



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

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Case #: ZBA 2017-31
Site: 34 & 38 Dane Street
Date of Decision: June 21, 2017
Decision: Petition Approved with Conditions
Date Filed with City Clerk: June 29, 2017

ZBA DECISION

Applicant Name:	Paulo C. Dasilva & Cassia Silva
Applicant Address:	38 Dane Street, Somerville, MA 02143
Property Owner Name:	Paulo C. Dasilva & Cassia Silva
Property Owner Address:	38 Dane Street, Somerville, MA 02143
Agent Name:	Adam Dash, Esq.
Agent Address:	48 Grove Street, Suite 304, Somerville, MA 02144

Legal Notice: Applicant/Owner, Paulo Dasilva and Cassia Silva, seek a Special Permit under Sections 7.11.1.c, 4.4.1, and 9.13 of the Somerville Zoning Ordinance (SZO) to renovate an existing nonconforming two-family dwelling, construct a new three-family dwelling, and parking relief to establish a total of five dwelling units on the site.

* *The existing structure is currently a single family dwelling and the locus is located in Ward 2.*

<u>Zoning District/Ward:</u>	RC zone/Ward 3
<u>Zoning Approval Sought:</u>	§7.11.1.c, §4.4.1 & §9.13
<u>Date of Application:</u>	April 12, 2017
<u>Date(s) of Public Hearing:</u>	6/7 & 6/21/17
<u>Date of Decision:</u>	June 21, 2017
<u>Vote:</u>	5-0

Appeal #ZBA 2017-31 was opened before the Zoning Board of Appeals at Somerville City Hall on June 7, 2017. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
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c. 40A, sec. 11 and the Somerville Zoning Ordinance. After one hearing of deliberation, the Zoning Board of Appeals took a vote.

DESCRIPTION:

The proposal is to construct a three-unit dwelling on the 34 Dane Street portion of the lot and convert the existing single family dwelling at 38 Dane Street into a two-family dwelling for a total of five units on the locus. Two two-bedroom units and one three-bedroom unit are proposed at 34 Dane Street and two three-bedroom units are proposed at 38 Dane Street. There will be two parking spaces at 34 Dane Street (one surface and one in a garage), two surface parking spaces at 38 Dane Street, and six bicycle parking spaces.

FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1, §7.11.1.c, 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."*

Article 4: Nonconforming Uses and Structures.

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." The structure is currently nonconforming with respect to the following dimensional requirements: lot area, front yard setback, and the number of off-street parking spaces.

The proposal is to construct an addition within the front yard by extending the front wall within the nonconforming front yard setback to square off the notch created by the front entry and to increase the height of the existing front entry. The front yard setback is currently 9.2 feet where 15 feet is required in the RC zoning district.

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. Other modifications to the existing single family dwelling include a rear addition and new dormers on the left and right, which are within the required setbacks and could be permitted as of right. The locus will continue to remain conforming with respect to the requirements for lot area per dwelling unit, ground coverage, landscaped area, pervious area, floor area ratio, building height, rear yard setback, right and left side yard setbacks, and street frontage.

The Board finds that granting approval of the requested Special Permit will not have a detrimental impact on the structure or the surrounding neighborhood and will fit in with the character of the neighborhood.

Article 7: Permitted Uses.

Section 7.11.1.c, the table of permitted uses, indicates that 4-6 dwelling units in the RC zoning district requires a special permit from the Zoning Board of Appeals making certain findings and determinations as outlined in §5.1.4 of the SZO.

Article 9: Off-Street Parking and Loading.



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 less than six. The locus is currently nonconforming with respect to the number of required off-street parking spaces as two are required for the existing five-bedroom single-family dwelling and only one is provided. There is an existing retaining wall in the driveway area that only allows for one 9' x 18' parking space.

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 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 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."

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 existing single-family dwelling requires two off-street parking spaces. The conversion of a single family dwelling (that is nonconforming with respect to parking) into a two-family dwelling requires one addition parking space. The proposed new three-family dwelling will consist of two two-bedroom units (1.5 spaces required per unit) and one three-bedroom unit (2 spaces required); therefore the three-family dwelling requires five parking spaces. In total, the locus requires a total of six new parking spaces. The applicant is proposing to provide four spaces and is seeking relief for two parking spaces. 34 Dane Street will have two parking spaces, one in a new garage and one at grade, and 38 Dane Street will have two at grade parking spaces. There will also be six bicycle parking spaces on the premises. The table below summarizes the parking requirement.

	Existing	Required	Proposed
38 Dane Street	1	1 additional	2
34 Dane Street		5	2
Total	1	6 additional	4

The Applicant provided a parking memorandum produced by Tom Bertulis, P.E., PTOE of Design Consultants, Inc. It indicates that there is adequate on-street parking availability for Somerville permit holders in the neighborhood as there are seven spaces available during the weekday evening period within 250 feet of the locus. The relief requested will have a negligible impact on the area's parking supply during typical weekday and Saturday periods. The locus is within close proximity to multi-modal transportation facilities, which reduces the need for residents to use a vehicle as their primary mode of transportation. Vehicle ownership is less likely for residential units that have good transit connectivity, which reduces the need for on-site parking spaces.

