



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

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**Case #:** ZBA 2019-79  
**Site:** 48 Elm Street  
**Date of Decision:** November 20, 2019  
**Decision:** Petition Approved with Conditions  
**Date Filed with City Clerk:** November 26, 2019

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**ZBA DECISION**

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**Applicant & Owner Name:** Baiany Real Estate Group, LLC  
**Applicant & Owner Address:** 464 Common Street, #322, Belmont, MA 02478  
**Agent Name:** Richard Di Girolamo  
**Agent Address:** 424 Broadway, Somerville, MA 02145

Legal Notice: Applicants and Owners, Baiany Real Estate Group, LLC, seek special permits under §4.4.1 of the SZO to alter a non-conforming property by constructing dormers within the right side yard setback, and the upward extension of the non-conforming right side yard setback through the construction of a second story at the rear of the building. Parking relief under Article 9.

Zoning District/Ward: RB Zone/Ward 5

Zoning Approval Sought: Special permits under §4.4.1 and §9.

Date of Application: July 16, 2019

Date(s) of Public Hearing: September 4, 2019; September 28, 2019; October 2, 2019; October 16, 2019; November 6, 2019; November 20, 2019

Date of Decision: November 20, 2019

Vote: 5-0

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Appeal #ZBA 2019-79 was opened before the Zoning Board of Appeals at Somerville City Hall on September 4, 2019. 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. On November 20, 2019, the Zoning Board of Appeals took a vote.

**DESCRIPTION:** The locus presents a 2 ½-story, structure in the RB zoning district. Architectural plans submitted show that there is only one residential unit currently extant in the building.

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**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 §4.4.1 of the SZO. This section of the report goes through §4.4.1 in detail.*

**1. Information Supplied:**

The Board finds that the information provided by the Applicant conforms to the requirements of §4.4.1 of the SZO.

**2. Compliance with Standards: The Applicant must comply "with such criteria or standards as may be set forth in this Ordinance which refer to the granting of the requested special permit."****Section 4.4.1 of the 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."*

The Board finds compliance with these standards.

**Gross Floor Area (GFA)**

Section 4.4.1 of the SZO requires that an Applicant seek a special permit when then GFA of a property will increase more than 25%.

**Right side yard setback**

The RB zone requires a right side yard setback of 8 feet. The existing setback is 2.0 feet. A large, rear addition is proposed to carry this non-conformity toward the rear of the lot. Though the addition is stepped in from the main body of the original house on the site, the improvement in the side yard non-conformity is minimal. It is not uncommon for the ZBA to request that an applicant further inset a rear addition from the non-conforming setback. The ZBA may wish to consider having this rear addition stepped even further away from the right side yard property line.

The Applicant also proposes two dormers within the right side yard setback. One shed-style dormer is proposed on the roof plane of the original house and one shed-style dormer is proposed on the roof plane of the rear addition.

**Section 9.13 of the SZO**

The Applicant proposes one parking space per unit for a total of two legal spaces on the site after renovation. The assessment regarding relief for number of parking spaces appears below:

Unit #	Existing BDR	Existing Req. Pkg.	Proposed BDR	Proposed Req. Pkg.
1	4	2.0	3	2.0
2	n/a	n/a	3	2.0
		<b>TOTAL: 2.0</b>	<b>TOTAL: 4.0</b>	

**Formula:** *new parking requirement – old parking requirement = # spaces of relief*

***48 Elm Street: 4.0 – 2.0 = 2.0 spaces of relief needed***

**Other determinations**

This area of Elm Street presents a variety of houses of varying styles and sizes, the majority of which have yet to undergo exterior upgrades.

The proposed alterations at the locus will be visible from Elm Street, left and right abutting properties and from some view corridors on Adelaide and Mossland Roads.

Abutters can expect typical noises and odors associated with the construction phase of a project. There is also the possibility that there may be an up-tick in noise due when building residents use their rear yards. It is possible that additional shadowing of the right-abutting property may occur due to the nature of the proposed addition.

Due to the addition of more bedrooms, there will be more demand placed on the City's water supply and sewer system. Because this project will need to be reviewed by the Engineering Department prior to the granting of a building permit, they will determine if any measures need to be taken by the Applicant to address any impacts.

