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MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2017-100
Site: 23-25 Boston Avenue
Date of Decision: December 13, 2017
Decision: Petition Approved with Conditions
Date Filed with City Clerk: December 26, 2017

ZBA DECISION

Applicant Name:	23-25 Boston Avenue, LLC
Applicant Address:	657 Main Street, Suite 7, Waltham, MA 02451
Property Owner Name:	23-25 Boston Avenue, LLC
Property Owner Address:	657 Main Street, Suite 7, Waltham, MA 02451
Agent Name:	Richard DiGirolamo

Legal Notice: Applicant and Owner, 23-25 Boston Avenue*, seeks Special Permits under §4.4.1 of the SZO to increase the FAR by more than 25%, add dormers and an areaway within the non-conforming right side yard setback, and finish basement. RA zone. Ward 4.

<u>Zoning District/Ward:</u>	RA zone/Ward 4
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	December 13, 2017
<u>Date(s) of Public Hearing:</u>	December 13, 2017
<u>Date of Decision:</u>	December 26, 2017
<u>Vote:</u>	5-0

Appeal #ZBA 2016-145 was opened before the Zoning Board of Appeals at the Somerville High School Auditorium, 81 Highland Avenue, on December 13, 2017. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L. c. 40A, sec. 11 and the Somerville Zoning Ordinance. After one hearing of deliberation, the Zoning Board of Appeals took a vote.



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DESCRIPTION:

1. **Subject Property:** The subject parcel presents a 2,940 square foot lot with a 2 ½-story, two-family residential structure. The structure contains 2,993 square feet of living area and is located in the RA zone.
2. **Proposal:** The Applicant proposes retaining the two-family use and renovating the property. Key aspects of the proposal that trigger the need for a special permit appear immediately below:

FAR:

The property is located in the RA zoning district which has a maximum FAR of .75. The existing property is already non-conforming with regard to its FAR which is at 1.01. The applicant proposes increasing the FAR by more than 25% to 1.33. The main catalyst for the FAR increase is finishing the basement and, to a lesser extent, the reconfiguration of the interior arrangement of each unit. The overall net floor area will increase from 2,993 square feet to 3,569 square feet.

Left side yard setback (dormer):

The left side yard setback is non-conforming at 7.5 feet where an 8-foot minimum is required. There is an existing dormer located at the rear of this elevation that will remain after the renovations. The Applicant proposed adding a new, smaller dormer toward the front of this left elevation. The proposed new dormer's location in the left side yard setback triggers the need for a special permit. The length of the existing and proposed left elevation dormers taken together total 22.4 feet in length which is less than 50% of the length of the roof plane to which they are attached (the length of the roof plane is 46.2 feet).

Right side yard setback (dormer):

At 6.7 feet, the right side yard setback is non-conforming as an 8-foot minimum setback is required. There is an existing dormer located at the rear of the roof plane on this elevation. This dormer will remain after the renovations. The Applicant proposes adding another dormer toward the front of this roof plane. From the renderings provided, it appears that the front of this proposed right elevation dormer will align with the front of the proposed left elevation dormer, providing a symmetry across both roof planes when viewed from the public way along Boston Avenue.

The proposed right elevation dormer appears to rest further back from the eave than the existing dormer on this elevation. It does not appear that the distance from the edge of this dormer to the right property line has been provided on the plan set. Without measurements, staff assumes that the proposed dormer will fall within the right side yard setback. The Applicant will need to provide this measurement on their building plans.

Right side yard setback (areaway):

The Applicant proposes a large areaway along the rear of the right elevation. This areaway is designed to provide emergency egress from the two proposed bedrooms in the basement.

The Board is not supportive of the inclusion of this areaway. Due to its length and width, escaping from this area in an emergency will likely require a person to exit from the areaway onto the abutting property – as long as a fence is not present. Emergency egress must allow for an individual to egress onto their own property. Emergency egress cannot be created such that its success depends on one's ability to cross onto an abutting property to facilitate escape. Further, the length of the areaway leaves little ground space to the right and left of each emergency egress window onto which an escaping individual can climb. This



area is so tight that Staff finds the over-riding purpose of providing safe egress is negated by the constrained area into which an individual would have to exit. In addition, the proposed vegetation around this areaway would further encumber an individual's means of escape from the basement bedrooms.

The Board believes that this situation can be remedied by relocating the bedrooms. The Board determined that the Applicant remove the areaway along the right elevation and position the bedrooms on the opposite side of the basement where there is more land onto which an individual can exit the emergency windows. The Board also determined that only window wells be used on this left elevation. There should be no gating or vegetation around the window wells. Conditions have been added to the end of this staff report to address these issues.

