



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
**JOSEPH A. CURTATONE**  
**MAYOR**

PLANNING DIVISION

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**Case #: ZBA #2010-56**  
**Site: 152 Albion Street**  
**Date of Decision: November 17, 2010**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: December 1, 2010**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Alan Peterson
<b>Applicant Address:</b>	7 Fairfield Street, Medford, MA 02155
<b>Property Owner Name:</b>	Lawrence Fidalgo
<b>Property Owner Address:</b>	36 Foxcroft Road, Winchester, MA 01890
<b>Agent Name:</b>	Alan Peterson
<b>Agent Address:</b>	7 Fairfield Street, Medford, MA 02155

<u>Legal Notice:</u>	Applicant, Alan Peterson, and Owner, Lawrence Fidalgo Revocable Trust, seek a special permit (SZO §4.4.1, §5.1) to allow the expansion of an existing nonconforming commercial structure in order to construct a two family dwelling and a special permit to allow for use of a tandem parking space and reduced maneuvering aisles to meet parking requirements (SZO §9.13). RB zone. Ward 5.
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<u>Zoning District/Ward:</u>	RB zone/Ward 5
<u>Zoning Approval Sought:</u>	§4.4.1, §5.1 & §9.1.3
<u>Date of Application:</u>	September 28, 2010
<u>Date(s) of Public Hearing:</u>	November 17, 2010
<u>Date of Decision:</u>	November 17, 2010
<u>Vote:</u>	5-0

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Appeal #ZBA 2010-56 was opened before the Zoning Board of Appeals at Somerville City Hall on November 17, 2010. 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 proposal is to construct a two-family dwelling in a front-to-back townhouse-like configuration. The building will be 2 ½ stories, or 40 feet tall at the roof ridge and 3690 nsf. Some of the existing structure will be retained, allowing the project to qualify as a modification of an existing non-conforming structure. The garage that currently sits in the back corner of the property will be removed.

Each unit will have a living room, dining room, kitchen, three bedrooms, and bathrooms. The front unit will have a roof deck that is inset in the roof of the back unit. There will be a garage for two cars that will be dedicated to the front unit and driveway space for two cars parked in tandem that will be dedicated to the rear unit.

The approval is for a plan which included two garage doors along the street and a driveway to the left for two cars parked in tandem. This plan, a modification of the initial submittal, addresses concerns raised by the neighborhood about the impact of the project on the adjacent property to the left. The applicant worked with Planning Staff and the DRC through two meetings to develop alternate plans that would remove the front-facing garage that were not approved. No other plan could meet the parking requirements of the SZO and also meet the concerns of the abutting neighbor.

## **FINDINGS FOR SPECIAL PERMIT (SZO §5.1 & 4.4.1 & 9.13):**

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."

In considering a special permit under §4.4 of the SZO, Board find that the alterations proposed would not be substantially more detrimental to the neighborhood than the existing structure. The majority of the nonconformities of the site would be eliminated including ground coverage, landscaped area, rear yard setback, left side yard setback. The only dimensions that would remain nonconforming are left side yard setback, street frontage, curbcut and lot size. The use of the property would change from a nonconforming business to a conforming residential property.

In considering a special permit under §9.13 of the SZO the Applicant must be able to demonstrate that granting the requested special permit would not cause detriment to the surrounding neighborhood through any of the criteria as set forth under SZO §9.13, which are as follows:

- 1) increase in traffic volumes;
- 2) increased traffic congestion or queuing of vehicles;
- 3) change in the type(s) of traffic;
- 4) change in traffic patterns and access to the site;
- 5) reduction in on-street parking;
- 6) unsafe conflict of motor vehicle and pedestrian traffic.

The proposal would provide the four required parking spaces onsite. The traffic to the site would be typical of any two-family house on the street. Tandem parking spaces are a typical parking situation for residential properties in the City. The spaces would be used for one of the dwellings so that the cars could easily be rotated. The proposal



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will reduce overall traffic, vehicle impacts, vehicle idling and the many other negative impacts of a commercial/industrial use within a residential neighborhood.

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 conserving the value of land and buildings and encouraging the most appropriate use of land throughout the City. As a two-family house, the proposal is consistent with the purpose of the district, which is, "[t]o 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."

