



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
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PLANNING DIVISION

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**Case #: ZBA 2018-05**  
**Site: 95-97 Cross St**  
**Date of Decision:** April 18, 2018  
**Decision:** *Petition Approved with Conditions*  
**Date Filed with City Clerk:** May 1, 2018

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**ZBA DECISION**

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**Applicant / Owner Name:** Daiza Ferreira Souza Almeida  
**Applicant / Owner Address:** 97 Cross Street, Somerville, MA 02145  
**Alderman:** Matthew McLaughlin

**Legal Notice:** Applicant and Owner, Daiza Ferreira Souza Almeida, seeks a special permit under §4.4.1 to extend a preexisting nonconformity to legalize a fence. RB Zone. Ward 1.

<u>Zoning District/Ward:</u>	RB Zone. Ward 1.
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	January 11, 2018
<u>Date(s) of Public Hearing:</u>	3/21/18, 4/4/18, 4/18/18
<u>Date of Decision:</u>	April 18, 2018
<u>Vote:</u>	5-0

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Appeal #ZBA 2018-05 was opened before the Zoning Board of Appeals in the Aldermanic Chambers of Somerville City Hall, 93 Highland Avenue. 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 two hearings of deliberation, the Zoning Board of Appeals took a vote.



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

The applicant is seeking approval to retroactively legalize the fence.

**II. 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."*

The evergreen shrubs that are greater than four feet tall are considered to be a preexisting nonconformity with respect to SZO §8.6.5.b, which requires that front yard fences and walls over four feet in height are subject to setback requirements, and SZO §8.6.5.c, which requires that *"all structures, fences or plantings greater than three-and-one-half (3-1/2) feet above sidewalk level and within twenty (20) feet of any corner street line intersection shall be maintained so as not to interfere with traffic visibility across corners."* The nonconforming obstruction was extended by the installation of the fence that wraps around the corner. Extending that nonconformity is something that should have required a Special Permit.

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 §4.4.1 of the SZO, the Board finds that the alterations proposed, as conditioned, would not be substantially more detrimental to the neighborhood than the existing structure.

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 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 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 RB district, which is, “To establish and preserve medium density neighborhoods of one-, two- and three-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts.”

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

*Surrounding Neighborhood*: The subject property is located on the corner of Cross Street and Flint Street. The surrounding neighborhood is mostly residential with the East Somerville Community School nearby and sporadic commercial storefronts along Cross Street.

*Impacts of Proposal (Design and Compatibility)*: The fence that the Applicant is proposing to legalize has been installed for over at least two years and the neighborhood has been bearing the impacts of such without any complaints from the neighborhood. The Board conditions the following, “the two fence panels that meet at the intersection shall be no taller than 3.5 feet tall and the Applicant shall be permitted to construct a 6 foot-tall fence behind the shrubs that diagonally connect the second post in from the intersection on each side.”

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.
6. Housing Impact: Will not create adverse impacts on the stock of existing affordable housing.
7. SomerVision Plan: N/A

**DECISION:****Special Permit under §4.4.1**

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Elaine Severino, Danielle Evans, and Anne Brockelman, with Josh Safdie and Pooja Phaltankar absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit and Variance. 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 to legalize an existing fence. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/PIng.					
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>January 11, 2018</td><td>Initial application submitted to the City Clerk's Office</td></tr></table>				Date (Stamp Date)	Submission	January 11, 2018	Initial application submitted to the City Clerk's Office
	Date (Stamp Date)				Submission			
January 11, 2018	Initial application submitted to the City Clerk's Office							
Any changes to the approval that is not <i>de minimis</i> must receive SPGA approval.								
2	The two fence panels that meet at the intersection shall be no taller than 3.5 feet tall and the Applicant shall be permitted to construct a 6 foot-tall fence behind the shrubs that diagonally connect the second post in from the intersection on each side.	Perpetual	PIng. / ISD					
Site								
3	Landscaping shall be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	PIng. / ISD					
Miscellaneous								
4	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					
Final Sign-Off								
5	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	PIng.					

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*  
Richard Rossetti, *Clerk*  
Elaine Severino  
Daniel Evans  
Anne Brockelman, *Alt.*

Attest, by City Planner: \_\_\_\_\_

Alexander 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 \_\_\_\_\_

