



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2017-105

Date: November 8, 2017

Recommendation: Uphold ISD decision*

***See Recommendation section for clarification**

ZBA STAFF REPORT

Site: 21 Cherry Street

Applicant Name: Alan Moore

Applicant Address: 23 Cherry Street, Somerville, MA 02144

Owner Name: Lacourt Foundation, LLC / Mouhab Rizkallah

Owner Address: 30 College Avenue, Somerville, MA 02144

Alderman: Mark Niedergang

Legal Notice: Applicant, Alan Moore of 23 Cherry Street seeks an Administrative Appeal under §3.1.9, §3.2, and §3.2.3 of the SZO and M.G.L. Chapter 40A §8 of a decision by the Inspectional Services Department (ISD) to issue a building permit (B17-001444) for the property at 21 Cherry Street which is tied to ZBA Decision 2016-25. The owner of 21 Cherry Street is Lacourt Foundation, LLC. RB zone. Ward 5.

Date of Hearing: November 8, 2017 – ZBA

I. GROUNDS FOR APPEAL

Alan Moore (hereafter referred to as “Mr. Moore”), owner of the property located at 23 Cherry Street, Somerville, MA, is a direct abutter to the property at 21 Cherry Street. The property at 21 Cherry Street is the subject of the appeal which was submitted by Mr. Moore on October 10, 2017 to the City Clerk’s Office per protocol. Mr. Moore alleges that the building permit issued by the Inspectional Services Division (ISD), numbered B17-001444 and issued on September 7, 2017, was wrongly granted and should be revoked. Mr. Moore contends that:

1. “There are several and many serious requirements of the building permit application submitted by the applicant that were never submitted or adhered to. These unapproved changes in the plans being made illegally by the applicant have serious implications and impact on us abutters and the neighborhood. Equally serious are that the ZBA Special Permit and State Building Code requirements are being flagrantly violated[.] Based on these violations of the ZBA Special Permit and the State Building Codes, the building permit should never have been issued. Therefore it should now be entirely withdrawn/voided/rescinded and a new building permit application with all required documentation and pre-conditions should be submitted for property review by ISD. In the meantime, no work should be done on the building. A stop work order should be issued.”

Immediately following the introduction above, Mr. Moore discusses the demolition of an existing garage on the premises:

2. “Additionally, demolition of the garage was never approved by the ZBA Special Permit (see documentation A below). Therefore, even if a demolition permit is properly requested, it should not be granted without a subsequent new public hearing by the ZBA. The owner/applicant should be fined the maximum amount possible for demolishing the garage without a permit and not adhering to the State Building Code requirements for demolishing a building (see B below).”

[**Staff Note:** items “A” and “B” appear at the end of this Staff Report in the Appendix for the ZBA’s reference.)

Next, Mr. Moore enumerates each of his additional complaints as follows:

“The following are the infractions of the building permit process that is the basis for this appeal of the issuance of the permit:

3. An increase in the # of bedrooms from what was approved in the ZBA Special Permit was requested by the applicant of a building permit that was subsequently issued on September 7, 2017. The May 17, 2017 ZBA Special Permit specifies the parking (no relief needed) calculation based on three 2 BR, two 1BR and a studio; i.e., 9 “sleeping areas”: 8 bedrooms and 1 studio. The plans submitted for the building permit application includes 9 bedrooms and 1 studio, or 10 sleeping areas; i.e., a 1 bedroom apartment approved by the ZBA has been increased to a 2 bedroom. *Any future building permit that may be issued must agree with the # bedrooms in the approved plans. Otherwise the parking calculation must be revised.* [Emphasis appellant.]
4. Performing building (the garage) demolition without a permit. *Maximum fines should be made.* [Emphasis appellant.]
5. Basement bulkhead stairs encroaching into the abutter’s 19 Cherry St) right of way easement.
6. Newly proposed stairs off the first floor to the south are part of the landscaped area. *They cannot be both.* [Emphasis appellant.]
7. Not having proper permits for the two dumpsters.