Lastly, as the property is converting from a single-family to a two-family. In general, taken independently, the increase of one residential unit, even one with one or more vehicles associated with it, would not substantially increase the traffic volume in the immediate area. Due to residents coming and going from any property at staggering times, additional traffic congestion is not anticipated.

**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 Board finds that the proposal is consistent with the purposes of the RB zone which are "[t]o 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."

There is no part of this proposal, as conditioned, that Board finds to be inconsistent with the purposes of the RB district.

**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."***

The Board has addressed the question of site and area compatibility in a previous section. The Board has also conditioned the project to require an update to the landscaping plan prior to the issuance of a building permit.

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

The proposal will not add to the existing stock of affordable housing.

**6. SomerVision:**

The Board finds that the proposal will add one residential unit to the City's available housing stock.

**DECISION:**

Present and sitting were Members Orsola Susan Fontano, Danielle Evans, Elaine Severino, Josh Safdie, and Drew Kane with Anne Brockelman recused. Upon making the above findings, Josh Safdie 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 increase in GFA of more than 25% through the rehabilitation of the property and construction of a rear addition, 2.0 spaces of parking relief, constructing an addition and dormers within the right side yard setback.	BP/CO	ISD/Plng.					
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>July 16, 2019</td><td>Application submitted to City Clerk’s office.</td></tr></table>				Date (Stamp Date)	Submission	July 16, 2019	Application submitted to City Clerk’s office.
	Date (Stamp Date)				Submission			
July 16, 2019	Application submitted to City Clerk’s office.							
Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive SPGA approval. Whether or not a change is <i>de minimis</i> in nature must be determined by the Planning Office.								
Engineering								
2	<p>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.”</p> <p>The Applicant shall work with Engineering to meet this condition and provide the required fees/mitigation.</p>	BP	Engineerin g/ISD					
3	The Applicant must comply with all Engineering requirements pertaining to finishing basements.	BP/CO	Engineerin g/ISD					
4	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.					
5	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					
Design								
6	All materials, including, but not limited to windows, exterior finishes, siding, and similar shall be submitted to, reviewed and approved by Planning Staff prior to the issuance of a building permit. Vinyl-based products will not be considered.	BP	ISD/Plng					
Construction Impacts								

7	The Applicant shall, at his 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	
8	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/ISD	
9	The name(s) and contact information of all entities working on the site shall be posted in an area easily-visible from the public way for the passing public to read.	During Construction	ISD	
10	Construction shall be limited to M-F 7:30am – 5:00pm. No weekend construction or construction-related work shall occur.	During Construction	ISD	
<b>Site</b>				
11	All hardscaping to be used on the property shall first be reviewed and approved by Planning Staff prior to the issuance of a building permit.	BP	ISD/Plng	
12	All garbage and recycling shall be stored out-of-view of the public way and shall be screened	Perpetual	ISD/Plng	
<b>Public Safety</b>				
13	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
14	All exterior lighting on the site shall be downcast and shall not cast light onto surrounding properties in any fashion.	CO	ISD	
15	In accordance with City of Somerville ordinances, no grills, barbeques, chimineas or the like shall be allowed on decks and porches. This shall be written into any rental agreements or condo documents. Proof thereof shall be presented to Planning Staff/ISD prior to the issuance of a Certificate of Occupancy (CO)	CO/Perpetual	ISD/PlngFP	
<b>Miscellaneous</b>				
16	Venting and piping shall be painted or wrapped the same color as the exterior of the house from which they protrude.	CO	ISD/Plng	
17	Utility meters shall not be installed on the front façade of the structure.	CO	ISD/Plng	
18	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.	
19	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	

Final Sign-Off				
20	The Applicant shall contact Planning Staff, specifically, the Zoning Review Planner, 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	ISD/Pln g.	

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*  
Danielle Evans, *Clerk*  
Anne Brockelman  
Elaine Severino  
Josh Safdie  
Drew Kane (Alt.)

Attest, by the Planner: \_\_\_\_\_

Melissa A. Woods

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 \_\_\_\_\_