



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

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Case #: ZBA 2017-41
Site: 38 Oliver Street
Date of Decision: November 8, 2017
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: November 21, 2017

ZBA DECISION

Applicant Name: Mark J. Ahern & Polly Chin-Ahern
Applicant Address: 38 Oliver Street, Somerville, MA 02145
Property Owner Name: Mark J. Ahern & Polly Chin-Ahern
Property Owner Address: 38 Oliver Street, Somerville, MA 02145
Agent Name: Richard G. DiGirolamo

Legal Notice: Applicants and Owners, Mark J. Ahern & Polly Chin-Ahern seek Special Permits under §4.4.1 of the SZO to renovate a non-conforming 4-unit residential structure. Parking relief is sought under Article 9 of the SZO. RB zone. Ward 1.

Zoning District/Ward: RB Zone. Ward 1
Zoning Approval Sought: §4.4.1 & Article 9
Date of Application: April 20, 2017
Date(s) of Public Hearing: 11/8/2017
Date of Decision: 11/21/2017
Vote: 4-0

Appeal #ZBA 2017-41 was opened before the Zoning Board of Appeals in the Aldermanic Chambers located on the second floor 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 one hearing of deliberation, the Zoning Board of Appeals took a vote.



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

1. Subject Property: The subject property is a 3,222 square foot, 2 ½-story, four-family residential building situated on a 2,368 square-foot lot in the RB district. Despite the fact that the Assessor’s site states that the property is a 3-family, Staff has confirmed with Inspectional Services (ISD) that this property is, indeed, a legally-existing 4-family structure in this zone.

2. Proposal: The Applicant proposes maintaining the four-family use and making some interior and exterior modifications as described below.

Site:

The parcel on which this structure is situated is quite narrow. The narrowness of the lot and the location of the structure thereon allows for no possibility for vehicular access of parking anywhere on this parcel. This situation will not change under the proposal.

Parking:

As noted above, no parking is currently available on the property. This situation will not change going forward. The overall bedroom count on the property is increasing by one. Despite this increase, there is no need for parking relief.

The total bedroom count per unit and the associated parking requirements for each are as follows:

Unit #	Existing BDR	Req. Parking	Proposed BDR	Req. Parking
1	4	2.0	4	2.0
2	1	1.5	1	1.5
3	1	1.5	2	1.5
4	1	1.5	1	1.5

FAR

Due to the nature of the exterior and interior changes, the FAR will slightly decrease from a non-conforming 1.33 to a non-conforming 1.29.

Design:

The Applicant proposes moving existing, non-conforming exterior egress stairs along the left elevation of the structure. Within the left elevation, the Applicant also proposes creating a small porch.

At the rear, right corner of the building, the Applicant proposes repairing the existing deck and adding new posts, railings and decking.

At the full rear of the building, the Applicant proposes removing what looks like a head-house on the roof and adding two windows and an access door under the rear gable. The existing rear roof deck will be significantly shortened. Mechanical units (condensers) will be installed on the roof and masked by additional deck rails and balusters. The rear setback is currently non-conforming and will remain at 5.3 feet from the property line under the proposal.



The Applicant also proposes extending one existing dormer. The right elevation dormer rests within the side yard setback (at 1.3 feet from the property line). The proposed size of the right elevation dormer, after it is extended, is 13' 11 ½", which is less than 50% of the roof plane to which it is attached (which is 29' 7 ½").

Lastly, the Applicant proposes a new left elevation dormer at a size of 14' 9", which is less than 50% of the roof plane to which it would be attached (which is 29' 7 ½").

The portions of the proposal that trigger the need for special permit relief are the location of the rear, ground floor deck, the extension of the non-conforming right elevation dormer, and the new egress stairs and new left elevation porch.

FINDINGS FOR VARIANCE (SZO §4.4.1):

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in the relevant sections of the SZO. This section of the report goes through those sections in detail.

1. Information Supplied:

The Board finds that the information provided by the Applicants conforms to the requirements of §7.3, 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."*

Under SZO §4.4.1

Section 4.4.1 states that "[l]awfully existing non-conforming 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 non-conforming 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."

