



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2016-82

Date: September 12th, 2016

Recommendation: Denial

PLANNING STAFF REPORT

Site: 88 Winslow Avenue

Applicant Name: Nili Ohayon and Assaf Biderman

Applicant Address: 88 Winslow Avenue, Somerville, MA 02144

Owner Name: Nili Ohayon and Assaf Biderman

Owner Address: 88 Winslow Avenue, Somerville, MA 02144

Alderman: Lance Davis

Legal Notice: Applicant/Owner, Nili Ohayon and Assaf Biderman, seek a Variance under SZO §5.5 and §8.6.5.c to approve a 6 foot fence constructed along the front property line. RC Zone. Ward 6.

Dates of Public Hearings: September 21st, 2016

I. PROJECT DESCRIPTION

1. **Subject Property:** The subject parcel is a 3-story structure built in 2015 containing 2 residential units. The applicant owns the building and occupies the lower unit and rents the top unit.

2. **Proposal:** The Applicant is requesting a variance to construct a 6-foot fence along the Winslow Avenue and Clifton Street property lines.

The 6-foot fence has already been constructed by the applicant and a Violation Notice was issued by Building Inspector Paul Smith on June 16th, 2016.



3. Green Building Practices: None

4. Comments:

Fire Prevention: Staff discussed this situation with Fire Prevention providing the documentation submitted by the applicant. Fire Prevention will not accept a 6-foot fence in this location. Only a 3 ½ - foot fence will be accepted.

Chief Building Inspector: Paul Nonni, Chief Building Inspector has weighed in and will not approve a 6-foot fence on the corner of a lot. The Chief Inspector noted that, while currently the streets intersecting at this property are a T-intersection and not through streets, this may not always be the case and that the standards of a 3.5-foot fence in these circumstances must be applied uniformly across the city.

Traffic & Parking: Staff discussed the proposed installation of a mirror at the intersection with Terrance Smith. Parabolic mirrors are not suitable for use at vehicular intersections as there are visibility and liability issues within a public right-of-way. This is not a viable solution to an oversized fence. The fence should be no taller than 3.5 feet for a minimum of 20 feet at the corner.

II. FINDINGS FOR VARIANCE (SZO §5.5.3):

In order to grant a Variance, the Board must make certain findings and determinations as outlined in §5.5.3 of the SZO. A variance can ONLY be granted if ALL of the conditions below set forth under §5.5.3 are met:

(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 substantial hardship, financial or otherwise.”

Staff Response: There are no such special conditions present on the property. The application does not meet the standards for a variance under these conditions.

(b) 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.”

Staff Response: The applicant does not meet the standards for a variance under the conditions set by item (b). The applicant already has a by-right means of reasonable relief. The applicant can construct a 3.5-foot fence within the first twenty feet of any corner as per §8.6.5.c of the SZO which states: “On any lot where front yards are required, all structures, fences or plantings greater than three-and-on-half (3 ½) feet above sidewalk level and within twenty (20) feet of any corner street line intersection shall be maintained so as not to interfere with traffic visibility across corners.”

(c) “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.”

Staff Response: Staff finds that the applicant does not meet the standards set forth for a variance under the conditions set by item (c). A 6-foot fence is not in harmony with the surrounding neighborhood, would be injurious to pedestrian and vehicular traffic and is in complete contradiction to what is permitted under the SZO. The applicant has other means of reasonable accommodation by virtue of a 3 ½-foot fence that will provide separation of the yard from the street and will function to contain pedestrians to the sidewalk and garden occupants to the yard.

III. RECOMMENDATION

Variance under SZO §5.5.3

Based on the materials submitted by the Applicant and the above findings, the Planning Staff’s recommendation is **to DENY** approval of the requested **VARIANCE**, and require the applicant to remove the existing 6-foot fence.