

Reply to the Administrative Appeal letter of Adam Dash of Nov. 18, 2013 to the Somerville Zoning Board

by

Dmitry Vasilyev and Patrycja Missiuoro (owners of 16 South street property)

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1. Preface.

Just before we start, let us make two preliminary remarks.

1. The Appeal **violates M.G.L. Chapter 40a**, which says “Any appeal under section eight to a permit granting authority shall be taken within thirty days from the date of the order or decision which is being appealed”
2. According to SZO 3.2.3.2, any zoning appeal such as of 18 South street condominium should be filed within 30 days after the corresponding permit has been issued. The construction permit for 16 South street has been issued in June 2013, and the construction was immediately underway. Since it has been six months, and it has been by far much more than 30 days, **filing a zoning appeal is a clear violation of SZO 3.2.3.2**
3. The property 18 South street was sold with clear condition that future owners do not object, and will never oppose, the future construction of 16 South street building. Sellers recorded this in the 18 South street Master Condominium document. Please note that Condominium Master Deed document was jointly drafted with the current owners of 18 South St Condominium. This agreement of sale is being violated by 18 South street, via this zoning appeal.
4. The 16 South street is a conforming lot owned by right without easements; the proposed building satisfies all zoning requirements for this lot.

2. History of the properties.

Historically, at all times, properties 16 South street and 18 South street were different separate lots. Sometime at the beginning of the 20th century there were two houses.

Here is a picture of 16 South street building around 1912 (source: Library of Congress Prints and Photographs Division Washington, D.C. 20540 USA <http://hdl.loc.gov/loc.pnp/pp.print>)



- **Title:** Typical group of Home Workers crocheting on steps, 16 South Street, Somerville, Mass. Location: Somerville, Massachusetts.
- **Creator(s):** [Hine, Lewis Wickes, 1874-1940](#), photographer
- **Date Created/Published:** 1912 August.

Here are two pictures of 18 South street building's entryway, around the same time (Library of Congress Prints and Photographs Division Washington, D.C.):



- **Title:** Crocheting on underwear at home. Carmina Caruso, 10 years old, a regular worker. Sister Mary, 5 years old, learning; mother and neighbor sitting out in unkept [i.e., unkempt?] side yard all day long. Sometimes they walk up and down the street as they work. 18 South Street, Somerville, Mass. See also home work report. See also home work report. Location: Somerville, Massachusetts
- **Creator(s):** [Hine, Lewis Wickes, 1874-1940](#), photographer
- **Date Created/Published:** 1912 August.

The 16 South street building was demolished some years ago, the demolition time unknown.

The 18 South street building still survived, however a later addition to the entryway was made (time unknown), which defaces the historical main entrance which is shown on the pictures above.

When Dmitry Vasilyev and Patrycja Missiuro acquired the property in 2008, there was a tall wooden fence separating 18 and 16 South St properties. Mr. Vasilyev and Ms. Missiuro demolished this fence with an intent to replace it by a more visually appealing one.

Back at 2008, the 18 South street building was not occupied, except for the owners' relative living on the 3rd floor. The only other offer for this property was from a developer planning to demolish the 18 South St. building. The building was in an extremely deteriorated shape, with an outdated interior, deteriorated oil heating on the 1st floor, no heat on the 3rd floor, structural issues, broken and energy-inefficient windows, multiple layers of linoleum and carpeting, multiple layers of old roofing shingles, wood paneling and dropped ceilings on all floors, etc. Mr. Vasilyev and Mrs Missiuro invested an extraordinary effort to make this house safe and appealing, working most days until 4AM, while living in the house and keeping fulltime jobs/studying in university.

Unfortunately, due to job situation, Mr. Vasilyev and Ms. Missiuro needed to sell the 18 South street building, but they kept the 16 South street land. Please note that there were a total of 7 attorneys involved in the sale, 6 of those represented the current owners of the Condominium.

Currently Dmitry Vasilyev and Patrycja Missiuro legally own 16 South street land, without any easements or other title defects and would like to build a house, which would lift and vitalize the neighborhood of the South Street, which is currently dominated by commercial establishments with a handful of old residential houses. Mr. Vasilyev and Ms. Missiuro believe that this project will greatly benefit the neighborhood overall, including 18 South street.

