



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
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DAWN PEREIRA, *ADMINISTRATIVE ASSISTANT*

**Case #:** ZBA 2012-09

**Date:** February 23, 2012

**Recommendation:** Unable to Recommend

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**PLANNING STAFF REPORT**

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**Site:** 139 Shore Drive

**Applicant and Property Owner Name:** Carl Stevens

**Applicant and Property Owner Address:** 139 Shore Drive, Somerville, MA 02145

**Agent Name:** Richard G. Di Girolamo, Esq.

**Agent Address:** 424 Broadway Somerville, MA 02145

**Alderman:** Tony Lafuente

Legal Notice: Applicant and Owner Carl Stevens, seeks a Variance under SZO §5.5 from the dimensional requirement of SZO §8.5.B requiring a minimum of 2,250 square feet of lot area per dwelling unit to establish a two-family use. RA zone. Ward 4.

Zoning District/Ward: RA Zone / Ward 4

Zoning Approval Sought: Variance under SZO §5.5

Date of Application: January 31, 2012

Dates of Public Hearing: Zoning Board of Appeals – **February 29, 2012**

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**I. PROJECT DESCRIPTION**

1. Subject Property: The subject property consists of a two story, single-family wood-frame dwelling on an approximately 4,303 square foot lot located at the corner of Shore Drive, a wide public street with access to the Fellsway, and Temple Road. The Applicant received a Special Permit from the Zoning Board of Appeals in June of 2007 to alter the nonconforming structure at the property to add a full second story to the building. The structure originally had a small covered porch with a gabled roof and a bay window on the front of the first story.

2. Proposal: The history of this project goes back to February of 2006 when the Applicant applied for and received a building permit to alter the structure at the property by adding a second floor. In 2006 when the building permit was applied for, the structure on the lot was a 1½-story single-



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family wood-frame building. The structure was nonconforming with respect to the side yard setback along Temple Road because for a 1½ story structure a six foot minimum setback is required on each side of a building and the combined side yards must equal at least 14 feet. The right side yard setback at this property is only 5.7 feet which means that the structure is nonconforming and the Applicant should have obtained a Special Permit under §4.4.1 of the Somerville Zoning Ordinance (SZO) to add on a full second story.

Due to an oversight, the Applicant was awarded a building permit to perform the work of constructing a second story addition on the dwelling without obtaining the necessary Special Permit to alter the nonconforming structure. Pursuant to the building permit that was issued, the roof of the structure was removed in March of 2006. In May of 2006, the Applicant again applied for and received a second building permit to perform more work on the second story addition without being required to obtain the necessary Special Permit. The same incident occurred again for a third time in June of 2006. Also occurring in June, the Applicant was forced to fire his contractor because he stopped showing up around the time the first floor of the dwelling flooded due to there being no roof on structure and the dwelling became unlivable. The Applicant then hired a new contractor to make the building weather tight so that it could become habitable again. At this point in time the work on the second floor addition was essentially suspended because the Applicant did not have the financing to move forward with the work. After several months went by, the Applicant was able to secure funding again to finish the remaining work on the second story addition and hired an electrician, a carpenter, a gas fitter, and plasterers to complete the work. Each of these contractors obtained the necessary building permits to perform the work, all the work was inspected by the Inspectional Services Division (ISD), and all the work received final sign offs from ISD. Ultimately, this addition was constructed pursuant to a building permit that was issued in error as a Special Permit should have been obtained before the original building permit was issued.

When the work was completed and all the final sign offs had been issued, the Applicant contacted ISD to determine what the next step was to make the structure a legal two-family dwelling. The Applicant was told to apply at ISD to establish a two-family residential use at his property, which he did, and he was subsequently denied this request based on the fact that no Special Permit had ever been issued to alter the nonconforming structure and also because the lot size was 197 square feet short of meeting the necessary square footage to have two dwelling units on a lot in an RA district. Therefore, in early 2007, the Applicant sought zoning relief from the Zoning Board of Appeals to legalize the work and obtain the necessary Special Permit and Variance. The Applicant went before the Zoning Board of Appeals and was awarded the Special Permit to alter the nonconforming structure in April of 2007. However, in moving through the Special Permit process, the Applicant ended up withdrawing his Variance application for the relief from the lot area per dwelling unit requirement in the RA district because the Alderman in Ward 4 at that time was not supportive of his Variance application.

