



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

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Case #: ZBA 2016-72
Site: 17-27 Holland Street
Date of Decision: October 19, 2016
Decision: Petition Approved with Conditions
Date Filed with City Clerk: November 2, 2016

ZBA DECISION

Applicant Name:	JTD 17 Holland, LLC
Applicant Address:	22 Hillside Avenue, Winchester, MA 01890
Property Owner Name:	JTD 17 Holland, LLC
Property Owner Address:	22 Hillside Avenue, Winchester, MA 01890
Agent Name:	Sean T. O'Donovan, Esq.
Agent Address:	741 Broadway, Somerville, MA 02144

<u>Legal Notice:</u>	Applicant and Owner, JTD 17 Holland, LLC, seeks a Variance under SZO §8.5.e to increase the Floor Area Ratio (FAR), Special Permits undo SZO §8.5.d for minimum landscaped area, SZO §8.5.i for minimum rear yard setback, SZO §4.4.1 to substantially alter an existing, non-conforming building, SZO §7.10 for change of use and increase in the number of units, SZO §7.11.1.d and SZO §9.13 for parking relief.
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<u>Zoning District/Ward:</u>	CBD zone/Ward 6
<u>Zoning Approval Sought:</u>	§8.5.e, §8.5.d, §8.5.i, §4.4.1, §7.10, §7.11.1.d & §9.13
<u>Date of Application:</u>	June 29, 2016
<u>Date(s) of Public Hearing:</u>	8/3, 8/17, 9/7, 9/21, 10/5 & 10/19/16
<u>Date of Decision:</u>	October 19, 2016
<u>Vote:</u>	4-0



Appeal #ZBA 2016-72 was opened before the Zoning Board of Appeals at Somerville City Hall on August 3, 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.

DESCRIPTION:

The application states that the proposal would be to retain the existing first floor and associated basement for future retail space. This ground floor space is approximately +/- 3,300 square feet. The Applicant proposes to add three additional stories atop this ground floor space, creating a total of seven (7) residential units. The seven residential units will measure a total of +/- 11,500 square feet.

Two parking spaces will be provided. This two-bay garage will be incorporated into the ground floor level of the building. These two parking spaces will exit onto Winter Street.

A trash room and recycling area will be provided in, bike room with 19 bicycle spaces, storage, recycling room and electrical room will be contained to the basement area.

The primary entrance to the residential units will be from Holland Street and will be separate from the retail store entrance. Memorabilia pertaining to the history of Johnny D's will be installed in the residential entry area.

The seven residential units being proposed break down as follows:

- two 3-bedroom units
- four 2-bedroom units
- one 4-bedroom unit

FINDINGS FOR SPECIAL PERMIT:

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

1. **Information Supplied:**

Regarding SZO §8.5.d, §8.5.i, §4.4.1, §7.10, §7.11.d, & §9.13:

- The Board finds that the information provided by the Applicant conforms to the requirements of the SZO for 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."*

Regarding SZO 8.5.i:

- As regards this project, the property is non-conforming with regard to the minimum rear yard setback which, in the CBD zone, is required to be ten feet plus two feet for each story above the ground floor. The project will retain the existing rear non-conformity and build, in part, off of that.

Regarding SZO §8.5.c & d:

- As regards this project, the property is currently non-conforming with regard to the minimum landscaped area as well as the maximum ground coverage. The minimum landscaped area in



the CBD is 10% and the maximum ground coverage is 80%). The property is currently at 0% and 97% respectively and the proposal is to maintain those percentages.

Regarding SZO §4.4.1:

- As regards this project, the Applicant proposes to substantially alter an existing non-conforming structure. The upward extension of the rear yard setback is one of the triggers for this Special Permit.

Regarding SZO §7.10:

- As regards this project, the Applicant proposes to change the use of the building from commercial/restaurant use to a mixed retail/residential use.

Regarding SZO §7.11.1.d:

- As regards this project, the Applicant proposed to increase the number of units on the site from 1 commercial/restaurant to 1 commercial and 7 residential.

Regarding SZO §9.1.3:

- The parking relief requested for this project regards the residential component of the project. The number of proposed bedrooms makes for a need of 11 parking spaces for the residential units. The Applicant proposes to provide two parking spaces (both of which are for the owner-occupied unit), leaving a request for 9 spaces of relief.

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.

Regarding SZO 8.5.i:

- The Board finds that the upward extension of the existing, non-conforming, rear yard setback will not adversely affect the neighborhood or site.

