



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

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Case #: ZBA 2016-56
Site: 352 Highland Avenue
Date of Decision: September 21, 2016
Decision: Petition Approved with Conditions
Date Filed with City Clerk: September 26, 2016

ZBA DECISION

Applicant Name:	352 Highland Avenue Holdings, LLC
Applicant Address:	7 Morrison Road West, Wakefield, MA 01880
Property Owner Name:	352 Highland Avenue Holdings, LLC
Property Owner Address:	7 Morrison Road West, Wakefield, MA 01880
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145

<u>Legal Notice:</u>	Applicant and Owner 352 Highland Ave Holdings, LLC, seek a Special Permit to alter a nonconforming structure by adding 4 residential units and a commercial space, and for parking relief.
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<u>Zoning District/Ward:</u>	NB zone/Ward 6
<u>Date of Application:</u>	May 16, 2016
<u>Date(s) of Public Hearing:</u>	6/22 & 9/21/16
<u>Date of Decision:</u>	September 21, 2016
<u>Vote:</u>	5-0

Appeal #ZBA 2016-56 was opened before the Zoning Board of Appeals at Somerville City Hall on September 21, 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
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DESCRIPTION:

The proposal adds 4 residential units and a commercial space by adding two stories above the entire footprint of the existing structure, and a third story at the corner of Willow and Highland.

FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1; 7.11.1.c; 9.13):

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."*

The structure is currently nonconforming with respect to the following dimensional requirements: ground coverage, minimum landscaped area, rear yard setback, and required parking.

The proposal will impact increase the rear yard setback from 0' to 10'; otherwise the new structure will be located in essentially the same space as the existing structure, with the major change being the height. This alteration to a nonconforming structure requires the Applicant to obtain special permits under §4.4.1 of the Somerville Zoning Ordinance (SZO).

Section 4.4.1 states that "[l]awfully existing nonconforming 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."

In considering a special permit under §4.4, §7.11 and §9.13 of the SZO, the Board finds that the alterations/use proposed would not be substantially more detrimental to the neighborhood than the existing structure/use. The proposal will provide 4 new housing units and will maintain a commercial space on the corner which will benefit the neighborhood; it also creates 4 on-site parking spaces, where previously there were none. The proposal has been designed with setbacks that minimally impact the neighbors.

The 4 story height is allowed on the corner per the following footnotes (18-20) of Section 8.5 of the SZO:

18.

Four-story Height for Residential Use Allowed in NB Districts: Within the Neighborhood Business District (NB), four (4) stories up to forty-two (42) feet is allowed for buildings where all four (4) stories are residential use or where the first floor is commercial/business use and the top three (3) floors are residential. For buildings which are two (2) or more stories of commercial business use, the maximum height limit shall be three (3) stories and forty (40) feet.

19.



Top Story Setback in NB Districts: A minimum setback of five (5) feet from the front lot line for the top story is required if the building is above forty (40) feet in height in NB districts.

20.

Height Limit for Structures Abutting Residential Districts: Where a lot abuts an RA, RB or RC zoning district line, any structure (or portion of a structure) within thirty (30) feet of said district line shall be limited to three (3) stories and forty (40) feet in height.

The total parking requirement for the 4 residential units and 900sf of retail space is 9 spaces. Only 4 spaces are provided on-site, so parking relief for 5 spaces under Section 9.13 is required.

SZO §9.13 allows for sites with nonconforming parking to apply for a Special Permit to modify parking requirements if the total number of spaces is less than six. In considering a special permit under §9.13 of the SZO the Applicant must be able to demonstrate that granting the requested special permit would not cause detriment to the surrounding neighborhood through any of the criteria as set forth under SZO §9.13, which are as follows:

- 1) increase in traffic volumes;
- 2) increased traffic congestion or queuing of vehicles;
- 3) change in the type(s) of traffic;
- 4) change in traffic patterns and access to the site;
- 5) reduction in on-street parking;
- 6) unsafe conflict of motor vehicle and pedestrian traffic.

Planning staff doesn't anticipate any detriment to the surrounding neighborhood as a result of items 1-6 above.

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 The purposes of the Ordinance are to promote 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 lessen congestion in the streets; to protect health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; to conserve the value of land and buildings; to preserve the historical and architectural resources of the City; to adequately protect the natural environment; to encourage the most appropriate use of land throughout the City; to protect and promote a housing stock that can accommodate the diverse household sizes and life stages of Somerville residents at all income levels, paying particular attention to providing housing affordable to individuals and families with low and moderate incomes; and to preserve and increase the amenities of the municipality.

The proposal is consistent with the purpose of the district, which is: To establish and preserve areas for small-scale retail stores, services and offices which are located in close proximity to residential areas and which do not have undesirable impacts on the surrounding neighborhoods.

In considering a special permit under §9.13 of the SZO the SPGA may grant such a special permit only when consistent with the purposes set forth in Section 9.1.

The special permit is consistent with the purposes set forth in Section 9.1.

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."*



Surrounding Neighborhood: The surrounding neighborhood contains a variety of 2-3 story residential structures as well as several single story commercial structures. The site is located about 1,000' from Davis Square, and 400' from the Somerville Community Path, and is located on a major bus route.

Impacts of Proposal (Design and Compatibility): The incorporation of a commercial space at grade will help to activate the streetscape with pedestrian activity. The design is generally compatible with the various vernacular architectural styles along the rest of Highland Avenue. No negative impacts are anticipated as a result of the design.

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.*

Impacts of Proposal (Environmental): No adverse impacts on the surrounding area anticipated as a result of excessive noise, illumination, glare, dust smoke or vibration, or from emissions of noxious materials, or pollution of water ways or ground water, or interference with radio or television signals.

