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MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2018-67
Site: 22 Newbury St
Date of Decision: June 20, 2018
Decision: Petition Approved with Conditions
Date Filed with City Clerk: July 3, 2018

ZBA DECISION

Applicant Name: North America Development, LLC
Applicant Address: 93 Broadway, Somerville, MA 02145
Owner Name: Edmund Gildea
Owner Address: 22 Newbury Street, Somerville, MA 02145
Alderman: Katjana Ballantyne

Legal Notice: Applicant, North America Development LLC, and Owner, Edmund Gildea, seek Special Permits under §4.4.1 of the SZO to alter a non-conforming structure, including, but not limited to the linear extension of the left side yard setback and increasing the GFA by more than 25%.* Parking relief under Article 9 of the SZO. RB zone. Ward 7.

*The GFA of the structure is not changing by more than 25%.

<u>Zoning District/Ward:</u>	RB zone. Ward 7.
<u>Zoning Approval Sought:</u>	§4.4.1, §7.11, and §9.13
<u>Date of Application:</u>	April 26, 2018
<u>Date(s) of Public Hearing:</u>	June 20, 2018
<u>Date of Decision:</u>	June 20, 2018
<u>Vote:</u>	5-0

Appeal #ZBA 2018-67 was opened before the Zoning Board of Appeals in the Visiting Nurses Association, 3rd floor Community Room, 259 Lowell Street, Somerville. 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 one hearing of deliberation, the Zoning Board of Appeals took a vote.



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DESCRIPTION:

The Applicant proposes to increase the number of units from one to three. This will be accomplished by finishing the basement and interior reconfigurations of existing space. The existing rear deck will be removed and a sunken areaway/patio will be installed (with protective fencing) to allow for egress from new basement living room space. The bituminous material (asphalt) will be removed from the property and pervious pavers installed in its stead. Three on-site parking spaces area proposed – one per residential unit. The remainder of the property will be re-landscaped.

The triggers for special permitting are as follows:

Side Yard Setback

The left side yard setback is currently at .9 feet from the property line at its shortest point in a zone where an 8-foot side yard setback is required. Under Special Permit, an Applicant may request to increase or maintain such a non-conformity. In the case of 22 Newbury Street, the location of the areaway/patio and its accompanying fencing is being installed more than .9 feet from the property line. Though the Applicant is improving the non-conformity, the setback remains non-conforming, thus triggering the need for a Special Permit.

Parking

Parking relief is needed for one (1) parking space. Discussion of this relief appears later in this report.

FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1 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 §4.4.1 and §5.1.4 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."***Regarding §4.4.1 and §9.13 of the SZO****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."



Left Side Yard Setback

The existing rear deck rests less than the required 8 feet from the left property line. The Applicant proposes installing an areaway/patio area with associated fencing in place of the deck. Though the areaway/patio/fencing will be constructed further away from the property line than the existing deck, thus improving the non-conforming setback, the setback will remain non-conforming. The Board is supportive of the deck removal and the installation of the areaway/patio/fencing. Though still non-conforming, the Board finds the increased distance of this structure from the property line to be an improvement to a non-conformity that can be supported.

Additional Findings

The majority of the changes being made to the structure itself are internal in nature. Modifications to the front and side dormers, the installation of window wells for egress, and the removal of the rear deck to make way for the installation of an areaway/patio are the crux of the changes to the structure itself.

The addition of one additional residential unit and its associated bathrooms and kitchen will increase the demand on the municipal water supply and City sewer capacity. The Applicant will be required to comply with the City's policy for new connections and modifications to the municipal sewer and drainage system. This is a condition of any approvals granted by the ZBA. The Applicant's proposal in this regard will be submitted to Engineering and reviewed/altere d/approved by that Department independent of Planning Staff review. The Board finds that the increase of the permeability of the lot (through the removal of the bituminous material) should reduce the amount of stormwater runoff that evacuates this property into the municipal sewer system. Instead, a greater amount of stormwater should be able to percolate through the parcel rather than into City systems.

During the construction phase of this project, the neighborhood can expect an uptick in the amount of noise and, possibly, construction-related odors, emanating from this parcel. However, the Board anticipates that this increase in noise/odor will be temporary and will dissipate once the construction phase is complete. The City of Somerville does have noise ordinances to which residents are expected to adhere. Therefore, should inhabitants of the surrounding neighborhood find that there is undue noise coming from any of the units at 22 Newbury Street, they should follow normal protocol by contacting the proper city authorities and register a complaint.

