



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2014-77
Site: 109 College Avenue
Date of Decision: October 1, 2014
Decision: Petition Approved with Conditions
Date Filed with City Clerk: October 7, 2014

ZBA DECISION

Applicant Name:	109 College Avenue, LLC
Applicant Address:	109 College Avenue, Somerville, MA 02144
Property Owner Name:	John J. McKenna, Trustee
Property Owner Address:	42 Francesca Avenue, Somerville, MA 02144
Agent Name:	Adam Dash, Esq.
Agent Address:	48 Grove Street, Suite #304, Somerville, MA 02144

<u>Legal Notice:</u>	Applicant, 109 College Ave. LLC, and Owners, John J. McKenna (Individually), John J. McKenna, Trustee of College Realty Trust; & Kathy Macdonald, Administratrix of the Estate of R. Gregory Macdonald, seek Special Permits under SZO §4.4.1 to alter a nonconforming structure to add an accessible ramp and under SZO §4.5.1 to alter a nonconforming use from a law and real estate office use to dentist office use.
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<u>Zoning District/Ward:</u>	RB zone/Ward 6
<u>Zoning Approval Sought:</u>	§4.4.1 & §4.5.1
<u>Date of Application:</u>	July 31, 2014
<u>Date(s) of Public Hearing:</u>	9/3, 9/17 & 10/1/14
<u>Date of Decision:</u>	October 1, 2014
<u>Vote:</u>	5-0

Appeal #ZBA 2014-77 was opened before the Zoning Board of Appeals at Somerville City Hall on September 3, 2014. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by



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M.G.L. c. 40A, sec. 11 and the Somerville Zoning Ordinance. After two hearings of deliberation, the Zoning Board of Appeals took a vote.

DESCRIPTION:

The Applicant proposes to alter the existing law and real estate office use into a dentist office. This project would demolish the garage at the rear of the parcel to afford one additional parking space, create ADA access through a ramp that would begin at the rear of the building and become incorporated into the existing front porch, and add 5 spaces of on-site bike parking. The ground coverage would be reduced to 20% of the site. Pervious area would increase slightly and landscaping would be slightly reduced.

There would be six parking spaces total. Four parking spaces located directly behind the building, including the ADA space, while two additional spaces would be located at the rear of the parcel, upon demolition of the garage. These two spaces would be composed of a pervious material with a rigid substrate. A back-up area for these two spaces would be located directly in front of the new trash area, and would be understood through a different color in the gravel. This would be the same for the snow removal area, to be located behind the two parking spaces at the rear of the lot.

FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1 & 4.5.1):

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 Board 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."*

Under SZO §4.4.1, existing structures, other than single or two-family dwellings, may only be altered through Special Permit; therefore, alterations to construct an ADA entrance requires approval of a Special Permit.

Under SZO §4.4.1, this is a pre-existing non-conforming situation with regard to the driveway. It serves currently as a two-way and will continue to operate as a two-way; this is not proposed to change as a result of this proposal.

Under SZO §4.5.1, a nonconforming use may be changed to another nonconforming use only through Special Permit; therefore, to change use from a law and real estate office to a dentist office requires approval of a Special Permit.

Under SZO §9.5, the existing parking requirement for the office use is three, which is provided. The change in use requires one additional parking space, which is also being provided through demolition of the garage at the rear of the property.

In considering a special permit under §4.4 and §4.5 of the SZO, the Board finds that the alterations and use proposed would not be substantially more detrimental to the neighborhood than the existing structure and use. Alterations to the mixed-use building enable the dentist office to become ADA accessible and bring the porch railings up to building code through the use of a view panel. This change is not detrimental to the historic features of the building and is integrated into the existing front porch. The first floor has been used as an office since 1988 and has not been



the cause of concern within the neighborhood; therefore, alterations to use the first floor as a dentist office is appropriate.

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 promoting "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 conserve the value of land and buildings; to preserve the historical and architectural resources of the City; 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 Residential B district, §6.1.2, 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." The proposed use and changes are consistent with the existing use as an office, which is compatible with the district and incorporates convenience to the residents.

