



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2015-85

Date: 11/18/2015

Recommendation: Unable to Recommend /
Conditional Approval

PLANNING STAFF REPORT

Site: 346 Summer Street

Applicant Name: Paul Lavelle

Applicant Address: 194 Waltham St, Lexington, MA 02421

Owner Name: Paul Lavelle

Owner Address: 194 Waltham St, Lexington, MA 02421

Agent Name: NA

Agent Address: NA

Alderman: Rebekah Gewirtz

Legal Notice: The Applicant and Owner, Paul Lavelle, seeks a special permit to modify a non-conforming structure by moving the rear egress stair to the outside of the structure, and adding decks at the second and third levels. RA Zone, Ward 6.

Dates of (initial) Public Hearing: October 21st, 2015

*The October 21st staff report was updated on November 12, 2015 to reflect the following changes: The proposal was updated to address concerns raised by members of the ZBA. Changes include eliminating the proposed decks, and instead only building the minimum landings required for egress. Updates since the October 21st staff report are underlined and deletions are ~~struck~~.

I. PROJECT DESCRIPTION

1. Subject Property: The 3,252sf lot houses a three-story, three-family house with three bedrooms on the first and second floors, and two bedrooms on the third floor. Egress to each unit is provided by internal stairs at the front and rear of the structure. There is an open porch on the first and second levels on the front of the structure, and a partially enclosed porch on the rear of the structure on the first level. The basement is used for storage and mechanical space. The property has an asphalt driveway and a small backyard with a mix of grass and garden area.

The property is in close proximity to Davis Square, located on a relatively short block between Summer Street and Elm Street, both of which provide significant automobile access to and from Davis Square. The block is adjacent to a CBD zone, NB zone and RB zone, the subject property is only 34' away from the CBD zone. The property is also approximately 55' from the VFW parking lot, and is the first full residential block in from Davis Square. In short, the subject property, and entire block on which it is located likely has higher than average levels of ambient noise, especially in consideration of the fact that cars accelerating as they leave the relatively large VFW parking lot will produce higher levels of noise than cars that are simply passing by. This is exacerbated by the fact that Summer Street is one-way, and thus all cars exiting the VFW lot must pass by the block and or subject property.

The subject property is typical of other structures on the block, the majority of which are multifamily and have at least one rear deck or porch. Eleven of the fourteen homes on the block have some type of rear deck, rear porch, or rear enclosed porch; the same ratio of homes is multifamily. This is fairly typical of Somerville where 88% of all residential structures are multifamily.



Subject property indicated by blue dot above.



Subject property indicated by red circle above.



Typical decks and porches of other homes on the block.



Typical decks and porches of other homes on the block.



Typical decks and porches of other homes on the block.

2. Proposal: The proposal demolishes the existing internal rear stair, and moves it to the outside of the structure. In doing so, the footprint of the existing partially enclosed rear porch is reduced, and two decks are added at the second and third levels, which are extensions of the landings of the new external stair. These modifications allow for a new dining room to be created on the first floor, for the dining room and kitchen to be reconfigured on the second floor, for a second bathroom to be added on the second floor, and for the kitchen and living room to be remodeled on the third floor. The proposed decks provide desirable outdoor space for the second and third floor units, and the new external stair also improves safety of the rear egress as compared to the existing internal stair. The design of the decks incorporates separate lattice structures for vines to grow on which would help soften the visual appearance of the new construction, and increase privacy for occupants of the second and third floor units, as well as occupants of adjacent properties. The number of bedrooms remains the same.

3. Green Building Practices: None listed in application.

4. Comments:

Staff:

Staff respectfully urges the ZBA to reconsider their previous request for the applicant to remove the proposed decks. Staff feels that this request is not warranted based on the following rationale:

The Previous Hearing:

During the initial public hearing on October 21st, the owner of the abutting property raised concerns about potential privacy issues that might arise as a result of the proposed addition in that his daughter's bedroom window would be more visible from the rear decks. The abutter was generally unprepared for the hearing and admitted to not having reviewed the actual plans, despite the Applicant having reached out to him on several occasions to discuss the project and review the plans.

During the abutter's initial statement, he explicitly noted that sometimes people have gatherings in their back yards, or even parties, and that the occasional noise produced from those events was not a problem, and in his words was in fact 'fine'.