The Board does not generally support parking within front yards; however, the topography of the site creates a unique circumstance. The site has a steep slope down from Dane Street that would require significant grading work to construct driveways down to the rear of the site for parking behind the buildings, which would remove some of the proposed lawn area and landscaping elements. Staff finds that the proposal provides adequate off-street parking for the project by providing a combination of four parking spaces and six bicycle parking spaces on the locus. Additionally, the parking areas are proposed to be constructed of permeable pavers, which provides environmental benefits of allowing water to penetrate into the soil and will have more curb appeal compared to asphalt or concrete.



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.

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 near the intersection of Dane Street, Village Street and Dane Avenue and the railroad bridge on Dane Street. The entirety of Dane Street is an eclectic mix of older, single-story former industrial buildings and single-, double-, and three-family, wood-framed residential properties built in a traditional style (pitched roofs with gables fronting Dane Street and flat-topped triple decker). The proposed flat roof and gable structures would fit in with the style and would be consistent with the character of the neighborhood.

Impacts of Proposal (Design and Compatibility): 38 Dane Street will have two entry doors with roofs and brackets that are consistent with the design of 34 Dane Street. The massing of the structure at 38 Dane Street will be broken up as the front projection of the house extends about 3 feet from the main body of the structure.

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): No adverse environmental impacts on the surrounding area are anticipated as a result of this project. The neighborhood can anticipate typical construction noise and related dust and dirt during the construction process. It would appear that the active railroad track which this property abuts might provide a greater means of bringing noise and depositing pollutants and other disagreeable materials and substances to the area than the construction and later habitation of the proposed structure would cause.

The proposal includes a stormwater management system that will capture runoff from the roofs and direct water into subsurface infiltration systems that will have the capacity

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): There are currently two curb cuts to access the site. The southernmost curb cut will remain to access the two spaces for 38 Dane Street. The northernmost curb cut will be relocated slightly more north to provides access to the two spaces for 34 Dane Street. The bicycle parking spaces will be access via a stairway between the two structures. The Board recommends a condition that a wheeling ramp be installed on the steps to allow for cyclists to more easily transport their bicycles up and down the steps.

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

This project will not add any additional affordable housing units to the City’s affordable housing stock.

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

<i>SomerVision Summary</i>	<i>Existing</i>	<i>Proposed</i>
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<i>Dwelling Units:</i>	1	5
<i>Parking Spaces:</i>	1	4

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								
	<p>Approval is for the addition to and conversion of the single family into a two-family and the construction of a new three-family dwelling as well as other site improvements. This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>April 12, 2017</td> <td>Initial application submitted to the City Clerk’s Office</td> </tr> <tr> <td>April 6, 2017</td> <td>Civil engineering plan set submitted to OSPCD (<i>cover sheet, C1 existing conditions, C2 site layout, C3 grading and drainage, C4 utility plan, C5 site preparation, C6 and C7 construction details, and C8 landscape plan</i>)</td> </tr> <tr> <td>February 20, 2017</td> <td>Architectural plans submitted to OSPCD (<i>X1.0, X2.0, A1.0, A1.1, A2.0, A2.1, A3.0, A3.1, A4.0, A4.1, and AV1.0</i>)</td> </tr> </tbody> </table> <p>Any changes to the approved site plan or elevations/use that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	April 12, 2017	Initial application submitted to the City Clerk’s Office	April 6, 2017	Civil engineering plan set submitted to OSPCD (<i>cover sheet, C1 existing conditions, C2 site layout, C3 grading and drainage, C4 utility plan, C5 site preparation, C6 and C7 construction details, and C8 landscape plan</i>)	February 20, 2017	Architectural plans submitted to OSPCD (<i>X1.0, X2.0, A1.0, A1.1, A2.0, A2.1, A3.0, A3.1, A4.0, A4.1, and AV1.0</i>)	BP/CO	ISD/Png.	
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Pre-Construction												
1	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.									
2	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.									



3	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	
Construction Impacts				
4	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.	
5	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	
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	
Design				
7	Applicant shall provide final material samples for fencing, siding, trim, windows, and doors to Planning Staff for review and approval prior to construction.	BP	Plng.	
8	An exterior light and electrical receptacle is required for the first (or all) level of porches and an electrical receptacle is required for the second level (if there is no access to the ground).	Final sign off	Wiring Inspector	
Site				
9	Landscaping shall be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Plng. / ISD	
10	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	
11	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.	
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.	CO	Plng.	



13	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	Plng.	
14	Applicant will supply six bicycle parking spaces, which can be satisfied with U- type bicycle racks. A bike wheeling ramp shall be installed on the steps to allow for cyclists to more easily transport their bicycles up and down the steps.	CO	Plng.	
15	Applicant shall present a detailed landscaping plan to Planning Staff for their review and approval prior to the issuance of a Building Permit. ANY changes to said plan shall be reviewed and approved by Planning Staff prior to installation.	BP	Plng./ ISD	
Traffic & Parking				
16	Entrance into and exit from either curb cut of the site shall be by right-turn only from or onto Dane Street. Signage indicating such shall also be included on-site. Additionally, the Applicant shall coordinate, with Planning, Engineering, Traffic & Parking, and DPW-Highway, the installation of a sign notifying southbound travelers on Dane Street that a left-turn into the site is prohibited.	CO	Plng. / ISD / Eng. / T&P / Highway	
17	There shall be no parking between the garage entrance and the property line. Additionally, no vehicles shall over hang onto the public sidewalk.	Cont.	Plng./ISD	
Miscellaneous				
18	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	
19	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.	Cont.	ISD/ Plng.	
20	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.	CO	Plng.	

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/ Plng.	
Public Safety				
22	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
23	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/B OH	
24	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				
25	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 _____

