



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2018-33
Date: July 18, 2018
Recommendation: Unable to recommend

PLANNING STAFF REPORT

Site: 51 Oliver Street

Applicant / Owner Name: 51 Oliver Street, LLC
Applicant / Owner Address: 741 Broadway, Somerville, MA 02144
Agent Name: Sean T. O'Donovan, Esq.
Agent Address: 741 Broadway, Somerville, MA 02144
Alderman: Matthew McLaughlin

Legal Notice: Applicant/Owner, 51 Oliver Street, LLC, seeks a Variance under §5.5, §8.5, and Article 9 for minimum lot size, left side yard setback, floor area ratio (FAR), minimum frontage, and parking to construct a three-story, three-family dwelling. RB Zone. Ward 1.

Dates of Public Hearing: Zoning Board of Appeals – July 18, 2018

I. PROJECT DESCRIPTION

- Subject Property: The subject property is a 4,600 square foot vacant parcel. It has been used as a parking lot for the neighborhood since as early as 1973. The site has its own curb cut and utilities.
- Proposal: The proposal is to construct a three-unit triple decker on the vacant property.
- Green Building Practices: The application states that the applicant is intending to install electric automobile charging stations, re-used cementitious exterior materials, and possible solar panels and reusable rain water sources.



4. Comments:

Fire Prevention: The Fire Prevention Bureau of the Somerville Fire Department does not have any objections to the proposal.

Ward Alderman: Alderman McLaughlin has been informed of this proposal and held a neighborhood meeting. He does not have any objections.

II. FINDINGS FOR VARIANCE

A Variance (§5.5) is sought to construct a new three-unit triple decker. The proposed structure will violate the dimensional requirements for left side yard setback, lot area, frontage, and the number of off-street parking spaces. The structure would be situated virtually in the middle of the lot with a 15 foot front yard, a right side driveway that leads to three parking spaces, and private patios and lawn area within the left side yard. The units will not be stacked like a traditional triple decks, instead, each unit will have three levels of living and will be placed behind one another. The applicant is proposing a head house with a roof deck for each unit. There will also be an unfinished basement.

DIMENSION	ALLOWED/ REQUIRED	EXISTING	PROPOSED	COMPLIANCE
# of Dwelling Units	3	0	3	Complies
Lot Size	7,500	4,600	4,600	Violation
Lot Area/Unit	1,500	N/A	1,533	Complies
Ground Coverage	80%	36%	37.5%	Complies
Landscaped Area	20%	0	20%	Complies
Pervious Area Min	35%	0	40%	Complies
FAR	1.0	0	0.79	Complies
Height (Ft/Stories)	40 / 3	0	30 / 3	Complies
Front Yard	15	0	15	Complies
Rear Yard	20	0	27	Complies
Left Side Yard	10	0	8	Violation
Right Side Yard Min	10	0	10	Complies
Frontage	50	40	40	Violation
# of Parking Spaces	6	20	3	Violation

The subject property has an interesting ownership history worth noting. It was once owned in common with the adjacent property at 53 Oliver Street which contains a two-family dwelling. Typically when adjacent undersized lots are held in common ownership where one has a principle use and another is vacant they are considered merged for zoning purposes in order to help meet the minimum lot area zoning requirement. The two properties were held in common ownership until 2005.

In a recent Massachusetts Appellate case, *Gallagher vs. Falmouth ZBA*, the Appeals Court determined that a house lot and a carport lot owned in common by one individual had merged. While the Land Court determined that the lots had merged in this case, they specifically reiterated the point that lot merger is not automatic, and is instead determined by a fact-based analysis of the situation. Therefore, comparison against the fact pattern noted in this case is a worthwhile exercise to determine if the lots at 51 and 53 Oliver had merged prior to their separate sale. A letter from a previous longtime owner of the both parcels has submitted a letter to the Planning Staff to help document facts regarding the history of the site.

According to the Land Court:

The determination of whether adjacent properties should be deemed to have merged for zoning purposes is a highly fact-sensitive inquiry. In making such determinations, courts have considered several factors, including:

(a) whether the adjacent lots were conveyed by one deed or multiple deeds (e.g. Lindsay v. Bd. of App. of Milton, 362 Mass. 126, 130-131 (1972) (finding several properties previously conveyed as separate lots to have merged upon their joint conveyance in a subsequent deed));

They adjacent lots have been conveyed by separate deeds.

*(b) whether the lots have been assessed separately or together (e.g. id. at 132, n. 6 (“where owners have benefitted from a particular assessment practice, it is not unjust to require that an existing use be maintained even though, under a different interpretation of the zoning by-law, a more favorable use might be open to the owners” (quotation omitted)); Seltzer, 24 Mass. App. Ct. at 524 (the fact that lots were assessed as one lot was a relevant factor but did not require a finding of merger); McGrath v. Zoning Bd. of App. of Chatham, 76 Mass. App. Ct. 1120, *3 (2010) (unpublished opinion) (separate assessment of property was a relevant factor);*

The lots have been assessed separately and have their own curb cuts and utility lines.

