



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

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Case #: ZBA 2013-53-R1-11/2015
Site: 17-21 Village Street
Date of Decision: January 20, 2016
Decision: Petition Approved with Conditions
Date Filed with City Clerk: February 3, 2016

ZBA DECISION

Applicant Name:	Village People Realty Trust, Keith Glover, Trustee
Applicant Address:	21 Village Street Somerville, MA 02143
Property Owner Name:	Village People Realty Trust
Property Owner Address:	21 Village Street Somerville, MA 02143
Agent Name:	Richard G. DiGirolamo, Esq.
Agents Address:	424 Broadway, Somerville, MA 02145

<u>Legal Notice:</u>	Applicant and Owner, Village People Realty Trust, seek a Revision to Special Permit with Site Plan Review, case ZBA 2013-53 to alter rear patios and fenestration under SZO 5.3.8. The original approval was under SZO §7.11.1.c to establish 7 residential units.
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<u>Zoning District/Ward:</u>	RC zone/Ward 2
<u>Zoning Approval Sought:</u>	§5.3.8 & §7.11.1.c
<u>Date of Application:</u>	November 5, 2015
<u>Date(s) of Public Hearing:</u>	12/9/15 – 1/20/16
<u>Date of Decision:</u>	January 20, 2016
<u>Vote:</u>	5-0

Appeal #ZBA 2013-53-R1-11/2015 was opened before the Zoning Board of Appeals at the Visiting Nurse Association on December 9, 2015. 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 two hearings of deliberation, the Zoning Board of Appeals took a vote.



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DESCRIPTION:

The site has an approved project under Case # ZBA 2013-91 that is nearing completion. The approval was to build a 3-story, 6 unit residential building behind the single family home. The project had 11 parking spaces in the basement and 2 at grade. The approved building was 8,174 net square feet. The 6 units have 2 bedrooms, a study, and 2 bathrooms and are on average approximately 1,800 square feet. Each unit will have access to private outdoor space which includes patios, rear decks, and 2 roof decks for the units on the top floor. The new building complies with all dimensional and parking requirements.

The current application is to revise the nature of the rear yard, fence height, window location and size of the roof deck.

Rear Yard

The approved plan had a masonry retaining wall in the rear that is labeled "for garden". The approved plan showed one set of steps down from the area raised by the retaining wall to access the ground. The landscape plan showed a lush green with specific plants that would fill this raised area. The plan also showed two 6' by 14' foot patios off of the residential units.

The full raised area was built as concrete block patios with two sets of stairs projecting farther into the rear yard than the original proposal. There is also an opening between the patios that creates a passageway into the garage.

The Applicant will remove the 2 stairs that have already been built and install 2 planting beds into each patio.

Fence

The fence along the property lines in the rear and portions of the side yard is eight feet in height.

Windows

There are a few small changes to window locations that have been deemed by staff to be de minimis and could be approved at the staff level.

Roof Deck

Two 120 square foot roof decks were shown on the approved plans. The roof decks were constructed to be 274 square feet.

FINDINGS FOR SPECIAL PERMIT with SITE PLAN REVIEW (SZO §7.11.1.C):

The following are the findings that relate to the proposed revisions.

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."*

A revision to a special permit is allowed if the final signoff and certificates of occupancy have not yet been issued which is the case for this project. Changes that are not de minimis must go back to the permit granting authority for approval. Staff deemed this revision to be greater than the de minimis requirements under §5.3.8 and the request is before the ZBA for a public hearing.

Rear Yard

The revision changes the landscape requirement, which was proposed to be 31%. Patios are not considered landscaped area. The definition of landscaping from the SZO is below. The hard patio area is approximately 550 square feet, decreasing the landscaping on the site by 4.3%. The landscaping would still be conforming at 26.7%. Subsequently the applicant agreed to add two planting zones on each of the raised patios, each 4'x11' or an



additional 44sf each (88sf total). This minimally impacts permeability, but is at least closer to the original intent illustrated by the approved plans.

Landscaping: The improvement of land, generally for use as passive outdoor space, through the planting and maintenance of live plants including trees, shrubs, ground cover, flowers, or other, low-growing plants that are native or adaptable to the urban climatic conditions of Somerville. In addition, the term landscaping may include some natural or manufactured materials including, but not limited to, reflecting pools, works of art, walkways, screens, walls, fences, benches and other types of landscape or street furniture. Landscaping may also include other non-living materials used as components of a plan for improving outdoor space, such as rocks, pebbles, sand, bark mulch, landscape pavers, earthen mounds and the like, but excluding curbing and pavement for vehicular use.

Fence

An eight foot fence was installed along the rear and portions of the side yard. Per SZO section 10.7.1, fences cannot be greater than 6 feet in height unless specifically required by the SPGA under the review processes of Article 5. The Zoning Board of Appeals would have to require the fence of this height in order for it to remain.

Windows & Roof Deck

There are a few small changes to window locations that have been deemed by staff to be de minimis and could be approved at the staff level.

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."*

Rear Yard

The Board conditional approved the revised site plan over the approved plan. The landscaped back yard that was on the approved plan is preferable to a hardscaped back yard with planters. The approved plan had approximately 10 feet from the patio to the fence and the agreed upon revision retains this setback. The trees shown in the rear yard will have sufficient space to be planted. The addition of 11'x4' planters on top of the patios is an improvement given the circumstances.

Fence

The ZBA requires that the fence along the rear property line be eight feet in height because of the conditions behind the property. The site is location along the rail road tracks with an industrial building located on the other side of the tracks. An eight foot fence in this location will provide screening for the residence and will not be visible from the public right of way. This is not an unusual condition in this neighborhood where neighboring properties have an eight foot fence along the rear property lines.

Windows

The change to window locations would not be noticeable to someone generally familiar with the plans and do not change the character of the original proposal.

Roof Deck

The Board finds that the increase in the size of the roof decks will not be impactful to the neighborhood however, it is a substantial enough of a change that it is not deemed de minimis and should be reviewed within a public hearing.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Elaine Severino, Josh Safdie and Anne Brockelman 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 eight foot fence height, window alterations and 2, roof deck alterations and 11'x4' planters on the patios. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/Plng.									
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>Nov 5, 2015</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>January 14, 2016</td><td>Revised landscape plan showing planters on patios.</td></tr><tr><td>June 3, 2015</td><td>A102 third floor and roof plan</td></tr></table>				Date (Stamp Date)	Submission	Nov 5, 2015	Initial application submitted to the City Clerk's Office	January 14, 2016	Revised landscape plan showing planters on patios.	June 3, 2015	A102 third floor and roof plan
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	June 3, 2015				A102 third floor and roof plan							
Any changes to the approved plans that are not <i>de minimis</i> must receive SPGA approval.												
2	The Applicant shall install a fence that should be 8' in rear and side yard for privacy.	Plng.	CO									
Final Sign-Off												
3	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 _____