Regarding SZO §8.5.c & d:

- The percentages of landscaping and ground coverage will remain the same under the new proposal as the majority of the existing building, including all setbacks and coverages, will be re-used in this project.

Regarding SZO §4.4.1:

- As regards this project, the Board finds that the alterations proposed to this structure would not be substantially more detrimental to the neighborhood than those present on the site. Staff finds that the proposed alterations will enhance the neighborhood character, provide needed housing units in a transit-oriented neighborhood and will contribute to the general character and walkability of the area.

Regarding SZO §7.10:

- As regards this project, the Applicant proposes to change the use of the building from commercial/restaurant use to a mixed retail/residential use. Staff finds that this proposal is in keeping with the purpose of the CBD zone and will help enhance the goals set forth in this area. The Board finds that the proposed mixed use in this area will substantially improve the site and will provide additional housing needs in a pedestrian and public transit-oriented area.

Regarding SZO §7.11.1.d:

- As regards this project, the Applicant proposed to increase the number of units on the site from 1 commercial/restaurant to 1 commercial and 7 residential. The Board finds that this increase in residential units is in keeping with the goals of the CBD zoning district and will promote pedestrian traffic within the immediate neighborhood. Retaining retail/commercial space on the ground floor also meets the purpose of the CBD zoning district.

Regarding SZO §9.1.3:

- The Board finds that the request for relief for 9 parking spaces is consistent with the purposes of the CBD zone which is, in part “...to provide environments that are safe for and conducive to a high volume of pedestrian traffic, with a strong connection to retail and pedestrian accessible street level uses.” The Applicant is also providing 15 bicycle spaces within the building and, in compliance with the standards of the CBD zone, the two off-street parking spaces are being provided at the rear of the lot and enclosed within the building.

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 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 CBD district which is “to preserve and enhance central business areas for retail, business services, housing, and office uses and to promote a strong pedestrian character and scale in those areas. A primary goal for the districts is to provide environments that are safe for and conducive to a high volume of pedestrian traffic, with a strong connection to retail and pedestrian accessible street level uses.”

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."*

- 17-27 Holland Street is located in an area with myriad styles, sizes and forms of buildings which serve mixed commercial and residential purposes. The proposal for this site is compatible with the surrounding area.

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

- The proposal, at 7 units, triggers the affordable housing provision. In lieu of providing an affordable unit, a payment will be made at the 60% rate.

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 7 more units to the City's housing stock.

FINDINGS FOR SPECIAL PERMIT:

In order to grant a variance for lot area per dwelling unit, landscaped area, pervious area, building height, building story height, front and rear setback, and required parking 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 response: None supplied

Board's response:

Floor Area Ratio (FAR) (§8.5.e of the SZO)

The lot on which the subject property resides is oddly-shaped and has frontage on two streets, Winter and Holland. The structure itself is "locked" between two abutting structures, one of which – 5 Holland Street - is also owned by the Applicant. The aerial view below illustrates the lot condition along with the varying structures in the surrounding area.

The Applicant seeks relief from the maximum floor area ratio (FAR) allowed in the CBD zone which is 2.0. The FAR of the current building is 1.1. The Applicant proposes a FAR of 3.27, a substantial increase over the set limit. Staff looked at several surrounding buildings that were also in the CBD zone to compare the FAR of those structures with the proposed FAR for 17-27 Holland. The comparison shows that the FAR in the CBD is quite varied with four of the studied buildings already exceeding the 2.0 FAR set for the area. The selected buildings are below:

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 response: None supplied.

Board's response:

Floor Area Ratio (FAR) (§8.5.e of the SZO)

As stated in §8.5.e of the SZO, the FAR allowed in the CBD for conforming properties is 2.0. To exceed that limit, a variance is needed. While a project could occur on this site without increasing the FAR to the extent proposed, a sizeable overage in FAR is not out-of-keeping with other properties in the surrounding neighborhood.

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's response: None supplied.