Despite the majority of the ZBA members discounting the privacy concerns expressed by the abutter (with comments regarding the existence of window shading devices the abutter could install (**blinds are already installed**), or the inclement angle of the deck to the subject window and reflections making a direct view unlikely, or the reality that these two properties are located in a dense urban area where obviously people can see into your home) the applicant proceeded to agree to plant a tree in the corner of his lot so as to provide privacy screening, and also even agreed to provide more screening of the proposed decks.



Window of concern

After the issue of Privacy had been addressed, the subject of noise was raised by the ZBA. Citing a previous case where the ZBA required another applicant to reduce their proposed rear decks to the minimum required for a landing to an egress stair, the ZBA agreed to require the same of the present applicant for the subject property of 346 Summer Street, and voted to continue the case. As noted by the ZBA at the hearing, this recent case was in fact a very different proposal due to the proximity of the structures and concern of the neighbors.

The Zoning Board has also approved the construction and expansion of rear decks and porches, which are a ubiquitous feature of structures throughout Somerville. During the ZBA hearing on November 4th, 2015, the ZBA approved an application for the construction of a 17'x9' rear deck on the second level of a multifamily structure, and a 7'x7' rear deck on the third floor of the same structure, both which were less than 2' from the rear property line. Based on the application materials provided, planning staff does not see how the proposed decks at 346 Summer Street would be louder, or more detrimental than the decks the ZBA approved on November 4th, or any of the other decks in Somerville.

How Does the City of Somerville address noise?

The Somerville, Massachusetts Code of Ordinances, Chapter 9, Article VII – Offenses Against Public Peace, Division 2 – Noise Control Ordinance, adopted in 2000, establishes noise control standards, and definitions regarding noise disturbances, noise levels, enforcement and additional noise policies. The planning staff believes that enforcement of these policies by the chief of police, the superintendent of inspectional services and their duly authorized agents, officers and employees, (as stated in the Ordinance) is sufficient to regulate any and all noise disturbances. Furthermore, planning staff does not feel comfortable setting a precedent that projects can be denied or changed based on the potential for noise to be made in or on the subject structure or property, especially by way of small additions to residential properties. Staff believes that the current Zoning Ordinance reinforces this notion by the fact that it specifically references the General Ordinance with respect to noise issues.

Initial Staff Recommendation

The initial staff report for the proposed alterations included the following condition: *All tenants of 346 Summer Street shall adhere to the following lease addendum “rear stairs are for emergency use only; respect neighbors’ privacy and use front entrance day to day; absolutely no BBQs (fire hazard); max 10 persons on deck at one time; respect the neighbors please (noise, music and loud voices to be kept to a minimum); deck not to be used for storage (basement area is storage).”*

Staff feels that this condition represents a good faith effort on behalf of the applicant, and goes above and beyond the typical requirements of a special permit application to ensure respectful and appropriate usage of the proposed alterations.

Somerville By Design:

When making a determination regarding design and zoning we must consider both use and dimension of proposals. It is the opinion of staff that when possible, it makes sense to incorporate small areas of outdoor amenity space into otherwise utilitarian structures, especially when the addition of these amenity spaces would not increase the footprint of a project, and the air space that they would exist in would be otherwise unused.

SomerVision Neighborhood Goal VII. aims to *foster vital, healthy, inclusive and distinctive urban neighborhoods that are the best possible places to live, work, play do business, learn and serve.* It is not beyond reason to assume that most residents of Somerville would prefer an apartment with a rear deck to one with only a landing.

In the Somerville By Design Davis Square “What is important to me” survey, the top result on home improvements was:

- Homeowners have a clear understanding about what they can be allowed to do to expand their house.
- The second was that small home addition projects can be done without review by neighbors.

Requiring the applicant to reduce the proposed decks to only landings is not consistent with the goal of fostering neighborhoods that are the best places to live. It also doesn’t help give residents a clear

understanding of what they can do to expand their homes, especially when the opinion of planning staff and the ZBA differ.

The planning staff respectfully asks the ZBA to approve the proposed additions with the following condition:

The applicant shall construct the proposed alterations according to the plans submitted for the October 21st ZBA hearing.

Ward Alderman: Alderman Gewirtz has been contacted but has no comments at this time.

II. 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 Staff 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 use: three-family use in an RA zone, and the following/dimensional requirements: FAR 1.11 (RA allows .75), and the side yard setback is 1.2' (RA requires 8'). The lot is also nonconforming with respect to landscaped area with 22%, where 35% is required, however the design increases this number to 24%.

