



CITY OF SOMERVILLE, MASSACHUSETTS
OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2010-23

Date: May 27, 2010

Recommendation: Do not enforce appeal

PLANNING STAFF REPORT

Site: 187 Elm Street

Applicant Name: Matthew Sullivan

Applicant Address: 12 Windom St, Somerville MA

Address of Property Appeal: 187 Elm Street

Owner of Property Under Appeal: 187 Elm Street, LLC

Alderman: Rebekah Gewirtz

Legal Notice: Applicant, Matthew Sullivan, owner of 12 Windom St, seeks an appeal (pursuant to SZO §3.1.9) from a decision of the Superintendent of Inspectional Services to issue a certificate of occupancy based on the satisfaction of special permit conditions for 187 Elm St owned by 187 Elm Street, LLC.

Zoning District/Ward: NB / 6

Zoning Approval Sought: Appeal of ISD decision

Date of Application: April 22, 2010

Dates of Public Hearing: Zoning Board of Appeals 6/2/2010

I. GROUNDS FOR APPEAL

Matthew Sullivan, owner of 12 Windom Street, is an abutter to the property at 187 Elm Street. The property at 187 Elm Street is the subject of the appeal. Matthew Sullivan alleged that:

1. The operator the restaurant at 187 Elm Street has not met the conditions of the Special Permit related to screening the dumpster
2. The dumpster was moved from its original location
3. The dumpster is not a sufficient distance from the lot line to avoid interference with safety, convenience or health of abutters and other residents.



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II. BACKGROUND

1. Subject Property: The subject parcel contains two contiguous parcels which constitute 6,569 square feet. There is a one-story structure and nine parking spaces on the lot. The restaurant, Posto, is the current tenant in the building.

2. History: The ZBA granted a special permit with design review for the site in 1996 (1996-06) for a fast order food establishment with no drive-up service conducted in part or in whole outside of an enclosed building (7.11.10.2.2) and a variance for thirteen parking spaces. There have been several different restaurants at the property in the last thirteen years. The original special permit was for 50 seats inside and 20 outside. The 1996 special permit contained the following conditions, "Location of the dumpster on the northern edge of the property behind the angled parking spaces and effectively enclosed and screened by a fence" and "Planning Staff review and approval of the final landscape plan which is to incorporate plant materials of varying species, seasonality and sizes, as well as eight (8) foot high fencing along the rear abutters property line prior to the issuance of any building permits." The eight foot fence was constructed along the rear property line but the dumpster was not screened by a fence on the other two sides of the triangularly shaped dumpster area at that time.

Contrary to the position of the abutter, the record suggests that the owner of 187 Elm Street constructed the wood fence along the rear property line after, and in response to, the 1996 condition. The 1996 Planning Board report stated that there was a 4 foot high chain link fence along the rear abutting residential property at that time the initial application was filed. The plot plan also shows this fence. The report stated that the applicant (the owners of 187 Elm Street) would install the 8 foot high wood stockade fence along the property line, and this 8 foot fence is there today. Additionally, the locations of the posts of the fence indicate that the fence was installed by the restaurant owner.

In November of 2009 the Zoning Board of Appeals granted a special permit with design review to establish a restaurant with outdoor seating with 50 seats inside and 20 seats outside. This special permit contained the following condition to ensure that the dumpster would be screened from the other two sides of the triangularly shaped dumpster area, "Applicant will screen the dumpster and recycling receptacles with fencing that totally encloses them and blocks views of them." The third side of the dumpster area was already screened with the eight foot high fence. The fence along the rear property line provides screening of the dumpster and the small slats in the fence are typical of wood fence construction (see image).



The dumpster is located in the enclosed area as indicated on the landscape plan from 1996. The dumpster drawn on the plan actually touches the property line of 12 Windom Street in the plan. The actual dumpster location is located along the fence enclosure at the furthest point possible from this residential abutter. The Zoning Board was aware that there would also be recycling receptacles near the dumpster, as condition 7 referenced recycling, stating: “Applicant will screen the dumpster **and recycling receptacles** with fencing that totally encloses them and blocks views of them.”

Planning Staff in consultation with the Superintendent of Inspectional Services found that the plan and conditions related to location and enclosure of the dumpster have been met.

