



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2017-96
Site: 8 Whipple Street
Date of Decision: November 8, 2017
Decision: Petition Approved with Conditions
Date Filed with City Clerk: November 14, 2017

ZBA DECISION

Applicant / Owner Name: Mouhab Rizkallah, manager of LaCourt Enterprises, LLC
Applicant / Owner Address: 30 College Avenue, Somerville, MA 02144
Agent Name: N/A

Legal Notice: Applicant, LaCourt Enterprises, LLC, and Owner, Mouhab Rizkallah, seek Special Permits under §4.4.1 of the SZO to increase the GFA and FAR by more than 25%, and for upward extensions of the non-conforming front, left, and right yard setbacks, and Special Permit under Article 9 of the SZO for parking relief*.

** Upon further analysis, the number of required parking spaces will not increase; therefore, a Special Permit under Article 9 of the SZO for parking relief is not required.*

Zoning District/Ward: RC zone/Ward 6
Zoning Approval Sought: §4.4.1
Date of Application: August 21, 2017
Date(s) of Public Hearing: November 8, 2017
Date of Decision: November 8, 2017
Vote: 5-0

Appeal #ZBA 2017-96 was opened before the Zoning Board of Appeals at Somerville City Hall on November 8, 2017. 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:

The proposal is to construct an additional story to the top of the structure that will add living area to the two existing units on the second floor to become five-bedroom units. Overall the building is proposed to include three-stories with two two-bedroom units on the first floor side-by-side and two five-bedroom units on the second and third floors side-by-side.

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 §5.1.4 of the SZO. This section of the report goes through §5.1.4 in detail.

1. **Information Supplied:**

The Staff finds that the information provided by the Applicant conforms to the requirements of §5.1.2 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."*

The total increase in gross floor area (GFA) will be greater than 25%. The existing GFA is 5,316s.f and the proposal is to add 1,812s.f to increase the GFA to 7,128s.f, or 34% of the existing.

Section 4.4.1 states that *“Alteration, reconstruction, extension, or structural change to a one- or two-family structure that complies with the dimensional requirements of the zoning ordinance in effect at the time of the application, but is located on a lot with insufficient area, and provided any such alteration, reconstruction, extension or structural change remains in compliance with all current dimensional requirements and does not increase the Gross Floor Area (GFA) of the dwelling by more than twenty-five percent (25%).”*

The structure is currently nonconforming with respect to the following dimensional requirements: lot area, front yard setback, left side yard setback, and right side yard setback.

The proposal is to extend the walls within the nonconforming front, left, and right yard setbacks upwards by constructing a third story. The addition will not encroach any further into the setbacks than the existing structure. The side yard setback requirements for the existing structure (two stories) is 8 feet and the requirements for the proposed structure (three stories) is 10 feet. These alterations to a nonconforming structure requires the Applicant to obtain special permits under §4.4.1 of the Somerville Zoning Ordinance (SZO).

	<i>Requirement</i>	<i>Existing</i>	<i>Proposed</i>
Right side yard setbacks	10 feet	5’ - 9”	5’ - 9”
Left side yard setback	10 feet	5 feet	5 feet
Front yard setback	15	8’ - 1”	8’ - 1”

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.”*



In considering a special permit under §4.4 of the SZO, Staff finds that the alterations proposed would not be substantially more detrimental to the neighborhood than the existing structure. The proposal has been designed with setbacks that minimally impact the neighbors and the requirements for lot area per dwelling unit, ground coverage, landscaped area, pervious area; floor area ratio (FAR), building height, rear yard setback, and street frontage will continue to be conforming to the requirements of the SZO.

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 is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to promote the health, safety, and welfare of the inhabitants of the City of Somerville; to provide for and maintain the uniquely integrated structure of uses in the City; to protect health; to secure safety from fire, panic and other dangers; to conserve the value of land and buildings; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality.

The proposal is consistent with the purpose of the RC district, which is, "to establish and preserve a district for multi-family residential and other compatible uses which are of particular use and convenience to the residents of the 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."*

Surrounding Neighborhood: Whipple Street is an "L" shaped street that connects Willow Avenue and Highland Avenue. The south and east sides of the street are residential with 2.5 story gable roofs. The north side of the street is occupied by a utility service provider substation that includes a two story brick structure. The west side of the street consists of a large one story brick commercial building.

Impacts of Proposal (Design and Compatibility): The proposal will add a flat third story to the existing two story flat structure. The building height will increase by 11' 9" to make the building 33' 1". The design and theme of the existing building will not change. The existing structure has horizontal vinyl siding. The third level will use a scalloped cementitious siding of a color to match the existing white siding to be determined prior to the issuance of a building permit in consultation with Planning Staff.

All of the asphalt on the site will be replaced with permeable brick pavers. The landscape plan shows that existing landscaped area on either side of the porch is proposed to be permeable brick pavers. Staff would recommend that those areas remain landscaped area and all existing landscape areas shall remain, weeded, and improved. The proposed landscape plan shall be updated to reflect such prior to the issuance of a building permit.

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

7. 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 proposal will allow for improvements that are in keeping with the character of the neighborhood.



DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Elaine Severino, Danielle Evans, and Pooja Phaltankar with Anne Brockelman and Josh Safdie with absent. Upon making the above findings, Richard Rossetti 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 the construction of a third story. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/Plng.									
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>August 21, 2017</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>(November 2, 2017)</td> <td>Plans submitted to OSPCD (A-001, A-002, A-003, A-004, landscape plan, and site plan)</td> </tr> <tr> <td>November 3, 2017</td> <td>Landscape plan</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	August 21, 2017	Initial application submitted to the City Clerk's Office	(November 2, 2017)	Plans submitted to OSPCD (A-001, A-002, A-003, A-004, landscape plan, and site plan)	November 3, 2017	Landscape plan
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November 3, 2017	Landscape plan											
Any changes to the approved site plan or elevations/use that are not <i>de minimis</i> must receive SPGA approval.												
Construction Impacts												
2	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.									
3	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									
4	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									
5	Noise emitted from construction shall be limited to the hours of 8:00 a.m. to 5:00 p.m. from Monday-Friday.	During Construction	ISD									
Design												
6	Applicant shall provide final material samples for siding, trim, windows, and doors to Planning Staff for review and approval prior to the issuance of a building permit.	BP	Plng.									
7	Cementitious siding shall be used as the siding material for the proposed third story.	BP	Plng.									
Site												



8	Landscaping shall be installed and maintained in compliance with the American Nurserymen’s Association Standards;	Perpetual	Plng. / ISD	
9	Existing landscaped areas shall remain such and shall be weeded and improved. The proposed landscape plan shall be updated to reflect such and reviewed and approved by Planning Staff prior to the issuance of a building permit.	BP	Plng.	
Miscellaneous				
10	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.	BP	Plng.	
11	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.	
12	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				
13	The Applicant or Owner shall meet the Fire Prevention Bureau’s requirements.	CO	FP	
14	Per Somerville fire safety regulations, grills, barbecues, chimineas and the like are NOT permitted on decks or porches.	Perpetual	FP/ISD	
15	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				
16	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
Elaine Severino
Danielle Evans
Pooja Phaltankar

Attest, by the case 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 _____