Parking relief:

The Board notes that the project, as proposed, does not require parking relief. The justification for this is as follows:

Dwelling Area	Existing Bdrs.	Parking Req.	Dwelling Area	Proposed Bdrs.	Parking Req.
Unit 1	2	1.5	Unit 1	3	2.0
Unit 2	4	2.0	Unit 2	3	2.0
Total 3.5			Total: 4.0		

Parking formula: *New Parking Req. – Old Parking Req. = new spaces required**

23-25 Boston Avenue: $4.0 - 3.5 = .5$ (this result is less than 1, therefore no parking relief is required)

*When this result is < 1 or a negative number, no parking relief is required.

3. Green Building Practices: The application states that the project will not exceed the stretch code.

II. FINDINGS FOR SPECIAL PERMIT (SZO §4.4):

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §5.1.4 of the SZO. This section of the report goes through §5.1.4 in detail.

1. Information Supplied:

Staff finds that the information provided by the Applicant conforms to the requirements of §5.1.2 of the SZO and allows for a comprehensive analysis of the project with respect to the required Special Permits.

2. Compliance with Standards: *The Applicant must comply "with such criteria or standards as may be set forth in this Ordinance which refer to the granting of the requested special permit."*

Section 4.4.1 states that "[l]awfully existing nonconforming structures other than one- and two-family dwellings may be enlarged, extended, renovated or altered only by special permit authorized by the SPGA in accordance with the procedures of Article 5. The SPGA must find that such extension, enlargement, renovation or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming building. In making the finding that the enlargement, extension,



renovation or alteration will not be substantially more detrimental, the SPGA may consider, without limitation, impacts upon the following: traffic volumes, traffic congestion, adequacy of municipal water supply and sewer capacity, noise, odor, scale, on-street parking, shading, visual effects and neighborhood character.”

In considering a special permit under §4.4 or 4.5 of the SZO, the Board finds that overall the alterations proposed would not be substantially more detrimental to the neighborhood than the existing structure.

Enlargements to the structure that will be visible to the public are the addition of one left elevation dormer and one right elevation dormer. This property is one of only a handful of structures on this street and on neighboring streets that have had shed dormers added to them over the years.

That said, Staff does not find that the inclusion of these dormers will be substantially more detrimental to the site or area or neighborhood character than the existing conditions. The Board does not anticipate that the inclusion of these dormers will create negative visual effects, particularly given the overall exterior improvements this property will undergo. The Board also finds that these dormers are of a size and position that they should not substantially increase any shading in the immediate area.

The increase in FAR, though minimally affected by the addition of the dormers, is largely impacted by finishing the basement area. As the majority of the work being done to increase the FAR is contained within the structure and is not being gained by increasing the massing and volume of the structure through the use of additions, The Board finds that the FAR increase will not be substantially more detrimental to the site or neighborhood.

Staff has discussed the inclusion of the areaway under the “Proposal” section of this staff report above and re-iterates those concerns here. The Board has conditioned this report and accompanying recommendation to address those concerns.

Further, the Board finds that the proposed alterations will not negatively impact traffic volumes, traffic congestion, or on-street parking (the property is and will remain a two-family and the number of bedrooms within the property will remain the same). Some additional noise and potential odors may occur during the construction phase of the project but this is to be expected. As always, the public must contact ISD or 311 with any concerns of this nature before, during, and after the completion of the project. Any new residents of the structure are required to comply with all Somerville ordinances, including noise ordinances. Staff does not anticipate negative impacts on the municipal water supply and sewer given that the number of bedrooms in the property is staying the same. All relevant plans will be reviewed by the Engineering Department prior to the issuance of a building permit. Engineering will flag and address any concerns that they have in these areas.

Overall, the Board finds that the proposed alterations to this structure will visually improve the property and provide a much-needed face-lift to a parcel that has become somewhat challenged over time.

3. Consistency with Purposes: *The Applicant has to ensure that the project "is consistent with (1) the general purposes of this Ordinance as set forth in Article 1, and (2) the purposes, provisions, and specific objectives applicable to the requested special permit which may be set forth elsewhere in this Ordinance, such as, but not limited to, those purposes at the beginning of the various Articles."*

The proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to The purposes of the Ordinance are to promote the health, safety, and welfare of the inhabitants of the City of Somerville; to provide for and maintain the uniquely integrated structure of uses in the City; to lessen congestion in the streets; to protect health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; to conserve the value of land and buildings; to preserve the historical and architectural resources of the City; to adequately protect the natural environment; to encourage the most appropriate use of land throughout the City; to protect and promote a housing stock that can accommodate the diverse household sizes and life stages of Somerville residents at all income levels, paying particular attention to providing housing affordable to individuals and families with low and moderate incomes; and to preserve and increase the amenities of the municipality.

The proposal is consistent with the purpose of the RA district, which is "...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."

4. Site and Area Compatibility: *The Applicant has to ensure that the project "(i)s designed in a manner that is compatible with the characteristics of the built and unbuilt surrounding area, including land uses."*

The surrounding neighborhood contains a mix of residential structures of various architectural styles. As indicated elsewhere in this staff report, Staff finds that the proposed alterations to the structure and the parcel will have a positive impact on both the site and the surrounding neighborhood.

