



## CITY OF SOMERVILLE, MASSACHUSETTS

### PLANNING BOARD

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**Case #:** ZBA 2008-39

**Site:** 95 Kidder Ave

**Date:** August 21, 2008

**Recommendation:** Unable to Recommend

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### PLANNING BOARD REPORT

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**Site:** 95 Kidder Ave

**Applicant Name:** Antonio and Maria Fernandes

**Applicant Address:** 9 Spring St, Somerville MA 02143

**Property Owner Name:** same

**Alderman:** Gewirtz

Legal Notice: The Applicants seek a variance from SZO §9.9.c to create a second curb cut onto their property.

Zoning District/Ward: RA / 6

Zoning Approval Sought: Variance under SZO §9.9.c

Date of Application: July 28, 2008

Date(s) of Public Meeting/Hearing: Planning Board: August 21, 2008 / ZBA: September 3, 2008

Date of Decision: N/A

Vote: N/A

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Dear ZBA members:

At its regular meeting on August 21, 2008 the Planning Board heard the above-referenced application. Based on materials submitted by the Applicant and the Staff recommendation, the Board was unable to recommend the requested **Variance** (voted 4-0 with Kevin Prior and James Kirylo absent).

In conducting its analysis, the Planning Board found:

## I. PROJECT DESCRIPTION

1. Subject Property: The subject property is an approximately 3500 square foot lot on which sits a two and one-half story, wood frame structure consisting of three dwelling units. There is one curb cut to the right side of the house and paved areas on both sides of the house. The tenants use both areas for parking and the property owners and tenants have been cited for "jumping the curb". Street parking is only allowed on the even side of the street, which is the side opposite the dwelling.

2. Proposal: 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.

3. Nature of Application: SZO §9.9.c limits the number of driveway curb cuts per street line to one in Residence A and B districts. "In all districts, driveways shall be located so as to minimize conflict with traffic on public streets and where good visibility and sight distances are available to observe approaching pedestrian and vehicular traffic."

4. Surrounding Neighborhood: There are many two- and three-family homes in the surrounding area and there is an elementary school on the block to the southeast of the site. Many of the neighbors have one curb cut to a driveway.

5. Impacts on Abutting Properties: The Board has general concerns regarding increasing the number of curb cuts. Creating a curb cut in this location would add another area where pedestrians would have to be aware of cars backing out. The curb cut would most likely remain indefinitely and would discourage replacement of the paved area with landscaping. While a curb cut would end the currently dangerous practice of "jumping the curb" this practice should not be used to justify a curb cut.

6. Green Building Practices: None

7. Comments:

Superintendent Highways, Lights and Lines:

"The ordinance states one curb cut per property line. We have turned down curb cut request for the very same reason. The property owner and tenants have been told for over 1 year now to stop jumping the curb at this location. ISD and the Highway Dept have informed them several times that parking is not allowed here with out a curb cut and they continue to ignore us. I say no to the curb cut."

Ward Alderman:

Alderman Gewirtz supports the requested variance. She submitted a letter (attached) stating the following reasons.

"1) This curb cut would be on a portion of the street where no parking is allowed anyway so no on-street parking will be lost due to it; a factor that I believe makes this request unique.

2) The area next to the house at 95 Kidder where the owners would like to create legal parking for their tenants is clearly already a driveway, it simply lacks access.

3) There is no vegetation on the sidewalk where the curb cut would be created, and therefore there would be little negative impact to the streetscape.

4) Prohibiting a curb cut at this location creates more pressure on street parking as this driveway, which is currently unusable, can hold up to 4 cars.”

## **II. FINDINGS FOR VARIANCE (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.

### **III. RECOMMENDATION**

#### **Variance from Driveway/Curb cut Location (SZO §9.9.c) Requirements**

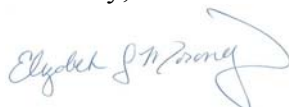
Based upon the application materials, Planning Staff site visits, submitted information and the above findings, the Planning Board is not able to recommend the requested **VARIANCE** for an additional curb cut. The Board finds that the site does not meet all of the requirements for a variance as set forth under §5.5.3 of the SZO.

If the Zoning Board of Appeals denies the variance the Applicant shall cease use of the side yard for parking within a designated number of days of the appeal period.

If the Zoning Board of Appeals approves the variance, the Planning Board recommends attaching the following conditions.

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	Approval is for the construction of a second curb cut onto the property. This approval is based upon the following application materials and the plans submitted by the Applicant and/or Agent:	Curb cut construction	Plng.							
	<table><tr><th>Date</th><th>Submission</th></tr><tr><td>July 28, 2008</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>August 7, 2008</td><td>Plans submitted to OSPCD (plot plan showing landscaped area)</td></tr></table>	Date	Submission	July 28, 2008	Initial application submitted to the City Clerk's Office	August 7, 2008	Plans submitted to OSPCD (plot plan showing landscaped area)			
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	Any changes to the approved plan that are not <i>de minimis</i> must receive ZBA approval.									
2	The landscaped area shall not be reduced from its current 22% coverage and landscaping shall be maintained in compliance with the American Nurserymen's Association Standards.	Perpetual	Plng. / ISD							
3	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final sign-off on the building permit 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.							

Sincerely,



Elizabeth Moroney  
Acting Chair

Cc: Applicant/Owner: Antonio and Maria Fernandes