8. The 5,242 sq ft on the building permit application doesn't match the 4,231 maximum SF living area approved by the ZBA special permit.
9. Utility, grading, and drainage plans are required prior to the issuance of a building permit and have not been submitted.
10. A grading and drainage plan, stamped by a registered PE in Massachusetts that demonstrates compliance with the City's stormwater policy is required prior to issuance of a building permit and has not been submitted.
11. A plan for construction traffic management is required prior to issuance of a building permit and has not been submitted.
12. Posting the name and phone number of the general contractor and all sub-contractors at the site entrance where it is visible to people passing by is required prior to issuance of a building permit and has not been done.
13. Proof of MAAB determination is required prior to issuance of a building permit and has not been submitted.
14. An arborist plan for how the three trees/grape vine and roots will be protected was also to be filed prior to permit approval.
15. During the ZBA permitting process, the abutters pointed out that more parking was needed on the site because the 9 "bedrooms" could support 12-15 occupants. The applicant testified that these would be luxury apartments and would only be occupied by 1 person per bedroom, thus 9 occupants. The building permit application requested 20 occupants. Any approval should only allow 9 occupants as the applicant stated.
16. State DEP regulations require that suspected asbestos containing materials should be tested, and if containing asbestos, a plan must be submitted on how the material needs to be handled during demolition. *This has not been done.* [Emphasis appellant.]
17. Similarly, dust from lead paint must be controlled during the demolition process to protect the neighborhood. [sic]
18. Lastly, ISD certified that the existing building had living spaces in the attic and basement even though these spaces were/are in violation of State Building Code because of ceiling height and window size. This ISD error led to an incorrect conclusion by the Planning Dept. that no parking relief was necessary. This conclusion should be voided and the parking requirements recalculated.

II. BACKGROUND

1. **Subject Property:** The RB-zone subject property is currently an active construction site. The following description was provided to the ZBA in the staff report for this property:

“The subject property is a non-conforming, legally-existing 6-unit building in a zone where one-and two-family residential structures are allowed. This 6-unit use may continue. The 3,057 square foot structure dates to the 19th -century, is wood-framed, and presents a gable front to the street. Several decades ago, a two-car garage was built into the slope in front of the house. The area above the garage is used as a large deck. The lot is 4,519 square feet and there are two legal parking spaces in the garage.”

2. **History:**

During the the course of the approximately 1.5 years that transpired from the date of submission of the application by the owner of 21 Cherry Street (hereafter referred to as “Dr. Rizkallah”), at least six formal meetings were held between the abutters, Dr. Rizkallah, Alderman Niedergang and Planning Staff.

The dateline that follows reflects key submissions by Dr. Rizkallah and key determinations made by City boards or departments.

- **February 2016** - Initial application submitted to City Clerk’s office.
- **December, 2016** - Final proposal submitted to OSPCD.
- **February 1, 2017** – ZBA requests abutters and Dr. Rizkallah conduct another neighborhood meeting.
- **March, 2017** - Updated renderings submitted OSPCD.
- **April 2017** - Updated renderings submitted to OSPCD.
- **April 19, 2017** – ISD & Planning Division perform site visit to determine layout and unit/bedroom count.
- **May, 2017** - Final renderings submitted to OSPCD.
- **May 31, 2017** – ZBA approves case # 2016-25 (21 Cherry Street) with conditions.
- **August 2, 2017** – Permit plan set submitted to ISD.
- **September 7, 2017** – Building permit issued by ISD for 21 Cherry Street.
- **September 14, 2017** – Stop work order issued by ISD for beginning demolition of garage. The garage demo was not part of the scope of the building permit issued by ISD.

- **September 15, 2017** – Statement received from Dominic Valente, architect of record for 21 Cherry Street, that the garage roof needed to be removed due to its condition.
- **September 15, 2017** – Demolition of remainder of garage allowed to proceed by ISD due to safety reasons (complaint assigned to building inspector and closed the same day).
- **September 28, 2017** – Engineering plan submitted to ISD.
- **October 3, 2017** – Fire Prevention signs off on sprinkler plans.
- **October 4, 2017** – ISD responds to complaint from public of asbestos at project site. ISD inspector confirms that the material being removed that was of concern to the public was wood shingling, not asbestos.
- **October 4, 2017** – Letter from Massachusetts Architectural Access Board (MAAB) received by ISD relieving 21 Cherry Street of compliance.
- **October 5, 2017** – *Alan Moore submits application to City Clerk's office for an Administrative Appeal of the ISD-issued building permit.*
- **October 6, 2017** – Building permit suspended by ISD due to several ZBA conditions not being met.
- **October 10, 2017** – Landscaping plan submitted to ISD.
- **October 10, 2017** – Construction traffic management plan submitted to ISD.
- **October 12, 2017** – Electrical plan conditionally approved by Electrical.
- **October 18, 2017** – Engineering plan approved by Director of Engineering.
- **November 1, 2017** – Arborist plan received by ISD.
- **November 1, 2017** – Corrected plan submitted to ISD removing what had appeared to be a bulkhead in the right elevation easement area. These were to be interior stairs but were improperly rendered by the Applicant team on the original submittal to ISD.
- **November 1, 2017** – Suspension of building permit lifted by ISD.
- **November 1, 2017** – Planning Staff speaks with Mr. Moore to inform him that the suspension of the 21 Cherry building permit was lifted.