The proposal will impact the following nonconforming dimensions: FAR and side yard setback. The current dimension of the side yard setback will remain 1.2', but instead of a partially enclosed porch, there will be a finished wall, and a foundation for that wall will be constructed where previously there was only wooden lattice. The existing FAR is 1.11, but will be reduced to 1.09. 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 "lawfully 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, Staff find that the alterations proposed would not be substantially more detrimental to the neighborhood than the existing structure. The proposal would modernize the rear egress to the units on the second and third floors and in so doing allow the interior

spaces to be reconfigured more efficiently, ~~and also provide desirable outdoor space for the units on the second and third levels. To mitigate the appearance and scale of the proposed stair and deck the design incorporates lattice structures for vines which will also provide privacy. Furthermore, the owner has drawn up a future lease addendum for tenants that ensures the decks will be used in a respectful manner so as not to disturb neighbors, and prohibits tenants from using the decks for storage.~~ The proposal has been designed with rear yard setbacks that minimally impact the neighbors and will continue to be conforming to the requirements of the SZO.

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 not 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 protect health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to conserve the value of land and buildings; to preserve the historical and architectural resources of the City; to encourage the most appropriate use of land throughout the City; to encourage housing for persons of all income levels; and to preserve and increase the amenities of the municipality. The strictly utilitarian addition on the rear of the structure misses an opportunity to provide valuable outdoor space for prospective tenants, which would in effect provide more-adequate light and air while likely increasing the value of the building.

The proposal is not consistent with the purpose of the district, (6.1.1. RA - Residence Districts) "To establish and preserve quiet neighborhoods of one- and two-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts." The proposed landings are not convenient to the prospective tenants, when in fact they could be easily made into decks and provide nice outdoor space which would be compatible with the majority of homes on the same block.

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 surrounding neighborhood is composed primarily of residences with gabled roofs, front and rear porches and decks, and clapboard siding. Several neighboring parcels also have external rear egress stairs and decks; as such, the removal of the rear decks is in fact not compatible with the neighborhood. ~~proposal is consistent and compatible with the neighborhood.~~

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.*

No adverse environmental impacts are anticipated as a result of the proposal. There will not be levels of noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; or emission of noxious or hazardous materials or substances; or pollution of water ways or ground water; or interference of 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.*

There is no anticipated impact of the proposal on vehicular or pedestrian circulation.

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

8. 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.*

III. RECOMMENDATION

Special Permit under §4.4.1

Based on the materials submitted by the Applicant, the above findings and subject to the following conditions, the Planning Staff is **UNABLE TO RECOMMEND** the proposed alterations with only landings, but would recommend **CONDITIONAL APPROVAL** of the requested **SPECIAL PERMIT**, provided, the alterations include the rear decks initially proposed.

The recommendation is based upon a technical analysis by Planning Staff of the application material based upon the required findings of the Somerville Zoning Ordinance, and is based only upon information submitted prior to the public hearing. This report may be revised or updated with new recommendations, findings and/or conditions based upon additional information provided to the Planning Staff during the public hearing process.

#	Condition	Timeframe for Compliance	Verified (initial)	Notes								
1	Approval is for the alteration of a nonconforming structure. 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>9/30/2015</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>10/15/2015</td><td>Modified plans submitted to OSPCD (1-10)</td></tr><tr><td>11/12/2015</td><td>Modified plans submitted to OSPCD (1-11)</td></tr></table>				Date (Stamp Date)	Submission	9/30/2015	Initial application submitted to the City Clerk's Office	10/15/2015	Modified plans submitted to OSPCD (1-10)	11/12/2015	Modified plans submitted to OSPCD (1-11)
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Any changes to the approved (site plan or elevations/use) that are not <i>de minimis</i> must receive SPGA approval.												

Construction Impacts				
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	Plng.	
3	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	
4	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				
5	<u>The applicant shall construct the proposed alterations according to the plans submitted for the October 21st ZBA hearing.</u>	<u>CO</u>	<u>Plng.</u>	
6	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	
Miscellaneous				
7	All tenants of 346 Summer Street shall adhere to the following lease addendum “ <i>rear stairs are for emergency use only; respect neighbors’ privacy and use front entrance day to day; absolutely no BBQs (fire hazard); max 10 persons on deck at one time; respect the neighbors please (noise, music and loud voices to be kept to a minimum); deck not to be used for storage (basement area is storage).</i> ”	Cont.	ISD	
8	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	
Public Safety				
9	The Applicant or Owner shall meet the Fire Prevention Bureau’s requirements.	CO	FP	
10	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.	
Final Sign-Off				
11	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.	