3. The lots 16 and 18 South street were not merged for zoning purposes.

The complaints titled **A** and **B** in the Appeal letter are based on the claim that the lots were “merged for zoning purposes due to common ownership” and, consequently, lot 16 was used for zoning compliance. This statement is false.

Unlike Cambridge and other Massachusetts towns, Somerville defines a “lot” in a way that does not allow lots to merge due to common ownership, even if they have non-conforming buildings. Here is an official memo of the Massachusetts’ Department of Housing and Community Development:

<http://www.mass.gov/hed/docs/dhcd/cd/zoning/grandfathered.pdf>

Section B of this document describes the general merging rules:

“In the absence of specific zoning provisions defining a “lot” in terms of sources of title or assessors’ plans, the Supreme Judicial Court has consistently held that adjoining parcels may and, indeed, in certain instances, must be considered one lot for zoning purposes. *Heald v. Zoning Board of Appeals of Greenfield*, 7 Mass. App. Ct. 286 (1979).”

In Somerville, a “lot” is defined in the SZO exactly in terms of sources of title and plans:

“2.2.85. *Lot*. A single parcel of land under one (1) ownership and undivided by a street or public way, with definite boundaries as indicated by recorded deed or plan and used or set aside and available for use as the site of one (1) or more principal and accessory uses.”

The definition above does NOT define a lot as “an area in common ownership designated for one building unit” (e.g. City of Cambridge definition) in which case such zoning merge would have been allowed.

In summary, the Appeal’s main argument falsely claims that the lots should have been treated as merged due to common ownership. This is not the case in Somerville.

In addition, before selling the 18 South street property, in spring of 2010, the owners contacted the City's zoning department and spoke to Christopher Di Iorio (who was a senior planner in 2010); Mr. Di Iorio confirmed that the lots **were not merged** for zoning purposes, and therefore can be sold separately, with no need for subdivision.

Since the City's zoning department did not make a decision to merge the properties, the lots should not be considered merged. The zoning map attached to the Appeal clearly shows that zoning database has the lots separate.

The case *Hoffman v. Board of Zoning Appeal of Cambridge* is not applicable, because Cambridge defines lots without reference to deed and plot plans and therefore allows such merge.

Additionally,

- The property boundary separating the lots is present on all deed documents and zoning plans,
- The Somerville zoning board has maintained the lots as separate entities at all times.
- The assessor's database lists them as separate lots.
- There was no application filed with the City requesting the merge of the two lots.
- The Deed of 2008 describes lots separately, and therefore is not a basis for such merge.

As a consequence, the 16 and 18 South street lots should be treated as independent entities. 16 South street lot is not required to satisfy parking and egress compliance issues of 18 South street. The non-conforming use of 18 South street lot is "grandfathered" by SZO provision 4.3:

"Any building lawfully existing and any use lawfully being made of land or buildings which does not conform to this Ordinance as adopted or as amended may be continued to the same degree and for the same purpose.

A nonconforming use is limited to the lot on which it is located and cannot be relocated to another lot within the same zoning district, [...]"

4. Detailed responses to each claim of the original letter

A. **An alleged parking violation.**

- The argument does not constitute a Somerville zoning code violation by the proposed 16 South street building.
- The zoning ordinance 8.2 is not violated by the proposed 16 South street building, because the 16 South street lot was never a part of 18 South street lot and its ownership was not transferred (Ms. Missiuro and Mr. Vasilyev still own this lot).
- The argument incorrectly assumes that the properties 16 South and 18 South St. were merged (see above)