In considering a special permit under §9.13 of the SZO the SPGA may grant such a special permit only when consistent with the purposes set forth in Section 9.1. The proposal is consistent with the purpose of the section. The side driveway will provide two spaces for one of the units.

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 as designed would be compatible with the built surrounding area. The change in use would eliminate the nonconforming business use and establish a compatible two-family dwelling.

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.

The change in use will decrease the adverse environmental impact at the site. The noise at the site will be reduced from a business to a two-family dwelling.

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.

The project will remove a use that generated truck traffic and replace it with a typical residential use.



**DECISION:**

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Scott Darling and Josh Safdie with Danielle Evans absent. Upon making the above findings, Susan Fontano made a motion to approve the request for a special permit. Scott Darling 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 expansion of an existing nonconforming commercial structure in order to construct a by-right two family dwelling. Also, to use a tandem parking space to meet parking requirements. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	Plng.							
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>(Sept 28, 2010)</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>11/12/10</td><td>Updated plans submitted to OSPCD (elevations, floor plans, site plan) with front garage</td></tr></table>				Date (Stamp Date)	Submission	(Sept 28, 2010)	Initial application submitted to the City Clerk’s Office	11/12/10	Updated plans submitted to OSPCD (elevations, floor plans, site plan) with front garage
	Date (Stamp Date)				Submission					
	(Sept 28, 2010)				Initial application submitted to the City Clerk’s Office					
	11/12/10				Updated plans submitted to OSPCD (elevations, floor plans, site plan) with front garage					
Any changes to the approved plans that are not <i>de minimis</i> must receive SPGA approval.										
2	The applicant shall develop a 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							



3	<p>Because of the history of the site and the intended use, the Applicant shall, prior to issuance of any foundation permit and/or any building permit for the project, provide to the Planning Department and the Inspectional Services Division:</p> <p>a) a copy of any Response Action Outcome (RAO) Statement, or other appropriate document signed by a Licensed Site Professional (LSP) and filed with DEP, verifying that a level of no significant risk for the proposed residential use has been achieved at the site; or</p> <p>b) if remediation has not reached the RAO stage, a statement signed by an LSP describing (i) the management of oil and hazardous materials/waste at the site, including release abatement measures intended to achieve a level of no significant risk for residential use at the site, treatment and storage on site, transportation off-site, and disposal at authorized facilities, (ii) a plan for protecting the health and safety of workers at the site, and (iii) a plan for monitoring air quality in the immediate neighborhood.</p>	Foundation Permit	Plng/IS D	
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	
5	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.	During Construction	OSE/FP/BOH	
6	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
7	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	
8	The Applicant shall install granite curbing along the street for any length of the existing driveway that can be closed, and shall provide for a sidewalk in the curbed area that meets the requirements of the Engineering Department.	CO	Plng. / DPW	
9	The applicant shall provide material and color samples for the windows, siding and porches and the garage doors to Planning Staff for review and approval.	CO	Plng.	



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10	The applicant shall continue to work with staff on design details surrounding the window bay including but not limited to corner boards and window sizing, with final review and approval by Planning Staff.	BP	Plng.	
11	The driveway shall be constructed of pervious pavement, unless it is deemed by the Engineering Department that further pervious area on this lot will have negative impacts on immediate abutters. The driveway pavement shall include a change in material, texture or color to designate a four-foot walkway from the sidewalk to the entry door for the rear unit.	CO	Plng.	
12	The applicant shall provide Planning Staff with a landscape plan for review and approval.	CO	Plng.	
13	Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards.	Perpetual	Plng. / ISD	
14	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.	Perpetual	ISD	
15	The Applicant shall furnish the buyer of the front unit with documentation stating that the garage door on this unit must remain closed except when vehicles are pulling into or out of the garage. This shall become a part of the registered record for the property, being identified in the deed, condo documents or another separately filed document that shall first be reviewed and approved by Planning Staff.	CO	Plng.	
16	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.	



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Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*  
Orsola Susan Fontano, *Clerk*  
Richard Rossetti  
T.F. Scott Darling, III, Esq.  
Josh Safdie (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 \_\_\_\_\_



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