



CITY OF SOMERVILLE, MASSACHUSETTS
OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
JOSEPH A. CURTATONE
MAYOR

PLANNING DIVISION

ZONING BOARD OF APPEALS MEMBERS

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Case #: ZBA # 2012-37
Site: 63 Boston Street
Date of Decision: January 9, 2013
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: January 23, 2013

ZBA DECISION

Applicant Name:	David & Renee Scott
Applicant Address:	63 Boston Street, Somerville, MA 02143
Property Owner Name:	David & Renee Scott
Property Owner Address:	63 Boston Street, Somerville, MA 02143
Agent Name:	N/A

Legal Notice: Applicants and Owners, David and Renee Scott, seek a Special Permit under SZO §4.4.1 to alter a nonconforming structure and a Variance under SZO §5.5 for relief from the building height requirement under SZO §8.5.F to construct a third story addition on the rear of an existing two-family dwelling.

<u>Zoning District/Ward:</u>	RA zone/Ward 3
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	May 8, 2012
<u>Date(s) of Public Hearing:</u>	6/6/12-1/9/13
<u>Date of Decision:</u>	1/9/13
<u>Vote:</u>	4-0

Appeal #ZBA 2012-37 was opened before the Zoning Board of Appeals at Somerville High School Auditorium on June 6, 2012. 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 two hearings of deliberation, the Zoning Board of Appeals took a vote.



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DESCRIPTION:

The Applicants/Owners of the unit that occupies the second and third floors (Unit # 2) of the subject dwelling are proposing an addition to the third story of the building. The rear 1/3 of the building at 63 Boston Street is only two stories in height and contains a flat roof with a solar array for a hot water unit.

The Applicants/Owners originally proposed to construct a 22 foot wide by 13 foot deep (approximately 280 square feet) addition directly on top of this flat roof. Three feet of this addition would overhang the lower two floors on the right side of the structure. The addition would be 9 feet above the existing roof over the second story. The highest point of the structure's existing roofline is approximately 37 feet and the roof height of the proposed addition would be approximately 33 feet. The new addition would also not be higher than the roof peak of the portion of the structure to which it is attached. The habitable space of the addition would contain one bedroom and one full bathroom. The newly added bedroom would have numerous windows with two on each side façade and six across the rear façade. One window would also be installed in the proposed bathroom. The solar array would be reinstalled on top of the proposed addition as well.

After the hearing on June 20, 2012, the Applicants have redesigned the addition. The new proposal includes constructing a half story gable roof over the existing two-story flat roof portion of the house and two shed dormers on either side in an ell shape. The dormers would be along the new gable roof and wrap around to the existing roof. As originally proposed, the added space beneath the new roof will be for a fourth bedroom and a bathroom on the third story.

FINDINGS FOR VARIANCE (§SZO §5.5 & 8.5.F)

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."

The Applicant indicated the following response to this question in their application: "The existing structure is on a small parcel of land, conforming on 3 of 4 sides, but expansion on the north side requires a special permit even to construct within the existing footprint of the house. Confined by the existing setbacks, expanding upward is the only way to increase living space while keeping in harmony with the existing structure. The back section of the house is two stories with a flat roof, and extending this section upward one story would not be in compliance with our zone.

The hardship that results from these special circumstances is that it is not possible within the residential zone to add living space sufficient for five family members plus visiting family. The children are currently 7, 4, and seven months, and as they grow they will require a second bathroom in the home as well as a bedroom for each. The existing bedrooms are within a finished attic, where the sloping ceilings make much of the space unusable for an adult or a tall child.

Our plan gains living space on the third floor while remaining below the roofline and within the footprint of the structure, as well as not being visible from Boston Street."

The existing lot of the subject property is somewhat small at only 4,160 square feet, which only provides 2,038 square feet per dwelling unit at the site; approximately 200 square feet less than what is dictated in the SZO. The existing structure is already nonconforming with regard to its left side yard setback and there is little room for structural expansion towards the front or right sides of the property. The existing building does only occupy approximately 31% of the subject property and there is about 30 feet of rear yard setback currently which is about 10 feet more than the requirement for the RA district. However,



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because this is a two-family dwelling where one unit is situated on top of the other unit, it may prove difficult to get both occupants of the two-family dwelling to agree to make the investment to expand the structure deeper into the lot. Since the Applicants/Owners occupy the space on the second and third floors, they do not hold as much bargaining power as the occupant on the first floor who could expand their first floor unit without consent from the occupants above. The area where the Applicants/Owners are proposing the third story addition is the only portion of the structure that is 2 stories and not 2½ stories in height, and no coordination with the occupant on the first floor is necessary to expand living space into this area.