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."*

The surrounding neighborhood is a mix of residential and commercial uses, though primarily residential. Powder House Square is located nearby and has a number of small commercial uses. Single-, two- and three-family dwellings are common in the surrounding area, reflective of the residential zoning. Nathan Tufts/Powder House Park is a nearby abutter, northeast of the subject property.

Due to the compatible nature of the proposed use and ADA access that will be provided, the project will have minimal to no impact on the surrounding neighborhood. Parking will meet the requirement; the changes to the building are compatible with the neighborhood and do not disturb the architectural features of the mixed-use building.

While no signage has been proposed as part of this application, signage in a residential district is not allowed to exceed 12 square feet.

5. Adverse environmental impacts: *The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.*

The proposed use, structure or activity will not constitute an adverse impact on the surrounding area.

6. Vehicular and pedestrian circulation: *The circulation patterns for motor vehicles and pedestrians which would result from the use or structure will not result in conditions that create traffic congestion or the potential for traffic accidents on the site or in the surrounding area.*

The circulation of the site will be improved due to removing the garage, which will enable the rear of the lot to be utilized better in providing additional parking, an enclosed trash area, bike parking, and updated landscaping.

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 areas in the SomerVision map that are designated as enhance and transform should most significantly contribute towards the SomerVision goals that are outlined in the table below. The areas marked as conserve are not expected to greatly increase the figures in the table since these areas are not intended for large scale change.

<u>SomerVision Summary</u>	<i>Existing</i>	<i>Proposed</i>
<i>Dwelling Units:</i>	2	2
<i>Estimated Employment:</i>	4-5	3-5
<i>Parking Spaces:</i>	5	6

The project complies with SomerVision in that alterations to the existing historic building do not alter or detrimentally affect architectural features of the building; the use is compatible and appropriately integrated into the district; the use is an amenity to the area, and this use will retain jobs along the College Avenue.

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Elaine Severino with Josh Safdie and Brandy Brooks absent. Upon making the above findings, Susan Fontano made a motion to approve the request for a Special Permit. Richard Rossetti 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 Special Permits under SZO §4.4.1 to alter a nonconforming structure to add an accessible ramp and under SZO §4.5.1 to alter a nonconforming use from a law and real estate office use to dentist office use. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/Plng													
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>(July 31, 2014)</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>(September 24, 2014) August 26, 2014</td><td>Plot plan submitted to OSPCD</td></tr><tr><td>(September 24, 2014)</td><td>Proposed site plan submitted to OSPCD</td></tr><tr><td>(September 24, 2014)</td><td>Elevations submitted to OSPCD (EX-4, EX-5, A-3, A-4, & A-5)</td></tr><tr><td>July 30, 2014</td><td>Proposed floor plans</td></tr></table>				Date (Stamp Date)	Submission	(July 31, 2014)	Initial application submitted to the City Clerk’s Office	(September 24, 2014) August 26, 2014	Plot plan submitted to OSPCD	(September 24, 2014)	Proposed site plan submitted to OSPCD	(September 24, 2014)	Elevations submitted to OSPCD (EX-4, EX-5, A-3, A-4, & A-5)	July 30, 2014	Proposed floor plans
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July 30, 2014	Proposed floor plans															



	<div> <div>(September 24, 2014)</div> <div>submitted to OSPCD (EX-1, EX-2, EX-3, A-1, & A-2)</div> </div> <p>Any changes to the approved site plan, elevations, or use that are not <i>de minimis</i> must receive SPGA approval.</p>			
Design				
2	An exterior light and electrical receptacle is required for the first (or all) level of the porch and an electrical receptacle is required for the second level (if there is no access to the ground).	Final sign off	Wiring Inspector	
Site				
3	Applicant will screen the dumpster with fencing/landscape that blocks any view of the dumpster itself.	CO	Plng.	
4	Applicant will supply 5 bicycle parking spaces on-site.	CO	Plng.	
Public Safety				
5	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
6	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				
7	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.	
Traffic & Parking				
8	The Applicant shall install a sign at the rear of the driveway, in a clear location, stating that vehicles entering from College Avenue have the right-of-way.	CO	Traffic/ Pkg	

Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*
Orsola Susan Fontano, *Clerk*
Richard Rossetti
Danielle Evans
Elaine Severino

Attest, by the Administrative Assistant:

Dawn M. PereiraCopies 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 _____

