



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
**JOSEPH A. CURTATONE**  
**MAYOR**

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PLANNING DIVISION

**ZONING BOARD OF APPEALS MEMBERS**

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**Case #: ZBA 2019-119**  
**Site: 242 Broadway**  
**Date of Decision:** November 20, 2019  
**Decision:** Petition Approved with Conditions  
**Date Filed with City Clerk:** November 26, 2019

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**ZBA DECISION**

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**Owner Name:** Lauro O. DaSilva and Zelia I.C. Silva  
**Owner Address:** 77 Munroe Street, Somerville, MA 02143  
**Applicant Name:** Lauro DaSilva  
**Applicant Address:** 77 Munroe Street Somerville, MA 02143  
**Agent Name:** Edward M. Wheeler  
**Agent Address:** P.O Box 410046, Cambridge, MA 02141

Legal Notice: Applicant, Lauro O. DaSilva, and Owners, Lauro O. DaSilva and Zelia I.C. Silva, seek a special permit under SZO §4.4.1 to alter the two nonconforming structures on the lot by constructing rear stairs and dormers. A Special Permit under SZO §7.11 is also required for five residential units and under SZO §9.13 for parking relief.

Zoning District/Ward: RC Zone/Ward 1  
Zoning Approval Sought: SP §4.4.1, §7.11, §9.15  
Date of Application: October 23, 2019  
Date(s) of Public Hearing: November 20, 2019  
Date of Decision: November 20, 2019  
Vote: 5-0

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Appeal #ZBA 2019-119 was opened before the Zoning Board of Appeals at Somerville City Hall on November 20, 2019. 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. On November 19, 2019, the Zoning Board of Appeals took a vote.

**DESCRIPTION:** The subject property consists of one parcel totaling 3,544 square feet. The site contains two residential structures and a detached four-car carriage house in the rear of the site. The residential structures are located behind one another. Both structures are 2.5 stories with gable ends with the front structure containing three-units and the one behind it being a single-family dwelling.

**FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1, §7.11, and §9.13):**

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:

The Board 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."*

The Board finds compliance with these standards as described below.

*Article 4: Nonconforming Uses and Structures*

The lot is currently nonconforming with respect to the following dimensional requirements: lot area, landscaped area, permeable area, and street frontage.

*Front Structure*

The front structure is currently nonconforming with respect to the dimensional requirements for front yard setback and right side yard setback.

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.”

The proposal to perform renovations to the structure that will include a rear addition to construct an internal stairwell and a dormer will not impact the nonconforming dimensions. However, due to the full renovation of the three-family structures, these alterations to a nonconforming structure requires the Applicant to obtain special permits under §4.4.1 of the Somerville Zoning Ordinance (SZO).

*Rear Structure*

The rear structure is currently nonconforming with respect to the dimensional requirements for left side yard setback and right side yard setback.

The proposal will impact the nonconforming dimension of the left side yard setback. The current dimension is 7.5 feet and the proposal to construct an addition and dormer within the required setback will maintain the same distance. The requirement in the district is 8 feet for a 2.5 story structure. This alteration to a

nonconforming structure requires the Applicant to obtain special permits under §4.4.1 of the Somerville Zoning Ordinance (SZO).

Section 4.4.1 states that “[l]awfully existing one-and two-family dwellings which are only used as residences, which are nonconforming with respect to dimensional requirements, may be enlarged, extended, renovated or altered by special permit granted by the SPGA in accordance with the procedures of Article 5.”

In considering a special permit under §4.4 of the SZO, the Board finds that the alterations and use proposed would not be substantially more detrimental to the neighborhood than the existing structure and use. The proposal will allow for modest improvements to the structure. The proposal has been designed with setbacks that minimally impact the neighbors and the requirements for lot area per dwelling unit, ground coverage, floor area ratio (FAR), building height, and rear yard setback will continue to be conforming to the requirements of the SZO.

*Article 7: Table of Permitted Uses*

SZO §7.11.1.c requires a Special Permit for the establishment of five residential units in the RC zoning district.

*Article 9: Off-street Parking and Loading*

	<b>Existing</b>		<b>Proposed</b>	
Unit #1	3 BR	2 spaces	3 BR	2 spaces
Unit #2	3 BR	2 spaces	3 BR	2 spaces
Unit #3	2 BR	1.5 spaces	2 BR	1.5 spaces
Unit #4	5 BR	2 spaces	2 BR	1.5 spaces
Unit #5	--	--	2 BR	1.5 spaces
<b>Total</b>	<b>8 spaces</b> (rounded up from 7.5)		<b>9 spaces</b> (rounded up from 8.5)	

The site currently provides seven parking spaces for the four dwelling units. Therefore, the site is nonconforming with respect to the number of required off-street parking spaces as eight are currently required. For sites with a nonconforming number of parking spaces, SZO 9.4.2 only requires a proposal to provide the number of required spaces for what is being added to the site. The proposal is to add a second dwelling unit to the rear structure, which will increase the number of required parking spaces to nine. The proposal is to provide zero additional spaces on the site. SZO §9.13 allows for sites with nonconforming parking to apply for a Special Permit to modify parking requirements if the total number of spaces is six or fewer. Relief is being requested from providing the additional one required parking space.

