



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
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**MAYOR**

PLANNING DIVISION

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DANIELLE EVANS  
ELAINE SEVERINO (ALT.)  
JOSH SAFDIE (ALT.)

**Case #: ZBA # 2012-06**  
**Site: 123 Morrison Avenue**  
**Date of Decision: February 15, 2012**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: February 16, 2012**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Margaret Morrissey
<b>Applicant Address:</b>	123 Morrison Avenue, Somerville, MA 02144
<b>Property Owner Name:</b>	Margaret Morrissey
<b>Property Owner Address:</b>	123 Morrison Avenue, Somerville, MA 02144
<b>Agent Name:</b>	N/A

Legal Notice: Applicant/Owner, Margaret Morrissey, seeks Special Permit approval (SZO §4.4.1) to rebuild a single-story, one-family dwelling into a two-and-a-half-story, two-family dwelling. The Applicant is also seeking variances from the minimum side yard and lot area per dwelling unit requirements (SZO 8.5).

<u>Zoning District/Ward:</u>	RA zone/Ward 6
<u>Zoning Approval Sought:</u>	§4.4.1 & §8.5
<u>Date of Application:</u>	January 17, 2012
<u>Date(s) of Public Hearing:</u>	February 15, 2012
<u>Date of Decision:</u>	February 15, 2012
<u>Vote:</u>	5-0, 5-0, 4-1

Appeal #ZBA 2012-06 was opened before the Zoning Board of Appeals at the Visiting Nurses Association on February 15, 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 one hearing of deliberation, the Zoning Board of Appeals took a vote.



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**DESCRIPTION:**

The Applicant is proposing to reconstruct and expand the house to create a 2.5-story, two-family, wood-frame dwelling. The reconstruction would be a contemporary rendition of a standard house type in Somerville, incorporating two-story oriel windows, a gable roof, and massing comparable to that of neighboring homes. Contemporary features include modern window and door types, a cantilevered front porch covering, and a roofline that changes from a gable to an upward-sloping, fully glazed rear dormer at the rear of the home.

Landscaping on the property appears to meet the minimum 25% landscaping requirement. There are small plants and bushes in the front and right yards, while the left side and rear yards are paved with asphalt; there is a small area at the rear of the lot, which is bordered in stone and has some bushes that do not appear to be in good condition. The Applicant is proposing to retain existing front and side landscaping, and to replace the rear landscaping with a comparable amount at the right-rear (northeast) corner, where there is currently patchy asphalt. This would accommodate a third parking space without negatively impacting the landscaping. New paving is proposed for the driveway, and the Applicant proposes to replace the asphalt in the rear parking area with gravel.

**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."

The Applicant requires a special permit under §4.4.1 of the SZO. Under §4.4.1, "The SPGA must find that such extension, enlargement, renovation or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming building ... 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."

In considering the requested special permit, the Board finds that the proposed reconstruction would not be substantially more detrimental to the neighborhood than the existing conditions. While the proposed style differs from that of nearby structures, the scale and proportions of the proposed dwelling would be much more consistent with the area than the existing structure, which is notably out of place both in terms of style and scale.

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 project site is located within an RA zoning district, which seeks 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 changes would be compatible with these goals. The footprint of the building would not increase, and the increased height would not be atypical of this area.

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."

The proposed massing and proportions will be more compatible with the surrounding area than the existing structure. The proposed design will also be more in harmony with that of the surrounding area.



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**FINDINGS FOR VARIANCES (SZO §5.5):**

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

1) The Applicant must show that 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 existing structure is unique among its neighbors in its style, size, and proportions, in a manner that is incompatible with its surroundings. This is apparently the result of a redevelopment of the site in the past half-century, as the structure is of more recent vintage than its neighbors. Thus, while the existing structure is largely compliant with the dimensional requirements of the SZO, it does not satisfy the SZO’s broader goals of creating visually harmonious neighborhoods. While neighboring structures enjoy protection for their nonconforming dimensions, the strictures of the SZO prevent the subject property from being redeveloped in a manner that is harmonious with its context, unless substantial relief is granted, in the form of a variance. The Board finds that the Ordinance is in conflict with itself, where it directs uniformity within districts, but applies standards, which in this case would prevent that uniformity with the subject property’s surrounding area.

The physical and financial hardship presented by the site is that the foundation is fixed and the proposed setbacks cannot be altered without significant expense to the owner and disruption to the neighborhood. Furthermore, the building, which the Board finds would be an improvement to the surrounding neighborhood, could not financially be constructed without its being allowed as a two-family dwelling. As previously noted, the setback is currently compliant, but greater setbacks are required for 2.5-story structures than for one-story structures. The Board finds that the redevelopment of the site as proposed is beneficial to the surrounding area as well as to the owner, but that requiring a new setback-compliant foundation and limiting the structure to a single-family use creates an undue hardship for the owner and makes this redevelopment impossible.

