



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
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**Case #:** ZBA 2015-115

**Date:** April 20, 2016 May 4, 2016 May 18, 2016  
July 13, 2016 August 3, 2016

**Recommendation:** Conditional Approval

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**UPDATED PLANNING STAFF REPORT**

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**Site:** 38 Day Street

**Applicant Name:** Darin Samaraweera  
**Applicant Address:** 20 Park Plaza, Suite 468,  
Boston, MA 02116  
**Owner Name:** Darin Samaraweera  
**Owner Address:** 20 Park Plaza, Suite 468, Boston,  
MA 02116  
**Alderman:** Lance Davis



**Legal Notice:** ~~38 Day Street. Applicant and Owner, Darin Samaraweera, seeks a Special Permit per SZO §4.4.1 to alter a non-conforming structure by adding an additional unit in the basement. The Applicant/Owner also seeks a parking Variance for 2 spaces per SZO §5.5 and §9.5 RB Zone, Ward 6.~~

Applicant, Darin Samaraweera, seeks a Special Permit under SZO §9.4.2 to increase the net square footage of the building by adding a 3-bedroom and an affordable unit, both to the basement. SZO §4.4.1 to add window wells within the setback. The Applicant also seeks a Special Permit for parking relief under SZO §9.13. RB zone, Ward 6.

**Dates of Public Hearing:** April 20, 2016 May 4, 2016 May 18, 2016 July 13, 2016 August 3, 2016

This is an updated Staff Report for the proposed project at 38 Day Street. Items that no longer apply have been struck and new items are highlighted in yellow.

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**I. PROJECT DESCRIPTION**

1. Subject Property: The subject property is a c.1920 four-story, 25-unit apartment building in the RC zone. The property rests on a 10,890 square foot lot.
2. Proposal: The proposal consists of creating a 1,300 square foot three bedroom market-rate unit in the basement along with a 370 square foot 1-bedroom affordable unit in the basement.  
  
The 3-bedroom unit requires relief for 2 parking spaces while the 1-bedroom unit requires relief for 1.5 parking spaces.
3. Green Building Practices: None listed.
4. Comments:

Ward Alderman: Lance Davis has been notified of this project.

## **II. FINDINGS FOR SPECIAL PERMIT (~~SZO §4.4.1~~) and (~~SZO §5.5 and §9.5~~) (SZO §9.4.2) and (SZO §4.4.1) and (SZO §9.13)**

*In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §9.4.2, §4.4, and §9.13 of the SZO. This section of the report goes through those sections in detail.*

### **1. Information Supplied:**

#### **Regarding SZO §4.4.1:**

Staff finds that the information provided by the Applicant conforms to the requirements of §4.4.1 of the SZO and allows for a comprehensive analysis of the project with respect to the required Special Permit.

#### **Regarding §9.4.2. Increase in net floor area**

This section of the SZO states that, when increasing net floor area, *"if it is proposed to increase the net floor area of a building whether by addition to the exterior of the building or by internal reconstruction, which building does not have sufficient off-street parking or leading, full compliance with this Article for the increase in net floor area shall be a condition of the issuance of a building permit for the construction of such increase of net floor area."*

Staff finds that the information provided by the Applicant conforms to the requirements of §9.4.2 and allows for a comprehensive analysis of the project with respect to the required Special Permit.

#### **Regarding SZO §9.13:**

Staff finds that the information provided by the Applicant conforms to the requirements of §9.13 and allows for a comprehensive analysis of the project with respect to the required Special Permit.

#### **Regarding ~~SZO §9.1.3 SZO §5.5 and §9.5:~~**

Staff finds that the information provided by the Applicant conforms to the requirements of §5.5 and §9.5 of the SZO and allows for a comprehensive analysis of the project with respect to the required Special Permit.