The Applicant is now back before the Zoning Board of Appeals requesting a Variance from the lot area per dwelling unit requirement in SZO §8.5.B under §5.5.3 to be able to convert his single-family dwelling into a two-family dwelling. The Applicant stated in his application that if had he known before the first building permit was ever issued that he needed a Variance to construct a second dwelling unit at the property, he would have not moved forward with any of the work at his property.

3. Nature of Application: The minimum lot area per dwelling unit requirement for a single dwelling unit in an RA district is 2,250 square feet of lot area under §8.5.B of the SZO. The subject property is 4,303 square feet and lacks the additional necessary 197 square feet required to meet the minimum lot area per dwelling unit ratio for a two-family structure. As a result, a Variance is required under SZO §5.5.3 to get relief from this dimensional requirement.

4. Surrounding Neighborhood: The neighborhood is characterized by primarily two-family dwellings 2½ stories in height, although there are a few one-family dwellings in the area and multi-family condos further south. Single-family uses are rather unusual for the surrounding area, and the structure, in its previous configuration, appeared small relative to surrounding properties as viewed in aerial photos. Across the street from the site is the Mystic River Park.

5. Impacts of Proposal: Few impacts are anticipated by the addition and occupancy of the second unit at the property as many of the structures in the neighborhood are also two-family dwellings on similarly sized lots. However, the design of the addition is not consistent with or particularly compatible with the design of nearby properties because the façade has lost its characteristic roof pitch and gabled entry. The Applicant converted the single-family dwelling into a two-family structure by raising the roof of the half-story and creating a full second story. This story was expanded by the addition of shed dormers spanning the entire width of the structure on the front and the back. The front façade has been altered by the addition of sliding glass doors and a deck over the front porch along with four windows, which now makes the front appear rather like the back of a house. The rear has been altered by the addition of a rear egress door and stairwell along three windows; there is also an upstairs door on the south (left) side of the building, with a stairwell. The entire structure is now clad in vinyl siding. There is a single wood-frame garage in the rear of the property as well. Parking at the property is compliant with the requirements of the SZO as there are three existing parking spaces at the property already.

6. Green Building Practices: None indicated on the application form.

7. Comments:

*Fire Prevention:* Has been contacted but has not yet provided comments.

*Ward Alderman:* Alderman LaFuentes indicated in an email to Planning Staff on February 11, 2012 that he is in favor of the proposal.



Existing Conditions



Existing Conditions

## II. FINDINGS FOR VARIANCE (Minimum Lot Area per Dwelling Unit SZO §8.5.B)

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. “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 subject property is an undersized lot at 4,303 square feet, but it is actually larger than several neighboring lots containing two-family dwellings. Many of the lots in this area are undersized and subject to the space constraints that this Applicant is also subject too. However, there do not appear to be any unique characteristics regarding the soil, shape or topography of this lot that would constitute a special circumstance for a Variance. Therefore, Planning Staff is unable to determine if special circumstances related to soil conditions, shape, or topography of the land is causing a hardship to the Applicant/property owner that is not generally affecting the zoning district in which the property is located.

2. “The specific variance as may be granted by the Board 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 subject property lacks the necessary 4,500 square feet required to create a second dwelling unit on the site, being short by 197 square feet. Since there is no way to meet this requirement by acquiring additional land, nor by reducing the size of the structure, this Variance would be the minimum needed to add a second dwelling unit to the property. However, the property has been

operating as a single-family lot for a number of years and if the single-family dwelling were to remain as such it would still enable the Applicant to retain reasonable use of the land. Therefore, the Planning Staff is unable to determine that the requested Variance is necessary to make reasonable use of the property.

