



CITY OF SOMERVILLE, MASSACHUSETTS

PLANNING BOARD

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Case #: ZBA 2008-30

Site: 9 Pitman St / 18 Beech St

Date: August 7, 2008

Recommendation: Conditional Approval

PLANNING BOARD RECOMMENDATION

Site: 9 Pitman St / 18 Beech St

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 02141

Agent Name: Adam Dash, Esq.

Agent Address: 48 Grove Street, Somerville MA 02144

Alderman: Taylor

Legal Notice: The Applicant seeks 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 and reconfigure a non-conforming 5-family dwelling.

Zoning District/Ward: Residence B / 3

Zoning Approval Sought: Special Permit under SZO §4.4.1

Date of Application: June 23, 2008

Date(s) of Public Hearing: ZBA: July 23, 2008

Date of Decision: N/A

Vote: N/A

Dear ZBA members:

At its regular meeting on August 7, 2008, the Planning Board heard the above-referenced application. Based on materials submitted by the Applicant and the Staff recommendation, the Board voted (5-0, with J. Favaloro absent), to recommend **conditional approval** of the requested **Special Permit**.

I. PROJECT DESCRIPTION

1. Subject Property: The property is a five-family wood-frame dwelling with vinyl siding. The structure is three stories along Pitman Street and two stories along Beech Street due to the slope of the site. The Inspectional Services Division ordered the Owner to demolish concrete garages facing Pitman Street in 2006. A continuous curb cut remains along Pitman Street. The parcel is 9185 sf and is 26 percent landscaped.

2. Proposal: 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. The current plans include the following positive revisions from the original submission received in the Office of Strategic Planning and Community Development on June 30, 2008: there are entrances to the units on the Pitman Street side as opposed to only being in the back of the building so that the Pitman Street side acts as the front of the dwelling – these entrances also activate the street and make it more pedestrian friendly; also, the style has changed from a modern building with roof decks and a loft level to a more traditional gambrel design with two stories in response to the neighbors' feedback.



View of Pitman Street Façade (left)



View of Beech Street Façade (right)

3. Nature of Application: The site is currently nonconforming with respect to use, front yard setback, rear yard setback, side yard setback, parking spaces and bicycle parking. The use of the property is not changing. The number of parking spaces would become conforming with an increase from 8 to 10 spaces. The bicycle parking would increase to 5 and only 1 is required. The dimensional requirements would change in the following way:

Dimensional Requirements that are currently nonconforming	Existing	Proposed	SZO	Remaining Nonconformity
Front Yard Setback	1' 7" on Pitman	6'	15'	yes
Rear Yard Setback	2' 9"	13' 1"	10' 6"	no
Side Yard Setback (Left)	8' 8 1/8"	15'	15'	no
Side Yard Setback (Right)	6'	6'	15'	yes

The proposal impacts the nonconforming front, rear and side yards by virtue of increased but the setbacks are becoming more conforming in terms of distance from the property line. The existing nonconformities

require the Applicant to obtain special permits under §4.4.1 of the Somerville Zoning Ordinance (SZO). Section 4.4.1 states that “[l]awfully existing one- and two-family dwellings which are only used as residences, which are nonconforming with respect to dimensional requirements, may be enlarged, extended, renovated or altered by special permit granted by the SPGA in accordance with the procedures of Article 5.”

The Applicant must also apply for a variance for ground coverage. The existing ground coverage is 48%, which is conforming because it is below the maximum allowed coverage of 50%. The proposal would have a ground coverage of 55%.

4. Surrounding Neighborhood: The surrounding neighborhood is comprised of many two- and three-family dwellings that are two or two and one-half stories. There are several historic properties in the neighborhood which are described in the Historic Preservation Staff comments below.

5. Impacts on Abutting Properties: Closing the continuous curb cut along Pitman Street to restore the sidewalk and create a pedestrian friendly façade will be an improvement for abutters. The retaining wall to the rear of the property will be more secure for the abutters to the rear of the site. The headlights from pulling into and out of the driveway are the only foreseen negative impact of the development. The neighbor to the west said that she and the Applicant have discussed putting a fence along the western edge of the driveway that would defray headlights but would not block all air and light. This abutter appears to have one standard-sized window on the side of the house facing the proposal and a five foot setback. The fence is not shown on the site plan and if the neighbor and Applicant agree on a fence it would not impact the project.

