



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2018-32
Site: 165 Cedar St
Date of Decision: June 20, 2018
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: June 27, 2018

ZBA DECISION

Applicant Name: 165 Cedar, LLC
Applicant Address: 78C Lawrence Road, Bedford, MA 01921
Owner Name: Royal Environ Services Inc
Owner Address: 52 Morning Side Drive, Arlington, MA 02474
Agent Name: Sean T. O'Donovan, Esq.
Agent Address: 741 Broadway, Somerville, MA 02144
Alderman: Mark Niedergang

Legal Notice: Applicant, CEDWAR, LLC*, and Owner, Royal Environ Services Inc., seek a special permit under SZO §7.11 to establish four residential units, §4.4.1 to substantially alter a nonconforming structure by modifying the existing footprint and constructing four stories that will be greater than 25% of the existing gross floor area (GFA), and §9.13 for parking relief. BB Zone. Ward 5.

*Scrivener's error: the Applicant is 165 Cedar, LLC.

<u>Zoning District/Ward:</u>	BB Zone. Ward 5.
<u>Zoning Approval Sought:</u>	§4.4.1, §7.11, and §9.13
<u>Date of Application:</u>	March 1, 2018
<u>Date(s) of Public Hearing:</u>	June 20, 2018
<u>Date of Decision:</u>	June 20, 2018
<u>Vote:</u>	5-0

Appeal #ZBA 2018-32 was opened before the Zoning Board of Appeals in the Visiting Nurses Association, 3rd floor Community Room, 259 Lowell Street, Somerville. 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:

The proposal is to demolish the building, except for a portion of the existing foundation, and construct a new four story building with four two-bedroom residential units and an underground parking garage.

FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1, §7.11, §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."*

Article 4: Nonconforming Uses and Structures

The structure is currently nonconforming with respect to the rear yard setback requirement, which is 16 feet in the BB district (10 feet plus 2 feet for each story above the ground level). The current rear yard setback requirement is 0 feet and the proposal will remain nonconforming but improve the distance to 10 feet. 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 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 of the SZO, the Board finds that the alterations/use proposed would not be substantially more detrimental to the neighborhood than the existing structure/use. The proposal will improve the existing nonconformity on the site and significantly improve the aesthetics along a major corridor and the highly traveled community path. The proposal has been designed with setbacks that minimally impact the neighbors and the requirements for use, lot area per dwelling units, ground coverage, landscaped area, floor area ratio (FAR), building height, front yard setback and street frontage will continue to be conforming to the requirements of the SZO.

Article 7: Permitted Uses

The SZO 7.11.1.c requires that four residential units in the BB zone require a Special Permit.



Article 9: Off-Street Parking and Loading

	Existing		Proposed	
Warehouse/distribution	1,374 s.f plus	4 spaces	-	-
	3 business			
	vehicles			
Unit #1	-	-	2 BR	1.5 spaces
Unit #2	-	-	2 BR	1.5 spaces
Unit #3	-	-	2 BR	1.5 spaces
Unit #4	-	-	2 BR	1.5 spaces
Total		4 spaces		6 spaces

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. The locus is currently nonconforming with respect to the number of required off-street parking spaces as 4 spaces are required and none are provided on the site (since loading docks nor the area in front of loading docks count as parking spaces). The proposal increases the parking requirement by two spaces.

Since the locus does not currently have sufficient off-street parking and an addition is being added to the property that increases the parking requirement by three, SZO §9.4.2 requires the Applicant to provide the two required additional spaces. The proposal includes four underground spaces at a ratio of one per unit. Relief is being requested from providing the additional two parking spaces.

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 of 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 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 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 adequately protect the natural environment; 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 BB district, which is, “to establish and preserve general commercial and high density residential areas consisting of multi-family developments, shopping centers, commercial strips and automobile related establishments where customers reach individual businesses primarily by automobile.”



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 subject site is located on the east side of Cedar Street on the block between the Community Path and Warwick Street. This particular section of cedar street is mostly residential in nature and nearby land uses include two, three, and multi-family dwellings as well as a two-story office building across the Community Path. Building heights in this area range from 2.5 stories to four stories.

Impacts of Proposal (Design and Compatibility): The proposed design follows a modern style four-story building that incorporates primarily wood siding with corrugated metal panels on the top floor. Accents include metal windows and balconies and a contrasting cedar wood siding on the inside of the balconies. Overall, the proposal would enhance the aesthetics of the corridor and serve as an impressive gateway to the community path.

