



**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.)  
Josh Safdie (Alt.)

**Case #: ZBA 2007-45-R0908**  
**Site: 161-163 Elm Street**  
**Date of Decision: October 15, 2008**

**Decision: Revision Approved with Conditions**  
**Date Filed with City Clerk: October 27, 2008**

---

**ZBA DECISION**

---

<b>Applicant Name:</b>	Gorka Brabo
<b>Applicant Address:</b>	311 Highland Avenue, Somerville, MA 02144
<b>Property Owner Name:</b>	161-163 Elm Street, LLC
<b>Property Owner Address:</b>	311 Highland Avenue, Somerville, MA 02144
<b>Agent Name:</b>	Richard G. DiGirolamo, Esq.
<b>Agent Address:</b>	424 Broadway, Somerville, MA 02145

Legal Notice: Applicant & Owner: 161-163 Elm Street, LLC seeks a revision to Special Permit ZBA 2007-45 to alter the proposed parking layout and the materials used for paving. RB zone. Ward 6.

<u>Zoning District/Ward:</u>	RB zone/Ward 6
<u>Zoning Approval Sought:</u>	Revision to Special Permit# 2007-45
<u>Date of Application:</u>	September 29, 2008
<u>Date(s) of Public Hearing:</u>	October 15, 2008
<u>Date of Decision:</u>	October 15, 2008
<u>Vote:</u>	5-0

---

Appeal #ZBA 2007-45-R0908 was opened before the Zoning Board of Appeals at Somerville City Hall on October 15, 2008. After one (1) hearing(s) of deliberation, the Zoning Board of Appeals took a vote.

**DESCRIPTION & FINDINGS:**

As described in the Planning Board report dated November 15, 2007, the subject property is recorded as a 6,651 square foot lot on which sits a 5,746 net square foot six-family wood-framed dwelling. Also on the lot is a 232 square foot masonry structure with framed lean-to additions that was formerly used as a garage and now contains a seventh residential unit. The property is at the corner of Elm Street and St. James Avenue, both two-way streets with parking on both sides.

In 2007, the site received special permits under SZO §4.5.1 & §4.5.3 in order to alter and expand a dimensionally nonconforming structure by constructing two dormers and decks onto an existing six-family dwelling and to expand and change the nonconforming six-family use by converting an existing seventh dwelling in a detached structure to a detached accessory office use.

In November of 2007, the site received a special permit revision of the approved plans to remove existing windows and install sliding doors and wood stairs and railings to the west and east sides of the dwelling.

**The applicant is requesting this Special Permit Revision in order to:**

**1. Modify the proposed driveway layout**

The applicant is proposing to revise the layout of the two driveways to allow for additional landscaping in areas where the driveways abut trees and to slightly increase the paved area of the Elm Street driveway immediately adjacent to the house. Staff finds the additional landscaping to be an improvement to the property and the increased paving to be minimal. The additional landscaping will be beneficial to the existing trees in the vicinity.

**2. Modify the driveway paving materials**

The applicant is proposing to change the paving materials on both driveways from pavers to 3/8" pea stone over 6" of compacted gravel with several rows of cobble stone where the driveway meets the concrete apron. Staff finds that a stone and gravel treatment would technically be considered "pavement" and the driveways a "paved area". Therefore, this proposal is in conflict to condition 5 of the original approval which states, "All new paved areas shall be cobblestone or brick". However, Staff finds that this alteration would be beneficial as it would enable the applicant to preserve two trees that have their roots growing into the driveway that would need to be cut for paver installation.

**DECISION:**

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Scott Darling and Josh Safdie. 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	<p>This approval is to alter the site plan in order change the driveway dimensions and add landscaping, and to revise the original condition 5 in order to install a gravel and stone driveway.</p> <p>A previous revision approval allowed the applicant to remove existing windows and install sliding doors, wood stairs, and railings on the west and east sides of the dwelling.</p> <p>The original Special Permit approval allowed the alteration and expansion of a dimensionally nonconforming structure and the expansion of a nonconforming use by allowing the applicant to construct two dormers and decks onto an existing six-family dwelling. In addition, approval was granted for expansion and change of the nonconforming six-family use to allow the conversion of an existing seventh dwelling in a detached structure to a detached accessory office use.</p>	Building Permit / CO	ISD / Plng.	

