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## CITY OF SOMERVILLE

Office of Strategic Planning & Community Development

**TO:** Somerville Zoning Board of Appeals (ZBA)  
**FROM:** Planning & Zoning Staff  
**HEARING DATE:** January 20, 2021  
**RE:** 9-11 Aldersey Street (Land Court Remand), **UPDATED**

This memo provides a brief **update** regarding the Court Remand of ZBA 2003-25. Please see the memo submitted to the ZBA for their January 6, 2021 hearing for more additional information.

On January 6, 2021, the ZBA discussed the Court Remand regarding 9-11 Aldersey Street. The outgrowth of that hearing resulted in the ZBA requesting the following:

1. plot plan
2. corrected plans/elevations regarding a left elevation open front porch on Building "A"
3. clarification regarding the terminus of the left façade of Building "A" relative to the left side yard property line
4. inclusion of north arrow
5. inclusion of small windows on the front façade of Building "C" in the elevation drawings rather than as a condition. Since the windows have been included in the plan set, Staff has removed the condition requiring such from the list of conditions.

The plan set provided to the ZBA for their January 20, 2021 meeting provides the above-noted items.

### Litigation & Role of the ZBA

As noted in the Staff Memo of January 6, 2021, the 9-11 Aldersey Street proposal has been either under board review<sup>1</sup> or litigated since 2003. There were two components to the litigation: the ZBA litigation and the HPC litigation. Each litigated component was heard by a different judge in a different court. The ZBA component was litigated in Land Court under Judge Keith Long. The HPC component was litigated in Superior Court under Judge William Ritter. In both the ZBA and HPC cases, the Judges ordered approval of the proposal with no opportunity for large-scale changes and minimal opportunity to "tweak" minor architectural details and features.

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<sup>1</sup> ZBA and Historic Preservation Commission (HPC)

### **ZBA Litigation**

Land Court Judge Keith Long ruled that the ZBA erred in its initial denial of the proposal for the development at 9-11 Aldersey Street. Judge Long himself made the findings<sup>2</sup> that the proposal meets all zoning dimensional requirements and all other provisions for the granting of a Special Permit with Site Plan Review (SPSR) that were set forth under the version of the SZO active in 2003. No dimensionals of the proposal are to be changed. Judge Long, however, recognized that some changes to the proposal might be made as the result of HPC review.

### **HPC litigation**

Superior Court Judge William Ritter ruled that the HPC erred in its denial of the proposed alterations to be made to this site. Judge Ritter ruled that the HPC was ordered to approve the project but allowed for *minor* changes to be made to architectural details and some architectural features such as dormer design.

At their public meeting on November 4, 2020, the HPC approved the proposal. As part of their approval, minor changes were made to some architectural details and architectural features. These changes were already included in the plan set and noted in the staff memo reviewed by the ZBA at their January 6, 2021 meeting. These minor "tweaks" did not impact the project's compliance with zoning dimensionals or other required provisions of an SPSR (2003 zoning code).

### **Role of the ZBA**

Attorneys for both the City and the Applicant agree that the minor changes allowed to the proposal by the Courts can be included in the plans provided to the ZBA for their approval. The plan set that was reviewed by the ZBA at their January 6, 2021 meeting was consistent with those allowed changes. The updates made to the plan set to be reviewed by the ZBA at their January 20, 2021 meeting remains consistent with those allowed changes.

The Court orders the ZBA to approve the proposal for 9-11 Aldersey Street. The ZBA is not allowed to make findings as Judge Long has already made the findings on behalf of the ZBA.

City and Applicant attorneys agree that the ZBA may, at their discretion, add reasonable conditions to their approval. The list of proposed conditions that Staff provided to the ZBA for their January 6, 2021 meeting is attached again to this memo with the original Condition #22 that was included in the January 6, 2021 memo removed since the Applicant team has adjusted the plans to meet that condition.

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<sup>2</sup> Applicable findings were made by Judge Long under the provisions of the SZO active in 2003.

**CONDITIONS**

Planning Staff recommends the following conditions be added to the ZBA's approval of the Special Permit with Site Plan Review (SPSR) for 9-11 Aldersey Street.

