



CITY OF SOMERVILLE, MASSACHUSETTS
ZONING BOARD OF APPEALS
JOSEPH A. CURTATONE, MAYOR

MEMBERS

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ELAINE SEVERINO (ALT.)

Case #: ZBA 2008-10

Site: 221 Beacon Street

Date of Decision: June 18, 2008

Decision: *Petition Approved with Conditions*

Date Filed with City Clerk: July 1, 2008

ZBA DECISION

Applicant Name:	Dedic Andrade Development, LLC
Applicant Address:	c/o Stephen Andrade & Mark Roderick 26 Horace Street, Somerville, MA 02143
Property Owner Name:	Robert Fortini
Property Owner Address:	10 Prescott Street, Medford, MA 02155
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145

Legal Notice: Applicant Dedic Andrade Development, LLC & Owner Robert Fortini seek Special Permit with Site Plan Review approval under SZO §7.3 to develop eight (8) residential units containing 12.5% affordable. RB zone. Ward 2.

<u>Zoning District/Ward:</u>	RB zone/Ward 2
<u>Zoning Approval Sought:</u>	§7.3
<u>Date of Application:</u>	February 26, 2008
<u>Date(s) of Public Hearing:</u>	4/16, 5/7, 5/21, 6/4 & 6/18/08
<u>Date of Decision:</u>	June 18, 2008
<u>Vote:</u>	5-0

Appeal #ZBA 2008-10 was opened before the Zoning Board of Appeals at Somerville City Hall on April 16, 2008. 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 (1) hearing(s) of deliberation, the Zoning Board of Appeals took a vote.

DESCRIPTION:

The applicant proposes to construct eight (8) condominium units of 13,104 net square feet (nsf). Each condominium will contain three bedrooms within three-story structures that feature a maximum height of 36'6". The structure will be 96' wide as viewed from Beacon Street and parking will be located underground. The proposed structure is a U-shaped array of condominiums with a 20' wide covered entrance from Beacon Street that will lead into the central courtyard where the entrances to the units will be located. The structure meets all dimensional and parking requirements. The proposal includes one unit of affordable housing which is required to conform to the Inclusionary Housing and affordability requirements under Article 13 of the SZO.

FINDINGS FOR SPECIAL PERMIT (SZO §7.3):

In considering the requested special permits with site plan review the Board must consider and make findings and determinations as outlined in §5.2.5 of the SZO. This section of the report goes through §5.2.5 in more detail.

1. Information Supplied: The Applicant must comply "with the information requirements in Section §5.2.3;"

The information provided by the Applicant allows for a comprehensive review of the proposed development and is in general compliance with the requirements set forth under §5.2.3 of the SZO.

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 with site plan review".

As conditioned, the proposal will comply with these standards.

3. Purpose of the District: The Applicant has to ensure that the project "is consistent with the intent of the specific zoning district as specified in Article 6". The project site is located within an RB district. The RB district seeks 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."

SZO §7.3 states that in RB districts, where developments include a minimum of 12.5% affordable housing units on-site, the maximum dwelling units per lot can be waived through SPSR application. In all cases minimum lot size, minimum lot area per dwelling unit and other dimensional and parking requirements of Article 8 and Article 9 shall be met.

Due to the inclusion of an affordable housing component, the large size of the subject parcel, the consistency with some adjacent and nearby structures, and the conformity with all dimensional requirements under Article 8 and 9, The Board finds this project consistent with the purpose of the RB zoning district.

4. Site and Area Compatibility: The Applicant has to ensure that the project "Is designed in a manner that is compatible with the existing natural features of the site and is compatible with the

characteristics of the surrounding area, and that the scale, massing and detailing of buildings are compatible with those prevalent in the surrounding area.”

Since the lot has previously been developed, the existing natural features have been significantly altered. The building itself will generally be consistent with the height of surrounding buildings and the scale and massing of the structure will be similar to other buildings in the nearby vicinity.

5. Functional Design: The project must meet “accepted standards and criteria for the functional design of facilities, structures, and site construction.”

Based upon the comments received from the various City Departments, the project meets accepted standards and criteria for the functional design of facilities, structures, and site construction. Any necessary mitigation or minor design changes have been incorporated into the recommended conditions section of this report.

6. Impact on Public Systems: The project will “not create adverse impacts on the public services and facilities serving the development, such as the sanitary sewer system, the storm drainage system, the public water supply, the recreational system, the street system for vehicular traffic, and the sidewalks and footpaths for pedestrian traffic.”