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.*

Impacts of Proposal (Circulation): No traffic congestion or potential for accidents are anticipated as a result of this structure.

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

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.*

8. Impact on Affordable Housing: *In conjunction with its decision to grant or deny a special permit for a structure of four or more units of housing, the SPGA shall make a finding and determination as to how implementation of the project would increase, decrease, or leave unchanged the number of units of rental and homeownership housing that are affordable to households with low or moderate incomes, as defined by HUD, for different sized households and units.*

No impact on affordable housing.



DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Elaine Severino, Josh Safdie and Anne Brockelman voting with Danielle Evans 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 **5-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	Approval is for the special permit to modify a nonconforming structure, to build 4 residential units in an NB zone and for parking relief. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/Pln g.							
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>5/16/2016</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>6/16/2016</td><td>Modified plans submitted to OSPCD (1-16)</td></tr></table>				Date (Stamp Date)	Submission	5/16/2016	Initial application submitted to the City Clerk's Office	6/16/2016	Modified plans submitted to OSPCD (1-16)
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	5/16/2016				Initial application submitted to the City Clerk's Office					
	6/16/2016				Modified plans submitted to OSPCD (1-16)					
Any changes to the approved (site plan or elevations/use) that are not <i>de minimis</i> must receive SPGA approval.										
Pre-Construction										
2	The Applicant must contact the Engineering Department to obtain a street address prior to a building permit being issued.	BP	Eng.							
3	The Applicant will be required to demonstrate that the updated project plans meet the current City of Somerville stormwater policy. Utility, grading, and drainage plans must be submitted to the Engineering Department for review and approval.	BP	Eng.							
4	The Applicant must contact the Engineering Department to coordinate the timeline for cutting or opening the street and/or sidewalk for utility connections or other construction. There is a moratorium on opening streets from November 1st to April 1st and there is a list of streets that have additional opening restrictions.	BP	Eng							



5	New sanitary connection flows over 2,000 GPD require a removal of infiltration and/or inflow by the Applicant. This will be achieved by submitting a mitigation payment, established by the City Engineers Office, to the City based on the cost per gallon of I/I to be removed from the sewer system and a removal ratio of 4:1. If a different ratio of removal or mitigation payment amount is adopted by the Board of Aldermen prior to the Applicant receiving a Certificate of Occupancy, payment will be adjusted to the BOA rate. The Applicant shall work with Engineering and meet this condition before a certificate of occupancy is issued.	BP	Eng.	
6	The Applicant shall develop a demolition plan in consultation with the City of Somerville Inspectional Services Division. Full compliance with proper demolition procedures shall be required, including timely advance notification to abutters of demolition date and timing, good rodent control measures (i.e. rodent baiting), minimization of dust, noise, odor, and debris outfall, and sensitivity to existing landscaping on adjacent sites.	Demolition Permitting	ISD	
Construction Impacts				
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	Plng.	
8	Approval is subject to the Applicant's and/or successor's right, title and interest in the property.	Cont.	Plng.	Deed submitted & application formed signed
9	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	
10	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				
11	Applicant shall provide final material samples for siding, trim, windows, and doors to Planning Staff for review and approval prior to construction.	BP	Plng.	
12	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	



13	25% of the windows in the commercial space at grade shall be operable.	BP	Plng.	
14	Window boxes for flowers shall be provided at each window on each level along Highland and Willow Avenues. These shall be maintained in perpetuity by the HOA.	CO	Plng., ISD	
Site				
15	Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Plng. / ISD	
16	The electric, telephone, cable TV and other such lines and equipment shall be placed underground from the source or connection. The utilities plan shall be supplied to the Wiring Inspector before installation.	Installation of Utilities	Wiring Inspector	
17	All new sidewalks will be installed by the Applicant in accordance with the specifications of the Highway Superintendent. Specifically, all driveway aprons shall be concrete;	CO	Plng.	
18	Applicant will supply 2 secure bicycle parking spaces per unit.	CO	Plng.	
19	Snow plowed from the development shall be limited to the on-site storage area as shown in plan	Cont.	ISD.	
Traffic & Parking				
20	Traffic mitigation in the form of the applicant being required to repaint with the proper material all the pavement markings (bike lane, bike box) on Willow Ave from Summer Street to Highland Ave and all the crosswalks at the intersection of Highland Ave and Willow Ave would be sufficient traffic mitigation.			
Public Safety				
21	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
22	Any transformers should be located as not to impact the historic building or landscaped area, and shall be fully screened.	Electrical permits & CO		
23	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.	
Signage				
24	Signage shall be reviewed by planning staff and neighbors prior to installation and final CO for retail/commercial space.	CO/Cont.	Plng.	
Misc.				
25	Developer will use best efforts to locate off-site parking for construction vehicles during the construction period.	Duration of project	ISD/T&P	
26	Work hours shall be modified during construction period as follows: Weekdays 8-5 Saturday 9-2	Duration of project	ISD	



27	Prior to the issuance of a building permit at the request of the Alderman or an Alderman-at-large, the developer is willing to have a meeting with neighbors to discuss items relating to a construction management plan.	BP	Plng	
28	Adequate precautions shall be put in place to ensure the safety of the pedestrians on the sidewalk on both sides of the property.	Duration of project	ISD	
29	48 hours notification shall be given to all neighbors when utilities are shut off.	Duration of project	ISD/Lights & Lines, Water & Sewer	
30	Name and number of a liaison shall be posted on-site during demolition and construction.	Duration of project	ISD	
31	Contractor shall use best efforts to take delivery of construction materials during mid-day only.	Duration of project	ISD/T&P	
Final Sign-Off				
32	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
Josh Safdie
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 _____