III. APPEAL

- 1. Role of the ZBA:** In an administrative appeal hearing, the ZBA hears appeals of the decision of the Superintendent of Inspectional Services. The process for such appeals is set out in M.G.L. Chapter 40A, Section 8 and in Section 3.2 of the Somerville Zoning Ordinance (SZO). An appeal may be undertaken by any person aggrieved by an order or decision of the

Superintendent of Inspectional Services. The ZBA must determine whether to affirm the ISD decision or to overturn it and why.

Staff believes that, as a direct abutter to the property, Mr. Moore has status as an aggrieved party in this circumstance and that this administrative appeal is properly before the ZBA.

2. Analysis of the Appeal: OSPCD Staff has reviewed:

- 1) The appeal application from Mr. Moore;
- 2) The file for the property (21 Cherry Street) at Inspectional Services;
- 3) The ZBA decision of May 31, 2017 and all associated data leading up to that decision including staff reports, plan sets, and submissions to ISD.

In his appeal, Mr. Moore has put forth several arguments and claims regarding the initial issuance of the building permit by ISD on September 7, 2017. These arguments were enumerated at the outset of this Staff Report.

The staff notes that there were a number of items brought forth by Mr. Moore in his complaint where he was initially correct. Upon being alerted of these concerns, the staff reviewed the application records and instructed ISD to stop the work on this project until such time as the staff could ensure that the applicant had addressed all of the special permit conditions and was ready to proceed.

This certainly exposed a gap in our internal review of this project prior to building permit. This issue has now been addressed.

After an extensive review, and after the submittal of supplemental material, the stop-work was lifted and the project was, very recently, able to continue.

There are a number of Mr. Moore's other arguments that the staff is determining to be unfounded.

A discussion of each of Mr. Moore's arguments, supporting claims, and staff recommendations are as follows.

1 – Mr. Moore alleges that: “There are several and many serious requirements of the building permit application submitted by the applicant that were never submitted or adhered to.

These unapproved changes in the plans being made illegally by the applicant have serious implications and impact on us abutters and the neighborhood. Equally serious are that the ZBA Special Permit and State Building Code requirements are being flagrantly violated[.]

Based on these violations of the ZBA Special Permit and the State Building Codes, the building permit should never have been issued.

Therefore it should now be entirely withdrawn/voided/rescinded and a new building permit application with all required documentation and pre-conditions should be submitted for property review by ISD.

In the meantime, no work should be done on the building. A stop work order should be issued.”

Staff Response: Staff and ISD determined that conditions 2, 3, 4, 5, 6, 7, 8, 14, 17, and 31 had not been met at the time the building permit was issued. These conditions were pre-permitting items that should have been received and signed off on prior to the issuance of the building permit. A Stop Work order was placed on the project on September 14, 2017.

An update as to the completion status of each of these conditions appears in **red bold** immediately after each item:

Condition #2: The Applicant shall be required to demonstrate that the updated project plans meet the current City of Somerville stormwater policy. Utility, grading, and drainage plans shall be submitted to the Engineering Department for review and approval before a building permit will be issued.

Staff Response: **Engineering signs off on October 13, 2017.**

Condition #3: The Applicant shall submit a proposed grading and drainage plan, stamped by a registered PE in Massachusetts that demonstrates compliance with the City’s stormwater policy. This plan shall be reviewed and approved by the Engineering Department prior to the issuance of a building permit.

Staff Response: **Engineering signs off on October 13, 2017. The engineering office believes that a PE stamp is not necessary for a drainage plan with this level of simplicity. Nonetheless, the stamp was required by the original ZBA approval. For this reason, the staff will need the applicant to have a PE stamp the approved drainage plan.**

Condition #4: 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.