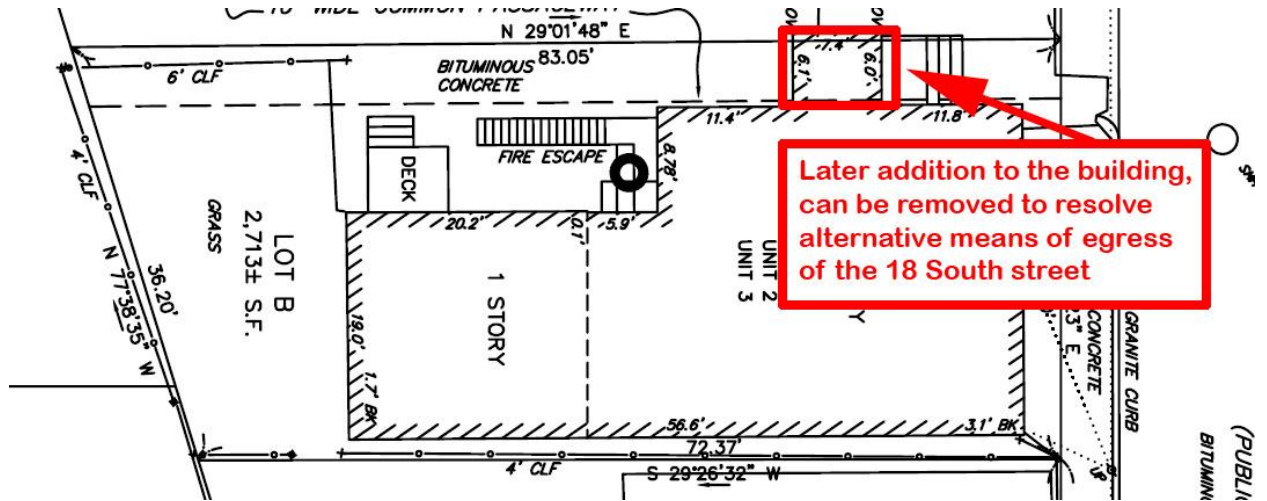
B. An alleged safety violation

- The argument does not represent a Somerville zoning code violation by the proposed 16 South street building.
- The 16 South street lot does not serve as a means of egress to the 18 South street condominium, and lack of egress of the 18 South street is “grandfathered” according to SZO 4.3.
- Contrary to what is stated in the letter, the fence separating 16 and 18 South street lots was erected before 18 South Street was converted for sale.
- The 16 South street lot did not provide such means of egress in the past, because the lots were separated by a tall wooden fence, which was subsequently replaced by a chain-linked fence.
- The gate of the existing chain-linked fence was intended to be locked at all times, except several times when 18 South street condominium trespassed the property of 16 South street and illegally cut locks on the gate.
- The owners of 16 South street were actively preventing such attempts of illegal trespassing of the occupants of 18 South street condominium.
- The owners of 16 South street have not granted any access to 16 South street property for any kind of regular access such as garbage storage.

C. Alleged absence of alternate means of egress

- a. The argument does not represent a Somerville zoning code violation by the proposed 16 South street building.
- b. The argument constitutes a violation of the Somerville Zoning Code by 18 South street Condominium, and not the 16 South Street property.
- c. The violation above is not the responsibility of 16 South street.
- d. Contrary to what the Letter by Dash and Hagemeister claims, the 18 South St. Condominium has means to establish the required alternate means of egress by demolishing a small single-level uninhabitable addition to the 18 South street, which blocks approximately ½ of the width of the “common passageway” area. This small portion of the house is a later addition to the original house, therefore such demolition does not represent a structural concern to the 18 South street building. The above suggested project is an inexpensive project. Such a project would not diminish property value of any unit of the 18 South St. condominium, because this unheated vestibule area does not contribute to any living square footage of the property.
- e. The renovation suggested in (d) would allow for the required alternate means of egress for 18 South street Condominium and not conflict with SZO Section 9.
- f. The renovation in (d) was offered at no charge by the contractors working on 16 South street project. The offer was refused by the 18 South street condominium.

Drawing of the proposed renovation, which would allow means of egress.



D. Alleged structural concern

- The argument does not represent a Somerville zoning code violation by the proposed 16 South street building.
- The current foundation design plan is based on the soil survey report by the certified geotechnical engineer Kevin M. Martin, P.E. from June 3, 2012.
- The protection of integrity of the 18 South street building is guaranteed by the contractor in compliance with IBC. Required drawings and proper techniques will be provided by the Contractor in case of actual soil conditions being different from the conditions described in the mentioned Report.

