



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

PLANNING DIVISION

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Case #: ZBA # 2011-29
Site: 44 Medford Street
Date of Decision: May 4, 2011
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: May 16, 2011

ZBA DECISION

Applicant Name:	F&L Realty Development, LLC
Applicant Address:	46 Medford Street, Somerville, MA 02143
Property Owner Name:	F&L Realty Development, LLC
Property Owner Address:	46 Medford Street, Somerville, MA 02143
Agent Name:	Steven L. Cicatelli, Esq.
Agent Address:	266 Main Street, Stoneham, MA 02180

<u>Legal Notice:</u>	Applicant and Owner F&L Realty Development, LLC, seeks a variance from the minimum lot area per dwelling unit requirement under SZO §8.5.B to reconfigure the lot line separating 44 and 46 Medford Street, so that each building sits on a single lot. BA zone. Ward 2.
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<u>Zoning District/Ward:</u>	BA zone/Ward 2
<u>Zoning Approval Sought:</u>	§8.5.B
<u>Date of Application:</u>	March 31, 2011
<u>Date(s) of Public Hearing:</u>	May 4, 2011
<u>Date of Decision:</u>	May 4, 2011
<u>Vote:</u>	5-0

Appeal #ZBA 2011-29 was opened before the Zoning Board of Appeals at Somerville City Hall on May 4, 2011. 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.



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DESCRIPTION:

The Applicant is proposing to move the lot line between the lots at 44 and 46 Medford Street, to place one building on each lot. This would result in a lot at 44 Medford Street of 1,498 square feet with the existing three-family building, and a lot of 5407 square feet with the existing wood and brick building. Doing so requires the sites to be reviewed for zoning compliance, to ensure that the change does not create or extend a non-conformity. The applicant is therefore seeking a variance to retain the house on the lot at 44 Medford Street with a new nonconforming lot area per dwelling unit. There is no construction associated with this application, and the Applicant has indicated that at this time there is no intention to sell these lots separately.

FINDINGS FOR VARIANCE (SZO §5.5.3):

In order to grant a variance for lot area per dwelling unit (§8.5.B) requirements the SPGA 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 justification: “Due to the shape of the subject property, the fact that it abuts the property at 46 Medford Street, and the fact that the building at 46 Medford Street was expanded approximately twenty years ago in accordance with a duly issued building permit resulting in an encroachment onto the subject property, a substantial hardship relative to the marketability and title to the subject property currently exists”

Board Finding: The shape of the subject property includes a special circumstance, as it is awkward and it has the unique feature of having a portion of the building at 46 Medford Street located on the lot at 44 Medford Street. The impact of this lot configuration does not allow separate financing of either parcel and thereby creates a hardship.

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 justification: “The variance, if approved, are the minimum necessary to relocate the property line between the two above referenced properties and to resolve the encroachment issue.”

Board Finding: The Board finds that the proposed lot line configuration provide space for the 46 Medford Street building to be located completely on its lot and have adequate access to the sites of the building without needing access to the lot at 44 Medford Street. The space that remains on the lot at 44 Medford Street, just under 1500 square feet is the maximum lot area that can be available to this structure due to the existing site configuration. Therefore, this is the maximum lot area per unit available on the site and therefore the minimum variance necessary to establish one building on each lot at this location.

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 justification: “The granting of the variances will correct an encroachment issue that has existing for many years thus achieving marketability and will not result in any change or modification to existing buildings. The existing conditions of the structures will not change consequently there will not be any detriment of affect to the neighborhood or the public welfare.”

Board Finding: The Board finds that the division of this site into lots where one building is on each lot will have no material change to the neighborhood at all, and therefore cannot be detrimental. Any change to either structure would likely require special permits, as both would remain non-conforming structures on these lots. The variance



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achieves the goal of providing a more logical division of land on this site while retaining existing structures as they have been for many years.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Scott Darling and Elaine Severino. Upon making the above findings, Richard Rossetti made a motion to approve the request for a variance. Scott Darling 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	<p>Approval is to establish a lot with the existing structure at 44 Medford Street separate from the lot with the structure at 46 Medford Street, by permitting a variance from the lot area per dwelling unit while maintaining the existing configuration of the structures.</p> <p>This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>3/31/2011</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>12/8/2010 signed 3/30/11</td><td>Plan submitted to OSPCD (Subdivision of Land Plan)</td></tr></table> <p>Any changes to the approved use or elevations that are not <i>de minimis</i> must receive ZBA approval.</p>	Date (Stamp Date)	Submission	3/31/2011	Initial application submitted to the City Clerk's Office	12/8/2010 signed 3/30/11	Plan submitted to OSPCD (Subdivision of Land Plan)	BP/CO	Plng.	
Date (Stamp Date)	Submission									
3/31/2011	Initial application submitted to the City Clerk's Office									
12/8/2010 signed 3/30/11	Plan submitted to OSPCD (Subdivision of Land Plan)									
2	Any application for future exterior changes to these structures shall be subject to the zoning in effect at the time of that application. No permission is granted through this approval to alter or expand either structure.	Cont.	ISD							
3	The Applicant shall submit the subdivision of land plan to staff for review immediately after approval of the variance, and shall follow all required procedures and/or conditions for approval of the subdivision under the SZO §5.4.5 provisions for Site Plan Review/Subdivision.	Approval of Variance	Plng.							



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Acting Chairman*
Richard Rossetti, *Acting Clerk*
T.F. Scott Darling, III, Esq.
Danielle Evans
Elaine Severino (Alt.)

Attest, by the Administrative Assistant:

Dawn M. Pereira

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 _____



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