Staff Response: **Engineering signs off on October 13, 2017.**

Condition #5: The Applicant shall present their electrical plan to lights and lines/wiring for their review and approval prior to the issuance of a Building Permit.

Staff Response: **Electrical Inspector, John Powers, has given conditional approval for the electrical work.**

Condition #6: The Applicant shall provide the Traffic & Parking Division with a plan for construction traffic management for that division’s review and approval prior to the issuance of a building permit. This plan will include delivery windows for construction equipment.

Staff Response: Construction traffic management plan submitted to ISD on October 10, 2017. The proposal conforms to the requirements for deliveries laid out by Staff in the final staff report for this project.

Condition #7: The applicant shall post the name and phone number of the general contractor and all sub-contractors at the site entrance where it is visible to people passing by.

Staff Response: Staff understands from ISD that this requirement has now been fulfilled.

Condition #8: 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.

Staff Response: Construction traffic management plan submitted to ISD on October 10, 2017. The proposal conforms to the requirements for deliveries laid out by Staff in the final staff report for this project.

This is not a condition that was required to be met prior to the issuance of a building permit but, rather, on a continual basis throughout the length of the project.

Regarding the working hours, Staff understands that Dr. Rizkallah's construction team was NOT initially heeding this requirement. It is Staff's understanding that the construction team is now adhering to this condition.

Condition #14: The Applicant shall provide material samples for siding, trim, windows, and doors to Planning Staff for review and approval prior to construction issuance of a building permit and certainly prior to installation. Planning Staff shall have final determination selection and approval over all materials used on the exterior of 104 Beacon 21 Cherry Street. Lighting styles, location and design along with roofing/gutter samples shall also be provided for Staff approval.

Staff Response: Samples were presented to Planning Staff and in general concept approved. However, Staff made clear in their sign-off of this condition that, as per an agreement made between Dr. Rizkallah, the abutters, Alderman Niedergang, and Planning Staff, that though Planning Staff shall have final approval of all materials, it is required that the abutters be involved in the review and selection of said materials.

Condition #17: Any ZBA approval shall depend upon fulfilling any requirements of the Massachusetts Architectural Access Board (MAAB). Proof of any MAAB determination shall be submitted to ISD prior to the issuance of a building permit and prior to any work being performed on the building.

Staff Response: A letter from the MAAB attesting to the fact that Dr. Rizkallah has no requirements of the MAAB to fulfill for this project was submitted to ISD on October 4, 2017.

Condition #31: The Applicant shall hire a certified arborist to inspect the following trees/vegetative elements and devise a plan to protect them during the construction phase of the project in order to ensure that no damage is done to the root systems, trunk or branches: - The mature tree located at the front left of the property between 25 Cherry St. and 21 Cherry St. - The mature tree located at the left rear of the property between 23 Cherry St. and 21 Cherry St. - The mature grape vine between 21 Cherry St. and 19 Cherry St. Should either of the mature trees be severely damaged or killed as a result of the construction, replacement trees of a minimum 4" caliper shall be planted in their stead by the Applicant. The species of replacement tree shall be selected by the Planning Division's arborist in consultation with the Applicant and abutters. Should the mature grape vine be severely damaged or meet its demise as a result of the construction, the Applicant shall install (a) replacement grape vine(s) of a species determined by the Planning Division's arborist in consultation with the Applicant and abutters.

Staff Response: This plan was submitted to and approved by ISD on November 1, 2017.

Because all of the outstanding conditions were met, the Stop Work order was lifted by ISD on November 1, 2017.

2 – Mr. Moore alleges that: “Additionally, demolition of the garage was never approved by the ZBA Special Permit (see documentation A below). Therefore, even if a demolition permit is properly requested, it should not be granted without a subsequent new public hearing by the ZBA. The owner/applicant should be fined the maximum amount possible for demolishing the garage without a permit and not adhering to the State Building Code requirements for demolishing a building (see B below).”

Staff response: It is not uncommon that after projects get underway that development teams find that there are sections of existing buildings that are more structurally compromised than previously assumed by the project team. The Applicant would not need the approval of the ZBA to remove the garage that was determined to be structurally compromised, provided that the end condition on the site match the ZBA plan.

However, that the on-site development team did not include the demolition of the garage in their original building permit application, nor have they amended the building permit application to include razing the garage. Staff believes that this is a violation of the building permit. ISD agreed as such at the time, issuing a Stop Work order. Subsequently, ISD allowed the remainder of the garage to be demolished for safety reasons.

