



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

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Case #: ZBA 2016-82
Site: 88 Winslow Avenue
Date of Decision: September 21, 2016
Decision: Petition Denied
Date Filed with City Clerk: September 27, 2016

ZBA DECISION

Applicant Name:	Nili Ohayon and Assaf Biderman
Applicant Address:	88 Winslow Avenue, Somerville, MA 02144
Property Owner Name:	Nili Ohayon and Assaf Biderman
Property Owner Address:	88 Winslow Avenue, Somerville, MA 02144
Agent Name:	N/A

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.

<u>Zoning District/Ward:</u>	RC zone/Ward 6
<u>Zoning Approval Sought:</u>	§5.5 & §8.6.5.c
<u>Date of Application:</u>	July 19, 2016
<u>Date(s) of Public Hearing:</u>	September 21, 2016
<u>Date of Decision:</u>	September 21, 2016
<u>Vote:</u>	5-0

Appeal #ZBA 2016-82 was opened before the Zoning Board of Appeals at Somerville City Hall on September 21, 2016. 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 one hearing of deliberation, the Zoning Board of Appeals took a vote.



DESCRIPTION:

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.

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.”

The Board’s 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.”

The Board’s 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.”

The Board’s 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.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Elaine Severino, Josh Safdie and Anne Brockelman voting with Danielle Evans absent . Upon making the above findings, Richard Rossetti made a motion to deny the request for a Variance. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **DENY** the request.



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Richard Rossetti, *Clerk*
Elaine Severino
Josh Safdie
Anne Brockelman (Alt.)

Attest, by the Administrative Assistant:

Dawn M. Pereira

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 _____