Board's response:

The surrounding CBD zone offers a combination of commercial (retail, office, and restaurant) and residential uses. By converting the existing structure into mixed commercial and residential uses, the proposal is in keeping with the surrounding neighborhood. The scale of the proposed building is proportionate to other structures in the immediate area.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Elaine Severino and Anne Brockelman with Danielle Evans recused and Josh Safdie absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit & Variance. 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 for a four story mixed use building with a commercial first floor and seven residential units. This approval is based upon the following application materials and the plans submitted by the Applicant:	CO / BP	ISD/PIng.									
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>June 29, 2016</td><td>Application and plans submitted to City Clerk.</td></tr><tr><td>August 2, 2016</td><td>Plans of existing conditions submitted to OSPCD.</td></tr><tr><td>October 4, 2016</td><td>Updated plan set submitted to OSPCD</td></tr></table>				Date (Stamp Date)	Submission	June 29, 2016	Application and plans submitted to City Clerk.	August 2, 2016	Plans of existing conditions submitted to OSPCD.	October 4, 2016	Updated plan set submitted to OSPCD
	Date (Stamp Date)				Submission							
	June 29, 2016				Application and plans submitted to City Clerk.							
	August 2, 2016				Plans of existing conditions submitted to OSPCD.							
October 4, 2016	Updated plan set submitted to OSPCD											
Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive SPGA approval.												
Affordable Housing/Linkage												
2	If the project meets the threshold for affordable units, an 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									

3	If the project meets the threshold for affordable units, 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	
4	If the project meets the threshold for affordable units, 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	
Pre-Construction				
5	The Applicant will be required to demonstrate that the updated project plans meet the current City of Somerville storm water policy. Utility, grading, and drainage plans/reports must be submitted by a registered PE to the Engineering Department for review and approval.	BP	Eng.	
6	New sanitary connection flows over 2,000 GPD require a 4:1 removal of infiltration and/or inflow by the Applicant. This will be achieved by submitting a mitigation payment to the City based on the cost per gallon of I/I to be removed from the sewer system. The Applicant shall work with Engineering to meet this condition before a certificate of occupancy is issued.	CO	Eng.	
7	The Applicant shall develop a demolition plan / partial 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	
8	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	
Construction Impacts				
9	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.	



10	The Applicant shall at his 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	
11	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				
12	Applicant shall provide final material samples for siding, trim, windows, and doors to Planning Staff for review and approval prior to the building permit being issued.	BP	Plng.	
13	An exterior light and electrical receptacle is required for the first (or all) levels of porches and an electrical receptacle is required for the second level (if there is no access to the ground).	Final sign off	Wiring Inspector	
14	There shall be no venting on the Holland St. façade of the building.	Cont.	Plng.	
15	The Applicant shall provide Planning Staff with plans for the memorialization of Johnny D's for the lobby/vestibule area of the residential portion of the building. Staff will have sign-off on such plans.	Final sign off / CO	Plng.	
Site				
16	Any greenery installed on any levels shall be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Plng. / ISD	
17	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	
18	Storm water runoff shall not be routed into the City sewer system. Plans for such runoff must be approved by the Engineering Department and shall not create storm water maintenance issues for abutting properties or the City.	BP	Eng.	
19	Any new curb cuts shall be poured in accordance with the specifications of the Highway Superintendent	CO	Plng	
20	19 bicycle spaces shall be provided on the basement level of the building.	CO	Plng.	
Miscellaneous				
21	The Applicant, its successors and/or assigns, shall be responsible for maintenance of both the building and all on-site amenities, including landscaping, fencing, lighting, parking areas and storm water systems, ensuring they are clean, well kept and in good and safe working order.	Cont.	ISD	

22	For developments with 7 or more residential units or commercial development, the Owner/Applicant is required to hire a private company to remove trash and recycling on a regular basis.	Cont.	DPW	
23	The Applicant must provide an accessibility narrative prior to the issuance of a building permit.	BP	ISD/Plng.	
Public Safety				
24	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
25	All trash and recycling shall be stored in the designated spaces until the time of pickup.	Perpetual	ISD	
26	Notification must be made, within the time period required under applicable regulations, to the Massachusetts Department of Environmental Protection (DEP) if there is any release of oil, hazardous materials, or regulated hazardous substances at the site. The City's OSE office, Fire Department and the Board of Health shall also be notified.	CO	OSE/FP/B OH	
27	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.	
28	The Applicant shall provide notice of intent to strictly comply with applicable State and Federal regulations regarding air quality including without limitation continuous dust control during demolition and construction.	CO	Plng/OSE	
Signage				
29	Signage shall be submitted to Planning Staff for review and approval prior to installation. No internally lit box signs shall be permitted. Lighting after 10p.m. facing residential property will be turned down or off.	CO/Cont.	Plng.	
Final Sign-Off				
30	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.
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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 _____