III. APPEAL

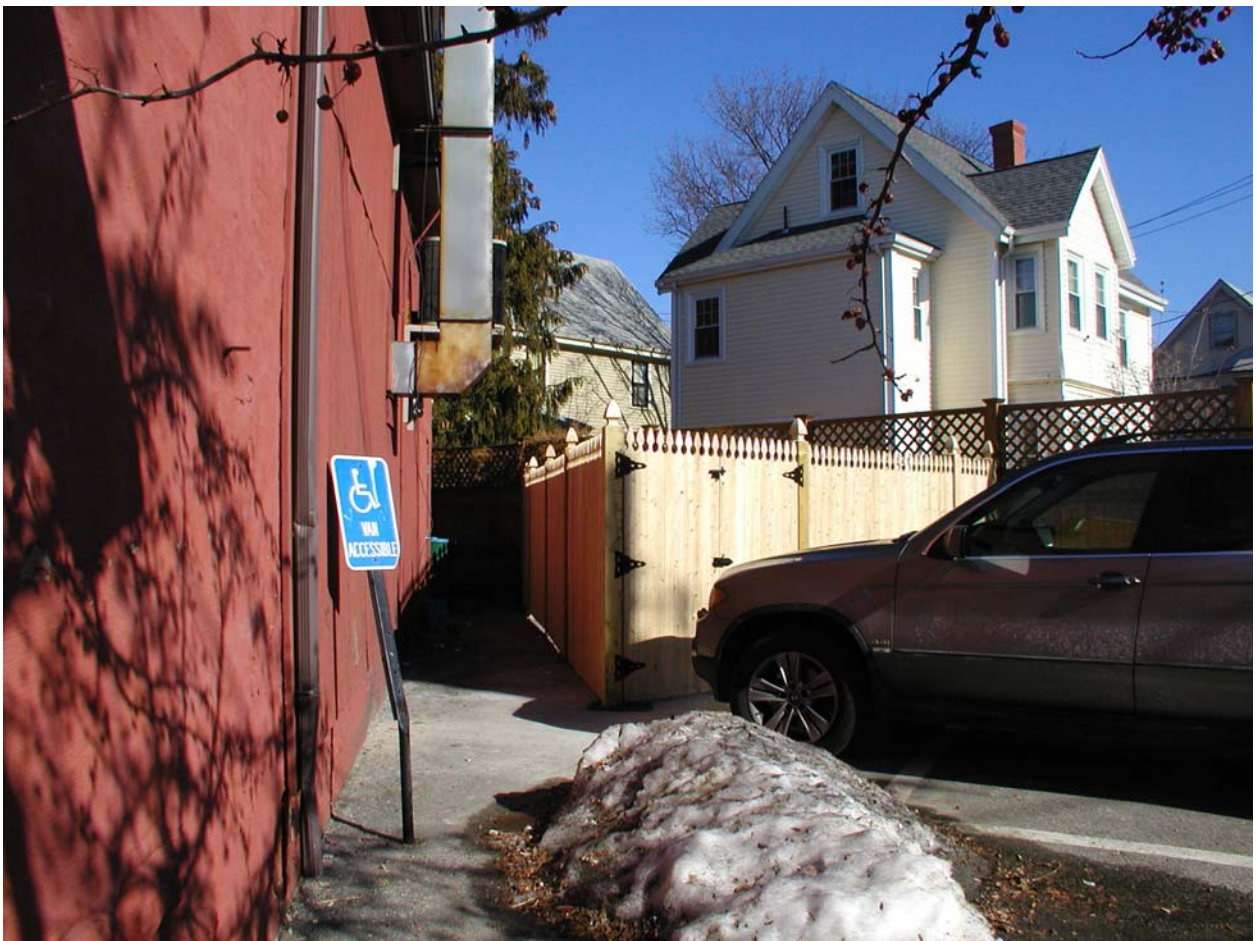
1. Role of the ZBA: In an administrative appeal hearing, the ZBA hears appeals from the decision of the Superintendent of Inspectional Services. The process for such appeals is set out in MGL 40A, Section 8 and Section 3.2 of the SZO. An appeal may be taken by any person aggrieved by an order or decision of the Superintendent of Inspectional Services. The ZBA must determine whether to affirm the ISD decision or overturn it, and why.

Planning staff believe that Matthew Sullivan has status as an aggrieved party in this circumstance and that appeal is properly before your Board.

2. Analysis of the Appeal: OSPCD staff have reviewed: 1) the appeal application from Matthew Sullivan; 2) the correspondence from the tenant's attorney, Adam Dash, dated May 20, 2010; 3) the plans and conditions from the 1996 and 2009 special permits. Matthew Sullivan has raised three (3) arguments in support of his appeal. A discussion of the arguments are below.