In considering a special permit under §9.13 of the SZO “the SPGA may grant such a special permit only when consistent with the purposes set forth in Section 9.1, and upon reaching the findings and determinations set forth in Section 5.1.4”. The Board finds that granting the requested Special Permit is consistent with the purposes of SZO §9.1 and will not cause detriment to increased traffic volumes, traffic congestion or queuing of vehicles, changes in the type of traffic, change in traffic patterns and access to the site, reduction in on-street parking, or unsafe conflicts of motor vehicles and pedestrian traffic.

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 Board finds that the proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to promote the health, safety, and welfare of the inhabitants of the City of Somerville; to protect health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to conserve the value of land and buildings; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality.

The proposal is consistent with the purpose of the RC district, which is, *“to establish and preserve a district for multi-family residential and other compatible uses which are of particular use and convenience to the residents of the district.”*

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 Board finds the proposal compatible with the surrounding area.

*Surrounding Neighborhood*: The subject property is located on the south side of Broadway on the block between Montgomery Avenue and Melvin Street opposite of Foss Park. This section of Broadway is primarily residential but includes a Dunkin’, a barber’s shop, and a gas station. The residential structures are primarily 2.5 stories.

*Impacts of Proposal (Design and Compatibility)*: The proposed alterations will not have a noticeable impact from the public way. The alterations to the rear structure will not be visible from Broadway. The proposed dormer to the left side of the roof of the front structure will be visible from a small segment of the Broadway sidewalk. The extension of the roofs and rear stair additions will have no impact on both structure’s design and compatibility with the neighborhood.

6. Housing Impact: *Will not create adverse impacts on the stock of existing affordable housing.*

The Board finds the proposal will not have an adverse impact.

7. SomerVision Plan: *Complies with the applicable goals, policies and actions of the SomerVision plan, including the following, as appropriate: Preserve and enhance the character of Somerville’s neighborhoods.*

<i>SomerVision Summary</i>	<i>Existing</i>	<i>Proposed</i>
<i>Dwelling Units:</i>	4	5

The Board finds this proposal complies with SomerVision.

### **DECISION:**

Present and sitting were Members Orsola Susan Fontano, Danielle Evans, Elaine Severino, Josh Safdie, Anne Brockelman, and Drew Kane. Upon making the above findings, Josh Safdie 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 **approve** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes								
1	Approval is for the alterations to both structures on the lot. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/ Plng.									
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>October 23, 2019</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>October 24, 2019</td><td>Modified plans submitted to OSPCD (Z1.1, Z1.2, AE1.1-AE1.4, and AE2.1-AE2.5)</td></tr><tr><td>September 25, 2019</td><td>Existing conditions plan</td></tr></table>				Date (Stamp Date)	Submission	October 23, 2019	Initial application submitted to the City Clerk’s Office	October 24, 2019	Modified plans submitted to OSPCD (Z1.1, Z1.2, AE1.1-AE1.4, and AE2.1-AE2.5)	September 25, 2019	Existing conditions plan
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September 25, 2019	Existing conditions plan											
Any changes to the approved site plan or elevations/use that are not <i>de minimis</i> must receive SPGA approval.												
<b>Pre-Construction</b>												
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 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.									
<b>Construction Impacts</b>												
5	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.									
6	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									
7	For the convenience of and respect for the neighborhood, during the construction phase, construction work shall not begin prior to 7:30am and shall finish no later than 5pm Monday through Friday. There shall be no construction or construction-related work performed on weekends or holidays.	During Construction	ISD									
<b>Design</b>												

8	Applicant shall provide final material samples for siding, trim, windows, and doors to Planning Staff for review and approval prior to the issuance of a building permit. Siding on both structures shall be fiber cement as presented at the ZBA hearing.	BP	Plng.	
<b>Site</b>				
9	Applicant shall submit an updated landscaping plan for review and approval by Planning Staff showing removal of one exterior parking spot incorporated into landscaping and pavers up to the back door of the house.	BP	Plng.	
10	Landscaping shall be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Plng. / ISD	
<b>Miscellaneous</b>				
11	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	Plng.	
12	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	Plng.	
13	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.	Ongoing	ISD / Plng.	
14	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	
<b>Public Safety</b>				
15	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
16	Per Somerville fire safety regulations, grills, barbecues, chimineas and the like are NOT permitted on decks or porches.	Perpetual	FP/ISD	
17	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.	
<b>Final Sign-Off</b>				
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.	

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*  
Danielle Evans, *Clerk*  
Anne Brockelman  
Elaine Severino  
Josh Safdie  
Drew Kane, *Alternate*

Attest, by the Planner: \_\_\_\_\_

Melissa A. Woods

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  
\_\_\_\_\_ 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 \_\_\_\_\_