



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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ANNE BROCKELMAN, (ALT.)

Case #: ZBA 2018-133
Site: 38-40 Windsor Road
Date of Decision: December 12, 2018
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: December 19, 2018

ZBA DECISION

Applicant Name: Dalfior Development
Applicant Address: 333 Great River Road, #229, Somerville, MA 02145
Owner Name: 38-40 Windsor Road, LLC
Owner Address: 1 Park Lane, Unit 728, Boston, MA 02210
Alderman: Lance Davis

Legal Notice: Applicant, Dalfior Development, Inc., and Owner, 38-40 Windsor Road, LLC, seek special permits under §4.4.1 of the SZO to increase the non-conforming FAR, increase the non-conforming rear yard setback, extend a dormer within the right side yard setback, open porches within the front yard setback. RA zone. Ward 6.

<u>Zoning District/Ward:</u>	RA zone. Ward 6.
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	October 4, 2018
<u>Date(s) of Public Hearing:</u>	November 28, 2018 and December 12, 2018
<u>Date of Decision:</u>	December 12, 2018
<u>Vote:</u>	5-0

Appeal #ZBA 2018-133 was opened before the Zoning Board of Appeals in the Aldermanic Chambers at Somerville City Hall on November 28, 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. On December 12, 2018 the Zoning Board of Appeals took a vote.



DESCRIPTION:

The Applicant is overhauling the entire property. The two-family use will be retained. All bituminous material will be removed from the property and the parcel will be re-landscaped. There is no parking relief needed for this proposal; the change in parking need is .5 spaces. When the need for additional spaces is less than 1.0 or a negative number, no parking relief is needed.

II. FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1):**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." Further, Section 4.4.1 of the SZO states that "[l]awfully existing one-and two-family dwellings which are only used as residences, which are nonconforming with respect to dimensional requirements, may be enlarged, extended, renovated or altered by special permit granted by the SPGA in accordance with the procedures of Article 5."*

Under §4.4.1 of the SZO

Section 4.4.1 of the SZO allows for legally-existing, non-conforming one- and two-family residences to be enlarged by Special Permit as long as the proposed changes do not create a situation that is more detrimental to the site or surrounding neighborhood than current conditions.

In considering a special permit under §4.4.1 of the SZO, the Board finds that the alterations proposed would not be substantially more detrimental to the site or neighborhood than the existing structure. The Board explains each of these findings below.

FAR

The existing FAR is 1.18, which is non-conforming for the RA zone which allows for a maximum FAR of .75. An Applicant can apply to make a non-conforming FAR more non-conforming through the Special Permit process. The Applicant for 38-40 Windsor Road seeks to increase the non-conforming FAR to 1.5. This increase in FAR is created by finishing the basement and adding dormers to the ½ story. The Board finds that finishing a basement or portions thereof is a reasonable accommodation for the Board to make to allow a property owner to gain additional living space without adding massing to an existing building. The Board further finds that the proposed additions to the existing dormers are extremely modest in size. That they are set back from the termination point of the existing dormers makes the additions subservient to the existing dormers.

Rear yard setback

The existing rear yard setback is currently non-conforming at 7 feet in a zone where a minimum 20-foot setback is required. The Applicant seeks to reduce this setback in one portion of the property to 4 feet to allow for a rear egress stair. The Board takes no position on the inclusion of the egress stair. However, the Board has conditioned this report such that any landings created on this rear egress stair cannot be used for outdoor recreational purposes by the current or future occupants of this property.



Right side yard setback

The existing right side yard setback is 1.4 feet from the property line. The Applicant proposes constructing a new dormer that is within the right side yard setback, but set back further from the roof edge such that the non-conforming setback is increased to 5.6 feet from the edge of the new dormer. The front porch that is to be opened as part of this project will continue to terminate 1.4 feet from the right yard setback as it does now.

