



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
JOSEPH A. CURTATONE
MAYOR

MICHAEL F. GLAVIN
EXECUTIVE DIRECTOR

PLANNING DIVISION

ZONING BOARD OF APPEALS MEMBERS

ORSOLA SUSAN FONTANO, CHAIRMAN
RICHARD ROSSETTI, CLERK
DANIELLE EVANS
ELAINE SEVERINO
JOSH SAFDIE
ANNE BROCKELMAN, (ALT.)

Case #: ZBA 2015-115
Site: 38 Day Street
Date of Decision: August 3, 2016
Decision: Petition Approved with Conditions
Date Filed with City Clerk: August 8, 2016

ZBA DECISION

Applicant Name:	Darin Samaraweera
Applicant Address:	20 Park Plaza, Suite 468, Boston, MA 02116
Property Owner Name:	Darin Samaraweera
Property Owner Address:	20 Park Plaza, Suite 468, Boston, MA 02116
Agent Name:	N/A

Legal Notice: 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.

<u>Zoning District/Ward:</u>	RB zone/Ward 6
<u>Zoning Approval Sought:</u>	§9.4.2, §4.4.1 & §9.13
<u>Date of Application:</u>	April 14, 2016
<u>Date(s) of Public Hearing:</u>	7/13 & 8/3/16
<u>Date of Decision:</u>	August 3, 2016
<u>Vote:</u>	4-0

Appeal #ZBA 2015-115 was opened before the Zoning Board of Appeals at Somerville City Hall on July 13, 2016. 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
(617) 625-6600 EXT. 2500 • TTY: (617) 666-0001 • FAX: (617) 625-0722
www.somervillema.gov

DESCRIPTION:

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.

FINDINGS FOR SPECIAL PERMIT (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:**

The Board 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.”*

The Board 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:

The Board 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.

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:

Required	Existing	Proposed
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, the Board 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



The Board 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

The Board 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

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

- 4) change in traffic patterns and access to the site

The Board 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

The Board 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 the Board finds that the addition of these two units will not create an environment conducive to unsafe motor vehicle and pedestrian interaction.

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..."



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 add one, 1-bedroom unit to the stock of affordable rental housing. The unit will be made anchored at the low HOME rent.

6. **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



DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti and Elaine Severino with Danielle Evans and Josh Safdie 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 **4-0** to **APPROVE** the request. In addition the following conditions were attached:

#	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 border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <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> </tbody> </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
	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											
<p><u>Any changes to the approved plan that are not determined to be <i>de minimis</i> by Planning Staff must receive ZBA approval.</u></p>												
<p>Pre-Construction</p>												
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									
<p>Affordable Housing/Linkage</p>												
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	
Design				
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	
Site				
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	
Miscellaneous				
12	The Applicant, its successors and/or assigns, shall be responsible for maintenance of both the building and property.	Cont.	ISD	
Public Safety				



13	The Applicant or Owner shall meet ALL of the Fire Prevention Bureau's requirements.	CO	FP	
Final Sign-Off				
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.	

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Richard Rossetti, *Clerk*
Elaine Severino
Anne Brockelman (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 _____