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."*

**Regarding SZO §4.4.1:**

*Section 4.4.1 states that Lawfully existing non-conforming 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.*

- With regard to this project, the property is already non-conforming with regard to number of dwelling units, lot area per dwelling unit, FAR, rear yard setback, right yard setback and number of stories.
- The addition of the market-rate and affordable unit will further decrease the lot area to dwelling unit ratio as follows:

<b>Required</b>	<b>Existing</b>	<b>Proposed</b>
1,500 / d.u.	436 / d.u.	403 / d.u.

- The existing structure is currently (legally) non-conforming with respect to the total number of dwelling units already extant on the property (25) in an RB zone. The addition of the two proposed units will further intensify the existing non-conformity.
- In considering a Special Permit under §4.4.1 of the SZO, Staff finds that, despite the intensification of the non-conformities, the alterations proposed to this structure will not be substantially more detrimental to the neighborhood than the conditions currently existing on the property.
- With the exception of the addition of the window wells required for egress purposes, all of the work for this project will occur on the interior of the building and allow for the Applicant to activate space that is otherwise unused.

**Regarding §9.4.2. Increase in net floor area**

*This section of the SZO states that, when increasing net floor area, "if it is proposed to increase the net floor area of a building whether by addition to the exterior of the building or by internal reconstruction, which building does not have sufficient off-street parking or leading, full compliance with this Article for the increase in net floor area shall be a condition of the issuance of a building permit for the construction of such increase of net floor area."*

- The net floor area of the building will increase by approximately 1,570 square feet (1,200 sqf. for the market rate unit and 370 sqf. for the affordable unit). While the inclusion of an affordable unit is seen as a net benefit for the city and to the project site, the inclusion of such a unit does not relieve the Applicant from providing sufficient parking for that unit.
- The additional three-bedroom unit requires that another two parking spaces be provided. The one-bedroom affordable unit requires that another 1.5 parking spaces be provided for a total of 3.5 new parking space needs.

The property is such that only 10 on-site parking spaces can be provided for all of the current units in the building. There is not sufficient land on the parcel to provide the 3.5 parking spaces the new basement unit requires and, therefore, the Applicant is requesting relief for these 3.5 spaces.

### **Regarding §9.13**

*This section of the SZO states, in part, that "...the specific relief requested...does not cause detriment to the surrounding neighborhood through any of the following applicable criteria" : This section of the staff report addresses each of these items:*

#### **1) increase in traffic volumes**

Staff finds that the addition of the market-rate and affordable units would not substantially increase the amount of traffic volume to this street or neighborhood.

#### **2) increased traffic congestion or queuing of vehicles**

Staff finds that the addition of two units to this building should not substantially increase traffic congestion or queuing of vehicles from current volumes.

#### **3) change in the type(s) of traffic**

Staff finds that the type of traffic will remain the same at residential vehicular.

#### **4) change in traffic patterns and access to the site**

Staff finds that the traffic pattern will not change and that access to the site will remain the same as current.

#### **5) reduction in on-street parking**

Staff finds that adding two more units will not reduce the amount of on-street parking.

#### **6) unsafe conflict of motor vehicle and pedestrian traffic**

Given 1 – 5 above, Staff finds that the addition of these two units will not create an environment conducive to unsafe motor vehicle and pedestrian interaction.

*The Applicant must show that “A variance from the requirements of this Ordinance may be authorized by the Board of Appeals only for reasons of practical difficulty and substantial hardship, and only where the Board finds that all of the following conditions apply:*

- a) 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 a substantial hardship, financial or otherwise. Staff finds that the size of the lot, coupled with the size and location of the existing, non-conforming structure on it leave insufficient space in which to provide adequate parking for even the existing units.*
- b) The specific variance as may be granted by the Board is the minimum variance that will grant reasonable relief to the owner, and is necessary for a reasonable use of the building or land.*

Staff finds that providing parking relief for this additional unit provides reasonable relief in order for the owner to create the additional unit although, it can be argued that the owner already has reasonable use of the building and land itself with 25 existing units.

