



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2016-127
Site: 1366-1374 Broadway
Date of Decision: December 7, 2016
Decision: Petition Approved with Conditions
Date Filed with City Clerk: December 19, 2016

ZBA DECISION

Applicant Name:	FHRC Management Corp.
Applicant Address:	1372 Broadway, Somerville, MA 02144
Property Owner Name:	Clarendon Hill Somerville, LP
Property Owner Address:	439 Washington Street, Quincy, MA 02184
Agent Name:	Mick Jones, First Hartford
Agent Address:	149 Colonial Road, Manchester, CT 06045

Legal Notice: Applicant, FHRC Management Corporation, and Owner, Clarendon Hill Somerville, Limited Partnership, seek a Special Permit under SZO §4.4.1 to install accessory smoking shelters on a lot with nonconforming structures.

<u>Zoning District/Ward:</u>	RC zone/Ward 7
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	November 1, 2016
<u>Date(s) of Public Hearing:</u>	December 7, 2016
<u>Date of Decision:</u>	December 7, 2016
<u>Vote:</u>	5-0

Appeal #ZBA 2016-127 was opened before the Zoning Board of Appeals at Somerville City Hall on December 7 2016. 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.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
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DESCRIPTION:

The proposal is to install two exterior smoking shelters on the premises as a smoke-free housing policy has been instituted inside the buildings. The smoking shelters, which can accommodate 6-7 people each, will resemble a bus shelter and are handicapped accessible if sited properly. One shelter is located adjacent to a sidewalk within the site on the western edge of the property near Alewife Brook Parkway. The other shelter is located on the eastern side of the property on the sidewalk in front of a handicapped ramp. The shelters have already been installed and after receiving complaints the Inspectional Services Department (ISD) has informed the Applicant and Owner that the structures require a Special Permit and shall not be used until such permit is granted. The complaints reported to ISD include lack of lighting and a lack of accessibility to the eastern shelter for handicapped individuals.

FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1):

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."*

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 site is currently nonconforming with several dimensional requirements, including landscaped area, lot area per dwelling unit, building height, and side yard setbacks.

The Board feels that with the conditions that the eastern shelter be moved to the end of the sidewalk, the left wall of the shelter be removed, and the handicapped ramp reconstructed to ADA standards the design and siting of the structures would be enhanced. Staff recommends a condition that there be downward cast lighting installed near the shelters that does not spill over the property lines. In considering a special permit under §4.4 of the SZO, the Board finds that the alterations proposed, as conditioned, would not be substantially more detrimental to the neighborhood than the existing structures.

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 protect health; to secure safety from fire, panic and other dangers; and to preserve and increase the amenities of the municipality.

The proposal is consistent with the purpose of the 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.” The proposal will preserve the multi-family character of the neighborhood.

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."*

Surrounding Neighborhood: The locus is located on the western edge of Somerville and is bound by Broadway and Alewife Brook Parkway. Adjacent land uses include a supermarket, single-, two-, and three-family dwellings, and a cemetery.

Impacts of Proposal (Design and Compatibility): The shelter on the western side of the property has been designed to not obstruct travel on the sidewalk; however, there is no lighting close by. The shelter on the eastern side of the property also has no lighting nearby and has been located on the sidewalk with an inadequate amount of space for a handicapped individual to access it. Also, there is a handicapped ramp from the parking grade up to the sidewalk grade but the eastern shelter is located in front of the ramp causing it to be inaccessible by an individual using a wheelchair or walker. Staff finds that conditioning the eastern shelter to move to the end of the sidewalk, removing the left wall of the shelter, and reconstructing the handicapped ramp to ADA standards will make the design and compatibility of the structures sufficient.

5. Adverse environmental impacts: *The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.*

Impacts of Proposal (Environmental): The proposed structures will encourage individuals who choose to smoke legal substances in a designated area away from those who chose not to smoke. There is not expected to be excessive noise, levels of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses or activities permitted in the surrounding area.

6. Vehicular and pedestrian circulation: *The circulation patterns for motor vehicles and pedestrians which would result from the use or structure will not result in conditions that create traffic congestion or the potential for traffic accidents on the site or in the surrounding area.*

Impacts of Proposal (Circulation): Vehicular circulation will not be affected as a result of this proposal. As previously noted, pedestrian circulation will be negatively impacted because the eastern shelter is positioned on a sidewalk and in front of a handicapped ramp. However, if constructed as conditioned the proposal is not anticipated to present a significant impact on the pedestrian circulation of the site.

6. 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 and preserve and expand an integrated, balanced mix of safe, affordable and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups.*

The residential character of the site and the neighborhood will be preserved as a result of this proposal.

7. 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 proposal will have no impact on the affordable housing stock in the City.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Elaine Severino and Josh Safdie. 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 **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	Approval is for the installation of two smoking shelters. 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>November 1, 2016</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>November 1, 2016</td> <td>Modified plans submitted to OSPCD</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	November 1, 2016	Initial application submitted to the City Clerk's Office	November 1, 2016	Modified plans submitted to OSPCD
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Any relocation or changes to the approved structures that are not <i>de minimis</i> must receive SPGA 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	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							
4	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							
Design										



5	The Applicant shall remove the left wall of the eastern shelter, move the eastern shelter to the right to the end of the side walk, and reconstruct both handicapped ramps to comply with ADA and MAAB regulations. Applicant shall provide final design drawings to Planning Staff for review and approval prior to construction.	BP	Plng.	
6	The Applicant shall submit a plan showing an exterior downward cast light near each of the shelters. The Applicant shall ensure that there is no light spill over onto adjacent properties.	BP	Plng.	
Site				
7	The Applicant shall ensure that snow is removed in a fashion that does not prevent access to either of the smoking shelters.	Perpetual	ISD	
Miscellaneous				
8	The Applicant, its successors and/or assigns, shall be responsible for the maintenance of the shelters, ramps, and lighting by ensuring they are clean, well kept, and in good and safe working order.	Perpetual	ISD	
Public Safety				
9	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
Final Sign-Off				
10	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*
 Richard Rossetti, *Clerk*
 Danielle Evans
 Elaine Severino
 Josh Safdie

Attest, by the Administrative Assistant:

Dawn M. Pereira

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 _____