While Mr. Moore contends that the owner/applicant of 21 Cherry Street should be fined the maximum amount possible for the demolition, it is not within the purview of the ZBA to levy fines or to take a position on the levying of fines.

3 – Mr. Moore alleges that: An increase in the # of bedrooms from what was approved in the ZBA Special Permit was requested by the applicant of a building permit that was subsequently issued on September 7, 2017. The May 17, 2017 ZBA Special Permit specifies the parking (no relief needed) calculation based on three 2 BR, two 1BR and a studio; i.e., 9 “sleeping areas”: 8 bedrooms and 1 studio. The plans submitted for the building permit application includes 9 bedrooms and 1 studio, or 10 sleeping areas; i.e., a 1 bedroom apartment approved by the ZBA has been increased to a 2 bedroom. *Any future building permit that may be issued must agree with the # bedrooms in the approved plans. Otherwise the parking calculation must be revised.* [Emphasis appellant.]

Staff Response: It appears that Mr. Moore is looking at a typographical error written in the parking calculation table of the staff report for this project. The plans submitted by Dr. Rizkallah for the May 31, 2017, ZBA hearing show the same number of bedrooms per unit that the plans submitted to ISD for building permit approval present. The side-by-side comparison follows with the typographical error highlighted:

Proposed plans approved by ZBA

Unit 1: studio
Unit 2: 1 BDR
Unit 3: 2 BDR
Unit 4: 2 BDR
Unit 5: 2 BDR
Unit 6: 2 BDR

Proposed BDR written in Staff Report

Unit 1: studio
Unit 2: 1 BDR
Unit 3: 1 BDR
Unit 4: 2 BDR
Unit 5: 2 BDR
Unit 6: 2 BDR

Plans submitted to ISD

Unit 1: studio
Unit 2: 1 BDR
Unit 3: 2 BDR
Unit 4: 2 BDR
Unit 5: 2 BDR
Unit 6: 2 BDR

The bedroom count for Unit 2 shows two bedrooms on the ZBA approved plans and two bedrooms on the plans submitted to ISD.

Further, despite the typographical error of listing one bedroom when there are two for this unit, the parking calculation does not change: 1- and 2-bedroom units both only carry a parking requirement of 1.5 spaces.

Multiple planners in the Planning Office and the Planning Director have all counted and re-counted the number of bedrooms in the ZBA-approved plans and the plans submitted for the building permit and have all found the number of bedrooms to match. Thus, Dr. Rizkallah did not increase the number of bedrooms in this unit *ex post facto* and the parking calculation does not need to be revised.

4 – Mr. Moore alleges that: Performing building (the garage) demolition without a permit. *Maximum fines should be made.* [Emphasis appellant.]

Staff Response: This issue has already been addressed in item #2 above.

5 – Mr. Moore alleges that: Basement bulkhead stairs encroaching into the abutter’s 19 Cherry St) right of way easement.

Staff Response: Planning Staff and the assigned Building Inspector both reviewed the elevations pertaining to this building component (bulkhead/stairs) and noted this discrepancy to Dr. Rizkallah. Dr. Rizkallah noted that it was a mistake in the rendering and that no bulkhead or stairs were planned for the area in question. Dr. Rizkallah submitted an amended plan sheet that shows the stairs properly facing into the building and not out onto the easement area between the two properties. This issue has been resolved.

6 – Mr. Moore alleges that: Newly proposed stairs off the first floor to the south are part of the landscaped area. They cannot be both. [Emphasis appellant.]

Staff Response: Several Staff Planners have reviewed this portion of the plan set. The ZBA-approved plans show steps in this area as does the building permit plan set. Therefore, the plan with the steps is consistent with the ZBA approval.

7 – Mr. Moore alleges that: Not having proper permits for the two dumpsters.

Staff Response: According to ISD, permits for the dumpsters have been issued and approved by the Fire Department.

8 – Mr. Moore alleges that: The 5,242 sq ft on the building permit application doesn’t match the 4,231 maximum SF living area approved by the ZBA special permit.

Staff Response: It is unclear to what Mr. Moore is referring in this claim. Planning and ISD Staff can only assume that he is mistaking the building footprint square footage with the net living area square footage.