Front yard setback

The existing front yard setback is six (6) feet in a zone where a 15-foot setback is required, but where a minimum 10-foot setback is allowed under certain conditions. The Applicant proposes opening the enclosed first floor porch. The termination point of the front porch and the front steps will not change. However, undertaking the work for opening and re-constructing the first story front porch within the setback requires a Special Permit. The Board finds that opening this first-story front porch is consistent with SomerVision goals of enhancing the relationship between the private realm and the public realm.

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 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 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 lessen congestion in the streets; 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 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; and to preserve and increase the amenities of the municipality.

The Board also finds that the proposal is consistent with the purpose of the RA district, which is, "[t]o 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 proposed alteration does not change the existing residential use of the building and maintains the same number of units at two (2).

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: This Windsor Road neighborhood contains mostly gable-fronted 2 ½-story residential structures with a smattering of gambrel gambrel cross-gables interspersed among them. The majority of the gable-fronted structures present at least one open front porch. Dormers are a common addition to the ½ story of these structures as well.

Impacts of Proposal (Design and Compatibility): The proposed alterations to this property will provide visual upgrades to the structure as well as to the landscape of the site. Removal of bituminous material



will improve the permeability of the site, allowing stormwater to better drain through the parcel rather than onto adjoining parcels and the City sewer system.

5. Housing Impact:

The proposal will not create affordable housing units.

6. SomerVision Plan:

Generally 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. Opening at least the first floor front porch is consistent with the goals of SomerVision. Opening previously-enclosed front porches encourages interaction between the private space and public way while simultaneously reducing massing along the front façade of a residential building in a residential neighborhood.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Josh Safdie, Danielle Evans, and Anne Brockelman. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit with conditions. Anne Brockelman 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 increase the non-conforming FAR, extend the non-conforming rear yard setback, build a dormer within the right side yard setback and rebuilding a porch within the front yard setback.	BP/CO	ISD/PIng .									
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>October 4, 2018</td> <td>Application submitted to the City Clerk’s Office</td> </tr> <tr> <td>November 15, 2018</td> <td>Updated plan set submitted to OSPCD</td> </tr> <tr> <td>December 1, 2018</td> <td>Corrected plan set submitted to OPCD</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	October 4, 2018	Application submitted to the City Clerk’s Office	November 15, 2018	Updated plan set submitted to OSPCD	December 1, 2018	Corrected plan set submitted to OPCD
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Any changes to the approved elevations that determined by Planning Staff to not <i>de minimis</i> in nature 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. This information shall be posted to be easily readable from the Somerville Community Path as well as from 41 Thorndike Street.	During Construction	ISD									



3	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	
4	Construction shall occur from 7:30am – 5:00pm Monday-Friday <u>ONLY</u> . There shall be no construction or construction-related work allowed on the weekends or holidays.	During Construction	ISD	
Design				
5	Applicant shall provide final material samples for siding, trim, windows, and doors to Planning Staff for review and approval <u>prior to the issuance of a building permit</u> .	BP	Plng./ISD	
Site				
6	The property shall be re-landscaped. All landscaping materials including those used for plantings, hardscape and fencing shall first be submitted to and approved by Planning Staff prior to ordering or installation.	Prior to ordering/inst allation / CO	Plng./ISD	
7	All bituminous material and/or cement shall be removed from the site and be replaced with pervious pavers, pea stone or similar. All materials to be used shall be submitted to Planning Staff for their review and approval prior to ordering/installation.	Prior to ordering/inst allation / CO	Plng./ISD	
Miscellaneous				
8	Granting of the applied for use or alteration does <u>not</u> include the provision for short term rental uses, such as AirBnB, VRBO, or the like. Separate approvals are needed for the aforementioned uses.	Perpetual	ISD / Plng.	
9	Given the proximity of the rear egress stairs to the rear lot line, any current or future landings on the rear egress stairs shall not be used for outdoor recreational activities or congregating. Any such landings shall not be enlarged for such future use.	Perpetual	ISD/Plng	
Public Safety				
10	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
11	Per Somerville fire safety regulations, grills, barbecues, chimineas and the like are NOT permitted on decks or porches.	Perpetual	FP/ISD	
12	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				
13	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
Josh Safdie
Anne Brockelman

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 _____

