



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

**MEMBERS**

HERBERT F. FOSTER, JR., *CHAIRMAN*  
ORSOLA SUSAN FONTANO, *CLERK*  
RICHARD ROSSETTI  
T. F. SCOTT DARLING, III, ESQ.  
DANIELLE FILLIS  
ELAINE SEVERINO (ALT.)

**Case #:** ZBA 2008-01  
**Site:** 308 Beacon Street  
**Date of Decision:** July 9, 2008  
**Decision:** *Revised Petition Approved with Conditions*  
**Date Filed with City Clerk:** July 23, 2008

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**ZBA DECISION**

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**Applicant Name:** Basnight, Buckingham & Partners, Inc.  
**Applicant Address:** 111 Frost Street, Newton, MA 02465  
**Property Owner Name:** Kyle E. Gale  
**Property Owner Address:** 136 Huron Avenue, Cambridge, MA 02138  
**Agent Name:** Adam Dash, Esq.  
**Agent Address:** 48 Grove Street, Suite 304, Somerville, MA 02144

Legal Notice: Applicant: Basnight, Buckingham & Partners, Inc. Owner: Kyle E. Gale and Agent: Adam Dash, Esq. seek Special Permit approval under SZO §4.4.1 for the alteration of a non-conforming structure. The applicant seeks Special Permit approval under SZO §7.11.1.c to build six-units. RC zone. Ward 2.

Zoning District/Ward: RC zone/Ward 2  
Zoning Approval Sought: §4.4.1 & §7.11.1.c  
Date of Application: January 7, 2008  
Date(s) of Public Hearing: 2/20, 3/5, 3/19, 4/2, 4/16, 5/7, 5/21, 6/4, 6/18 & 7/9/08  
Date of Decision: July 9, 2008  
Vote: 5-0

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Appeal #ZBA 2008-01 was opened before the Zoning Board of Appeals at Somerville City Hall on February 20, 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 two (2) hearing(s) of deliberation, the Zoning Board of Appeals took a vote.

## **DESCRIPTION:**

The applicant seeks Special Permit approval under SZO§4.4.1 and SZO §7.11.1.c to alter and expand a non-conforming structure in order to build six (6) studio units, in two, three-story residential buildings, on the lot. Three units are proposed to face Beacon Street and three units to face Harris Street. Due to poor structural conditions most of the existing structure will be removed except a portion of the front wall. Parking will be located between the two structures and in the front yard along Harris Street.

## **FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1 & §7.11.1.c):**

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."

The Board finds that the Applicant's proposal **would not be substantially more detrimental** to the surrounding neighborhood than the existing structure, as required under §4.4.1 of the SZO. The proposal is not substantially more detrimental in all relevant categories, including visual effects and neighborhood character. This development will remove a vacant house in poor condition and replace it with two structures of similar scale to the surrounding neighborhood that front and are oriented toward both streets.

The Applicant requires a special permit under SZO §7.11.1.c to establish six units on the site. This structure is configured as two triple-deckers back to back. The lot fronts on two streets; it will feature two front yards and two driveways to the ground level parking. While the SZO would not allow subdivision of the lot, the Board finds a six unit development thus configured appropriate for this unusual parcel.

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 Board finds that the proposal **is consistent** with the purposes set forth in Article 1 of the Zoning Ordinance; and, to the extent possible for a lawful pre-existing nonconforming structure, with those purposes established for the Residential C (RC) zoning districts in which the property is located, namely "(t)o establish and preserve a district for multi-family residential and other compatible uses which are of particular use and convenience to the residents of the district."

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 Board finds that the proposal **is consistent** with the site and area. The proposed residential structure will feature clapboard siding typical of other homes in the area and will maintain the three-story context of the surrounding built environment. The structure will conform to all SZO dimensional requirements

for the site including parking, which will be located primarily under the structure and concealed from view of the surrounding community.