9 – Mr. Moore alleges that: Utility, grading, and drainage plans are required prior to the issuance of a building permit and have not been submitted.

Staff Response: This issue was discussed earlier in this report (Item “B”) and the matter has been resolved.

10 – Mr. Moore alleges that: A grading and drainage plan, stamped by a registered PE in Massachusetts that demonstrates compliance with the City’s stormwater policy is required prior to issuance of a building permit and has not been submitted.

Staff Response: This issue was discussed earlier in this report (item #2) and the matter has been addressed to the satisfaction of the City Engineer. But, the applicant will be required to provide a stamped set of plans.

11 – Mr. Moore alleges that: A plan for construction traffic management is required prior to issuance of a building permit and has not been submitted.

Staff Response: This issue was discussed earlier in this report (Item “B”) and the matter has been resolved.

12 - Mr. Moore alleges that: Posting the name and phone number of the general contractor and all sub-contractors at the site entrance where it is visible to people passing by is required prior to issuance of a building permit and has not been done.

Staff Response: This issue was discussed earlier in this report (item #2) and the matter has been resolved.

13 - Mr. Moore alleges that: Proof of MAAB determination is required prior to issuance of a building permit and has not been submitted.

Staff Response: As noted earlier in this report, a letter has been submitted by the applicant stating that 21 Cherry Street needs no relief from nor is under any requirements of the MAAB.

Staff Response: This issue was discussed earlier in this report (item #2) and the matter has been resolved.

15 - Mr. Moore alleges that: During the ZBA permitting process, the abutters pointed out that more parking was needed on the site because the 9 “bedrooms” could support 12-15 occupants. The applicant testified that these would be luxury apartments and would only be occupied by 1 person per bedroom, thus 9 occupants. The building permit application requested 20 occupants. Any approval should only allow 9 occupants as the applicant stated.

Staff Response: The number of occupants that the architect of record, D.F. Valente, stated on his affidavit to Inspectional Services is part of a building code analysis that assesses the maximum safe amount of people in one space. This number does not refer to the number of occupants that Dr. Rizkallah plans to have live in this building. Further, the ZBA does not grant Special Permits or Variances based on the number of occupants that a building can have. The number of occupants allowed in a building is an issue of the standards to which a building must be constructed and a matter of fire code. If, after Certificates of Occupancy are issued for this property, abutters find that more than 4 unrelated people are living in any one unit, then this would be a violation of Somerville ordinances that should be reported by the public to ISD.

16 - Mr. Moore alleges that: State DEP regulations require that suspected asbestos containing materials should be tested, and if containing asbestos, a plan must be submitted on how the material needs to be handled during demolition. *This has not been done.*

[Emphasis appellant.]

Staff Response: As noted earlier in this report, Inspectional Services, acting on a complaint from an abutter to 21 Cherry, visited the construction site to follow up on reports of asbestos. The Inspector determined that the suspected materials (shingles) were not asbestos shingles but, rather, wood shingles. At the same time, if there are concerns of this nature, abutters are encouraged to contact ISD as well as the state DEP, as DEP has the ability to immediately enforce environmental violations and require any remediation at a project site.

17 - Mr. Moore alleges that: Similarly, dust from lead paint must be controlled during the demolition process to protect the neighborhood. [sic]

Staff Response: Should abutters be concerned about this on-going at the job site, they should contact ISD directly for enforcement. Abutters can also submit lead hazard complaints to DEP. At this time, there is no ongoing violation.

18 - Mr. Moore alleges that: Lastly, ISD certified that the existing building had living spaces in the attic and basement even though these spaces were/are in violation of State Building Code because of ceiling height and window size. This ISD error led to an incorrect conclusion by the Planning Dept. that no parking relief was necessary. This conclusion should be voided and the parking requirements recalculated.

Staff Response: Planning Staff has addressed this issue in abutter meetings numerous times, including with Mr. Moore. The living spaces in the attic are pre-existing living spaces. Likely everything about the property, in its current state, is non-conforming to modern building code.

Simply because a non-conforming property has changed ownership does not mean that the living spaces in the non-conforming structure suddenly become uncountable as bedrooms, living rooms or the like (unless they were illegally finished, of which no evidence exists in this instance). If that were the case, then nearly every residential structure in Somerville and beyond that was constructed prior to the advent of modern building code and hasn't been uniformly upgraded should probably have their Certificates of Occupancy revoked, including those of many neighboring properties. Countless pre-existing residential structures exist today that don't conform to modern building code. As part of the rehab of 21 Cherry Street, Dr. Rizkallah will need to ensure that everything he does to this building conforms to state building code standards.

