



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
JOSEPH A. CURTATONE
MAYOR

MICHAEL F. GLAVIN
EXECUTIVE DIRECTOR

PLANNING DIVISION

ZONING BOARD OF APPEALS MEMBERS

ORSOLA SUSAN FONTANO, CHAIRMAN
RICHARD ROSSETTI, CLERK
DANIELLE EVANS
ELAINE SEVERINO
JOSH SAFDIE
ANNE BROCKELMAN, (ALT.)
POOJA PHALTANKAR, (ALT.)

Case #: ZBA 2018-33
Site: 51 Oliver Street
Date of Decision: August 8, 2018
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: August 13, 2018

ZBA DECISION

Applicant / Owner Name: 51 Oliver Street, LLC
Applicant / Owner Address: 741 Broadway, Somerville, MA 02144
Agent Name: Sean T. O'Donovan, Esq.
Agent Address: 741 Broadway, Somerville, MA 02144
Alderman: Matthew McLaughlin

Legal Notice: Applicant/Owner, 51 Oliver Street, LLC, seeks a Variance under §5.5, §8.5, and Article 9 for minimum lot size, left side yard setback, floor area ratio (FAR), minimum frontage, and parking to construct a three-story, three-family dwelling. RB Zone. Ward 1.

*After further analysis, a Variance for FAR is not required.

<u>Zoning District/Ward:</u>	RB Zone. Ward 1.
<u>Zoning Approval Sought:</u>	§5.5, §8.5, and Article 9
<u>Date of Application:</u>	March 14, 2018
<u>Date(s) of Public Hearing:</u>	7/18/18, 8/8/18
<u>Date of Decision:</u>	August 8, 2018
<u>Vote:</u>	5-0

Appeal #ZBA 2018-33 was opened before the Zoning Board of Appeals in the Aldermanic Chambers, Somerville City Hall, 93 Highland Ave, Somerville, MA. 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 August 8, 2018, the Zoning Board of Appeals took a vote.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
(617) 625-6600 EXT. 2500 • TTY: (617) 666-0001 • FAX: (617) 625-0722
www.somervillema.gov

I. DESCRIPTION:

The proposal is to construct a three-unit triple decker on the vacant property.

II. FINDINGS FOR VARIANCE

A Variance (§5.5) is sought to construct a new three-unit triple decker. The proposed structure will violate the dimensional requirements for left side yard setback, lot area, frontage, and the number of off-street parking spaces. The structure would be situated virtually in the middle of the lot with a 15 foot front yard, a right side driveway that leads to three parking spaces, and private patios and lawn area within the left side yard. The units will not be stacked like a traditional triple deckers, instead, each unit will have three levels of living and will be placed behind one another. The applicant is proposing a head house with a roof deck for each unit. There will also be an unfinished basement.

DIMENSION	ALLOWED/ REQUIRED	EXISTING	PROPOSED	COMPLIANCE
# of Dwelling Units	3	0	3	Complies
Lot Size	7,500	4,600	4,600	Violation
Lot Area/Unit	1,500	N/A	1,533	Complies
Ground Coverage	80%	0%	37.8%	Complies
Landscaped Area	25% (or 1,150 sf)	0	25.3% (or 1,165 sf)	Complies
Pervious Area Min	35%	0	62.2%	Complies
FAR	1.0	0	0.79	Complies
Height (Ft/Stories)	40 / 3	0	30 / 3	Complies
Front Yard	15	0	15	Complies
Rear Yard	20	0	27	Complies
Left Side Yard	10	0	8	Violation
Right Side Yard Min	10	0	10	Complies
Frontage	50	40	40	Violation
# of Parking Spaces	6	20	3	Violation

An updated landscaping plan has been submitted that depicts, in green boxes, the areas of landscaping that are being calculated. The areas that are being calculated equate to 1,165 square feet or 25.3% of the lot; which meets the minimum requirement for the zoning district. The plan has also been altered so that grass pavers will be used for the entire length of the driveway and the parking spaces will be a pervious paver. Planning Staff recommended this change because if cars were parked in their spaces for most of the day the grass underneath would not grow. This revised plan will also give the appearance that both sides of the house are landscaped. However, the grass pavers are not able to be counted toward the landscaped percentage because the zoning definition for landscaping excludes areas used for vehicular use.

The subject property has an interesting ownership history worth noting. It was once owned in common with the adjacent property at 53 Oliver Street which contains a two-family dwelling. Typically when adjacent undersized lots are held in common ownership where one has a principle use and another is vacant they are considered merged for zoning purposes in order to help meet the minimum lot area zoning requirement. The two properties were held in common ownership until 2005.



