



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
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**Case #:** ZBA 2017-81  
**Date:** August 16, 2017  
**Recommendation:** Uphold ISD Decision

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**PLANNING STAFF REPORT**

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**Site:** 343, 345, 349, and 351 Summer Street

**Applicant Name:** Mary Gray  
**Applicant Address:** 48 Hawthorne Street, Somerville, MA  
**Ward / Alderman:** Ward 6 / Lance Davis

**Legal Notice:** Applicant Mary Gray seeks an Administrative Appeal per SZO §3.1.9, 3.2, and 3.2.3 and MGL c. 40A §8 from a decision by the Inspectional Services Department to issue a building permit (B16-001971) for construction of a structure at 343-351 Summer Street per ZBA Decision 2011-54. The property owner is 351 Summer LLC. CBD and RA Zones. Ward 6.

Dates of Public Hearing: August 16, 2017

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**I. GROUNDS FOR APPEAL**

Mary Gray has filed an appeal of the issuance of the building permit for the building at 343-351 Summer Street (BP16-001971) and has listed that the appeal is filed for “the following reasons among others.”<sup>1</sup>

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<sup>1</sup> The term “among others” in this appeal suggests that the applicant may intend to add other issues to the appeal. Staff does not believe this to be permitted. The appeal was filed on the last day that a building permit appeal may be filed by law. The applicant must address the grounds for the appeal to permit ISD, the Planning Division staff, and the building permit applicant the opportunity to respond to the appeal. If Ms. Gray provides additional grounds for this appeal, the Board may want to request that the City’s legal department determine if this is permitted. Otherwise, staff focuses this report on the four items identified in the application.

**1 – Ms. Gray alleges that:** the project is in “violation of SZO 8.6.12, (as) the buildings are in the CBD district and are within 15’ of the RA district line.

**2 – Ms. Gray alleges that:** the project is in violation of “SZO 9.9.c which allows only one driveway curbcut per street line for lots in RA districts.”

**3 – Ms. Gray alleges that:** the project fails “to comply with Condition 70 of ZBA Decision No. 2011-54 which requires “The applicant shall establish a deed restriction indicating that the parcels cannot be sold independently and control of the land shall remain with a single legal entity.”

**4 – Ms. Gray alleges that:** there is “failure to provide adequate information to ascertain whether the proposed open air parking spaces comply with requirements of SZO 9.11 and the information provided for the parking spaces in the garage and under the residential building in the rear shows that they do not comply with SZO 9.11

## **II. BACKGROUND**

Submitted herein as an attachment to this staff report is the decision of the ZBA in September of 2011 granting the original special permit for this project. That 2011 decision was appealed by other residents of Hawthorne Street, and that appeal was decided in favor of the ZBA by the Superior Court in a decision in December of 2015. That decision is also attached.

The 2011 special permit was approved by the ZBA after many months and many meetings of testimony. The project included over 70 conditions. In the past decade there is likely no case that has been more analyzed and more carefully conditioned than the project at this site.

After the court upheld the ZBA decision, there was a change in project developer, and the new developer filed for a building permit in late 2016. Over the next few months, the applicant completed all of the application and answered all of the required conditions for a building permit. The permit review process took approximately seven months, and the permit was issued in June.

## **III. APPEAL**

### **1. Role of the ZBA:**

In an administrative appeal hearing, the ZBA hears appeals of the decision of the Superintendent of Inspectional Services. The process for such appeals is set out in MGL 40A, Section 8 and Section 3.2 of the SZO. An appeal may be taken by any person aggrieved by an order or decision of the Superintendent of Inspectional Services. The ZBA must determine whether to affirm the ISD decision or overturn it and why.

Staff believes that Ms. Gray has a presumptive status as an aggrieved party in this circumstance and that appeal is properly before the Board. It is our understanding that Ms. Gray purchased her Hawthorne Street home after 2011, and may not have been a part of the neighborhood outreach and public process that led up to the original ZBA decision.