**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. 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 alteration of a non-conforming structure at 308 Beacon Street and to build six (6) studio units, in two, three-story residential buildings, on the lot. This approval is based upon the following application materials and the plans submitted by the applicant and/or contractor:		Plng.							
	<table><tr><th>Date</th><th>Submission</th></tr><tr><td>January 7, 2008</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>June 13, 2008</td><td>Revised plans submitted to OSPCD (V1.0, Z1.0, V1.1, V1.2, A1.0, A1.1, A1.2, A2.0, A2.1, A2.2, A2.3, A2.4)</td></tr></table>				Date	Submission	January 7, 2008	Initial application submitted to the City Clerk's Office	June 13, 2008	Revised plans submitted to OSPCD (V1.0, Z1.0, V1.1, V1.2, A1.0, A1.1, A1.2, A2.0, A2.1, A2.2, A2.3, A2.4)
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Any changes to the approved site plan or elevations that are not de minimis must receive ZBA approval.										
2	Landscaping shall be installed and maintained in compliance with the American Nurserymen's Association.	Perpetual	Plng. / ISD							
3	Applicant must design and construct each unit as a studio as defined by the SZO, or a parking variance will be required.	Building Permit	ISD							
4	Applicant will submit a detailed landscaping plan depicting the components of the landscaping to be approved by the Planning Staff.	Building Permit	Plng.							
5	The applicant shall provide a fire alarm detection system and automatic fire suppression system compliant with all applicable codes, standards, laws, etc.	CO	FP							
6	Any transformers shall be located as not to impact the building or landscaped area, and shall be fully screened.	Electrical permits &CO	Plng.							
7	Applicant will supply one bicycle parking space, which can be satisfied with a "U" type bicycle rack.	CO	Plng.							
8	The Applicant, successors and/or assigns, shall be responsible for maintenance of both the building and all	Cont.	ISD							

	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.			
9	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 of concrete subject to DPW approval.	CO	DPW	
10	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	
11	To the maximum extent feasible applicant will utilize strategies during demolition and construction to mitigate dust and control air quality, to minimize noise and to implement a waste recycling program for the removed debris.	During Demolition & Construction	OSE/ISD	
12	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/OSE	
13	Before demolition/building permits are issued, soil tests must be conducted. If soil contamination is observed by soil test results, the Applicant shall, prior to issuance of any foundation permit and/or any building permit for the project, provide to the Planning and the Inspectional Services Divisions: 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 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	Demolition /Building Permitting	ISD/Plng.	

	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.			
14	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 and the Board of Health shall also be notified.	CO	OSE /BOH	
15	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.	
16	A lattice-style fence with gates and plantings shall be constructed along the west property line boundary with 312 Beacon Street, starting from the end of the existing stockade fence up to Beacon Street	CO	Plng.	
17	Parking shall be screened from Harris Street by an 18' landscape fence, which shall be positioned starting at the west end of the lot line fronting Harris Street. Ivy or other climbing plant shall be planted to grow on the Harris Street side of the fence.	CO	Plng.	
18	A landscape fence shall be constructed along the east property line	CO	Plng.	
19	The third level deck of 308 Beacon Street shall have no permanent roof	CO	Plng.	
20	Exterior siding materials shall consist of wood products or hardiplank	CO	Plng.	
21	Refuse shall be stored in the basement trash rooms, which shall be accessed for collection through exterior areaways.	Cont.	ISD	
22	Foundations and deep retaining walls, if any, adjacent to interior lot boundary lines shall be constructed to protect abutters' foundations. Existing foundation conditions shall be documented and monitored as construction proceeds.	During construction	ISD	
23	The finished buildings will be Energy Star Compliant	CO	ISD	
24	Municipal utilities for both buildings shall be accessed from Beacon Street.	CO	ISD	
25	AC compressors shall be located on the roof and screened with widow's walk style fencing.	CO	Plng.	
26	During Construction temporary fire and intrusion detection devices shall be installed, the site shall be secured with a lockable fence and lit at night, temporary protection shall be placed on top of dumpsters and debris when high winds are forecast, and debris removal shall occur at regular intervals not to exceed one week.	During Construction	ISD	
27	Access to Harris Street by emergency vehicles shall be	During	ISD	

	maintained at all times. Construction equipment, materials, personnel or vehicles must be used, placed or operated in such a manner that the street is not blocked.	Construction		
28	Neighbors and abutters access to their driveways and the streets shall be maintained at all times and shall not be blocked by construction equipment, materials, personnel or vehicles.	During construction	ISD	
29	A construction schedule shall be submitted detailing the planned phasing of construction, staging proposal, movement of construction equipment and rodent control measures. Schedule updates shall be provided two-weeks prior to the start of noisy, dusty or equipment intensive operations.	Building permit and during construction	ISD	
30	All fencing shall be made of wood	CO	Plng.	
31	Landscaping shall not include the following trees:  Walnuts (Walnut trees) Cashews (Cashew trees) Pecans (Pecan trees) Pine nuts (Pine trees), Hazelnuts (Hazelnut shrub) Hickory nuts (Hickory trees) Beech nut (Beech trees) Butternut (Butternut trees) Chestnut (Chestnut trees) Ginko nut (Ginko trees) Macadamia nuts (Macadamia trees) Almonds (Almond trees) Pistachios (Pistachio trees) Brazil nuts (Brazil nut trees) Lichee nut Pili nut Shea nut	CO	Plng.	

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 \_\_\_\_\_