA district. Alterations within the left side yard include: rearranging the fenestration, expanding the size of the gambrel dormer, and extended the length of the building (requires a Variance see Sect. III of this report).

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 has been designed with setbacks that minimally impact the neighbors and the dimensional requirements for lot area per dwelling unit, ground coverage, landscaped area, floor area ratio (FAR), and building height/number of stories will continue to be conforming to the requirements of the SZO. There are no minimum requirements for lot area, front yard setback, right yard setback, and pervious area for the NB district in this case.

Article 9: Off-Street Parking and Loading.

	<i>Existing</i>		<i>Proposed</i>	
Unit #1	1 BR	1.5 spaces	4 BRs	2 spaces
Unit #2	1 BR	1.5 spaces	2 BRs	1.5 spaces
Unit #3	2 BRs	1.5 spaces	3 BRs	2 spaces
Total	4.5 spaces round up to 5		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 driveway. The proposal to add a total of five bedrooms by renovating the property 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, 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 avoid undue concentration of population; 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.



The proposal is consistent with the purpose of the NB district, which is, “to 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.”

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: Willow Street is primarily a residential street. However, this site is located at the intersection of Highland Avenue and Willow Street where there is some commercial activity.

Impacts of Proposal (Design and Compatibility): The fenestration alterations and expansion of the dormer will maintain the building’s form and will fit in with the character of the neighborhood.

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

6. **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, and preserve and expand an integrated, balanced mix of safe, affordable and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups.

III. FINDINGS FOR VARIANCE

A Variance (§5.5) is sought to construct a rear one-story addition and three-story deck that will create a new nonconformity in the required rear yard setback requirement. The rear yard setback requirement in the NB district is ten feet plus two feet for each story above the ground floor, which would make the requirement 14 feet for this particular site. The structure is currently 16.25 feet from the rear property line; therefore, it is currently considered to be conforming to the rear yard setback requirement.¹

The proposed one-story addition will extend six feet beyond the existing rear wall of the structure and the proposed deck will extend an additional eight feet beyond that on the ground level. The deck is proposed to step back on the second story and step back even further from the third story.²

Distance of deck from rear property line	
Ground Floor	3’-7”
Second Floor	5’-3 1/2”
Third Floor	11’-3”

¹ The plan of land, dated September 20, 2016, prepared by Massachusetts Survey Consultants that was submitted with the application indicates a measurement of 12.8 feet from the rear property line. That measurement represents the distance from the rear property line to a basement walkup door and unenclosed porch that are both 3 feet deep. Per SZO §8.6.14 (and §8.6.6), both features are allowed projections in the required rear yard setback.

² Per SZO §8.6.14 (and §8.6.6), decks may project into a required rear yard setback up to one-fourth (¼) of the required setback, but in no case within ten (10) feet of a rear lot line.



In order to grant a variance the Board must make certain findings and determinations as outlined in §5.5.3 of the SZO.

1. *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 substantial hardship, financial or otherwise.”*

Applicant’s response: The lot is shallow compared to some other properties on Willow Avenue. In order to provide an accessible home for our son we need to construct a rear porch so he can enjoy the outdoors. The shallowness of the lot creates a substantial hardship because we are not able to provide our son with outdoor space in a manner that conforms to the rear setback requirements of the Somerville Zoning Ordinance. Our son’s life changing situation has been an adversity for us. The reason we are renovating the first level unit into a handicap accessible home is to accommodate his needs and provide a better quality life for him. All of the external and internal aspects of the home will accommodate his disability and allow him to move around freely in a wheelchair. Living in a home that fully accommodates his disability thus would allow him to experience a better at-home lifestyle.

Board’s response: The shape of the lot is shallow compared to other lots on this side of Willow Avenue between Summer Street and Highland Avenue. The subject lot is 76 feet deep and the average of the other seven lots on this side of Willow Avenue between Summer Street and Highland Avenue is 87 feet. However, those other seven lots are in the RA zoning district. There is a row of ten lots along Highland Avenue between Willow Avenue and West Street also in the NB district and their average depth is 78 feet.

2. *“The variance requested 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’s response: Our family will be moving into this home to provide a handicap accessible home for our disabled son. This home would allow our son to comfortably live in a home with a better quality of life because he would be able to freely move around a handicap accessible house. In addition, we would like to extend the back porch of the home because our son could utilize the outdoor space. We believe this request is the minimum variance that will grant reasonable relief to our family and will continue to be a reasonable use of the building and land.