In a recent Massachusetts Appellate case, *Gallagher vs. Falmouth ZBA*, the Appeals Court determined that a house lot and a carport lot owned in common by one individual had merged. While the Land Court determined that the lots had merged in this case, they specifically reiterated the point that lot merger is not automatic, and is instead determined by a fact-based analysis of the situation. Therefore, comparison against the fact pattern noted in this case is a worthwhile exercise to determine if the lots at 51 and 53 Oliver had merged prior to their separate sale. A letter from a previous longtime owner of the both parcels has submitted a letter to the Planning Staff to help document facts regarding the history of the site.

According to the Land Court:

The determination of whether adjacent properties should be deemed to have merged for zoning purposes is a highly fact-sensitive inquiry. In making such determinations, courts have considered several factors, including:

*(a) whether the adjacent lots were conveyed by one deed or multiple deeds (e.g. *Lindsay v. Bd. of App. of Milton*, 362 Mass. 126, 130-131 (1972) (finding several properties previously conveyed as separate lots to have merged upon their joint conveyance in a subsequent deed));*

They adjacent lots have been conveyed by separate deeds.

*(b) whether the lots have been assessed separately or together (e.g. *id.* at 132, n. 6 (“where owners have benefitted from a particular assessment practice, it is not unjust to require that an existing use be maintained even though, under a different interpretation of the zoning by-law, a more favorable use might be open to the owners” (quotation omitted)); *Seltzer*, 24 Mass. App. Ct. at 524 (the fact that lots were assessed as one lot was a relevant factor but did not require a finding of merger); *McGrath v. Zoning Bd. of App. of Chatham*, 76 Mass. App. Ct. 1120, *3 (2010) (unpublished opinion) (separate assessment of property was a relevant factor));*

The lots have been assessed separately and have their own curb cuts and utility lines.

*(c) the location of structures on property and whether structures cross lines (e.g. *Seltzer*, 24 Mass. App. Ct. at 523-524 (construction of a residence straddling lot lines does not necessarily entail merger of the lots));*

The structure on 53 Oliver Street does not cross the property line.

*(d) whether the owner prepared a plan of the merged lots (e.g. *McGrath*, 76 Mass. App. Ct. at 1120, *3 (recorded plan was a “perimeter plan”, not a “consolidation plan”, and thus did not establish an intent to merge lots)); *Seltzer*, 24 Mass. App. Ct. at 523 (preparation of a plan setting new lot line division between two adjacent lots suggested an intent to keep the lots separate);*

A perimeter plan nor a consolidation plan were ever recorded.

*(e) whether separate ownership is a ruse to avoid the effects of the new law (e.g. *Distefano v. Town of Stoughton*, 36 Mass. App. Ct. 642, 644 (1994) (disregarding “checkerboard” conveyances to create an appearance of separate ownership); *Planning Bd. of Norwell v. Serena*, 27 Mass. App. Ct. 689, 690-691 (1989) (conveyance of adjacent lot to a trust found not to preclude merger), *aff’d*, 406 Mass. 1008 (1990));*

The Board does not believe that the separate ownership was a ruse to avoid the effects of any new law.

(f) whether the common owner exercised control over both lots (e.g. Distefano, 36 Mass. App. Ct. at 644 (one party exercised control over multiple lots despite sham conveyances to create the appearance of separate ownership)); and

The common owners have exercised control over both lots.

(g) whether the properties have been physically walled off or otherwise separated from each other (e.g. Vetter, 330 Mass. at 630 (finding that physical separation of lots might have undermined application of the merger doctrine)).

The lots were physically walled off with a fence since before 1973. The vacant parcel was used by a local church as a parking lot and then later as a parking lot for area residents in need of additional parking.

In order to grant a variance the Board must make certain findings and determinations as outlined in §5.5.3 of the SZO.

1. *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.”*

Applicant’s response: “The land is thin in nature @ 40 feet in width. As a result, the Applicant has been challenged in attempting to create family style units on this thinly shaped lot the makes sense financially based on acquisition, excavation, and building costs. Additionally, the topography of the land is sloped creating additional excavation and construction challenges.”

Board’s response: The lot is 40 feet wide and the proposed structure is 22 feet wide with side yards of eight and ten feet. The narrow shape of the lot does create a situation where the lot would not be able to be developed without needing Variances because a dwelling structure could not be built to serve a practical purpose at less than 22 feet in width.