5. Green Building Practices: The siding would be Hardieboard which is considered an environmentally friendly material for the following reasons: the raw materials are low in toxicity (wood pulp, cement, sand and water) and can be recycled up to 4 times; it lasts longer than other materials so it does not have to be replaced as often and reduces maintenance and repair costs; and the manufactured finish eliminates VOCs during exterior painting (www.jameshardie.com). The windows would be large to provide natural light and reduce the need for electricity. Finally, the building would have high efficiency boilers that would utilize a new hydro-forced air system.

6. Comments:

Alderman Taylor: I am supporting this project. We have had a neighborhood meeting and the majority of the neighbors appear to be in favor.

Fire Prevention: “The proposal for 9 Pitman Street/18 Beech Street will require a complete sprinkler system installation and an up to date code compliant fire alarm detection system.”

Historic Preservation: *Reviewed first scheme submitted - dated June 30, 2008. The comments are applicable to the new plans unless otherwise noted.* “Although 18 Beech Street is not listed as part of a Local Historic District (LHD), it directly abuts the Spring Hill National Register District and the Enoch Robinson Round House, one of the most significant historic structures in the City of Somerville, at the intersection of Atherton and Beech Streets. Enoch Robinson was an inventor and hardware manufacturer, many of whose designs are still being recreated to this day. The design of his “Round House” is unique, and is one of a few such structures still extant in the New England region. Other properties of historic significance in the immediate vicinity are the Carr Schoolhouse condominiums at 25 Atherton Street and the William Robinson House next door to the Round House at 40 Atherton Street. All of these buildings are part of the historic

streetscape that will be affected visually by the construction of a new building at the corner of Pitman and Beech Streets.

In contrast to the current building at 18 Beech Street, the architecture of the proposed new development is a clear improvement for the streetscape. Although clearly the design is much more modern [revised to be more traditional] than the surrounding structures, it is more complementary to them, reflecting many of the same forms and materials found in Somerville buildings within its peak 1870-1920 development era. During this period, building facades often incorporated bays and towers, giving an undulating movement to the streetscape. The proposed building includes modern square bays that emulate this in and out pattern. Older structures were typically sided with wood clapboards and shingles, and frequently integrated paneling or other materials to add visual interest to the facade. The proposed design also makes use of wood clapboards and paneling to enhance the form.

The HPC Staff also sees as positive features of this development, over the existing non-conforming structure, the removal of a building encased in vinyl siding and replacing it with one of predominantly wood siding; a limited number of windows overlooking the rear yards of abutting historic properties and decreasing their sense of privacy; and extensive use of trellises [removed], brick paving, and landscaping to maximize the amount of open and green space both physically and visually available to the neighborhood.

[...The vacant parcel next to the proposed site] serves as an important buffer between the proposed very modern building and the historic Round House that sits on a very congested lot, with no on-site parking. This lot was originally part of the Enoch Robinson Estate and gave it the type of breathing room that such an important structure deserves. The HPC Staff hopes that this lot can remain undeveloped over the longer term.”

Traffic and Parking: “[...] Traffic and Parking has no objections to the reconfiguration of these parking spaces.”

II. 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 Planning Board 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.

III. 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.

IV. RECOMMENDATION

Special Permit under §4.4.1

Based on the above findings, the Planning Board recommends **CONDITIONAL APPROVAL** of the requested **SPECIAL PERMIT**.

Variance for Maximum Ground Coverage §8.5.C

Based on the above findings, the Planning Board recommends **CONDITIONAL APPROVAL** of the requested **VARIANCE**. The Board finds that the requested variance does meet the requirements set forth under §5.5.3 of the SZO.

Although the Planning Board is recommending approval of the requested Special Permit and Variance, the following conditions should be added to the permits:

#	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	Plng.							
	<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	Plng.							
3	Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards.	Perpetual	Plng. / ISD							
4	All new sidewalks will be installed by the Applicant in accordance with the specifications of the Highway Superintendent.	CO	Plng.							
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	Plng.							

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.	

Sincerely,



Kevin Prior
Chairman

Cc: Applicant: Howard Shen
Owner: Thomas Shen
Agent: Adam Dash, Esq.