Board’s response: The request will grant reasonable relief to the Applicant’s/Owner’s family by enhancing their son’s living condition. The Board believes that the required accommodations for the Applicant/Owner cannot be provided within the existing building footprint. The proposed six foot addition on the rear of the structure is necessitated by locating two bedrooms and one bathroom on the first level, which the Applicant’s/Owner’s desperately need to care for their son. The Board finds that that the variance requested is the minimum variance that will grant reasonable relief to the Applicant/Owner so that they can provide an appropriate living condition for their son and for their family to care for their son.

3. *“The granting of the variance would be in harmony with the general purpose and intent of this Ordinance and would not be injurious to the neighborhood or otherwise detrimental to the public welfare.”*



Applicant's response: The granting of the variance will be in harmony with the general purpose and intent of the Ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. Our proposal will meet the following purposes of the Ordinance: to promote the health, safety, and welfare of the inhabitants of the City of Somerville; to protect health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to conserve the value of land and buildings; and 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.

Board's response: If approved, the proposed addition would have a minimal impact on the neighborhood as the rear addition will not have much visibility from the street and directly behind the subject property is a garage.

DECISION:

Special Permit under §4.4.1 and §9.13

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Elaine Severino, Danielle Evans, Anne Brockelman, and Josh Safdie with 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 **5-0** to **APPROVE** the request. In addition the following conditions were attached:

Variance under §5.5 and §8

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Elaine Severino, Danielle Evans, Anne Brockelman, and Josh Safdie with Pooja Phaltankar absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Variance. Elaine Severino seconded the motion. Wherefore 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														
1	Approval is for a rear addition and rear decks as well as interior and exterior renovations. 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>March 30, 2017</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>September 20, 2016</td> <td>Survey plan of land</td> </tr> <tr> <td>July 28, 2017</td> <td>Title Sheet and existing conditions (A.010, A.020, and A.030)</td> </tr> <tr> <td>August 16, 2017</td> <td>Modified plans submitted to OSPCD (A.000, A.001, A.102, A.103, A.301, A.302, and A.303)</td> </tr> <tr> <td>November 16, 2017</td> <td>Modified plan submitted to OSPCD (A.101)</td> </tr> <tr> <td>October 12, 2017</td> <td>Landscape Plan</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	March 30, 2017	Initial application submitted to the City Clerk's Office	September 20, 2016	Survey plan of land	July 28, 2017	Title Sheet and existing conditions (A.010, A.020, and A.030)	August 16, 2017	Modified plans submitted to OSPCD (A.000, A.001, A.102, A.103, A.301, A.302, and A.303)	November 16, 2017	Modified plan submitted to OSPCD (A.101)	October 12, 2017	Landscape Plan
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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.																		
Pre-Construction																		
2	The proposed basement finished floor elevation shall not be less than is 1 foot above the Seasonal High Ground Water elevation. The seasonal high ground water elevation shall be determined by a Massachusetts certified soil evaluator and stated on a signed soil test pit log.	BP	Eng.															
3	The Applicant must 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															
Construction Impacts																		
4	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.															
5	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															



6	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				
7	Applicant shall provide final material samples for siding, trim, windows, fences, and doors to Planning Staff for review and approval prior to the issuance of a building permit.	BP	Plng.	
8	An exterior light and electrical receptacle is required for the first (or all) level of the porch and an electrical receptacle is required for the second level (if there is no access to the ground).	Final sign off	Wiring Inspector	
Site				
9	Landscaping shall be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Plng. / ISD	
Miscellaneous				
10	Gas and electric meters shall not be on the front of the structure. Gas and electric meters may be located on the side of the structure but shall be screened from the street by a hardy, staff approved evergreen planting. Utilities shall not be located adjacent to windows and shall not impact any parking, landscaping, or egress. The provisions of this condition may be waived by staff if the applicant submits a letter from the utility, signed by a utility representative, on utility letterhead, indicating that there is no feasible alternative to placing meters in violation of this condition.	CO	ISD	
11	Electrical conduits on the exterior facades of buildings shall be painted to match the wall material to which they are attached. Conduits are not allowed on the front of any structure.	CO	Plng.	
12	Garbage and recycling locations shall be clearly indicated on site plans. Storage areas shall be inside of the structure or shall be fully screened from view from both the public way and abutters by an appropriate material reviewed and approved by staff. The location shall not impact any parking, landscaping, or egress.	BP	Plng.	
13	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.	
Public Safety				
14	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
15	Per Somerville fire safety regulations, grills, barbecues, chimineas and the like are NOT permitted on decks or porches.	Perpetual	FP/ISD	



16	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				
17	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*
Danielle Evans
Elaine Severino
Josh Safdie

Attest, by the 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 _____