Additional review is still required for the proposed drainage systems. However, this can be completed subsequent to the zoning review, with a condition of approval requiring provision of a drainage plan satisfactory to the City Engineer prior to the issuance of any permits. The approval of the SPSR shall be contingent upon the City Engineer’s determination that no adverse impacts on public systems will result from the development.

7. 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.”

Due to the residential nature of the proposed structure no environmental impacts are foreseen as a direct result of this development. Applicant is advised that this lot is the former site of an automobile service station and the property could be contaminated from this prior use. In the event the site is discovered to be contaminated, proper state procedures for remediation must be followed (see approval conditions).

8. Consistency with Purposes: "Is consistent with: 1) the purposes of this Ordinance, particularly those set forth in Article 1 and Article 5; and 2) the purposes, provisions, and specific objectives applicable to the requested special permit with site plan review which may be set forth elsewhere in this Ordinance, such as, but not limited to, those at the beginning of the various sections."

As the required findings of Article 5 have been made, and the proposal satisfies the purposes of Article 1, including “to encourage the most appropriate use of land” and “to encourage housing for persons of all income levels” and of Article 6, as already described, The Board find the proposal to be consistent with the purposes of the SZO.

9. Preservation of Landform and Open Space: The Applicant has to ensure that "the existing land form is preserved in its natural state, insofar as practicable, by minimizing grading and the erosion or stripping of steep slopes, and by maintaining man-made features that enhance the land form, such as stone walls, with minimal alteration or disruption. In addition, all open spaces should be designed and planted to enhance the attractiveness of the neighborhood. Whenever possible, the development parcel should be laid out so that some of the landscaped areas are visible to the neighborhood."

The project site is a relatively level parcel and no erosion problems are foreseen. The Applicant's development plans incorporate the landscaping requirements of the SZO for a residential use. A significant portion of the landscaping is located along Beacon Street, which will enhance the attractiveness of the neighborhood.

10. Relation of Buildings to Environment: The Applicant must ensure that "buildings are: 1) located harmoniously with the land form, vegetation and other natural features of the site; 2) compatible in scale, design and use with those buildings and designs which are visually related to the development site; 3) effectively located for solar and wind orientation for energy conservation; and 4) advantageously located for views from the building while minimizing the intrusion on views from other buildings."

The natural landform in this area has been previously altered. The proposed building is a three-story structure that is consistent with the heights of other buildings in the area. The mass of the building is in compatible in scale to the Durell School building, the townhouse units in the rear and another multi-family structure located on Ivaloo Street about 125' away from the subject property. The applicant's acceptance of The Board's request to move the driveway will reduce view intrusions on some structures on Harrison Street.

11. Stormwater Drainage: The Applicant must demonstrate that "special attention has been given to proper site surface drainage so that removal of surface waters will not adversely affect neighboring properties or the public storm drainage system. Stormwater shall be removed from all roofs, canopies, and paved area, and routed through a well-engineered system designed with appropriate stormwater management techniques. Skimming devices, oil, and grease traps, and similar facilities at the collection or discharge points for paved surface runoff should be used, to retain oils, greases, and particles. Surface water on all paved areas shall be collected and/or routed so that it will not obstruct the flow of vehicular or pedestrian traffic and will not create puddles in the paved area. In larger developments, where practical, the routing of runoff through sheet flow, swales or other means increasing filtration and percolation is strongly encouraged, as is use of retention or detention ponds. In instances of below grade parking (such as garages) or low lying areas prone to flooding, installation of pumps or other devices to prevent backflow through drains or catch basins may be required."

While additional review is required of drainage plans, any approval of the SPSR should be conditional upon the City Engineer's approval of such plans and determination that no adverse impact will result to the drainage system from the project's design.

12. Historic or Architectural Significance: The project must be designed "with respect to Somerville's heritage, any action detrimental to historic structures and their architectural elements shall be discouraged insofar as is practicable, whether those structures exist on the development parcel or on adjacent properties. If there is any removal, substantial alteration or other action detrimental to

buildings of historic or architectural significance, these should be minimized and new uses or the erection of new buildings should be compatible with the buildings or places of historic or architectural significance on the development parcel or on adjacent properties;"

This proposal was reviewed by the Somerville Historic Preservation Commission and found to not be a "preferably preserved" building. The existing structures were also found not to meet section 2.15 in the Demolition Review Ordinance #2003-05, that "it is in the public interest that the buildings be preserved or rehabilitated rather than to be demolished." The proposal is for new construction and the design incorporates elements of Somerville's architectural heritage through the use of clapboard siding, a three-story height limit and gabled roof lines.