2. *“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.”*

Applicant’s response: “The variance requested is the minimum approval necessary to grant reasonable relief as a result of its challenging thin nature of only 40 feet in width, thus requiring the applicant to vary from the Somerville Zoning Ordinance by necessity. This proposal creates needed housing for families. The Applicant is striving to create family units as this local is in close proximity to 3 of Somerville’s Public School. In light of the thinly shaped lot of land the Applicant is committed to creating 3 family style units with 3 bedrooms each.”

Board’s response: As previously noted, the narrow shape of the lot does create a situation where the lot would not be able to be developed without needing Variances because a dwelling structure could not be built to serve a practical purpose at less than 22 feet in width. Any type of development on this lot will require a Variance under the current SZO due to the lot not meeting the minimum lot size requirement.



The proposal would meet setback requirements and lot dimensions under the latest proposed zoning overhaul; however, it would violate some other regulations in the overhaul. The overhaul would prohibit triple-decker building types and three-units in this proposed district; however, potentially allowed three-units and/or triple decker building types in the proposed Neighborhood Residential (NR) district has been a topic of discussion in the Board of Alderman Land Use Committee deliberations. Also, the overhaul would prohibit units within a building from being arranged front-to-back

3. *“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.”*

Applicant’s response: “The granting of the variance is in harmony with the Somerville Zoning Ordinance and SomerVision as it create family style units in close proximity to 3 of Somerville’s public school and public transportation all within a half mile. The proposal is not injurious to the neighborhood nor detrimental to the public welfare as it fits into surrounding based on size, unit count, and use. The building style is very common and in harmony with other surround structures.”

Board’s response: The proposal would allow for the development of a derelict vacant site within this residential neighborhood that would provide opportunities for family-sized units. The Board does not believe that the proposal would be injurious to the neighborhood or detrimental to the public welfare.

DECISION:

Variance under §5.5, §8.5 and Article 9

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Elaine Severino, Danielle Evans, Anne Brockelman, and Pooja Phaltankar. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Variance. Elaine Severino seconded the motion. 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 the construction of a new three-unit triple decker. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/Pln g.							
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>March 14, 2018</td> <td>Initial application submitted to the City Clerk’s Office</td> </tr> <tr> <td>July 25, 2018</td> <td>Plans submitted to OSPCD (A1, A2, A1 landscaping calculations, and certified plot plan)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	March 14, 2018	Initial application submitted to the City Clerk’s Office	July 25, 2018	Plans submitted to OSPCD (A1, A2, A1 landscaping calculations, and certified plot plan)
	Date (Stamp Date)				Submission					
March 14, 2018	Initial application submitted to the City Clerk’s Office									
July 25, 2018	Plans submitted to OSPCD (A1, A2, A1 landscaping calculations, and certified plot plan)									
Any changes to the approved site plan or elevations/use that are not <i>de minimis</i> must receive SPGA approval.										
Pre-Construction										



2	The Applicant must contact the Engineering Department to obtain a street address prior to a building permit being issued.	BP	Eng.	
3	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.	
4	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.	
5	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.	
6	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.	
7	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. The Applicant shall work with Engineering to meet this condition and provide the required fees/mitigation.	BP	Eng.	
Construction Impacts				
8	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.	
9	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	
10	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	
11	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.	During Construction	ISD	
Design				
12	Applicant shall provide final material samples for landscaping, siding, trim, windows, fences, and doors to Planning Staff for review and approval prior to construction.	BP	Plng.	
Site				



13	Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Plng. / ISD	
14	The 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	
15	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.	
16	One tree must be planted and maintained according to National Nurseryman's Standards, and in accordance with SZO §10.2.2 and §10.6.2;	CO	Plng.	
Miscellaneous				
17	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	
18	Electrical conduits on the exterior facades of buildings shall be painted to match the wall material to which they are attached. Conduits are not allowed on the front of any structure.	CO	ISD	
19	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.	
20	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.	BP	Plng.	
21	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	
Public Safety				
22	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
23	Per Somerville fire safety regulations, grills, barbecues, chimineas and the like are NOT permitted on decks or porches.	Perpetual	FP/ISD	



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.	
Miscellaneous (cont.)				
26	The parking spaces in the rear of the site and the patio within the left side yard shall be constructed of permeable pavers.	Perpetual	Plng. / ISD	
27	The entire length of the driveway shall be constructed of permeable grass pavers.	Perpetual	Plng. / ISD	



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Richard Rossetti, *Clerk*
Elaine Severino
Daniel Evans
Anne Brockelman (*Alt.*)

Attest, by City Planner: _____

Alexander C. Mello

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 _____