Rear, left, and right yard setback, left egress stairs and left elevation porch

The Board finds that the extension of the right elevation dormer is modest in its scope and of a proportion suitable to its location on the roof plane. The Board finds that the ground level rear deck, as it is being re-built largely in the same location will have little-to-no impact on the existing massing of the house in that location. Further, The Board finds that the change in location of the left elevation egress stairs and its associated porch will provide a small modicum of private outdoor space for the tenant in that unit.

In general, The Board is not opposed to the construction of a dormer to provide additional living space. That said, the Board does have some concern with adding further massing to the left elevation of this property given that the structure is nearly built-out to the property line along both side yards already.

Overall, the Board finds that the proposed changes to this structure will not create any changes in traffic volumes, traffic congestion, on-street parking, or have negative impacts on the City water supply or sewer systems. This property is already a four-unit structure and that status will not change under the new proposal. Further, the Board finds that the proposed changes will not have negative impacts on noise or orders in the surrounding area. To that point, the rear, second-story deck will be smaller than the existing deck. Mechanicals (condensers) are being placed on the back portion of the second-story roof deck and screened from abutting properties. The condensers are also being placed in a location that should reduce the amount of noise that abutting properties hear generated by this mechanical equipment. Lastly, the property, in its current condition, presents some visual challenges to the public way. It might be argued that the inclusion of the left elevation dormer could provide visual balance to the property. In order to do so, however, the Board recommends that the proposed left dormer be built with the same roof pitch as the right side dormer and that the left dormer begins at the same distance from the ridge as the right elevation dormer.

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, as conditioned, is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to promoting the health, safety, and welfare of the inhabitants of the City of Somerville; to secure safety from fire, panic and other dangers; and to encourage the most appropriate use of land throughout the City.

4. Purpose of District: *The Applicant has to ensure that the project “is consistent with the intent of the specific zoning district as specified in Article 6”.*

The Board finds that the proposed project, as-conditioned, is consistent with the intent of the RB zoning 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.”

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

The proposal will not add one unit to the existing stock of the City’s affordable housing units.

6. 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, affordable and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups; and, make Somerville a regional employment center with a mix of diverse and high-quality jobs.*



The Board finds that the proposed project will maintain the same number of rental units on this parcel.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Elaine Severino and Pooja Phaltankar with , Josh Safdie and Anne Brockelman absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Variance. Josh Safdie seconded the motion. Wherefore the Zoning Board of Appeals voted **4-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes								
1	Approval is for extending the right elevation dormer, building a left elevation dormer, construction of a left elevation egress stair and associated porch, construction of rear upper floor roof deck, and reconstruction of ground floor rear roof deck. All items within their corresponding setbacks.	BP/CO	ISD/Plng.									
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>April 20, 2017</td> <td>Initial application submitted to the City Clerk’s Office</td> </tr> <tr> <td>October 24, 2017</td> <td>Updated plans submitted to OSPCD</td> </tr> <tr> <td>November 2, 2017</td> <td>Updated plans submitted to OSPCD</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	April 20, 2017	Initial application submitted to the City Clerk’s Office	October 24, 2017	Updated plans submitted to OSPCD	November 2, 2017	Updated plans submitted to OSPCD
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<p><u>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.</u></p>												
Pre-Construction & Construction Impacts												
2	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									
3	The Applicant shall post the name and phone number of the general contractor, owner, and all sub-contractors at the site entrance where it is visible to people passing by.	During Construction	Plng./ISD									