Given the proposed changes to the structure, the Board does not anticipate additional shadowing of abutting properties.

The character of the neighborhood is clearly residential in nature and is comprised of gable-fronted structures. The style of 22 Newbury is the outlier on the street in terms of not conforming with the ubiquitous gable-fronted style.

The proposal includes combining the two small, differently-sized gabled dormers into one larger gabled dormer. The Board has conditioned this decision such that the Applicant team work with Planning Staff to provide a better window arrangement for this new dormer than is presented on Sheet A2.1 of the plan set.

Lastly, the two chimney stacks will be removed and a small shed dormer is proposed for the right rear roof in lieu of the single dormer currently present. The inclusion of a few well-placed windows along the right elevation façade will improve the visual appearance of this portion of the structure.



Section 9.13 of the SZO (Article 9)

Under existing conditions, the property can provide two (2) legal spaces. The Applicant proposes maintaining the same number of parking spaces under the proposed conditions.

Dwelling Area	Existing Bdrs.	Parking Req.	Dwelling Area	Proposed Bdrs.	Parking Req.
Unit 1	3	2.0	Unit 1	3	2.0
Unit 2	4	2.0	Unit 2	2	1.5
Unit 3	n/a	n/a	Unit 3	2	1.5
Total: 4.0			Total: 5.0		

Formula:

new parking requirement – old parking requirement = # of spaces of relief needed*

$$5.0 \text{ spaces} - 4.0 \text{ spaces} = 1.0 \text{ space}$$

Under existing conditions, this property is required to provide four (4) legal parking spaces but is able to provide only two (2) legal spaces. Under the proposed conditions, the Applicant is required to provide a total of 5.0 parking spaces. Though the total bedroom count on the property remains the same under existing and proposed conditions, the bedrooms are distributed across three units rather than two. Thus, this results in increasing the number of overall parking spaces the site must provide.

The Applicant proposes providing three (3) parking spaces on-site. This leaves for one (1) parking space of relief needed.

The Applicant's proposal is consistent with the ZBA's interest in allowing for one on-site space per residential unit. The Applicant's proposal is also consistent with the ZBA's interest in not providing amenity parking spaces on-site and preferring the installation of increased, quality landscaping instead, along with the removal of existing bituminous material.

**When this result is a negative number or >1, no parking relief is needed. The result of this formula is then compared against the number of spaces that the applicant proposes to provide on the site. If this number is greater than the number of spaces of relief needed, then no special permit for parking relief is required.*

Pursuant to Section 9.13 of the SZO, the Board also provides the following assessment of this project against the following categories:

1. Increase in traffic volumes

The density on this site will increase from two residential units to three residential units. There exists the possibility of additional vehicles using this street to enter and exit the property once the project is complete. Taken independently as a project, the Board does not find that one or even two cars associated with each unit would create a meaningful increase in traffic volumes in this area.

2. Increased traffic congestion or queuing of vehicles

As noted above, the Board does not find that the increase of one residential unit on the site will create increased traffic congestion or queuing of vehicles along Newbury Street.

3. Change in the type(s) of traffic



As the use of the property is remaining residential, changes in the type of traffic is not anticipated. The neighborhood can expect an up-tick in construction-related traffic during the active construction period on the site. However, this type of traffic will be limited to the duration of construction.

4. *Change in traffic patterns and access to site*

The traffic pattern on Newbury Street will remain as it does today. Access to the site will be from the same direction as current.

5. *Reduction in on-street parking*

Because one additional residential unit is being added to the property, it is fair to say that there may be an increase in the number of vehicles used by residents of the site. Consequently, there may or may not be a need for some of the residents and their guests to use on-street parking.

6. *Unsafe conflict of motor vehicle and pedestrian traffic*

Given the proposed locations of the three on-site parking spaces, vehicular traffic will be entering and exiting the parcel in the same manner that it does under existing conditions: from Newbury Street and likely via pulling into and backing out of the parcel.

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.” The two-to-three-unit proposal is consistent with what is allowed in the RB zone from a site density perspective.

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.”*

Other than site improvements defined by re-landscaping, the removal of bituminous material and the installation of a pervious driveway, the majority of the changes to this property will occur internally. The existing character of the façade will be maintained but will be upgraded through an improvement in exterior finishes.

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 proposal will improve the visual appearance of an existing property and will add one more dwelling unit to the City’s housing stock. The proposal will upgrade the parcel by removing all bituminous material and allow for the installation of quality landscaping/green material.



