



CITY OF SOMERVILLE, MASSACHUSETTS
ZONING BOARD OF APPEALS
JOSEPH A. CURTATONE, MAYOR

MEMBERS

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ELAINE SEVERINO (ALT.)
JOSH SAFDIE (ALT.)

Case #: ZBA #2009-15
Site: 28-30 Newberne Street
Date of Decision: July 15, 2009
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: July 28, 2009

ZBA DECISION

Applicant Name:	128 Willow Avenue, LLC
Applicant Address:	30 Everett Avenue, Somerville, MA 02145
Property Owner Name:	128 Willow Avenue, LLC
Property Owner Address:	30 Everett Avenue, Somerville, MA 02145
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145

Legal Notice: Applicant & Owner 128 Willow Ave, LLC seeks approval to expand and alter an existing building and establish new uses therein: special permit with site plan review (§7.11.1.c) to establish a seven residential units; special permit (§4.4.1) to expand a non-conforming structure by constructing a two-story addition above an existing one-story structure; and special permit (§4.5.1) to change from one non-conforming use (workshop) to another (office) within an existing structure. RC & OS zones. Ward 6.

<u>Zoning District/Ward:</u>	RC & OS zones/Ward 6
<u>Zoning Approval Sought:</u>	§7.11.1.c, §4.4.1 & §4.5.1
<u>Date of Application:</u>	April 14, 2009
<u>Date(s) of Public Hearing:</u>	5/20, 6/3, 6/24 & 7/15/09
<u>Date of Decision:</u>	July 15, 2009
<u>Vote:</u>	5-0

Appeal #ZBA 2009-15 was opened before the Zoning Board of Appeals at Somerville City Hall on May 20, 2009. 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 four hearings of deliberation, the Zoning Board of Appeals took a vote.

DESCRIPTION:

The Applicant is proposing to partially demolish the existing building on the C block and incorporate the remaining foundation into a three-story, 40' high, seven unit residence. The residential structure will have a total of 15,790 nsf and features several gable roof lines, decks for each unit and individual garden areas for the residents. The entire structure is located within the RC zoning district.

The existing one story structure on the M block will be converted into two non-residential studio office spaces of approximately 500sf each. The façade would be altered with new windows and siding materials. This entire structure is located within the OS zoning district. There are two parking areas proposed for the building - one underneath the residential structure with 17 spaces and a smaller 2 space lot off of Willow Avenue. The area between this smaller lot and the residential structure will be landscaped and feature a pathway as well as individual garden plots for the residents.

There is no new construction proposed for the property in the OS district.

FINDINGS FOR SPECIAL PERMIT (SZO §7.11.1.c, §4.4.1 & §4.5.1):

In order to grant a special permit with site plan review, the SPGA must make certain findings and determinations as outlined in §5.2.5 of the SZO. This section of the report goes through §5.2.5 in detail.

1. Information Supplied: The Board finds that the information provided by the Applicant conforms to the requirements of §5.2.3 of the SZO and allows for a comprehensive analysis of the project.
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 with site plan review." As conditioned, the proposal would comply with these standards.
3. Purpose of the District: The Applicant has to ensure that the project "is consistent with the intent of the specific zoning district as specified in Article 6".

The project site is located in both an RC district and an OS district. Under the SZO§8.3, "Land in a more restrictive zoning district may supply space for a use permitted in a less restricted zoning district if the use of the land in the more restrictive district satisfies space and passive use requirements that are not prohibited in the more restrictive district." The land in the OS district will only supply the passive use requirements of landscaping to the dimensional calculations of the proposal.

Under the SZO the OS district is intended "to encourage the preservation of open space for parkland, recreation, reservations, community gardens...and similar uses by permanently protecting these open space resources, which enhance the quality of life for the City's residents." There is an existing structure on the site proposed for a change in use from a workshop to an office use which would be allowed under the SZO by Special Permit. Under the SZO an office is defined as, "a place for the regular performance of business transactions and services, generally intended for administrative, professional, and clerical activities". Although this is not a use typically found in an OS district, the Board finds this an appropriate change in use for the existing structure. The landscaping proposed for the remaining property in the OS district would be a substantial improvement for the property and to sight lines from the community path. The landscaped area, though not public, would be visually appealing and would expand the square footage of natural surface along the community path.

The purpose of the RC district is "to establish and preserve a district for multi-family residential and other compatible uses which are of particular use and convenience to the residents of the district." The Board finds this

proposal, as a multi-family residential use with two 500sf non-residential studio spaces is consistent with the intent of the districts.

