



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2016-131
Site: 5 Montgomery Avenue
Date of Decision: February 1, 2017
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: February 14, 2017

ZBA DECISION

Applicant Name:	Fernando Dalfior
Applicant Address:	11 Myrtle Street, Medford, MA 02155
Property Owner Name:	5 Montgomery Ave, LLC
Property Owner Address:	1 Park Lane, Unit #503, Boston, MA 02210
Agent Name:	N/A

<u>Legal Notice:</u>	Applicant, Fernando Dalfior, and Owner, 5 Montgomery Ave, LLC, seek a Special Permit under §4.4.1 of the SZO to finish the basement and increase the FAR and parking relief under Article 9* of the SZO.
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<u>Zoning District/Ward:</u>	RB zone/Ward 1
<u>Zoning Approval Sought:</u>	§4.4.1 & Article 9
<u>Date of Application:</u>	November 3, 2016
<u>Date(s) of Public Hearing:</u>	1/18 & 2/1/17
<u>Date of Decision:</u>	February 1, 2017
<u>Vote:</u>	4-0

Appeal #ZBA 2016-131 was opened before the Zoning Board of Appeals at Somerville City Hall on January 18, 2017. 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:

While the entire property is being overhauled, the trigger for the Special Permit is the increase in FAR caused by finishing the basement. The Applicant proposes to finish a portion of the basement with a laundry room and full bathroom.

FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1):

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."*

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 §4.4.1 of the SZO, the Board finds that the increase in net floor area, as a result of finishing the basement, will not be substantially more detrimental to the neighborhood than the current non-conforming conditions. The property is currently non-conforming in multiple regards, but it is the increase in the non-conforming FAR that is the trigger for the Special Permit. The existing FAR is currently 1.6 in a zone where 1.0 is the maximum allowed. The Applicant proposes to finish 701 square feet which brings the total FAR to 1.9.

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 include, but are not limited to "...promot[ing] the health, safety, and welfare of the inhabitants of the City of Somerville; to secure safety from fire, panic and other dangers; to conserve the value of land and buildings; and to encourage the most appropriate use of land throughout the City."

The Board finds that the proposal is consistent with the purpose of the RB district, which is, "to establish and preserve medium density neighborhoods of one-, two- and three-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts." The use of

the property will remain two-family, which is consistent with the RB district and with the use of similar properties in the immediate neighborhood.

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."*

The proposal is to finish a portion of the basement area, all of the changes for which are on the interior of the house. The Board finds that finishing the basement is a reasonable manner through which a property owner may gain a small amount of additional living space without negatively impacting the surrounding neighborhood through additional structural massing. The Board has included conditions at the end of this report aimed at ensuring an improvement to the visual experience this property provides to the surrounding neighborhood.

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

There will be no impact on the affordable housing stock.

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.*

Finishing the basement will have no impact on SomerVision.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Danielle Evans, Elaine Severino and Josh Safdie. Upon making the above findings, Danielle Evans 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 with Richard Rossetti absent. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes														
1	<p>Approval is to finish the basement. This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>November 3, 2016</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>November 4, 2016</td><td>Plan set submitted to OSPCD</td></tr><tr><td>December 14, 2016</td><td>Existing plan set submitted to OSPCD</td></tr><tr><td>December 15, 2016</td><td>Completed application form and articles of incorporation submitted to OSPCD</td></tr><tr><td>December 29, 2016</td><td>Updated plans submitted to OSPCD</td></tr><tr><td>January 12, 2017</td><td>Updated net floor area numbers submitted to OSPCD</td></tr></table> <p>Any changes to the approved plans that Planning Staff determines are not <i>de minimis</i> must receive SPGA approval <u>BEFORE</u> such changes are implemented.</p>	Date (Stamp Date)	Submission	November 3, 2016	Initial application submitted to the City Clerk's Office	November 4, 2016	Plan set submitted to OSPCD	December 14, 2016	Existing plan set submitted to OSPCD	December 15, 2016	Completed application form and articles of incorporation submitted to OSPCD	December 29, 2016	Updated plans submitted to OSPCD	January 12, 2017	Updated net floor area numbers submitted to OSPCD	BP/CO	ISD/PIng.	
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2	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	PIng.															
3	Approval is subject to the Applicant's and/or successor's right, title and interest in the property.	Cont.	PIng.	Deed submitted & application form signed														
4	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															

5	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	
6	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
7	All smoke detectors shall be hard-wired.	CO	FP / 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	
9	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.	
Design				
10	All new windows on this property shall be one-over-one or two-over one.	CO/Perpetual	ISD/PIng	
11	If windows with grids (mullions) are installed, the grids shall be applied to the glass. No between-the-glass window grids shall be allowed	CO/Perpetual	ISD/PIng	
12	All new windows shall have a dark sash and dark grids with dark spacers.	CO/Perpetual	ISD/PIng	
13	The exterior of the structure shall be re-sided with either wood clapboard or a cementitious board such as Hardie. No vinyl or aluminum siding shall be allowed.	CO/Perpetual	ISD/PIng	
14	All exterior house trim shall be of wood, or a composite material such as Azek or Wyton. NO VINYL shall be allowed.	CO/Perpetual	ISD/PIng	
15	Pressure-treated wood shall not be used on any porches, decks or the like.	CO/Perpetual	ISD/PIng	
16	Applicant shall provide final material samples for siding, trim, windows, and doors, lights and the like to Planning Staff for review and approval prior to construction.	BP	PIng.	
17	All exterior lights shall be downcast on the property such that they do not spill over in any way to neighboring properties.		ISD/PIng	
Site				
18	The site shall be re-landscaped. A landscaping plan shall be submitted to Planning Staff for review and approval prior to installation of said landscaping. A landscaping plan shall include all vegetation for the site as well as all proposed hardscaping.	CO	ISD/PIng	

19	Landscaping shall be installed and maintained in compliance with the American Nurserymen's Association Standards.	Perpetual	ISD	
Miscellaneous				
20	No bedrooms shall be added to the basement area in the future.	Perpetual	ISD	
21	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.	
22	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	

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Danielle Evans
Elaine Severino
Josh Safdie

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 _____

