



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 2008-30

Site: 9 Pitman Street/18 Beech Street

Date of Decision: September 3, 2008

Decision: *Petition Approved with Conditions*

Date Filed with City Clerk: September 10, 2008

ZBA DECISION

Applicant Name:	Howard Shen
Applicant Address:	27 James Street, #2, Brookline, MA 02446
Property Owner Name:	Thomas Shen
Property Owner Address:	71 Hancock Street, Lexington, MA 02420
Agent Name:	Adam Dash, Esq.
Agent Address:	48 Grove Street, Somerville, MA 02144

Legal Notice:

Applicant: Howard Shen & Owner: Thomas Shen seek a variance for maximum ground coverage and a special permit under SZO §4.4.1 for the alteration of a non-conforming structure in order to reconstruct a non-conforming 5-family dwelling. RB zone. Ward 3.

<u>Zoning District/Ward:</u>	RB zone/Ward 3
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	June 30, 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 2008-30 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 proposal is to construct a five-family dwelling in a townhouse-like configuration with shared enclosed parking for ten cars and five bicycles. There would be one 15-foot curb cut along Pitman Street and one measuring 16-feet along Beech Street. The structure would be 26' 6" tall, measured from midpoint of finished grade, or 32' from the

lowest point on the site, which is a similar height to the existing building. The structure would be approximately 9,000 net square feet. The landscaped area would be 34% including the rear deck.

FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1):

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 Zoning Board of Appeals made the following findings, as required under §5.1.4:

1. Information Supplied: The Board finds 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 Applicant requires a special permit under §4.4.1 of the SZO. Under §4.4.1, "The SPGA, as a condition of granting a special permit under this Section must find that such extension, enlargement, renovation or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming structure." The structure would not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The proposal increases the structure's encroachment on the nonconforming front, rear and side yards but the setbacks are becoming greater or more conforming in terms of distance from the property line.
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 proposal is consistent with the purposes of the ordinance, including "to conserve the value of land and buildings", "to encourage the most appropriate use of land throughout the City", and to preserve medium density neighborhoods.
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 massing of the house is consistent with the neighborhood. Most buildings are two and one-half stories tall and have minimal front yard setbacks. The style of the house incorporates historic design elements and materials in a contemporary way including a gambrel roof, bays, stoops, clapboards, and chimneys. All of the parking would be enclosed within the structure and therefore would not be visible. The sidewalk would be restored and would be pedestrian friendly with doorways, stoops, and planters lining them.

FINDINGS FOR VARIANCE (Maximum ground coverage SZO §8.5.C)

In considering a requested variance, the Special Permit Granting Authority must make positive findings under §5.5.3 of the SZO. The findings required are outlined below. The Board agrees with the findings provided by the Applicant's Agent.

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 Agent stated, "Mass. Gen. L. c.40A, §10 requires a variance petitioner to show that "a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise." The hardship must relate to the premises for which the variance is being sought. Hurley v. Kolligian, 333 Mass. 170, 173 (1955)."

“When “many lots in the neighborhood are nonconforming, the overall effect on the public of the deviations from lot frontage and lot width requirements would be truly de minimus, not substantially derogating from the purpose of the by-law.” Creasia v. Milford Zoning Board of Appeals, Mass. Superior Court, 1995 WL 1146155, citing Chater v. Board of Appeals of Milton, 348 Mass. 237, 246, 202 N.E.2d 805 (1964).”

“In this matter, the proposed five-family residential use will not change, however, the lot is narrow, irregularly shaped, and sloped. Such conditions were not created by Applicant. Due to said shape of the lot, in order to bring the Premises into compliance with the look of the neighborhood (which is a goal of the SZO) and with the SZO itself, the variance for maximum ground coverage is required for the parking and streetscape goals of the City to be met.”

“Applicant is seeking to make the Premises comply with the look of the neighborhood by eliminating the surface parking along Pitman Street, reducing the curb cut along Pitman Street, having the structure entrances engage Pitman Street along the sidewalk, putting compliant parking underground for bicycles and automobiles, and creating a facade which contains elements found in the neighborhood, all while continuing the current use as a 5-family dwelling.”

“In order to accomplish those goals, which will create compliant parking and will reduce the noncompliance on three setbacks (front, rear and left side), the maximum ground coverage will be violated by 5%.”

“Due to the irregular and narrow shape of the lot, altering the existing structure to be more zoning compliant with regard to parking and setbacks, including having the required number and size of parking spaces and having the required aisles for movement of automobiles, causes a small violation in ground coverage, thereby creating a substantial hardship to Applicant, and thereby meeting the standard for a variance.”

“A literal enforcement of the SZO for maximum ground coverage would create a substantial hardship on the Applicant, who is only seeking to bring the Premises into closer compliance with the goals of the SZO. Without the ground coverage variance, the Premises would continue to be noncompliant in other areas.”