4. Site and Area Compatibility: The Applicant has to ensure that the project “(i)s designed in a manner that is compatible with the existing natural features of the site and is compatible with the characteristics of the surrounding area, and that the scale, massing and detailing of the buildings are compatible with those prevalent in the surrounding area”.

The Board finds that the proposed development is in character with the surrounding area. To the south and west of this site are commercial and residential structures that are larger in size and scale than that of the proposed structure. Other residential structures in the area are 2.5 and 3 story structures, which are of similar height to this structure. The use of several gable and dormer rooflines in the design of this structure breaks up the massing and height of the building to make it appear as three 2.5 story structures, similar to those smaller residential structures in the area. While many structures along the community path face the streets they are located on and away from the path, this building appears to front on the path, which serves to improve the pedestrian experience. Since the east and west facades of the building will also be visible from the public way, the features and details of these facades have been well designed and are visually appealing.

The structure would be replacing a 20' cement block garage and removing the chain link and corrugated steel fencing that has been erected in that area. Landscaping will be added to the area along the path zoned OS that is currently paved. The Board finds this to be an improvement over the current conditions and is more compatible with the existing natural features of the community path.

The studio space being proposed will be made to look as if it is part of the first floor of the larger structure and create the appearance of a single congruous site.

5. Functional Design: The project must meet “accepted standards and criteria for the functional design of facilities, structures, and site construction.”

The project would meet accepted standards and criteria for the functional design of facilities, structures, and site construction. While not seeking certification the applicant intends to generally follow guidelines for LEED certified buildings. It is also anticipated that the building will exceed the energy audit requirements of the new building code. Each unit provides private outdoor space as well as individual spaces for gardening, access to the community path and underground parking.

6. Impact on Public Systems: The project will “not create adverse impacts on the public services and facilities serving the development, such as the sanitary sewer system, the storm drainage system, the public water supply, the recreational system, the street system for vehicular traffic, and the sidewalks and footpaths for pedestrian traffic.”

The City Engineer has reviewed the plans and found the drainage plan to be acceptable. The Board finds the increase in landscaped area should produce an overall reduction in the storm water runoff on the site. The City Engineer is concerned with the older water main that is located on Newberne Street and feels this would not provide the necessary volume of water for the 7 unit use. The Board will condition that the building will connect to the water main on Willow Avenue.

It is anticipated that traffic increases would be negligible and that the reduction in truck traffic would be an improvement for the residential area. The applicant has worked with the City's Traffic and Parking Department to reduce the number of parking spaces located on Willow Avenue and has received approval on the circulation pattern in that area.

7. Environmental Impacts: “The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or

hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.”

The Board finds that the proposed residential use would not have an adverse impact on the surrounding area due to the nature of residential construction. The office space would be for non-medical use and by definition is "generally intended for administrative, professional and clerical activities". It is not anticipated that any office use would have a negative environmental impact.

8. Consistency with Purposes: “Is consistent with: 1) the purposes of this Ordinance, particularly those set forth in Article 1 and Article 5; and 2) the purposes, provisions, and specific objectives applicable to the requested special permit with site plan review which may be set forth elsewhere in this Ordinance, such as, but not limited to, those at the beginning of the various sections.”

As the required findings of Article 5 have been made, and the proposal satisfies the purposes of Article 1, including “to provide for and maintain the uniquely integrated structure of uses in the City” and “to conserve the value of land and buildings” and of Article 6, as already described, the proposal is consistent with the purposes of the SZO.

9. Preservation of Landform and Open Space: The Applicant has to ensure that “the existing land form is preserved in its natural state, insofar as practicable, by minimizing grading and the erosion or stripping of steep slopes, and by maintaining man-made features that enhance the land form, such as stone walls, with minimal alteration or disruption. In addition, all open spaces should be designed and planted to enhance the attractiveness of the neighborhood. Whenever possible, the development parcel should be laid out so that some of the landscaped areas are visible to the neighborhood.”

The proposal would increase the amount of landscaping on the site and be visible to pedestrians on the community path. The increased landscaping on the site would increase the attractiveness of the neighborhood. No increases to the building footprints or groundcover are proposed.

10. Location of Access: The Applicant must ensure that “the location of intersections of access drives with the City arterial or collector streets minimizes traffic congestion.”

The proposal meets all requirements of the zoning regarding parking and driveway dimensions. Traffic will predominantly enter and exit from a single curb cut and garage access off of Newberne Street. Parking for the studios would be located in the garage and off of Willow Avenue (two spaces). No new curb cuts are proposed.