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	Approval Is for a Special Permit with Site Plan Review (SPSR). Two new buildings will be constructed. Existing building to be restored according to HPC approvals. 11 residential units total on property distributed across the three buildings. One of the units will be inclusionary. 24 on-site parking spaces.	BP/CO	ISD/Plng.							
	<table><tr><th>Date (plan set)</th><th>Submission</th></tr><tr><td>November 6, 2020</td><td>Elevations &amp; Site Plan</td></tr><tr><td>January 6, 2021 updated January 20, 2021</td><td>Plot plan Updated plan pages</td></tr></table>				Date (plan set)	Submission	November 6, 2020	Elevations & Site Plan	January 6, 2021 updated January 20, 2021	Plot plan Updated plan pages
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Any changes to the approved elevations that Planning Staff determines are not <i>de minimis</i> in nature must receive SPGA approval.										
Affordable Housing										
2	Affordable Housing Implementation Plan (AHIP) shall be approved by the OSPCD Housing Division and executed prior to issuance of Building Permit. Affordable units shall be provided on-site.	BP	Housing							
3	Written certification of the creation of affordable housing units, any fractional payment required, or alternative methods of compliance, must be obtained from the OSPCD Housing Division before the issuance of a Certificate of Occupancy (C.O.). No C.O. shall be issued until the OSPCD Housing Division has confirmed that the Affordable Housing Restriction has been approved and recorded and the developer has provided the promised affordable units on-site.	CO	Housing							
4	No Certificate of Occupancy shall be issued until the OSPCD Housing Division has confirmed that: (for Condominium Projects) the Condominium Documents have been approved and the Developer has agreed to a form of Deed Rider for the Affordable Unit(s), or (for Rental Projects) the Developer has agreed to and executed a Memorandum of Understanding for Monitoring of the Affordable Unit(s).	CO	Housing							
5	The OSPCD Housing Division shall determine which unit(s) shall be inclusionary and at what rate.	CO	Housing							

Misc. Conditions				
6	The Applicant shall ensure that all zoning dimensions are contained on the construction documents submitted for building permit review. Building height is limited to 35 feet above average finished grade.	BP	Zoning Review Planner (ISD)	
7	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. This information shall be posted to be easily readable from the public sidewalk along Prospect Street.	During Construction	Zoning Review Planner (ISD)	
8	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	
9	If a transformer is required, it shall be buried or shall be placed behind one of the buildings so that It is out of site of public view. The proposed location for the transformer shall be identified on site plans at the time of the application for a building permit is submitted.	BP and CO	Plng/ISD	
10	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.	BP	Zoning Review Planner (ISD)	
11	The Applicant must contact the Engineering Department to obtain addresses for all units prior to a building permit being issued.	BP	Eng	
12	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.	
13	Trash and recycling shall be stored in the building or in an enclosed (top and sites) place that is out-of-view of the public way. This must be indicated on site plans.	Perpetual	ISD	
14	Trash shall be picked up by a private contractor.	Perpetual	ISD	
15	Snow removal shall be undertaken by a private contractor and all shoveled/plowed snow shall be removed from the site.	Perpetual	ISD	

16	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	Zoning Review Planner (ISD)	
17	Electrical conduits on the exterior facades of buildings shall be painted to match the color of the building portion to which they are attached. Conduits are not allowed on the front of any structure.	CO	Zoning Review Planner (ISD)	
18	Exterior vents and pipes shall be painted or wrapped to match the façade or roof material through which they pass. Pipes and vents are not allowed on the front of the structures.	CO	Zoning Review Planner (ISD)	
19	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.	Perpetual	ISD	
20	Notification must be made, within the time period required under applicable regulations, to the Massachusetts Department of Environmental Protection (DEP) if there is any release of oil, hazardous materials, or regulated hazardous substances at the site. The City's OSE office, Fire Department and the Board of Health shall also be notified.	At time of release	OSE/FP/BOH	
21	The Applicant shall, at his 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/ISD	
<b>Final Sign-Off</b>				
22	The Applicant shall contact the <b><u>ZONING REVIEW PLANNER within ISD</u></b> at least five business 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	Zoning Review Planner (within ISD)	