The Applicants have spent a great deal of time between hearings trying to figure out a way of adding additional living space to this portion of the structure while keeping within the dimensional requirements of the SZO. They thought that they came up with a solution with the proposed dormer but with a difference of opinion in interpreting the code, a variance is still required. The work that went into trying to reconfigure the third story so that a variance is not needed but still provides sufficient space for the family shows that THERE ARE special circumstances at the property that affect this specific property but do not affect other properties in the zoning district, that are creating a hardship for the Applicants/Owners of not being able to remain in their home if they are not able to build out additional living space.

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.”

The Applicant indicated the following response to this question in their application: “Our home is limited by today's standards. As a family with three young children, having only one bathroom (located on the main floor of the unit) and three bedrooms on the upper story is insufficient. While on the main floor there is a fourth bedroom (which we use as a playroom, study and guest room) our children still need us close by at night and our infant is sharing the master bedroom with us. The guest room is used frequently by family that comes to visit and help us with the children. If we were to turn the guest room into a bedroom for one of our children, then we would no longer be able to accommodate grandparents, as well as other family and friends, and would lose the play and study space.

The variance is the minimum approval necessary to grant us reasonable relief because the zoning laws for our district will not allow us sufficient room to achieve our goal of being comfortable in our current home for at least the next 18 years while our children move through the Somerville Public Schools. We want our children each to have their own room that is large enough for a toddler or a 6'3" teenager. And, our four-year-old daughter already hogs our one bathroom!

As in many old houses, we have very limited storage and closet space, and a large section of one of the children's bedrooms will be taken up by a hallway to the new space. Our children will probably be tall like their father, who currently bangs his head on sloped ceilings in the bedrooms. The homes in this neighborhood are intended for family dwelling. Without a variance, the low ceilings and limited space on the third floor are not reasonable for a family of five.

Creating an addition which keeps within the zoning laws would be an major project costing a lot of money and still would not provide the space needed.”

The Board FINDS that the proposal to construct a half story addition and 2 ell-shaped gable dormers whose length could be interpreted to be greater or less than 50% of the length of the roof to which they are attached is the minimum Variance necessary to grant reasonable relief to the Applicants/Owners.

The Board also FINDS that the variance would allow for a reasonable use of the property. The Applicants/Owners purchased the dwelling unit in 2005 and it has been one of two units operating in the structure since that time. A two-family residential use on a 4,160 square foot lot seems to be a reasonable use of the property, as does the existing four bedroom, one full bathroom dwelling unit that the Applicants/Owners have been occupying to date. However, with a growing family and the



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Comprehensive Plan's goal to keep families in the City, allowing for the proposed addition as redesigned to add a fifth bedroom and a second full bathroom to this dwelling unit is necessary for reasonable use for a family-sized dwelling.

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."

The Applicant indicated the following response to this question in their application: "The proposed addition will be in harmony with the Somerville Zoning Ordinance because it will maintain the two-and-a-half story appearance of the home from the street. Our proposed addition will be located at the back of our home, not visible from Boston Street. The height of the addition will not exceed the height of the original structure. It will remain within the current footprint of the structure. Our neighbors on both sides and to the back have seen the drawings and are all in support of our project, as are many others in our immediate neighborhood.

We feel that it is important to keep the integrity and beauty of Somerville's old housing stock. We love our home for its old curved windows, high ceilings, and lovely woodwork. We have worked hard to care for and preserve its vintage charm.

While the proposed addition goes outside the current zoning laws, our intention is to do everything possible to keep the feel of the new room and bathroom within the style and quality of the original. The original wood bannisters and moldings were the first thing that attracted us to the house when we saw it 7 years ago, and we want to keep its original character intact while making necessary improvements.

By bringing this home up to contemporary standards, the neighborhood is benefitted, not harmed."

This project is consistent with the purposes of the SZO and will not be detrimental to the surrounding neighborhood. The granting of this Variance will be consistent with the purposes of the SZO, will not be injurious to the neighborhood, and will not be detrimental to the public welfare. Since the addition would be at the rear of the existing structure, it would not be visible from public right-of-way and therefore would not impact the Boston Street streetscape in any manner. The addition does not appear that it would greatly impact the amount of sunlight being received by surrounding structures or limit the views from abutting properties. Even with the proposed third story addition at the rear of the structure, the building would maintain a height and massing that is comparable to the other structures in the surrounding area. Therefore, The Board FINDS that the granting of the Variance would be in harmony with the general purpose and intent of this Ordinance and would not be detrimental to the public welfare.

FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1 & §5.1):

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."

In considering a Special Permit under §4.4 of the SZO, the Board finds that the alterations proposed to the rear of the structure would not be substantially more detrimental to the neighborhood than the existing structure. The roofline of the proposed addition would be lower than the highest point of the existing structure and the areas of the dormers that are visible in the rear and side yards are only 50% of the roof's length, in effect, still



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meeting the intent of the standards of the zoning ordinance. Additionally, since the addition would be at the rear of the existing structure, it would not be visible from the public right-of-way and therefore would not impact the Boston Street streetscape in any manner. Even with the proposed third story addition at the rear of the structure, the building would maintain a height and massing that is comparable to the other structures in the surrounding area. The property will remain a two-family residential use which is consistent with the surrounding neighborhood.

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 promoting "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 conserve the value of land and buildings; to preserve the historical and architectural resources of the City; to encourage the most appropriate use of land throughout the City; and to encourage housing for persons of all income levels."

The proposal is also consistent with the purpose of the district (6.1.1. RA - Residence Districts), which is, "To 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 third story addition at the rear of the structure would maintain a height and massing that is comparable to the other structures in the surrounding area and maintain the existing two-family residential use at the property.

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."

A proposed rear addition to the existing two-family structure would be compatible with the characteristics of the surrounding neighborhood and would have a minimal impact, if any, on the surrounding area. The roofline of the proposed addition would be lower than the highest point of the existing structure and the areas of the dormers that are visible in the rear and side yards are only 50% of the roof's length, in effect, still meeting the intent of the standards of the zoning ordinance. Additionally, since the addition would be at the rear of the existing structure, it would not be visible from the public right-of-way and therefore would not impact the Boston Street streetscape in any manner. Furthermore, it does not appear that the proposed addition would greatly impact the amount of sunlight being received by surrounding structures or limit the views from abutting properties. Even with the proposed third story addition at the rear of the structure, the building would maintain a height and massing that is comparable to the other structures in the surrounding area. The property will remain a two-family residential use which is consistent with the surrounding neighborhood.

5. Adverse Environmental Impacts: The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.

No adverse environmental impacts are anticipated from this proposal. No new noise, glare, smoke, vibration, nor emissions of noxious materials nor pollution of water ways or ground water nor transmission of signals that interfere with radio or television reception are anticipated as part of the project. The property will remain a two-family residential use which is consistent with the surrounding neighborhood.



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DECISION:

Present and sitting were Members Susan Fontano, Richard Rossetti, Elaine Severino and Josh Safdie with Herbert Foster and Danielle Evans absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Variance. Josh Safdie seconded the motion. Wherefore the Zoning Board of Appeals voted **4-0** to **APPROVE** the request. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit. Josh Safdie seconded the motion. Wherefore the Zoning Board of Appeals voted **4-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes										
1	<p>Approval is for a Variance under SZO §5.5 for relief from the maximum building height requirement under SZO §8.5.F and for a Special Permit to alter a nonconforming structure under SZO §4.4.1 to construct a third story addition on the rear of an existing two-family dwelling. This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>(May 8, 2012)</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>May 16, 2012 (June 11, 2012)</td> <td>Plot Plan</td> </tr> <tr> <td>May 15, 2012 (June 11, 2012)</td> <td>Existing Conditions 3rd Floor</td> </tr> <tr> <td>May 15, 2012 (June 11, 2012)</td> <td>Proposed 3rd Floor Addition</td> </tr> </tbody> </table> <p>Any changes to the approved site plans or elevations that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	(May 8, 2012)	Initial application submitted to the City Clerk's Office	May 16, 2012 (June 11, 2012)	Plot Plan	May 15, 2012 (June 11, 2012)	Existing Conditions 3 rd Floor	May 15, 2012 (June 11, 2012)	Proposed 3 rd Floor Addition	BP/CO	ISD/Plng.	
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2	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											
3	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP											
4	New siding type and color, trim, and materials of the addition shall match that of the existing structure.	CO	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	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, *Acting Chairman*
Richard Rossetti, *Acting Clerk*
Elaine Severino (Alt.)
Josh Safdie (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 _____