E. Alleged hazard of the parking area

- a. The argument does not represent a Somerville zoning code violation by the proposed 16 South street building.
- b. The proposed structure is fully compliant with the provisions of Somerville Zoning ordinance 9.1 for the current zone.
- c. The concern regarding the exhaust fumes from the parked cars is grossly exaggerated, due to
 1. High emission standards in the US
 2. The requirement of the mandatory CO detectors in residences which would alarm residents of any possible danger.
 3. More than six-foot clearance between the 16 and 18 South St. buildings will guarantee proper ventilation of exhausts, if any.
 4. The fact that parked cars shut off their engines.
 5. Headlight glare not representing any health concern of 18 South street residents.
- d. Without admitting any wrongdoing or code violation, the owners of 16 South St. herewith propose to build a light-impermeable fence which will eliminate any headlight glare and will help shielding any air flow from the parking area.

E1 – a note regarding the character of the vicinity of the both properties.

The beginning statement on page 5 of the Letter alleges that the vicinity of the South Street near 16 – 18 Street lots, is “a mainly residential area”. This is a gross misrepresentation.

It takes just a cursory stroll or a brief look at Google maps to realize that the whole South Street as well as the particular vicinity of 16-18 South street lots are all overwhelmingly industrialized areas, with only very few residential homes.

For example, in the immediate vicinity of the 16 (proposed building), 18 and 22 South street lots, there are following commercial establishments:

- from the East and South: **Cubby Oil Company** (parking lot and the main headquarters),
- from the North: **SRL corporation** and their lab facility right across the South Street,
- from the North: **commercial parking lot** of SRL corporation,
- from the North: **MagiQ technologies** lab
- from the North-West: **Golden Canoli Shells factory**,
- from the West: **Barbuto Oil company**
- Even 22 South street is a **daycare business**, therefore not strictly residential.
- from West: **MRES (Mass Restaurant Equipment Service)** corporation facility.

On the other hand, only buildings #7, #18 and #22 are residential, with #22 being half-commercial.

This industrial character is persistent along the whole South Street (from its beginning at Medford Street to the end at Windsor Street), with only 5 (five) residential houses offsetting more than a dozen of commercial establishments. In our opinion, this is, by far, not the prettiest part of Somerville.

Undoubtedly, the whole South Street area as well as 18 South street condominium in particular will greatly benefit from a modern new building such as the proposed 16 South street building. The building such as 16 South Street will increase property values and lift up the neighborhood presentation.

F. Alleged parking configuration non-conformance

- The argument does not represent a Somerville zoning code violation by the proposed 16 South street building.
- The proposed 16 South street building satisfies provisions of Somerville Zoning Ordinance 9.11 (e).
- Each parking space (#1-#6) allows for cars’ ingress and egress in the forward direction, with possible “3-point turn” completely within a maneuvering space of the parking lot.
- South street has sufficient width to allow two cars side-by-side to pass each other. This way, a car waiting to enter 16 South street lot will never block the traffic flowing through South Street.

In sum, the concerns outlined by the letter from Dash and Hagemeister do not represent zoning violations by the proposed 16 South street building and the building permits should not be revoked.

5. Incident on Dec. 14, 2013

On December 14, 2013, approximately 2PM Dmitry and Patrycja were visiting the site, and saw Adam Friedman (one of the owners of 18 South street condominium) digging ground with a hand shovel, in the narrow space between the 16 South street construction site and the wall of 18 South street, right below electrical meters. Dmitry and Patrycja asked Mr. Friedman what was he doing, and he refused to comment. Here is the picture of this area taken a few hours later that day:



We have no other interpretation to this behavior other than an attempt to create an evidence of excessive soil disruption by the 16 South street project. We reported this incident to Somerville police and the corresponding report should be on file.

Any liability claimed for any damages to the structural integrity of 18 South street is attributable to Mr. Friedman's actions.

6. Concluding remark

As another note, a recommendation by geotechnical engineer of 18 South street suggesting any damage by 16 South street construction is doubtful, because:

- There was no such examination reported before the project has started, and therefore we do not know whether the conditions changed or not,
- The 18 South street has had very obvious structural settlement before the construction on 16 South street has started, such as sagged roofline, cracks on the basement walls, bowed exterior wall on the Western side.
- No damage was observed and no soil movement reported by the geotechnical and structural engineers working on the 16 South street property
- The crew working on 16 South street has extended experience working in densely populated areas of Boston area and strictly follows Controlled Construction methods as required by architect and engineers.

Sincerely,

Dmitry Vasilyev and Patrycja Missiuro,

Owners of 16 South street property.