



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 2008-28
Site: 48 Hudson Street
Date of Decision: August 20, 2008
Decision: *Petition Denied*
Date Filed with City Clerk: August 29, 2008

ZBA DECISION

Applicant Name:	Jim Gilbert
Applicant Address:	48 Hudson Street, Somerville, MA 02143
Property Owner Name:	Jim Gilbert
Property Owner Address:	48 Hudson Street, Somerville, MA 02143
Agent Name:	N/A

Legal Notice: Applicant & Owner seeks a special permit to operate a hobby kennel as an accessory residential use under SZO §7.11.4.i.

<u>Zoning District/Ward:</u>	RA zone/Ward 5
<u>Zoning Approval Sought:</u>	§7.11.4.i
<u>Date of Application:</u>	June 12, 2008
<u>Date(s) of Public Hearing:</u>	7/23 & 8/20/08
<u>Date of Decision:</u>	August 20, 2008
<u>Vote:</u>	5-0

Appeal #ZBA 2008-38 was opened before the Zoning Board of Appeals at Somerville City Hall on July 23, 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 hearing of deliberation, the Zoning Board of Appeals took a vote.

DESCRIPTION:

The applicant seeks a special permit in order to legalize an existing situation, which requires both a “hobby kennel” license and a special permit under the SZO in order to operate a “hobby kennel” in a residence district. SZO §2.2.80 defines a “Hobby Kennel” as a “pack or collection of four to six dogs, aged three months or older, owned or kept by a person on his/her residential premises for purposes such as breeding or show, but excluding the boarding of dogs.” Under §7.11.4.i, a special permit is required for a hobby kennel in an RA district. The applicant seeks a special permit for the five miniature dachshunds they presently own. The application notes that the dogs are typically kept indoors but are occasionally let out into the yard.

FINDINGS FOR SPECIAL PERMIT (SZO §7.11.4.i):

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §5.1.4 of the SZO. In conducting its analysis, the Board made the following findings, as required under §5.1.4:

1. Information Supplied: The Board found 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 did not make this required finding.
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 did not make this required finding.
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 did not make this required finding.

Additionally, the Board found that the kennel would adversely affect quality of life of the surrounding neighborhood.

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 deny the request for a special permit. Scott Darling seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **DENY** the request.

Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*
Orsola Susan Fontano, *Clerk*
Richard Rossetti
T.F. Scott Darling, III, Esq.
Danielle Fillis

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 _____