5. 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): Any mobility issues resulting from the odd layout and compact spaces will be contained to the site. The brunt of any inconvenience will be felt by the residents and the manager of the property. That said, these are residential spaces, so in theory the same user will be using the same space all the time. Garages can be quirky as long as a limited number of people are using them. Residents will get used to how to get into and out of their assigned space. A condition should be added that compels the applicant to include disclaimers about the substandard parking spaces.

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

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 neighborhood.*

<u>SomerVision Summary</u>	<u>Existing</u>	<u>Proposed</u>
<u>Dwelling Units:</u>	0	4
<u>Commercial Sq. Ft.:</u>	1,374	0

DECISION:

Special Permit under §4.4.1, §7.11, §9.13

Present and sitting were Members Orsola Susan Fontano, Elaine Severino, Danielle Evans, Josh Safdie, and Pooja Phaltankar. Upon making the above findings, Danielle Evans 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 construct of a four-unit building. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/Pln g.							
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>March 1, 2018</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>June 5, 2018 (June 15, 2018)</td><td>Modified plans submitted to OSPCD (T1.1, existing conditions plan, utility site plan, Z0.1, Z1.0, Z1.1, A0.1, A1.1, A1.2, A2.1, A2.2, A2.3, and A2.4)</td></tr></table>				Date (Stamp Date)	Submission	March 1, 2018	Initial application submitted to the City Clerk’s Office	June 5, 2018 (June 15, 2018)	Modified plans submitted to OSPCD (T1.1, existing conditions plan, utility site plan, Z0.1, Z1.0, Z1.1, A0.1, A1.1, A1.2, A2.1, A2.2, A2.3, and A2.4)
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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	<p>Because of the history of the site and the intended use, the Applicant shall, prior to issuance of any demolition permit and/or any building permit for the project, provide to the Planning Department and the Inspectional Services Division:</p> <p>a) a copy of the Response Action Outcome (RAO) Statement, signed by a Licensed Site Professional (LSP) and filed with DEP, verifying that a level of no significant risk for the proposed residential use has been achieved at the site; or</p> <p>b) if remediation has not reached the RAO stage, a statement signed by an LSP describing (i) the management of oil and hazardous materials/waste at the site, including release abatement measures intended to achieve a level of no significant risk for residential use at the site, treatment and storage on site, transportation off-site, and disposal at authorized facilities, (ii) a plan for protecting the health and safety of workers at the site, and (iii) a plan for monitoring air quality in the immediate neighborhood.</p>	Demolition Permit	Plng/ISD	
6	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.	
7	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	
8	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.	
9	The Applicant shall develop a demolition plan in consultation with the City of Somerville Inspectional Services Division. Full compliance with proper demolition procedures shall be required, including timely advance notification to abutters of demolition date and timing, good rodent control measures (i.e. rodent baiting), minimization of dust, noise, odor, and debris outfall, and sensitivity to existing landscaping on adjacent sites.	Demolition Permitting	ISD	
Construction Impacts				
10	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.	



11	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	
12	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	
13	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				
14	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.	BP	Plng.	
Site				
15	Landscaping shall be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Plng. / ISD	
16	A permeable paver driveway apron of at least 10 feet in depth and as wide as the proposed driveway shall be constructed at the driveway opening.	CO	Plng.	
17	New 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	
18	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.	
19	The applicant shall coordinate the curb cut with the Department of Public Works Engineering Department and the Highway Department.	CO	Highway and Eng.	
Traffic & Parking				
20	The Applicant/Owner shall provide a disclaimer to prospective tenants or purchases about the substandard sized parking spaces.	CO/Perpetual	Plng.	
Miscellaneous				



21	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	
22	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.	
23	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.	
24	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.	
25	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				
26	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
27	Per Somerville fire safety regulations, grills, barbecues, chimineas and the like are NOT permitted on decks or porches.	Perpetual	FP/ISD	
28	Any transformers should be located as not to impact the historic building or landscaped area, and shall be fully screened.	Electrical permits & CO		
29	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	
30	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				



31	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.	
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Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Danielle Evans
Elaine Severino
Josh Safdie
Pooja Phaltankar (*Alt.*)

Attest, by City Planner: _____

Alexander C. 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
_____ 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 _____