(c) the location of structures on property and whether structures cross lines (e.g. Seltzer, 24 Mass. App. Ct. at 523-524 (construction of a residence straddling lot lines does not necessarily entail merger of the lots);

The structure on 53 Oliver Street does not cross the property line.

*(d) whether the owner prepared a plan of the merged lots (e.g. McGrath, 76 Mass. App. Ct. at 1120, *3 (recorded plan was a “perimeter plan”, not a “consolidation plan”, and thus did not establish an intent to merge lots)); Seltzer, 24 Mass. App. Ct. at 523 (preparation of a plan setting new lot line division between two adjacent lots suggested an intent to keep the lots separate);*

A perimeter plan nor a consolidation plan were ever recorded.

(e) whether separate ownership is a ruse to avoid the effects of the new law (e.g. Distefano v. Town of Stoughton, 36 Mass. App. Ct. 642, 644 (1994) (disregarding “checkerboard” conveyances to create an appearance of separate ownership); Planning Bd. of Norwell v. Serena, 27 Mass. App. Ct. 689, 690-691 (1989) (conveyance of adjacent lot to a trust found not to preclude merger), aff’d, 406 Mass. 1008 (1990));

Staff does not believe that the separate ownership was a ruse to avoid the effects of any new law.

(f) whether the common owner exercised control over both lots (e.g. Distefano, 36 Mass. App. Ct. at 644 (one party exercised control over multiple lots despite sham conveyances to create the appearance of separate ownership)); and

The common owners have exercised control over both lots.

(g) whether the properties have been physically walled off or otherwise separated from each other (e.g. Vetter, 330 Mass. at 630 (finding that physical separation of lots might have undermined application of the merger doctrine)).

The lots were physically walled off with a fence since before 1973. The vacant parcel was used by a local church as a parking lot and then later as a parking lot for area residents in need of additional parking.

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.”*

Applicant’s response: “The land is thin in nature @ 40 feet in width. As a result, the Applicant has been challenged in attempting to create family style units on this thinly shaped lot the makes sense financially based on acquisition, excavation, and building costs. Additionally, the topography of the land is sloped creating additional excavation and construction challenges.”

Staff’s response: The lot is 40 feet wide and the proposed structure is 22 feet wide with side yards of eight and ten feet. The narrow shape of the lot does create a situation where the lot would not be able to be developed without needing Variances because a dwelling structure could not be built to serve a practical purpose at less than 22 feet in width.

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.”*

Applicant’s response: “The variance requested is the minimum approval necessary to grant reasonable relief as a result of its challenging thin nature of only 40 feet in width, thus requiring the applicant to vary from the Somerville Zoning Ordinance by necessity. This proposal creates needed housing for families. The Applicant is striving to create family units as this local is in close proximity to 3 of Somerville’s Public School. In light of the thinly shaped lot of land the Applicant is committed to creating 3 family style units with 3 bedrooms each.”

Staff’s response: As previously noted, the narrow shape of the lot does create a situation where the lot would not be able to be developed without needing Variances because a dwelling structure could not be built to serve a practical purpose at less than 22 feet in width. Any type of development on this lot will require a Variance under the current SZO due to the lot not meeting the minimum lot size requirement. The proposal would meet setback requirements and lot dimensions under the latest proposed zoning overhaul; however, it would violate some other regulations in the overhaul. The overhaul would prohibit triple-decker building types and three-units in this proposed district; however, potentially allowed three-units and/or triple decker building types in the proposed Neighborhood Residential (NR) district has been a topic of discussion in the Board of Alderman Land Use Committee deliberations. Also, the overhaul would prohibit units within a building from being arranged front-to-back

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.”*

Applicant’s response: “The granting of the variance is in harmony with the Somerville Zoning Ordinance and SomerVision as it create family style units in close proximity to 3 of Somerville’s public school and public transportation all within a half mile. The proposal is not injurious to the neighborhood nor detrimental to the public welfare as it fits into surrounding based on size, unit count, and use. The building style is very common and in harmony with other surround structures.”

Staff’s response: The proposal would allow for the development of a derelict vacant site within this residential neighborhood that would provide opportunities for family-sized units. Staff does not believe that the proposal would be injurious to the neighborhood or detrimental to the public welfare.

III. RECOMMENDATION

Variance under §5.5, §8.5 and Article 9

Based on the materials submitted by the Applicant, the above findings and subject to the following conditions, Planning Staff is **UNABLE TO RECOMEND** the requested **VARIANCE**.

If the Zoning Board decides to make a favorable vote, Staff would recommend the following conditions.