13. Enhancement of Appearance: The Applicant must demonstrate that "the natural character and appearance of the City is enhanced. Awareness of the existence of a development, particularly a non residential development or a higher density residential development, should be minimized by screening views of the development from nearby streets, residential neighborhoods of City property by the effective use of existing land forms, or alteration thereto, such as berms, and by existing vegetation or supplemental planting;"

Currently on the site there is a vacant service station that has been found to have minimal historic significance. The buildings are in poor condition and illegal dumping has been occurring on the lot. The proposal as designed will enhance the appearance of the city by removing the vacant structure and replacing it with a structure the Somerville Design Review Committee has supported. The applicant has proposed a landscaping plan that will use a combination of trees and shrubs to screen the proposed structure from the street and the neighbors to the rear of the project. Conditions will be attached to this report in effort to maximize the screening with immediate abutters.

14. Lighting: With respect to lighting, the Applicant must ensure that "all exterior spaces and interior public and semi-public spaces shall be adequately lit and designed as much as possible to allow for surveillance by neighbors and passersby."

The applicant is proposing to install lighting that meets the standards of the SZO and building code.

15. Emergency Access: The Applicant must ensure that "there is easy access to buildings, and the grounds adjoining them, for operations by fire, police, medical and other emergency personnel and equipment;"

The Fire Prevention Bureau has reviewed the proposal and has indicated no outstanding concerns regarding emergency access. According to the applicant, walkways have been designed along the side yards at the request of the fire department to provide access to the rear.

16. Location of Access: The Applicant must ensure that "the location of intersections of access drives with the City arterial or collector streets minimizes traffic congestion."

The proposal meets all requirements of the zoning regarding parking and driveway dimensions. The majority of traffic would enter and exit from a 14' wide curb cut and driveway on Beacon Street which is less than the SZO required 18' width. As requested by the Traffic and Parking Department the applicant has provided a design of a signal and detection system that will limit one car to the driveway at any given time. Traffic and Parking Department has accepted the signal and detection

system with a minor modification addressed in the conditions of this report. The location of the driveway has been moved at the request of Staff and the project now provides more sunlight to the adjacent garden with better visibility and sight lines to drivers while reducing conflict with the neighboring driveway to the south.

The Board finds the additional curb cut acceptable in order to meet handicapped requirements for parking.

17. Utility Service: The Applicant must ensure that "Electric, telephone, cable TV and other such lines and equipment are placed underground from the source or connection, or are effectively screened from public view."

The Applicant is proposing to tie into the existing City services for electric, telephone and cable. Any new lines would be placed underground in accordance with the SZO and the policies of the Superintendent of Lights and Lines.

18. Prevention of Adverse Impacts: The Applicant must demonstrate that "provisions have been made to prevent or minimize any detrimental effect on adjoining premises, and the general neighborhood, including, (1) minimizing any adverse impact from new hard surface ground cover, or machinery which emits heat, vapor, light or fumes; and (2) preventing adverse impacts to light, air and noise, wind and temperature levels in the immediate vicinity of the proposed development;"

No negative impacts are anticipated as a result of the proposed use, which will be an improvement over its prior use as a service station.

19. Signage: The Applicant must ensure that "the size, location, design, color, texture, lighting and materials of all permanent signs and outdoor advertising structures or features shall reflect the scale and character of the proposed buildings;"

Due to the residential nature of the building, any signage will be minimal.

20. Screening of Service Facilities: The Applicant must ensure that "exposed transformers and other machinery, storage, service and truck loading areas, dumpsters, utility buildings, and similar structures shall be effectively screened by plantings or other screening methods so that they are not directly visible from either the proposed development or the surrounding properties."

Any exposed dumpster or transformer must be located in areas that are not visible from the street and surrounding structures so as to allow for full screening. (See conditions)

21. Screening of Parking: All nineteen spaces are proposed to be beneath the building and will not be visible. If the handicapped space is located in the side yard it would be screened by the building and landscaping to the north and a fence to the south.

