



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

PLANNING DIVISION

ZONING BOARD OF APPEALS MEMBERS

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JOSH SAFDIE (ALT.)

Case #: ZBA 2010-33
Site: 16 Browning Road
Date of Decision: August 4, 2010
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: August 13, 2010

ZBA DECISION

Applicant Name:	William A. White, Jr.
Applicant Address:	16 Browning Road, Somerville, MA 02145
Property Owner Name:	William A. White, Jr.
Property Owner Address:	16 Browning Road, Somerville, MA 02145
Agent Name:	N/A

Legal Notice: Applicant and Owner William A. White Jr seeks a variance (SZO §5.5 and §10.7.1) to replace an existing eight (8) foot fence on the rear lot line with a ten (10) foot fence.

<u>Zoning District/Ward:</u>	RA zone/Ward 4
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	June 3, 2010
<u>Date(s) of Public Hearing:</u>	August 4, 2010
<u>Date of Decision:</u>	August 4, 2010
<u>Vote:</u>	5-0

Appeal #ZBA 2010-33 was opened before the Zoning Board of Appeals at Somerville City Hall on August 4, 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 replace the existing 8 foot fence with a 10 foot fence. The applicant indicates that the 8 foot fence is not sufficient to address the hardship created by excess noise from building tenants on the other side of the fence. A variance was issued on June 5, 1996 to allow the applicant to replace a previously existing conforming 5 foot fence with a new 8 foot fence to address the same type of concerns.

FINDINGS FOR VARIANCE (SZO §5.5.3):

In order to grant a variance the Board must make certain findings and determinations as outlined in §5.5.3 of the SZO.

Please find the Applicant's responses attached.

1. There are "special circumstances relating to soil conditions, shape or topography of land or structures which especially affect such land or structures but not affecting generally the zoning district in which it is located, causing substantial hardship, financial or otherwise."

In 1996, the ZBA found that "there were special circumstances related to the structure, given its close proximity to multi-unit dwellings, their density, and the narrowness of Sycamore Terrace, all of which about the rear of the subject property", and the ZBA concluded that these circumstances created a hardship for the Applicant in his efforts to attain privacy and a noise-free environment.

The Board finds that these circumstances have not changed since 1996.

2. The variance requested is the minimum variance that will grant reasonable relief to the owner, and is necessary for a reasonable use of the building or land.

In 1996, the ZBA found that the variance for an 8 foot fence was "the minimum necessary to grant the Applicant a reasonable use of his property, free from the nuisance of excessive noise, glare and unsightliness."

The applicant indicates that, during the intervening 14 years, the applicant has still suffered hardship from noise coming from the abutting property, and therefore the relief granted has not been successful at meeting the need. The Zoning Board of Appeals found that more extensive relief in the form of a taller fence with a sound blanket would be the minimum necessary for reasonable use of this property, given that the previously granted relief was unsuccessful at achieving that purpose.

3. "The granting of the variance would be in harmony with the general purpose and intent of this Ordinance and would not be injurious to the neighborhood or otherwise detrimental to the public welfare."

The ZBA indicated in 1996 that the variance "would be in harmony with the purposes and intent of the zoning ordinance since the Applicant has invested substantial funds and time restoring many of the original details of the 1940's house. The proposed fence will not be injurious to the surrounding area since it will only be seen by the rear abutting property."

The applicant indicated that the additional height will have no adverse impact and existing evergreen trees as well as proposed will screen the fence from view. Staff was initially unable to determine if this is the case, and recommended that the applicant provide more information about the design of the fence, material for sound dampening and proposed landscaping. The applicant provided information on the proposed fence and marketing material with a description and photos of the proposed sound dampening material. He indicated that the fence is on the rear property line and is mostly screened from other properties by trees in his backyard. He also indicated that he intends to plant a few more trees after installing the fence, to further limit any views of the fence



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and the sound blanket. The Zoning Board of Appeals is satisfied with this information and is comfortable that, by using these materials and planting additional trees where necessary, the fence would be in harmony with the general purpose and intent of the Ordinance and would not be injurious to the neighborhood or otherwise detrimental to the public welfare.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Scott Darling and Elaine Severino with Herbert Foster and Josh absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a variance. 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 construction of a 10 foot fence along the rear yard of 16 Browning Road	BP/CO	Plng.									
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>June 3, 2010</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>June 3, 2010</td><td>Plans submitted to OSPCD</td></tr><tr><td>July 15, 2010</td><td>Information about acoustic sound barrier material</td></tr></table>				Date (Stamp Date)	Submission	June 3, 2010	Initial application submitted to the City Clerk's Office	June 3, 2010	Plans submitted to OSPCD	July 15, 2010	Information about acoustic sound barrier material
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	June 3, 2010				Plans submitted to OSPCD							
	July 15, 2010				Information about acoustic sound barrier material							
Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive ZBA approval.												
2	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, *Acting Chairman*
Richard Rossetti, *Acting Clerk*
T.F. Scott Darling, III, Esq.
Danielle Evans
Elaine Severino (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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