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

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Case #: ZBA 2016-88
Date: September 21, 2016

Recommendation: Denial

PLANNING STAFF REPORT

Site: 1 Howe Street

Applicant(s) & Owner(s) Name(s): Joanna Koustomiris
Applicant(s) Address: 1 Howe Street, Somerville, MA 02145
Alderman: Tony LaFuente

Legal Notice: Applicant and Owner, Joanna Koustomiris, seeks a Variance under SZO §5.5 and §8.6.5.c to approve a 6 foot fence constructed along the corner property lines. RC zone. Ward 4.

Dates of Public Hearing: Zoning Board of Appeals – September 21, 2016

I. PROJECT DESCRIPTION

1. **Subject Property:** The subject property is a 2,852 square foot Mansard, 2-family residential building on a 3,485 square foot lot in the RC zone. This property is a corner lot at the intersection of Howe and Marshall Streets.

2. **Proposal:** The Applicant is requesting to install a solid 6-foot wood fence along the Howe and Marshall Street property lines.

3. **Nature of Application:** The Somerville Zoning Ordinance, under §10.7.1, limits maximum fence height to 6 feet above the existing grade. However, when a fence is being constructed within 20 feet of any corner street line intersection, a maximum of 3 ½ feet is allowed irrespective of whether the property is situated on the corner of two one-way streets (§8.6.3.c).

4. **Surrounding Neighborhood:** Located at the intersection of two one-way streets, Howe and Marshall, the surrounding area is a mixture of two- and three-family structures of varying sizes, a park and a Haitian church, just off Broadway.

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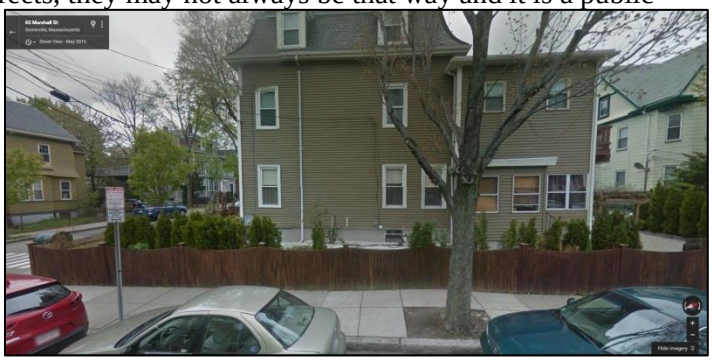
5. Impacts of Proposal:

Above: Howe St elevation with old fence.

- The 6-foot fence has already been constructed by the applicant without a building permit.
- The Applicant received a zoning violation notice from ISD.
- The Applicant has been made aware of the zoning code requirement for 3.5-foot fences in the first 20 feet of corner lots. The Applicant states that she replaced her previous fence with this 6-foot fence to prevent people in the area from throwing debris onto her property **(see attached Applicant narrative)**.

Above: Intersection of How and Marshall Streets.

- *Fire Prevention*: Fire Prevention does not accept 6-foot fences on corner lots. Only a 3 ½ - foot fences are acceptable.
- *Chief Building Inspector:* The Chief Inspector rejects allowing a 6-foot fences on corner lots for safety reasons. It is the position of the Chief Building Inspector that even though these are two one-way streets, they may not always be that way and it is a public safety hazard (pedestrian, cycling, vehicular) for fences higher than the 3.5 foot to exist in such circumstances.



Above: Intersection of How and Marshall Streets.

II. FINDINGS FOR VARIANCE (SZO §5.5.3):

In order to grant a Variance, the Board must make certain findings and determinations as outlined in §5.5.3 of the SZO. A variance can ONLY be granted if **ALL** of the conditions below set forth under §5.5.3 are met:

(a) There are "special circumstances relating to soil conditions, shape or topography of land or structures which especially affect such land or structures but not affecting generally the zoning district in which it is located, causing substantial hardship, financial or otherwise."

Staff Finding: There are no such special conditions present on the property. The application does not meet the standards for a variance under these conditions. This is a flat lot. There is nothing unusual about the shape or sloping (topography) of the lot. It is non-conforming in size, but this is consistent with all other lots in this neighborhood as well as the majority of Somerville.

(b) The variance requested is the "minimum variance that will grant reasonable relief to the owner, and is necessary for a reasonable use of the building or land."

Staff Finding: The applicant does not meet the standards for a variance under the conditions set by item (b). The applicant already has a by-right means of reasonable relief. The applicant can construct a 3.5-foot fence within the first twenty feet of any corner as per §8.6.5.c of the SZO which states: "On any lot where front yards are required, all structures, fences or plantings greater than three-and-on-half (3 ½) 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."

Reducing fence height from 6 feet to the required 3.5 feet does not prevent the owner from utilizing the land surrounding the house or from living in the building and thus does not meet the threshold for relief under this criterion.

(c) "The granting of the variance would be in harmony with the general purpose and intent of this Ordinance and would not be injurious to the neighborhood or otherwise detrimental to the public welfare."

Staff Finding: Staff finds that the applicant does not meet the standards set forth for a variance under the conditions set by item (c). A 6-foot fence is not in harmony with the surrounding neighborhood, would be injurious to pedestrian, bicycle, and vehicular traffic and is in complete contradiction to what is permitted under the SZO.

Other residences in the area have fences at code-compliant height, fences at a height that are grandfathered due to age (since installation or per special permit conditions) or no fences at all.

The applicant has other means of reasonable accommodation by virtue of a 3 ½-foot fence that will provide separation of the yard from the street and will function to contain pedestrians to the sidewalk and garden occupants to the yard.

III. RECOMMENDATION

Variance under SZO §5.5.3

Based on the materials submitted by the Applicant and the above findings, the Planning Staff's recommendation is **to DENY** approval of the requested **VARIANCE**, and require the applicant to remove the existing 6-foot fence.