- c) The granting of the variance will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. In addition to considering the character and use of the nearby buildings, the Board, in making its findings, shall take into account the number of persons residing or working in such buildings or upon such land, and the present and probable future traffic conditions.*

Staff finds that allowing for the parking relief needed by this additional unit would not create an environment more injurious to the neighborhood than that which currently exists. There are currently 25 units in the building. The addition of this 26<sup>th</sup> unit within the envelope of the existing multi-unit building would not change the character of the neighborhood nor would the minimal increase in parking needs.

**Regarding SZO §5.5 and §9.5:**

The additional three bedroom unit requires that another two parking spaces be provided. The property is such that only 10 on-site parking spaces can be provided for all of the current units in the building. There is not sufficient land on the parcel to provide the 2 parking spaces the new basement unit requires and, therefore, the Applicant is requesting relief for these two spaces.

**Regarding SZO §5.5 and §9.5:**

- In considering a Variance under §5.5 of the SZO and under §9.5 of the SZO, Staff finds that the property is currently extremely lacking in parking spaces for the existing units. According to §9.5, for residential, multiple dwelling (unit) buildings, the following parking calculations apply:

- 1.0 per efficiency/studio unit
- 1.5 per unit with 1 or 2 bedrooms
- 2.0 per unit with 3 or more bedrooms
- 1.0 visitor space for every 6 units

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Currently, 38 Day Street consists of the following:

- (13) 1 bedroom units (one in basement, remainder in the 1<sup>st</sup> through 4<sup>th</sup> floors)
- (12) studio units (first through fourth floors)

~~Based on the above, the Applicant should be providing a total of 36 parking spaces. The addition of the 3 bedroom basement unit would bring the total required to 38. The Applicant currently is able to provide 10 parking spaces due to the limited amount of open land available on the parcel. The Applicant proposes to keep the number of spaces set at 10 for the same reasons.~~

**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."*

**Regarding SZO §4.4.1**

- 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 secure safety from fire, panic and other dangers; to encourage the most appropriate use of land throughout the City; and to encourage housing for persons of all income levels.
- The proposal is consistent with the purpose of the RB 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."

**Regarding §9.4.2 & §9.13**

The proposal is consistent with the general purpose of the Ordinance as set forth under §9.4 which includes, but is not limited to: establishing "...standards ensuring the availability and safe use of parking areas within the City of Somerville. It is intended that any use of land involving the arrival, departure, or storage of motor vehicles, and all structures and uses requiring the delivery or shipment of goods as part of their function..."

**Regarding SZO §5.5 and §9.5:**

- ~~Staff finds the parking situation at 38 Day Street to be particularly challenging in that so little parking can currently be provided for such a densely inhabited building. That being said, Staff finds that providing relief for two spaces will not significantly increase traffic volumes, traffic congestion or queuing of vehicles nor will it change the type of traffic, traffic patterns or access to the site nor cause unsafe conflict of motor vehicle and pedestrian traffic.~~

**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."*

- Day Street is comprised of a mix of single and multi-family residential structures, some of which are condos and others apartments. Some of these residences are converted historic dwelling houses and others are multi-unit, low-rise apartment buildings. Also present on the street are city-owned parcels, parking lots, office buildings and a restaurant. With the exception of the addition of window wells for emergency egress purposes, all of the changes to the property will take place on the interior which will not negatively impact the appearance of the site or surrounding area.

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

- ~~The proposal will not add to the stock of affordable housing.~~
- The proposal will add one, 1-bedroom unit to the stock of affordable rental housing. The unit will be made anchored at the low HOME rent.

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.*

- The proposal will add two units to Somerville housing stock:
  - One market rate unit
  - One affordable unit

### III. RECOMMENDATION

Special Permits under **SZO §4.4.1** and ~~SZO §5.5~~ and ~~§9.5~~ **SZO §9.4.2 & SZO §9.13**

Based on the materials submitted by the Applicant, the above findings and subject to the following conditions, the Planning Staff recommends **CONDITIONAL APPROVAL** of the requested **SPECIAL PERMITS** and ~~VARIANCE~~.