13. Screening of Service Facilities: The Applicant must ensure that “exposed transformers and other machinery, storage, service and truck loading areas, dumpsters, utility buildings, and similar structures shall be effectively screened by plantings or other screening methods so that they are not directly visible from either the proposed development or the surrounding properties.”

All service facilities will be subject to screening requirements as conditioned in this permit.

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Danielle Fillis, Elaine Severino and Josh Safdie with Scott Darling and Richard Rossetti absent. Upon making the above findings, Susan Fontano made a motion to approve the request for a special permit. Josh Safdie 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	Approval is for the construction of a seven unit residential development and two approximately 500 nsf studio office spaces. This approval is based upon the following application materials and the plans submitted by the Applicant and/or its agent:		Plng.							
	<table><tr><th>Date (Stamp date)</th><th>Submission</th></tr><tr><td>(4/14/09)</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>6/16/09 (6/23/09)</td><td>Plans submitted to OSPCD (renderings and A0, A1, A2, A3, A4, A5, A6)</td></tr></table>				Date (Stamp date)	Submission	(4/14/09)	Initial application submitted to the City Clerk's Office	6/16/09 (6/23/09)	Plans submitted to OSPCD (renderings and A0, A1, A2, A3, A4, A5, A6)
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6/16/09 (6/23/09)	Plans submitted to OSPCD (renderings and A0, A1, A2, A3, A4, A5, A6)									
Any changes to the approved plans or elevations that are not de minimis, or any changes to the use, must receive ZBA approval.										
2	Any transformers should be located as not to impact the landscaped area and shall be fully screened.	Electrical permits & CO	Plng.							
3	Any fencing installed shall not be chain link and along the community path shall be constructed as depicted in the plans and renderings.	CO	Plng.							
4	A code compliant fire alarm system and fire suppression system shall be installed.	CO	FP							
5	Applicant shall supply two bicycle parking spaces, which can be satisfied with one u-type bicycle rack. This rack should be located within the structure.	CO	Plng.							
6	The Applicant, its successors and/or assigns, shall be responsible for maintenance of both the building and all on-site amenities, including landscaping, fencing, lighting, parking areas and storm water systems, ensuring they are clean, well kept and in good and safe working order.	Cont.	ISD							
7	The Applicant shall at his expense replace any existing equipment (including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheel chair ramps, granite curbing, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity. All new sidewalks and driveways must be constructed to meet DPW standards.	CO	DPW							
8	All construction materials and equipment must be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P							
9	The applicant shall provide notice of intent to strictly comply with applicable State and Federal regulations regarding air quality including without limitation continuous dust control during demolition and construction.	CO	Plng/OSE							

10	The applicant shall develop a demolition plan in consultation with the City of Somerville Inspectional Services Department. Full compliance with proper demolition procedures shall be required, including timely advance notification to abutters of demolition date and timing, good rodent control measures (i.e. rodent baiting), minimization of dust, noise, odor, and debris outfall, and sensitivity to existing landscaping on adjacent sites;	Demolition Permitting	ISD	
11	Because of the history of the site and the intended residential use, the Applicant shall, prior to issuance of any foundation permit and/or any building permit for the project, provide to the Planning Department and the Inspectional Services Department: a) a copy of the Response Action Outcome (RAO) Statement, signed by a Licensed Site Professional (LSP) and filed with DEP, verifying that a level of no significant risk for the proposed residential use has been achieved at the site; or b) if remediation has not reached the RAO stage, a statement signed by an LSP describing (i) the management of oil and hazardous materials/waste at the site, including release abatement measures intended to achieve a level of no significant risk for residential use at the site, treatment and storage on site, transportation off-site, and disposal at authorized facilities, (ii) a plan for protecting the health and safety of workers at the site, and (iii) a plan for monitoring air quality in the immediate neighborhood.	Building Permits	ISD/Plng.	
12	Notification must be made, within the time period required under applicable regulations, to the Massachusetts Department of Environmental Protection (DEP) if there is any discovery of hazardous materials, or regulated hazardous substances at the site. The City's OSE office and the Board of Health shall also be notified.	CO	Housing	
13	To the maximum extent feasible applicant will utilize strategies during construction to mitigate dust and control air quality, to minimize noise and to implement a waste recycling program for the removed debris.	During Construction	OSE/ISD	
14	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.	CO	Plng.	

Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*
Orsola Susan Fontano, *Clerk*
Danielle Fillis
Elaine Severino (Alt.)
Josh Safdie (Alt.)

Attest, by the 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 _____