4	Approval is subject to the Applicant's and/or successor's right, title and interest in the property.	Cont.	Plng./ISD	Deed submitted & application form signed
5	All construction materials and equipment shall 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	
6	<u>Construction shall occur from 7:30am – 5:00pm Monday-Friday ONLY. There shall be no construction or construction-related work allowed on the weekends or holidays.</u>	During Construction	ISD	
7	The Applicant shall ensure that all food waste associated with construction personnel be removed from the premises at the end of each work day.	During Construction	ISD	
8	The Applicant shall, throughout the construction process, ensure that the project site remains as follows: <ul style="list-style-type: none"> - <u>ALL</u> construction-related debris shall be placed in dumpsters or similar at the end of <u>EACH</u> day; - Items removed from the existing building as part of the project process shall be disposed of in dumpsters <u>at the end of each day</u> and/or placed in storage off the premises. These items may include, but are not limited to: mechanicals, pipes, vents, household appliances, toilets, bathtubs, refrigerators, etc. - <u>Under no circumstances</u> shall debris from demolition, construction waste, or the like fall upon, be placed upon or otherwise encroach on abutting properties or the public way. - <u>ALL</u> hazardous material including, but not limited to, asbestos (siding, pipe wrap, insulation, etc.), oil tanks, etc., shall be removed by a licensed, insured, and qualified specialist. 	Pre-Construction & during construction process	ISD/Plng	
9	During the construction process, all snow shall be removed from the driveways, parking spaces, walkways and abutting sidewalks. All such snow shall be removed from the site and not piled on the parcel in any manner.	During Construction	ISD	



10	Deliveries to the construction site shall only occur during 9am and 3pm Monday through Friday. No deliveries to the construction site shall occur on weekends or holidays.	During construction	Traffic & Parking/ISD	
11	Construction and construction-related personnel shall NOT arrive at the job site before 7:30 am. Construction-related vehicles shall not be left to idle on or near the property and site personnel shall be mindful of surrounding property owners by not playing music, engaging in loud conversations, and the like before, during, or after the work day.	During construction	ISD	
12	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	ISD/Plng/Engineering	
13	The Applicant shall 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 1 st to April 1 st and there is a list of streets that have additional opening restrictions.	BP	ISD/Engineering	
Design				
14	The Applicant shall provide final material samples for siding, trim, windows, and doors to Planning Staff for review and approval prior to construction.	BP	Plng/Zoning Review Planner	
Site				
15	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.	Perpetual	ISD	
16	Garbage and recycling containers shall be stored out-of-view of the public way. All such containers and container areas shall be screened with either evergreen plantings (no arborvitae) or wood screening. Locations for containers shall be indicated on the final plan set submitted to ISD for building permits. Screening material shall be reviewed and approved by Planning Staff prior to installation.	Screening material: BP Installation of container site and screening: CO	Plng/ISD	
17	Any materials used for any hardscaping (walkways, parking areas, landscaping walls, and similar) shall first be presented to Planning Staff for their review and approval prior to installation.	CO	Plng/ISD	
Miscellaneous				



18	The existing windows on the left elevation of the original structure may be replaced, but shall remain the same size as current. Any change in dimensions will result in the windows needing to be inoperable, fire-rated or glass block windows in keeping with fire prevention codes.			
19	Electrical conduits on the exterior of buildings shall be painted to match the color of the wall material to which they are attached. Conduits are not allowed on the front of any structure.	CO	Plng/ISD	
20	Exhaust/venting pipes protruding from the roof shall be wrapped or painted to match the color of the shingling.	CO	Plng/ISD	
21	There shall be no vents or exterior pipes located on the front façade of the building. All vents and exterior pipes shall be painted or wrapped to match the color of the structure from which they protrude.	CO	Plng/ISD	
Public Safety				
22	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
23	Any new or enlarged window openings that fall 3 feet or less from the property line shall be fire-rated, inoperable windows that conform to the specifications set out in the building code and interpreted by ISD	CO	ISD	
24	All lighting shall be downcast and shall not spill onto the public way or onto neighboring properties in any fashion.	CO	ISD	
25	Per City of Somerville fire prevention regulations, grills, barbeques, chimineas or similar shall not be used or stored on porches or decks. The Applicant shall write such specifications into any condo docs and/or rental agreements. The Applicant shall provide the City proof of such inclusion prior to the receipt of a Certificate of Occupancy	CO	Plng/ISD	
Final Sign-Off				
26	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

Attest, by the Planner:

Sarah M. 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 _____