“In Bellardo v. Brock, Mass. Land Court, 1990 WL 10092009, it is worth quoting the following passage:

“The configuration of the locus does not appear to have been the result of conveyances by predecessors in title of the Trust in the recent past. Moreover, because of the lot's shape and the location of the structure thereon, the Trust would suffer hardship if the parking requirements were applied literally and unnecessarily as to the use contemplated by the Trust; any use consistent with the history of the premises would require a variance. These unusual conditions make the grant of the variance fall within the ZBA's statutory authority. Accordingly, the Board of Appeals was warranted in granting the variance.”
Bellardo, at page 10.

Bellardo is similar to the Applicant's situation, in that the Assessor's Map (and the plot plan filed by Applicant) show the narrow, irregularly shaped lot. The configuration of the Premises is not the result of current owner or the Applicant, and no other lot in the neighborhood has the combination of lot and 5-family structure that the Premises has. The Premises has a history of a 5-family dwelling use. Applicant would suffer hardship if the maximum ground coverage requirements were literally applied because the 5-family use with compliant parking and improved setbacks will trigger some variance.”

The Board agrees with this finding.

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 Agent stated, "In Marashlian v. Zoning Board of Appeals of Newburyport, 421 Mass. 719, 726, 660 N.E.2d 369, 374 (1996), the Court stated: "We reject the proposition that a variance is unwarranted if any other possible use can be made of a site."

"There will always be a less-intensive use, however, the analysis should focus on what relief is being sought and whether that relief is the minimum necessary for Applicant. The Applicant is not seeking to change the 5-family use of the structure, and the Applicant cannot acquire additional land to comply with ground coverage limits, such that the relief being sought is the minimum necessary to alter the 5-family structure while complying with parking and improving compliance with setbacks. A 5% ground coverage violation is minor."

The Board agrees with this finding.

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 Agent stated, "The purpose and the intent of the SZO, as stated in SZO §1.2, is, in part, to promote the health, safety and welfare of the inhabitants of the City of Somerville, adequately protect the environment, to encourage housing for persons of all income levels, to encourage the most appropriate use of land throughout the City, and to preserve and increase the amenities of the City."

"Allowing the variance will enable the Applicant to remove the unsightly surface parking along Pitman Street; reduce the current curb cut which runs the entire length of the Pitman Street property line, thereby improving pedestrian safety; have a structure which engages Pitman Street; and reduce three of the setbacks."

"While the existing structure has a ground coverage of 48%, much of it is paved surface parking and a weed-choked patch. While the proposed structure may have 55% ground coverage, the replacement of surface parking and weeds with a handsome structure and landscaping, while hiding the parking underground, will actually improve the impact of the Premises on the rest of the neighborhood."

"Allowing the variance will enable the Premises to remain a 5-unit dwelling while reducing the neighborhood impact. It is unusual for a variance to actually make a structure fit better into the neighborhood, but this is one of those cases."

The Board agrees with this finding.

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 approve the request for a **variance**. Scott Darling seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **APPROVE** the request.

Susan Fontano made a motion to approve the request for a **special permit**. Scott Darling 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 alteration of a non-conforming structure in order to reconstruct a non-conforming 5-family dwelling. This approval is based upon the following application materials and the plans submitted by the Applicant and/or its contractor:	CO/ Building Permit	PIng.							
	<table><tr><th>Date</th><th>Submission</th></tr><tr><td>May 29, 2008</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>August 5, 2008</td><td>Modified plans submitted to OSPCD (garage level plan A2.0, entry level plan A2.1, upper level plan A2.2, roof plan A2.4, all elevations A3.1-A3.4, renderings RE.1-RE.5)</td></tr></table>				Date	Submission	May 29, 2008	Initial application submitted to the City Clerk's Office	August 5, 2008	Modified plans submitted to OSPCD (garage level plan A2.0, entry level plan A2.1, upper level plan A2.2, roof plan A2.4, all elevations A3.1-A3.4, renderings RE.1-RE.5)
	Date				Submission					
	May 29, 2008				Initial application submitted to the City Clerk's Office					
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Any changes to the approved plans that are not <i>de minimis</i> must receive ZBA approval.										
2	The Applicant shall provide a landscape plan with a minimum of two trees as required under SZO §10.3.	Building Permit	PIng.							
3	Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards.	Perpetual	PIng. / ISD							
4	All new sidewalks will be installed by the Applicant in accordance with the specifications of the Highway Superintendent.	CO	PIng.							
5	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.	CO	DPW							
6	A complete sprinkler system and an up to date code compliant fire alarm detection system shall be installed.	CO	FP							
7	The Applicant shall screen the trash cans so that they are not visible from the street.	CO	PIng.							
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 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	
10	The Applicant must ensure that drainage from the site conforms to the State DEP storm water regulations as well as City regulations (no new storm connections are allowed per city policy).	Building Permit	Eng.	
11	An engineering study for the retaining wall shall be conducted prior to any excavation. If the wall is replaced or rebuilt, same or better materials shall be used.	Prior to Excavation of Retaining Wall	ISD, Eng., Plng	
12	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*
Richard Rossetti
T.F. Scott Darling, III, Esq.
Elaine Severino (Alt.)

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 _____