



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2016-43
Site: 50 Spring Street
Date of Decision: May 4, 2016
Decision: Petition Approved with Conditions
Date Filed with City Clerk: May 12, 2016

ZBA DECISION

Applicant Name:	Jeffrey O'Neill, 50 Spring Street Condominium Trust
Applicant Address:	50 Spring Street, Somerville, MA 02143
Property Owner Name:	50 Spring Street Condominium Trust
Property Owner Address:	50 Spring Street, Somerville, MA 02143
Agent Name:	N/A
 <u>Legal Notice:</u>	 50 Spring Street. Applicant, Jeffrey O'Neill, and Owner, 50 Spring Street Condominium Trust, seek a Variance under SZO §5.5 and §10.7.1 to construct an 8 foot fence along the side property line.
 <u>Zoning District/Ward:</u>	 RA zone/Ward 3
<u>Zoning Approval Sought:</u>	§5.5 & §10.7.1
<u>Date of Application:</u>	March 30, 2016
<u>Date(s) of Public Hearing:</u>	May 4, 2016
<u>Date of Decision:</u>	May 4, 2016
<u>Vote:</u>	5-0

Appeal #ZBA 2016-43 was opened before the Zoning Board of Appeals at Somerville City Hall on May 4, 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.



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DESCRIPTION:

The Applicant proposes to install an 8-foot fence in order to block the view of an adjacent parking area that was created in the last few years which took the place of a previously wooded area buffering the two properties. See the Applicant's narrative with photos and description of the conditions and proposal (attached).

Note: The Somerville Zoning Ordinance (SZO), under §10.7.1, limits maximum fence height to 6 feet above the existing grade. To create a new non-conformity (in this case where the height of the fence goes from conforming to non-conforming) requires approval of a Variance.

FINDINGS FOR VARIANCE (SZO §5.5.3 & §10.7.1):

In order to grant a Variance, the Board must make certain findings and determinations as outlined in §5.5.3 of the SZO. The requirements that must be met and the Board's findings against those requirements appear below:

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."

The Board's Response: The structure in question is located near the right side property line which makes private outdoor space difficult to enjoy within close proximity of the adjacent parking area. While the Board does not support that special circumstances exist related to soil conditions, shape, or topography of land, the Board does recognize that the adjacent newer parking area presents a hardship to 50 Spring when attempting to utilize the private outdoor space.

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."

The Board's Response: Due to the close proximity of the adjacent parking area, occupants of 50 Spring would benefit from the added privacy that the addition of another 2 feet of fence height would provide in blocking the view of the cars parked right at their property line.

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."

The Board's Response: Granting a Variance will enable the occupants on the 50 Spring Street side of the fencing to have a better quality of life as they can more fully enjoy their private outdoor space through the added height of the fence. The fence would enable the residents of both properties to exist harmoniously in a dense urban environment. The additional height will have minimal to no effect on the streetscape as well as adjacent properties.



DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Elaine Severino and Josh Safdie. 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 to construct an 8-foot fence between 50 Spring Street and the abutting parking area.	BP/CO	ISD/PIng	
	Date (Stamp Date) Submission			
	March 11, 2016 Initial submission to City Clerk			
	April 22, 2016 Revisions to Applicant's narrative statement received at OSPCD			
2	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
3	Any changes to the approved plans must first be reviewed by Planning Staff to determine if the proposed changes are <i>de minimis</i> in nature.	CO	ISD/PIng	
4	The fence shall be made of natural wood (not pressure-treated wood).	CO	ISD/PIng	
5	The fence shall be 4 feet tall at the point where it meets the sidewalk and gradually taper up to 8 feet.	CO	ISD/PIng	
6	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	PIng.	

Attest, by the Zoning Board of Appeals:

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

Attest, by the Administrative Assistant:

Dawn M. PereiraCopies 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 _____