	<p>These approvals are based upon the following application materials and the plans submitted by the Applicant and/or agent:</p> <table><tr><th>Date</th><th>Submission</th></tr><tr><td>Aug 16, 2007</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>Oct 12, 2007 - OSPCD</td><td>floor plans and elevations, sheets A1-A4</td></tr><tr><td>Nov 5, 2007 - OSPCD</td><td>accessory building proposed plan and elevations, sheet A-6</td></tr><tr><td>Aug 7, 2008 - OSPCD</td><td>Revision to right &amp; left elevations, landing &amp; stair detail, SK2-SK4</td></tr><tr><td>Aug 7, 2008 - OSPCD</td><td>Site plan (SK1)</td></tr><tr><td>September 29, 2008</td><td>Site plan (SK1, SK2)</td></tr></table> <p>Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive ZBA approval. These conditions replace all conditions attached to prior permits.</p>	Date	Submission	Aug 16, 2007	Initial application submitted to the City Clerk’s Office	Oct 12, 2007 - OSPCD	floor plans and elevations, sheets A1-A4	Nov 5, 2007 - OSPCD	accessory building proposed plan and elevations, sheet A-6	Aug 7, 2008 - OSPCD	Revision to right & left elevations, landing & stair detail, SK2-SK4	Aug 7, 2008 - OSPCD	Site plan (SK1)	September 29, 2008	Site plan (SK1, SK2)			
Date	Submission																	
Aug 16, 2007	Initial application submitted to the City Clerk’s Office																	
Oct 12, 2007 - OSPCD	floor plans and elevations, sheets A1-A4																	
Nov 5, 2007 - OSPCD	accessory building proposed plan and elevations, sheet A-6																	
Aug 7, 2008 - OSPCD	Revision to right & left elevations, landing & stair detail, SK2-SK4																	
Aug 7, 2008 - OSPCD	Site plan (SK1)																	
September 29, 2008	Site plan (SK1, SK2)																	
2	The Applicant shall remove the deck and wood fence at the front of the concrete accessory structure and replace them replaced with landscaping materials.	CO	PIng.															
3	All new sidewalks in relation to the proposed curb cut will be installed by the Applicant in accordance with the specifications of the Highway Superintendent. Specifically, all driveway aprons shall be concrete.	CO	PIng.															
4	Prior to issuance of a certificate of occupancy, the Applicant shall submit for review and approval by the City Solicitor an appropriate legal instrument limiting the accessory office to use by a resident of the principal structure; upon approval by the City, the instrument shall be recorded in the Middlesex County Registry of Deeds.	CO	ISD															
5	All new paved areas shall be cobblestone, brick or stone and gravel. All new sidewalks in relation to the proposed curb cut will be installed by the Applicant in accordance with the specifications of the Highway Superintendent. Specifically, all driveway aprons shall be concrete;	CO	PIng.															
6	A code compliant fire alarm and suppression system will be required. Fire Prevention permits will be required before work begins.	Building Permit	FP															
7	A 6 foot wood fence shall be constructed in the rear of the property to replace the existing chain link fence;	CO	PIng.															
8	Landscaping should be installed and maintained in compliance with the American Nurserymen’s Association;	Perpetual	PIng.															
9	The clapboard siding must be made of wood or hardiplank;	CO	PIng.															
10	The Applicant will work with the Planning Staff to locate a spot for the trash storage.																	
11	The Applicant is responsible for notifying the Planning Staff at least five (5) working days in advance of a request for a final sign-off on a building permit to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final Building Permit Signoff	PIng. / ISD															

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 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  
ZBA proceedings are filed in the Somerville Planning Dept.

**CLERK'S CERTIFICATE**

Any appeal of this decision must be filed within twenty (20) 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 special permit, or any extension, modification or renewal thereof, 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. The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services is 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 either

\_\_\_\_\_ 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.

Signed \_\_\_\_\_

City Clerk Date \_\_\_\_\_