There is no incorrect conclusion on the part of ISD regarding the living spaces within 21 Cherry Street. At the request of the ZBA, Planning Staff, including the Planning Director along with the building inspector for this area did a walk-through of the property in the early spring of 2017 and confirmed the existing bedroom counts. There is no error in the parking calculation based on the bedrooms extant and proposed.

IV. RECOMMENDATION

- After review of the issues raised in the appeal, the Planning staff concludes that, while some of the items enumerated by the Appellant were valid and needed to be addressed, these issues have been resolved and the building permit re-instated. Currently, there are no issues that would constitute a basis for rescinding ISD's re-issuance of the building permit.
- While the applicant's drainage plan meets the City Engineer's requirements and was reviewed and signed off by the Director of Engineering, it is not stamped. Dr. Rizkallah should have his engineer address this immediately.

In light of these issues that have been extensively resolved, the staff recommends that the ZBA:

- a. CONTINUE this case to ensure that the property owner of 21 Cherry Street forthwith addresses the need for stamped drainage plan; AND,
- b. UPHOLD the decision of the ISD commissioner, upon these issues being addressed.

APPENDIX

The following was provided by Mr. Moore in his administrative appeal application to show the documents that he is referencing in portions of his appeal:

“Referenced Documentation:

- A. **“Demolition of the garage was never requested and the ZBA approved Special Permit says: *“The Applicant proposes to alter the property by changing the roofline, and style, adding height, a rear addition, massing to the right rear elevation and extending the front façade of the house in a step-back fashion over the existing garage.”* [Emphasis Applicant’s.]”**

Staff Response: This issue has already been addressed by Staff in item #2 “Analysis of the Appeal” earlier in this staff report.

- B. **“In addition to the above, there are serious violation of the following requirements of State Law. [Emphasis Applicant’s.] reference- [Emphasis Applicant’s] Inspector of buildings, M.G.L.A. c143, Section 3, especially no notice given to abutters. [Emphasis Applicant’s]”**

Staff Response: This issue has already been addressed by Staff in item #2 “Analysis of the Appeal” earlier in this staff report.

“Sec. 11-105. – Demolition of buildings.

- (a) No permit to demolish any structure which is within 30 feet of another structure shall be issued by the superintendent of the building department unless the applicant meets the following minimum conditions precedent:
- (1) Provide [sic.] with the fire department for a fire detail;
 - (2) Deposit with the fire department a sum of legal tender equal to the estimated cost of the fire detail;
 - (3) Compliance with the requirements of the board of health, division of highways, division of electric lines and lights, division of engineering and division of waterworks shall be provided by written acknowledgement of compliance as the superintendent of buildings deems necessary.
 - (4) A dust control plan that the superintendent of buildings determines is appropriate to protect the health and well-being of the surrounding neighborhood.
- (b) The fire department must provide written acknowledgement to the superintendent of the building department of compliance with the provisions of subsections (a)(2) of this section.
- (c) Notification of demolition. No permit to demolish any building or structure in its entirety, or more than 25 percent of a building or structure excluding interior only demolition, shall be issued by the superintendent of inspectional services until the following notification has been provided by the applicant for the demolition permit:
- (1) Written notice to abutting property owners and residents. The applicant must give written notification of his or her demolition application to residents of abutting property; t owners of all property within 300 feet of the lot on which demolition is proposed; or, in the case of a structure with a gross floor area of 500 square feet or less

- and a height of 15 feet or less, to owners of all property within 100 feet of the lot; and to the ward alderman. The notification must be mailed by certified mail with return receipt at least seven days before the demolition permit is issued and should state the proposed date, time and manner of demolition. An affidavit of compliance or certified mail return receipts must be submitted to the inspectional services department before the demolition permit may be issued.**
- (2) Post the application on the premises. The applicant is responsible for ensuring that notice of proposed demolition is posted continuously in a publicly visible place on the property subject to demolition for at least seven days prior to the issuance of the demolition permit. Such notice shall be on a form prepared by the inspectional services department.**
- (3) Post the application in city hall. The applicant, through the city clerk's office, shall post notice of proposed demolition in city hall for at least seven days prior to the issuance of the demolition permit."**