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.

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	Approval is for the construction of a new three-unit triple decker. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/Plng.							
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>March 14, 2018</td> <td>Initial application submitted to the City Clerk’s Office</td> </tr> <tr> <td>June 29, 2018</td> <td>Plans submitted to OSPCD (A1, A2, and certified plot plan)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	March 14, 2018	Initial application submitted to the City Clerk’s Office	June 29, 2018	Plans submitted to OSPCD (A1, A2, and certified plot plan)
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Any changes to the approved site plan or elevations/use that are not <i>de minimis</i> must receive SPGA approval.										
Pre-Construction										
2	The Applicant must contact the Engineering Department to obtain a street address prior to a building permit being issued.	BP	Eng.							
3	The proposed basement finished floor elevation shall not be less than is 1 foot above the Seasonal High Ground Water elevation. The seasonal high ground water elevation shall be determined by a Massachusetts certified soil evaluator and stated on a signed soil test pit log.	BP	Eng.							

4	The Applicant shall complete the Site Plan Review Checklist and supply the information to the Engineering Office. The plans must comply with the City's Stormwater Management Policy.	BP	Eng.	
5	The Applicant shall submit a proposed drainage report, stamped by a registered PE in Massachusetts that demonstrates compliance with the City's stormwater policy.	BP	Eng.	
6	The Applicant must contact the Engineering Department to coordinate the timeline for cutting or opening the street and/or sidewalk for utility connections or other construction. There is a moratorium on opening streets from November 1st to April 1st and there is a list of streets that have additional opening restrictions.	BP	Eng	
7	The applicant must comply with the policy for new connections to and modifications to existing connections to the municipal sewer and drainage system stormwater management and infiltration/inflow mitigation. The Applicant shall work with Engineering to meet this condition and provide the required fees/mitigation.	BP	Eng.	
Construction Impacts				
8	The applicant shall post the name and phone number of the general contractor at the site entrance where it is visible to people passing by.	During Construction	Plng.	
9	The Applicant shall at their expense replace any existing equipment (including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheel chair ramps, granite curbing, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity. All new sidewalks and driveways must be constructed to DPW standard.	CO	DPW	
10	All construction materials and equipment must be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P	
11	Construction shall occur from 7:30am – 5:00pm Monday-Friday ONLY. There shall be no construction or construction-related work allowed on the weekends or holidays.	During Construction	ISD	
Design				
12	Applicant shall provide final material samples for landscaping, siding, trim, windows, fences, and doors to Planning Staff for review and approval prior to construction.	BP	Plng.	
Site				
13	Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Plng. / ISD	
14	The electric, telephone, cable TV and other such lines and equipment shall be placed underground from the source or connection. The utilities plan shall be supplied to the Wiring Inspector before installation.	Installation of Utilities	Wiring Inspector	

15	All new sidewalks will be installed by the Applicant in accordance with the specifications of the Highway Superintendent. Specifically, all driveway aprons shall be concrete;	CO	Plng.	
16	One tree must be planted and maintained according to National Nurseryman's Standards, and in accordance with SZO §10.2.2 and §10.6.2;	CO	Plng.	
Miscellaneous				
17	Gas and electric meters shall not be on the front of the structure. Gas and electric meters may be located on the side of the structure but shall be screened from the street by a hardy, staff approved evergreen planting. Utilities shall not be located adjacent to windows and shall not impact any parking, landscaping, or egress. The provisions of this condition may be waived by staff if the applicant submits a letter from the utility, signed by a utility representative, on utility letterhead, indicating that there is no feasible alternative to placing meters in violation of this condition.	CO	ISD	
18	Electrical conduits on the exterior facades of buildings shall be painted to match the wall material to which they are attached. Conduits are not allowed on the front of any structure.	CO	ISD	
19	Garbage and recycling locations shall be clearly indicated on site plans. Storage areas shall be inside of the structure or shall be fully screened from view from both the public way and abutters by an appropriate material reviewed and approved by staff. The location shall not impact any parking, landscaping, or egress.	CO	Plng.	
20	Granting of the applied for use or alteration does not include the provision for short term rental uses, such as AirBnB, VRBO, or the like. Separate approvals are needed for the aforementioned uses.	BP	Plng.	
21	The Applicant, its successors and/or assigns, shall be responsible for maintenance of both the building and all on-site amenities, including landscaping, fencing, lighting, parking areas and storm water systems, ensuring they are clean, well kept and in good and safe working order.	Cont.	ISD	
Public Safety				
22	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
23	Per Somerville fire safety regulations, grills, barbecues, chimineas and the like are NOT permitted on decks or porches.	Perpetual	FP/ISD	
24	To the extent possible, all exterior lighting must be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	Plng.	
Final Sign-Off				
25	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.	