6. Housing Impact:

The proposal will not add any new dwelling units to Somerville's housing stock.

8. Somervision:

This proposal will visually improve a challenged property and improve the drainage on the site by increasing the pervious and landscaped areas. Proposed landscaping and the inclusion of some native and pollinator species of plants will have a positive impact on both the flora and the fauna in the immediate area.

9. Impact on Affordable Housing: *In conjunction with its decision to grant or deny a special permit for a structure of four or more units of housing, the SPGA shall make a finding and determination as to how implementation of the project would increase, decrease, or leave unchanged the number of units of rental and home ownership housing that are affordable to households with low or moderate incomes, as defined by HUD, for different sized households and units.*



The project will not add to the stock of affordable housing in the City.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Elaine Severino and Pooja Phaltankar (Alt), and Anne Brockeman with Josh Safdie and absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **CONDITIONALLY APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	Approval is for the construction of a left elevation dormer, a right elevation dormer and an increase in FAR.	BP/CO	ISD/Plng.							
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>September 1, 2017</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>November 14, 2017</td><td>Updated plan set submitted to OSPCD (plans contain the architect's date of 11/6/2017).</td></tr></table>				Date (Stamp Date)	Submission	September 1, 2017	Initial application submitted to the City Clerk's Office	November 14, 2017	Updated plan set submitted to OSPCD (plans contain the architect's date of 11/6/2017).
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Any changes to the approved site plan or elevations/use must be reviewed by Planning Staff PRIOR TO their implementation on the site. Planning Staff will determine whether such changes are <i>de minimis</i> in nature or if they will need to go back to the ZBA for approval.										
<u>ANY</u> changes to the conditions set forth by the ZBA in their decision, must be remanded to the ZBA for their review and approval.										
Construction Impacts										
2	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.							
3	Approval is subject to the Applicant's and/or successor's right, title and interest in the property.	Perpetual	Plng.	Deed submitted & application formed signed						
4	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/ISD/Plng							

5	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	ISD/T&P	
Site				
6	The chain link fence around the property shall be removed and a wood fence shall be installed in its place. The proposed fencing shall be submitted to Planning staff for their review and approval prior to the issuance of a building permit.	BP	Plng.	
7	All asphalt/bituminous material shall be removed from the property.	CO/perpetua l	ISD/Pln g	
8	The parking area along the left elevation of the property shall be reduced to the size of one standard parking space only. Tandem parking shall not be approved.	CO/Perpetua l	ISD/Pln g	
9	The one parking space shall be finished with pervious pavers. Plans must be updated prior to the issuance of a building permit to reflect this change.	BP	ISD/Pln g	
10	The area originally dedicated to parking space # 1 according to plan sheet A-020 in the plan set dated 11/6/2017	CO	ISD/Pln g	
11	All fencing, hardscape and similar materials to be used around the parcel shall be presented to Planning Staff on a materials board for their review and approval prior to the issuance of a building permit.	BP	ISD/Pln g	
12	No portion of a vehicle parked in the one parking space provided shall be allowed to extend beyond the front plane of the house toward the public way.	Perpetual	ISD/Pln g	
13	All final planting proposals shall be presented to Planning Staff for their review and approval prior to installation of the plantings. No arborvitae. Special attention shall be given to plants native to this part of Massachusetts.	Prior to installation/ CO	ISD/Pln g	
Design				
14	All materials used on the exterior of this structure shall be submitted to Planning Staff on a materials board for their review and approval prior to the issuance of a building permit.	BP	Plng./IS D	
15	No areaway shall be installed along the right elevation of the property. Plans reflecting this change shall be submitted to Planning Staff prior to the issuance of a building permit.	BP	Plng/IS D	
16	Any exterior lighting installed shall be downcast and not spill onto the public way or shine into/onto abutting properties at any time.	Final sign off/Perpetua l	Wiring Inspecto r/ISD/Pl ng	
Public Safety				
17	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
Final Sign-Off				

18	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.	
19	The Applicant team will provide Staff with updated plans with the bedrooms moved to the left of the basement by Monday, December 18, 2017.	December 18, 2017	Plng.	

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Richard Rossetti, *Clerk*
Danielle Evans
Elaine Severino
Anne Brockelman (Alt)
Pooja Phaltankar (Alt.)

Attest, by the Planner: _____

Alex Mello

Copies of this decision are filed in the Somerville City Clerk's office.
Copies of all plans referred to in this decision and a detailed record of the
SPGA proceedings are filed in the Somerville Planning Dept.

CLERK'S CERTIFICATE

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 3.2.10.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on _____ in the Office of the City Clerk, and twenty days have elapsed, and

FOR VARIANCE(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or



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_____ any appeals that were filed have been finally dismissed or denied.
FOR SPECIAL PERMIT(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

Signed _____ City Clerk Date _____

