



CITY OF SOMERVILLE, MASSACHUSETTS
OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2011-43

Date: June 2, 2011

Recommendation: Conditional Approval

PLANNING STAFF REPORT

Site: 184 Summer Street

Applicant Name: Agassiz Preschool, Inc.

Applicant Address: 184 Summer St, Somerville MA 02143

Property Owner Name: same

Property Owner Address: same

Agent Name: Tracey Kaplan

Agent Address: 184 Summer St, Somerville MA 02143

Alderman: Thomas Taylor

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.

Zoning District/Ward: RA/3

Zoning Approval Sought: Variance §5.5 & §8.6.5.c

Date of Application: May 10, 2011

Dates of Public Hearing: Zoning Board of Appeals June 8, 2011

I. PROJECT DESCRIPTION

1. Subject Property: The property a 8512 square foot rectangular lot on which sits a 2.5 story structure. The Zoning Board of Appeals issued a special permit for a 650 sf addition to the nonconforming structure and a special permit for modification of parking requirements in 2009, which allowed for the Agassiz Preschool to occupy the building. The property is on the National Register of Historic Places.



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2. Proposal: 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.

3. Nature of Application: The fence, which was installed to meet DEEC license requirements, does not comply with SZO §8.6.5.c which states that on any lot where front yards are required, all structures, fences or plantings greater than 3 ½ feet above the sidewalk level and within 20 feet of any corner street line intersection shall be maintained so as not to interfere with traffic visibility across corners. The Applicant is seeking a variance for the height of the fence is 4 feet, which is 6 inches taller than that which is allowed in this section of the Ordinance.



Picture from vehicle on Spring St approaching Summer St (top), Picture at crosswalk before turning onto Summer St (bottom)

4. Surrounding Neighborhood: The site is adjacent to the St. Catherine's of Genoa Church, the St. Catherine's School and a parking lot. There are also one-, two-, and three-family homes in the immediate vicinity.



5. Impacts of Proposal: The fence has already been constructed so the visibility with a four foot fence at the intersection of Spring and Summer Streets is evident today.

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

7. Comments:

Ward Alderman: Alderman Taylor indicated to staff that he concurs with the Staff recommendation.

Historic Preservation: The house is on the National Register of Historic Places. A solid wood fence does not reflect the historic character of the building and does not meet the guidelines for fences in front yards.

Fences should not screen front yards, should be open and decorative in nature, and should be a maximum of 3 feet along public rights-of-way. A picket style fence with gaps between the boards would be most appropriate while a wide board with decorative cutouts might also work.

Traffic & Parking: The applicant seeks a variance from SZO 8.6.5.c to have a 4' fence at the corner of Spring and Summer St. Traffic and Parking does not support this request. The AASHTO "Geometric Design of Highway and Street" criteria (Federal Design Standards) state that the motorist eye height is 3.5' from the pavement surface. At intersections this eye height is required for uninterrupted line of sight from vehicle to vehicle. If this line of sight is obstructed by a 4' high fence or any obstruction over 3.5' the probability of an accident is increased. With the concentration of school age children at this location (preschool and adjacent elementary school), this potential increase in accidents which most likely would involve school age children at this intersections is of high concern. To reiterate, Traffic and Parking does not support this request for a variance.



184 Summer Street: Rear yard (above), side yard (right, bottom), front yard (right, top)

II. 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.”

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

III. RECOMMENDATION

Variance under §5.5 & §8.6.5.c

Based on the materials submitted by the Applicant and the above findings the Planning Staff recommends **APPROVAL** of the requested **VARIANCE** for a four foot fence at the corner of Spring and Summer Streets within twenty feet of the intersection.

The recommendation is based upon a technical analysis by Planning Staff of the application material 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.