Ms. Gray is represented in this appeal by Attorney Philip Cahalin. Ms. Gray has signed the application authorizing Mr. Cahalin to act as her agent in this case.

## **2. Analysis of the Appeal:**

OSPCD staff has reviewed:

- 1) the appeal application
- 2) the file for the property at Inspectional Services
- 3) the original ZBA decision

In her appeal, Ms. Gray has put forth four main arguments. A discussion of each of these arguments and the staff recommendation on each item is below:

***Ms. Gray alleges that: the project is in “violation of SZO 8.6.12, (as) the buildings are in the CBD district and are within 15’ of the RA district line.***

The ordinance states that buildings in the CBD district that abut a lot within the RA district cannot be within 15’ of the line. The staff and the 2011 ZBA interpreted this to mean that they cannot be within 15 feet of the side property line, NOT (as Ms. Gray alleges) within 15 feet of a district line that divides the split-lot parcel. Based upon this, there is no violation here. This item was reviewed by the Planning Division prior to the 2011 hearing, by the ZBA during the 2011 hearing, and by ISD during final zoning review. When the project decision was upheld by the superior court, the court also did not take issue with this interpretation. Therefore, while the buildings may be within 15 feet of the line that separates RA and CBD districts and bisects the combined lot, this is not the line from which split lots would be measured. Otherwise, split lots that cross zoning boundaries would have insurmountable no-build areas.

***Ms. Gray alleges that: the project is in violation of “SZO 9.9.c which allows only one driveway curbcut per street line for lots in RA districts.”***

The law limits curbcuts as follows:

*SZO 9.13. SZO 9.9.c states that, “In all districts except Residence "A", Residence "B", and the University District, the number of driveways permitting entrance to and exit from a lot shall be limited to two per street line. For lots in Residence "A" and "B" districts, only one (1) driveway curb cut shall be permitted per street line.”*

The site had three curbcuts prior to construction. The proposed project, upon completion, will have two.

The curbcut which services the underground parking is located in a CBD district as indicated on the plans. The cut which services the surface lot is within the RA zone and is the only cut within the RA zoned portion of the project. ZBA 2011-54 indicates in findings section 2.1 “two curb cuts are proposed which is compliant with City Regulations and is one fewer than the existing site.”

Although a portion of this lot is in the RA district, that portion is compliant. And, as a whole, the joined lot is more conforming after the project than it was before the start of the project. Therefore, there is no zoning violation here.

***Ms. Gray alleges that: the project fails “to comply with Condition 70 of ZBA Decision No. 2011-54 which requires “The applicant shall establish a deed restriction indicating that the parcels cannot be sold independently and control of the land shall remain with a single legal entity.”***

The lots were merged prior to the issuance of a building permit. The applicant filed, with the Planning Division, a plan of land showing the lots merged. The applicant filed this plan with the registry of deeds. The applicant then provided and filed a statement that restricts the independent sale of any portion of the project. This meets the condition. Staff is aware that the building permit was issued prior to receipt of the final document, this was corrected within a few days of issuing the permit and the project is now in compliance.

***Ms. Gray alleges that: there is “failure to provide adequate information to ascertain whether the proposed open air parking spaces comply with requirements of SZO 9.11 and the information provided for the parking spaces in the garage and under the residential building in the rear shows that they do not comply with SZO 9.11***

The building permit plan set matches the ZBA approved plan set. The ZBA special permit includes relief from the dimensions of SZO 9.11 under SZO 9.13. That relief was granted by the Board in 2011. No material changes have been made to the plans for parking space sizes and/or locations since that 2011 approval, and therefore the dimensions on the plan are permitted as a part of the approved Special Permit.

#### **IV. RECOMMENDATION**

- After review of the issues raised in the appeal, the Planning staff concludes that the issues do not constitute a basis for overturning the decision from ISD.
- Planning staff recommends that the ZBA **DENY** this administrative appeal.