DECISION:**Special Permit under §4.4.1 and Article 9**

Present and sitting were Members Orsola Susan Fontano, Elaine Severino, Danielle Evans, Josh Safdie, and Pooja Phaltankar. Upon making the above findings, Danielle Evans 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 to finish the basement, install an areaway/patio and accompanying railings within the left side yard setback, removal of all bituminous material and relief for one parking space.	BP/CO	ISD/PIng.					
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>April 26, 2018</td><td>Application submitted to City Clerk’s office.</td></tr></table>				Date (Stamp Date)	Submission	April 26, 2018	Application submitted to City Clerk’s office.
	Date (Stamp Date)				Submission			
April 26, 2018	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.								
Design								
2	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 (including PVC) shall not be permitted.	BP	ISD/PIng					
Pre-Construction								
3	<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	Engineering/ISD					
4	The Applicant must obtain a new street address for the new unit on the property from the Engineering Department prior to the issuance of a building permit.	BP	Engineering/ISD					
Construction Impacts								
5	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					



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/ISD	
7	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 see.	During Construction	ISD	
8	Construction shall be limited to M-F 7:30am – 5:00pm. No weekend/holiday construction or construction-related work shall occur.	During Construction	ISD	
9	Prior to the issuance of a building permit, the Applicant shall submit full engineering plans to the Engineering Department for their review and approval.	BP	ISD/Plng/E ng.	
Public Safety				
10	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
11	All smoke detectors shall be hard-wired.	CO	Fire Prevention / ISD	
12	The building shall be sprinkled	CO	Fire Prevention/ ISD	
13	All exterior lighting on the site shall be downcast and shall not cast light onto surrounding properties in any fashion.	CO	ISD	
14	In accordance with City of Somerville ordinances, no grills, barbeques, chimineas or the like shall be allowed on patios, decks, or porches. These requirements shall be written into any rental agreements or condo documents. Proof of the inclusion of this language shall be shown to Planning Staff prior to the issuance of a CO.	CO/Perpetua l	ISD/PlngF P	
Site				
15	All plantings and their locations along with all hardscaping materials, design and location for driveways, walkways, fencing, etc., shall first be reviewed and approved by Planning Staff prior to the issuance of a building permit.	BP	ISD/Plng	
16	No vents shall exit onto the Newbury Street facade of the structure. All venting, pipes, conduits and the like shall be painted the same color as the exterior of the structure from which they protrude.	CO	ISD/Plng	
17	Utility meters shall not be installed on the Newbury Street façade. Under all circumstances, utility meters shall be screened with evergreen vegetative screening. All screening shall first be reviewed and approved by Planning Staff.	CO	ISD/Plng	
18	All bituminous material shall be removed from the site.	CO	ISD/Plng	
19	All materials for hardscaping shall be submitted to Planning Staff for their review and approval prior to the issuance of a building permit	BP	ISD/Plng	
20	Vinyl siding, trim, fencing, or decking material shall not be used on this site	CO	ISD/Plng	



21	All mechanicals shall be screened from view from the public way. All screening materials shall be reviewed and approved by Planning Staff prior to installation	CO	ISD/Plng	
22	The location of mechanicals (such as AC condensers) shall be first reviewed and approved by the Zoning Review Planner prior to their installation. Such mechanicals shall not be allowed along the front façade of the building.	BP	ISD	
23	Garbage and recycling shall be stored out-of-view from the public way and shall be screened from the public way and from immediately-abutting properties. Screening material and storage location shall first be reviewed and approved by Planning Staff.	CO	ISD	
24	The parking area shall be constructed of pea stone or of permeable pavers. Materials and installation design shall first be reviewed and approved by Planning Staff prior to installation.	CO	ISD/Plng	
Miscellaneous				
25	A construction traffic management plan shall be submitted to Traffic & Parking for their review and approval prior to the issuance of a building permit.	BP	Traffic & Parking	
26	The Applicant team shall work with Planning Staff to improve the window arrangement proposed from the new gabled dormer on the front elevation.	BP	ISD/Plng	
27	The chain-link fence that separates the left side of 22 Newbury from the public sidewalk shall be removed.	CO	ISD/Plng	
Final Sign-Off				
28	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./IS D	

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Danielle Evans
Elaine Severino
Josh Safdie
Pooja Phaltankar (*Alt.*)

Attest, by City Planner: _____

Sarah White

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 _____