The Applicant indicated the following in response to this particular Variance finding: "I would be greatly relieved if the variance was granted. This has been a major burden on me, both financially (and) emotionally. I have dealt with a huge amount of stress due to this whole project and the poor guidance I was given by those who I hired to do the work and most importantly, the I.S. Department's mistakes as outlined above. Bottom line is that the original issuing inspector was at the job site many times and knew what was being built. Work was never stopped by any inspectors during any and all inspections. Everything was approved (See Building Permit, Electrical, Plumbing and Gas Permits)."

3. "The granting of the variance 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. In addition to considering the character and use of the nearby buildings, the Board, in making its findings, 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."

As already noted above, a two-family dwelling use on a lot of such a small size is typical of the surrounding neighborhood. There are even smaller lots in this area that are operating as two-family dwellings. This proposed use would still be consistent with the purposes of the RA district which are "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." Planning Staff finds that the creation of a second dwelling unit would not be substantially more detrimental or injurious to the public or the surrounding neighborhood than the existing structure.

The Applicant indicated the following in response to this particular Variance finding: "Granting me the variance would be in harmony with the entire neighborhood of two-family houses. By finishing this difficult project, I have improved the area significantly, added off-street parking and blended with the area. I receive nothing but compliments from neighbors and people walking by, many of whom have commented to me that all the work I have done has made a great improvement to the area, and how nice it looks."

### III. RECOMMENDATION

#### Variance under §5.5.3 from Minimum Lot Area per Dwelling Unit §8.5.B

While the proposed use as a two-family structure is consistent with the pattern of the development in the neighborhood, Planning Staff is unable to recommend approval of the requested Variance from the lot area per dwelling unit requirement of SZO §8.5.B having not found that all three findings were met for the requested Variance. Planning Staff finds that the creation of a second dwelling unit would not be substantially more detrimental than the existing structure, but the proposal does not meet the other two findings for a Variance as set forth under §5.5.3 of the SZO. Therefore Staff is unable to recommend approval of the proposal.

Based upon the application materials, Planning Staff site visits, submitted information, and the above findings, the Planning Staff is **UNABLE TO RECOMMEND APPROVAL** of the requested **VARIANCE**.

The recommendation is based upon a technical analysis by Planning Staff of the application materials based upon the required findings of the Somerville Zoning Ordinance, and is based only upon information submitted prior to the public hearing. This report may be revised or updated with new recommendations, findings and/or conditions based upon additional information provided to the Planning Staff during the public hearing process.

Should the Zoning Board of Appeals choose to make the other two findings as specified under §5.5.3 of the SZO, Planning Staff recommends that the following conditions be attached to the awarded Variance:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes										
1	<p>Approval is for a Variance under SZO §5.5 from the dimensional requirement of SZO §8.5.B requiring a minimum of 2,250 square feet of lot area per dwelling unit to establish a two-family use. 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>(January 31, 2012)</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>February 13, 2006 (February 8, 2012)</td> <td>Plot Plan</td> </tr> <tr> <td>June 20, 2006 (February 8, 2012)</td> <td>Stevens Residence Drawings – Floor Plans and Elevations (Drawings # 1 – # 7)</td> </tr> <tr> <td>(February 8, 2012)</td> <td>Supplemental Front Elevation</td> </tr> </tbody> </table> <p>Any changes to the approved use, site plan, or elevations that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	(January 31, 2012)	Initial application submitted to the City Clerk's Office	February 13, 2006 (February 8, 2012)	Plot Plan	June 20, 2006 (February 8, 2012)	Stevens Residence Drawings – Floor Plans and Elevations (Drawings # 1 – # 7)	(February 8, 2012)	Supplemental Front Elevation	BP/CO	ISD/Plng.	
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2	The Applicant shall meet the Fire Prevention Bureau's requirements.	CO	Fire Prevention											
3	The Applicant shall bring the property into compliance with the minimum required percentage of landscaped area under SZO §8.5.D (25%).	CO	Plng.											
4	The Applicant is advised that no additional dwelling units may be created without receiving the appropriate permits and zoning relief.	Perpetual	ISD											
5	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.											



139 Shore Drive