1. The operator the restaurant at 187 Elm Street has not met the conditions of the Special Permit related to screening the dumpster

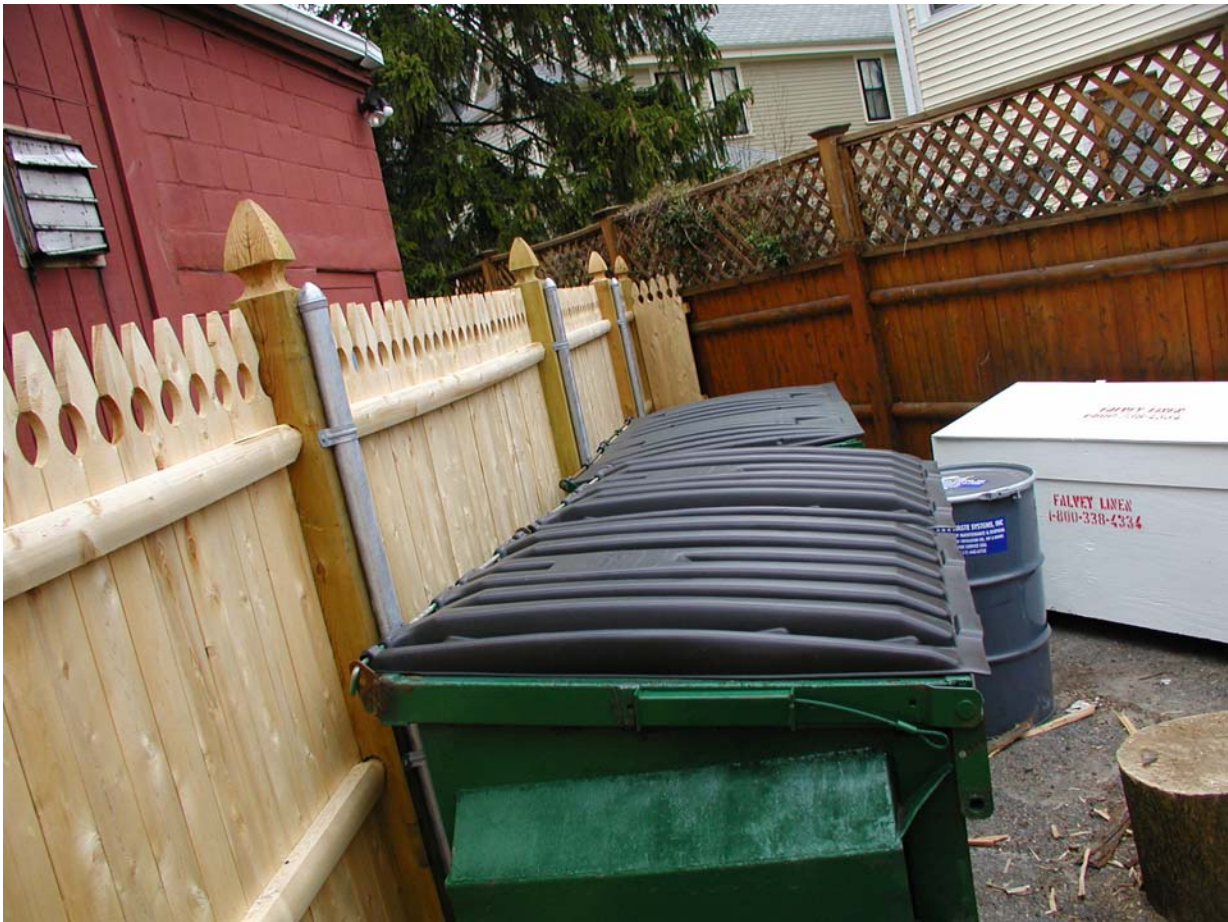
The applicant has now enclosed all three sides of the dumpster with wood fencing that totally blocks views of it. The wood fence along the residential property line has small slats in the fence are typical of wood fence construction; however, the fence blocks views of the dumpster. Also, this fence was constructed in response to the 1996 condition placed on the owners of 187 Elm Street. Staff finds that requiring the owner of 187 Elm Street to construct a new fence along the property line that abuts their existing wood fence is unreasonable and was not in the spirit of the condition that the ZBA placed on the special permit.



2. The dumpster was moved from its original location

As noted above, the dumpster is located in the enclosed area as indicated on the landscape plan from 1996. The dumpster drawn on the plan actually touches the property line of 12 Windom Street in the

plan. The dumpster location is located in the fence enclosure at the furthest point possible from this residential abutter.



3. The dumpster is not a sufficient distance from the lot line to avoid interference with safety, convenience or health of abutters and other residents.

The landscape plan indicated where the dumpster would be located during the 1996 and 2009 special permit application. The same landscape plan was used for both applications. The dumpster is located at the furthest point possible in the designated dumpster enclosure area on the plans. The Zoning Board was aware that there would also be recycling receptacles near the dumpster, as condition 7 includes them, "Applicant will screen the dumpster **and recycling receptacles** with fencing that totally encloses them and blocks views of them." Complaints about smells from the dumpster area should be directed to Inspectional Services Division to ensure that trash and materials for recycling are properly covered, meeting odor control standards, and removed in a timely manner.

3. Conclusion: After review of the issues raised in the appeal, the Planning staff concludes that the issues do not constitute a basis for overturning the decision from ISD.

IV. RECOMMENDATION

Planning staff recommend that the ZBA do not overturn the decision of the Superintendent of ISD that the plans and conditions of the ZBA decision 2009-48 have been met.