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Fillis and Scott Darling. Upon making the above findings, Susan Fontano made a motion to approve the request for a special permit. Richard Rossetti 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 construction of an eight unit condominium development. This approval is based upon the following application materials and the plans submitted by the Applicant and/or its contractor:		Plng.							
	<table><tr><th>Date</th><th>Submission</th></tr><tr><td>February 26, 2008</td><td>Initial site plan submitted to the City Clerk’s Office</td></tr><tr><td>June 3, 2008</td><td>Modified floor and elevation plans submitted to OSPCD (A0, A1, A2, A3, A4, SK-C1)</td></tr></table>				Date	Submission	February 26, 2008	Initial site plan submitted to the City Clerk’s Office	June 3, 2008	Modified floor and elevation plans submitted to OSPCD (A0, A1, A2, A3, A4, SK-C1)
	Date				Submission					
	February 26, 2008				Initial site plan submitted to the City Clerk’s Office					
June 3, 2008	Modified floor and elevation plans submitted to OSPCD (A0, A1, A2, A3, A4, SK-C1)									
Any changes to the approved site plan or elevations must receive ZBA approval.										
2	The applicant’s consultant must generate a drainage report showing how the drainage design meets the city's zoning regulations with respect to storm drainage. Also, an "Inspection and Maintenance" plan for the drainage system must be included in the report. The report must be prepared and stamped by a registered professional civil engineer.	CO	Eng.							
3	Applicant shall screen any outdoor dumpster with wood fencing that blocks any view of the dumpster itself.	CO	Plng.							
4	Any exposed transformers should be located in areas that are not visible from the street and surrounding structures, and so as to allow for full screening.	Electrical permits & CO	Plng.							
5	Any fencing installed shall not be chain link.	CO	Plng.							
6	A code compliant fire alarm and sprinkler system shall be installed.	CO	FP							
7	The building shall be painted with historically appropriate colors.	CO	Plng.							
8	Applicant shall supply four bicycle parking spaces, which can be satisfied with two u-type bicycle racks. This rack should be located within the structure.	CO	Plng.							
9	The warning flasher indicated as L1 on the signal and detection system plan (SK-C1) should be located	CO	Plng.							

	closer to the front edge of the property.			
10	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	
11	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 meet DPW standards.	CO	DPW	
12	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	
13	The applicant shall provide notice of intent to strictly comply with applicable State and Federal regulations regarding air quality including without limitation continuous dust control during demolition and construction.	CO	Plng/OSE	
14	The suspected underground fuel tanks on this site must be removed under the supervision of the Fire Prevention Bureau. Permits will be required for these removals.	CO	FP	
15	The applicant shall develop a demolition plan in consultation with the City of Somerville Inspectional Services Department. 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	
16	Because of the history of the site and the intended residential 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 Department: a) a copy of the Response Action Outcome (RAO) Statement, signed by a Licensed Site Professional (LSP) and filed with DEP, verifying that a level of no significant risk for	Building Permits	ISD/Plng.	

	the proposed residential use has been achieved at the site; or 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.			
17	Notification must be made, within the time period required under applicable regulations, to the Massachusetts Department of Environmental Protection (DEP) if there is any discovery of hazardous materials, or regulated hazardous substances at the site. The City's OSE office and the Board of Health shall also be notified.	CO	Housing	
18	To the maximum extent feasible applicant will utilize strategies during construction to mitigate dust and control air quality, to minimize noise and to implement a waste recycling program for the removed debris.	During Construction	OSE/ISD	
19	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final sign-off on the building permit to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	CO	Plng.	
20	The applicant shall make best efforts to erect barriers to protect the garden during the building demolition	Demolition Permit	ISD	
21	Baiting for rodents shall be done not only prior to demolition, but throughout the entire course of the project until CFOs are acquired. Applicant will submit a baiting plan and schedule to BOH	During Construction	ISD/BOH	
22	The Applicant shall consult with direct abutters regarding the type of material to be used in fencing around the property.	CO	Plng.	
23	The Developer will make every effort to retain mature trees on the site.	Building Permit	Plng.	
24	The Developer will contact direct abutters at MBL 45-G-7 and MBL 45-G-7A to inspect the foundation to their properties prior to demolition and after demolition to insure no damage is incurred	Demolition Permit	ISD	
25	The Developer will send a communication to every	Building	Plng.	

	direct abutter describing the manner in which water will be contained on the site. Evidence of this will be submitted to Planning Staff.	Permit		
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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.
Danielle Fillis
Elaine Severino, (Alt.)

Attest, by the Zoning Board of Appeals 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 _____