The recommendation is based upon a technical analysis by Planning Staff of the application material based upon the required findings of the Somerville Zoning Ordinance, and is based only upon information submitted prior to the public hearing. This report may be revised or updated with new recommendations, findings and/or conditions based upon additional information provided to the Planning Staff during the public hearing process.

#	Condition	Timeframe for Compliance	Verified (initial)	Notes								
1	Approval is to create a 3-bedroom market-rate unit in the basement of 38 Day Street along with a 1-bedroom affordable unit, also in the basement.	BP/CO	ISD/ Plng.									
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>December 31, 2015</td><td>Initial submission to City Clerk</td></tr><tr><td>March 30, 2016</td><td>Final plans submitted to OSPCD</td></tr><tr><td>June 7, 2016</td><td>Revised plans containing affordable unit submitted to OSPCD</td></tr></table>				Date (Stamp Date)	Submission	December 31, 2015	Initial submission to City Clerk	March 30, 2016	Final plans submitted to OSPCD	June 7, 2016	Revised plans containing affordable unit submitted to OSPCD
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<u>Any changes to the approved plan that are not determined to be de minimis by Planning Staff must receive ZBA approval.</u>												
Pre-Construction												
2	The Applicant must provide all final electrical plans to the Wiring Inspector and receive his sign-off prior to beginning construction.	BP	Wiring Inspector									
Affordable Housing/Linkage												
3	Affordable Housing Implementation Plan (AHIP) should be approved by the OSPCD Housing Division and executed prior to issuance of Building Permit. Affordable units shall be provided on-site.	BP	Housing									
4	Written certification of the creation of affordable housing units, any fractional payment required, or alternative methods of compliance, must be obtained from the OSPCD Housing Division before the issuance of a Certificate of Occupancy (C.O.). No C.O. shall be issued until the OSPCD Housing Division has confirmed that the Affordable Housing Restriction has been approved and recorded and the developer has provided the promised affordable units on-site.	CO	Housing									
5	No Certificate of Occupancy shall be issued until the OSPCD Housing Division has confirmed that: (for Condominium Projects) the Condominium Documents have been approved and the Developer has agreed to a form of Deed Rider for the Affordable Unit(s), or (for Rental Projects) the Developer has agreed to and executed a Memorandum of Understanding for Monitoring of the Affordable Unit(s).	CO	Housing									
Construction Impacts												



6	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/ISD	
7	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	ISD/Plng.	
8	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	
<b>Design</b>				
9	The plans submitted to ISD for a building permit to create the 3-bedroom basement unit must match the approved ZBA plans <u>EXACTLY</u> . <u>ANY</u> changes to the approved plans <u>MUST</u> be submitted to Planning Staff for review and approval <u>prior to</u> executing them on site.  The “as-built” 3-bedroom unit shall match the ZBA approved plans <u>EXACTLY</u> in order to obtain ISD and Planning sign-off for unit occupancy.	ISD	ISD/Plng	
<b>Site</b>				
10	The Applicant shall comply with ALL requirements of ISD, Fire, Electrical, Plumbing that those City entities deem necessary prior to, during and post-construction of the 3-bedroom basement unit. Such requirements of those City entities shall not be limited to just the 3-bedroom basement unit, but shall apply to any and all other issues related to the purview of each of said City entities.	Perpetual/During Construction /pre-construction /sign-off/CO	Plng. / ISD / Electrical / Fire Prevention / Plumbing	
11	No further units shall be created in this building after the construction of the 3-bedroom basement unit created as part of this case; 27 units shall be the maximum number of units allowed in this structure.	Perpetual	Plng. / ISD	
<b>Miscellaneous</b>				
12	The Applicant, its successors and/or assigns, shall be responsible for maintenance of both the building and property.	Cont.	ISD	
<b>Public Safety</b>				
13	The Applicant or Owner shall meet <b>ALL</b> of the Fire Prevention Bureau’s requirements.	CO	FP	
<b>Final Sign-Off</b>				
14	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.	