2) The Board must find that the variance 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 finds that both variances are the minimum relief necessary to allow a reasonable redevelopment of the site that is in harmony with the neighborhood. The foundation cannot be reasonably moved to accommodate the required side yard setback, and the subject property lacks an additional 550 square feet required to construct an additional unit; there is no way to meet this requirement either by acquiring additional land, or by reducing the size of the structure.

3) The Board must find that the proposed conversion “will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare... considering the character and use of the nearby buildings...shall take into account the number of persons residing or working in such buildings or upon such land, and the present and probable future traffic conditions.”

Regarding both requested variances, the Board finds that the proposal would be in harmony with the surrounding neighborhood and would be less detrimental than the existing structure.



**DECISION:**

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Scott Darling. Upon making the above findings, Susan Fontano made a motion to approve the request for a special permit. Scott Darling seconded the motion. Wherefore the Zoning Board of Appeals voted 5-0 to APPROVE the request. Upon making the above findings, Susan Fontano made a motion to approve the request for a variance for side yard setback. Scott Darling seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **APPROVE** the request. Upon making the above findings, Scott Darling made a motion to approve the request for a variance for lot area per dwelling unit. Susan Fontano seconded the motion. Wherefore the Zoning Board of Appeals voted **4-1** to **APPROVE** the request with Danielle Evans voting in opposition. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	<p>Approval is for the alteration to a nonconforming structure to create a 2 ½ story, two-family structure. 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>Jan 17, 2012</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>(Apr 18, 2007)</td> <td>Plans submitted to OSPCD (A0.0 cover pg- 3/13/07, SP.1 plot plan- 12/18/06, SP.2 site plan- 12/22/06, D1.1-1.3, D2.1-2.4 demo plan- 12/18/06, A1.0-1.4 floor plan- 12/22/06, A2.1 Sections- 3/13/07, A3.1-3.4 elevations- 12/22/06, A3.5 building section- 3/13/07)</td> </tr> </tbody> </table> <p>Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	Jan 17, 2012	Initial application submitted to the City Clerk's Office	(Apr 18, 2007)	Plans submitted to OSPCD (A0.0 cover pg- 3/13/07, SP.1 plot plan- 12/18/06, SP.2 site plan- 12/22/06, D1.1-1.3, D2.1-2.4 demo plan- 12/18/06, A1.0-1.4 floor plan- 12/22/06, A2.1 Sections- 3/13/07, A3.1-3.4 elevations- 12/22/06, A3.5 building section- 3/13/07)	BP/CO	ISD/PIng.	
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2	The fire alarm system must be updated to current code. A new Certificate of Compliance will be required.	CO	Fire Prevention							
3	If the building footprint or the amount of impervious surface will increase as a result of this proposal, a drainage analysis will be required.	BP	Engineering							



4	If the structure will be largely demolished, the utilities for the new structure will need to go in underground.	Installation	Wiring Inspector	
5	The Applicant is advised that no additional dwelling units may be created without receiving the appropriate permits and zoning relief.	Perpetual	ISD	
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.	



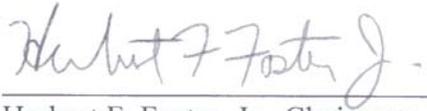
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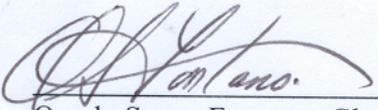
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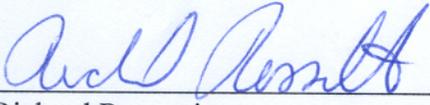


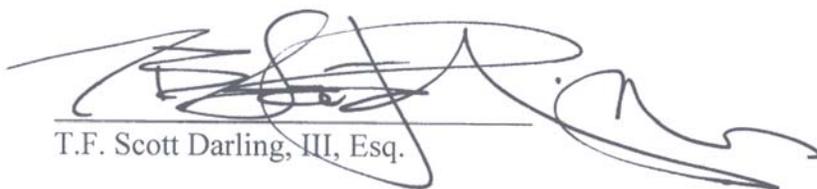
Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*  
Orsola Susan Fontano, *Clerk*  
Richard Rossetti  
T.F. Scott Darling, III, Esq.  
Danielle Evans

  
Herbert F. Foster, Jr., Chairman

  
Orsola Susan Fontano, Clerk

  
Richard Rossetti

  
T.F. Scott Darling, III, Esq.

  
Danielle Evans



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 \_\_\_\_\_



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