



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 2008-39

Site: 95 Kidder Avenue

Date of Decision: September 3, 2008

Decision: *Petition Denied*

Date Filed with City Clerk: September 10, 2008

ZBA DECISION

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| Applicant Name: | Antonio & Maria Fernandes |
| Applicant Address: | 9 Spring Street, Somerville, MA 02143 |
| Property Owner Name: | Antonio & Maria Fernandes |
| Property Owner Address: | 9 Spring Street, Somerville, MA 02143 |
| Agent Name: | N/A |

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| <u>Legal Notice:</u> | Applicant: Antonio & Maria Fernandes seek a variance from SZO §9.9.c to create a second curb cut onto their property. RA zone. Ward 6. |
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| <u>Zoning District/Ward:</u> | RA zone/Ward 6 |
| <u>Zoning Approval Sought:</u> | §9.9.c |
| <u>Date of Application:</u> | July 28, 2008 |
| <u>Date(s) of Public Hearing:</u> | September 3, 2008 |
| <u>Date of Decision:</u> | September 3, 2008 |
| <u>Vote:</u> | 5-0 |

Appeal #ZBA 2008-39 was opened before the Zoning Board of Appeals at Somerville City Hall on September 3, 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 (1) hearing(s) of deliberation, the Zoning Board of Appeals took a vote.

DESCRIPTION:

The Applicant proposed to create a second curb cut to the left side of the house to gain access from the street to the paved area of yard.

FINDINGS FOR SPECIAL PERMIT (SZO §9.9.c:

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

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.”

The Applicant stated, “This property is unique in that the home is situated in the middle of the plot which gives plenty of space on either side of the home for a driveway. In fact, on this side of the house that is already paved but lacks a curb cut it is wide enough to fit two cars side by side. Even with both sides of the house there is still plenty of landscaping in the front, the rear, and the side rear of the house. All other properties situated on Kidder Avenue are either on a corner lot which allows for the possibility to have two driveways based on the current zoning ordinances or already have a driveway and do not have the additional space necessary for a second driveway. Furthermore, the odd side of Kidder Ave, in which this home is located, does not allow parking. A second curb cut will not reduce parking on the street and in fact actually increases parking due to removing several resident cars from the street. In addition many streets in the neighborhood do not face the same situation as most streets have parking on both sides of the street and not just one.”

“Additional parking enhances the apartments and increases their rentability. Lack of parking hinders the rentability of the apartments especially in an area where it is permit parking and only allows for parking on one side of the street.”

The lot is unique in that there are not many homes which have space for a second driveway. The home is situated in the middle of the lot with two paved areas on either side. The landscaped areas drawn on the plot plan add up to approximately 22% of the site. The required landscaping in an RA district is 25%. The Board finds that there are special circumstances related to this lot that do not affect generally the zoning district.

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.”

The Applicant stated, “The minimum approval for the betterment of the situation is to allow for a second curb cut. This would allow for additional parking for tenants and would make use of the paved area.”

The paved area could now or in the future become landscaped area to improve the landscaping onsite. Landscaping would be a reasonable use for this three family house on a 3500 square foot lot. The fact that this area was paved in the past does not necessitate its use as a permanent driveway. The Board finds that the variance is not the minimum necessary for reasonable use of the building or land.

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 Applicant stated, “The granting of the variance allows for more street parking for the community and does not reduce street parking. It will also be in harmony with zoning ordinance section 9.5 which states that three family residential homes should have 1.5 parking spaces per 1-2 bedroom apartments. With the home being a three family with two 2-bedroom apartments and one 1-bedroom apartment, per this zoning ordinance that would imply that 4.5 spaces are needed and this second curb cut would allow for this to be achieved.”

While the Board agrees that the curb cut would not have the usual impact of reducing on-street parking, it does increase the potential for pedestrian/vehicle conflict. The purpose of the Ordinance is to promote the health, safety, and welfare of the inhabitants of the City. An additional curb cut on a residential street does not promote the health,

safety and welfare of the inhabitants as pedestrians are negatively impacted by cars backing out of the driveway. The Board finds that granting the variance would not be in harmony with the general purpose of the Ordinance.

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Scott Darling and Elaine Severino with Danielle Fillis absent. Upon making the above findings, Susan Fontano made a motion to deny the request for a variance. Scott Darling seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **DENY** the request. The Applicant shall cease use of the side yard for parking within a designated number of days of the appeal period.

Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*
Orsola Susan Fontano, *Clerk*
Richard Rossetti
T.F. Scott Darling, III, Esq.
Elaine Severino (Alt.)

Attest, by the Zoning Board of Appeals Administrative Assistant:

Dawn M. Pereira

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| 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. |
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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 _____