



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

Case #: ZBA # 2011-43
Site: 184 Summer Street
Date of Decision: June 8, 2011
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: June 16, 2011

ZBA DECISION

Applicant Name:	Agassiz Preschool, Inc.
Applicant Address:	184 Summer Street, Somerville, MA 02143
Property Owner Name:	Agassiz Preschool, Inc.
Property Owner Address:	184 Summer Street, Somerville, MA 02143
Agent Name:	Tracey Kaplan
Agent Address:	184 Summer Street, Somerville, MA 02143

Legal Notice: Applicant/Agent Agassiz Preschool, Inc. seeks a variance from SZO §8.6.5.c to have a 4 ft fence at the corner of Spring and Summer St to meet Dept of Early Education and Care requirements. RA zone. Ward 3.

<u>Zoning District/Ward:</u>	RA zone/Ward 3
<u>Zoning Approval Sought:</u>	§8.6.5.c
<u>Date of Application:</u>	May 10, 2011
<u>Date(s) of Public Hearing:</u>	June 8, 2011
<u>Date of Decision:</u>	June 8, 2011
<u>Vote:</u>	5-0

Appeal #ZBA 2011-43 was opened before the Zoning Board of Appeals at Visiting Nurses Association on June 8, 2011. 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 Applicants installed a four foot wood stockade fence around the outdoor play area which is located in the front and side yard at the intersection of Summer and Spring Streets and in the back yard. The fence was constructed at that height to meet the Department of Early Education and Care's (DEEC), the preschool licensing body, regulations that state that the licensee must maintain or have access to an outdoor play area that must be free from hazards including busy streets. A hazard must be removed or fenced by a sturdy, permanently installed barrier which is at least 4 feet high. The full language of the regulation is attached. The solid fence was chosen to create a safe barrier that provides privacy for the children.

The space at the corner of Summer and Spring Streets was included in the outdoor play area to maximize the size and layout of outdoor space for the children. The rear and side yards are relatively narrow spaces and creating a space that wraps around three sides of the building improves the utilization of the outdoor space on the site.

FINDINGS FOR VARIANCE (SZO §5.5 & §8.6.5.c):

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 configuration of the parcel with the placement of the building creating outdoor spaces that are relatively narrow stretches of land necessitates using the rear, side, and front portions of the yard as play space for the use of the site as a daycare. This need for outdoor space in conjunction with the requirement for a 4 foot tall fence to secure the space from the busy street and the conflicting requirement of a maximum of 3.5 foot tall fence for corner lots creates a hardship for the preschool that does not affect other land or structures in the zoning district.

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 Board find that the proposal to install a fence 6 inches taller than the Ordinance allows, at a height that is required by the licensing body for the preschool, is a minimum variance necessary that will grant reasonable relief for the children to utilize the yard for playing. If the fence was limited to 3.5 feet tall, the children would not be able to use this space and approximately 400 sf of yard space would not be usable. In addition, the 340 sf in the front yard that could remain with a 4 foot tall fence would be separated from the rest of the play yard and it would most likely be too awkward to use. Therefore, the total amount of space that would have to be removed from the play area would be 740 sf. With a variance for 6 inches of fence height, this 740 sf of play area becomes useable, thereby making this a minimal variance to address the circumstances on the lot.

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 Applicants have already installed the fence at a four foot height to comply with the requirements of the preschool licensing body. They were not aware of the conflict with the zoning requirement until they were contacted by Inspectional Services after installation. Since the fence is already installed the visibility of the intersection can be evaluated by making the turn at the intersection. The Board finds that since Spring Street slopes upward approaching the intersection the difference in the fence height of 6 inches would not change the visibility at the intersection. Also there were thick evergreen bushes planted at the property line at an unknown height before the fence was installed. Drivers always had to make a complete stop at the crosswalk and look to ensure that a car was not driving east on Summer Street before making a left hand turn onto the street. The granting of the variance



allows for the use of this space for a play area for a daycare center, a use that benefits the neighborhood, and was issued a special permit by the ZBA.

Therefore, while the Board is aware of the concerns expressed by Traffic & Parking and Historic Preservation, the Board will recommend approve the variance at this time. The proposed fence has already been installed, thereby allowing the Board to evaluate the impacts of the installation, and the Board believes that this design meets all of the required findings for the variance.

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 variance. Scott Darling seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **APPROVE** the request.



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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

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 _____



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