



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.)
Josh Safdie (Alt.)

Case #: ZBA 2004-05-R0208
Site: 135 Willow Avenue
Date of Decision: November 19, 2008
Decision: Revision Approved with Conditions

Date Filed with City Clerk: November 20, 2008

ZBA DECISION

Applicant Name:	131 Willow Avenue, LLC
Applicant Address:	18 York Road, Winchester, MA 01890
Property Owner Name:	131 Willow Avenue, LLC
Property Owner Address:	18 York Road, Winchester, MA 01890
Agent Name:	Adam Dash, Esq.
Agent's Address:	48 Grove Street, Suite 304, Somerville, MA 02144

Legal Notice: Applicant & Owner 131 Willow Ave seeks a revision to Special Permit 2004-05 to allow for the continued existence of the porch roof, doors and windows. RC zone. Ward 6.

<u>Zoning District/Ward:</u>	Residence C (RC) zone/Ward 6
<u>Zoning Approval Sought:</u>	Revision to Special Permit #2004-05
<u>Date of Application:</u>	January 30, 2008
<u>Date(s) of Public Hearing:</u>	3/5, 3/19, 4/2, 4/16, 5/7, 5/21, 6/4, 6/18, 7/9, 7/23, 8/6, 8/20, 9/3, 9/17, 10/1, 10/15, 11/5 & 11/19/08
<u>Date of Decision:</u>	November 19, 2008
<u>Vote:</u>	5-0

Appeal #ZBA 2004-05-R0208 was opened before the Zoning Board of Appeals at Somerville City Hall on March 5, 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 two (2) hearing(s) of deliberation, the Zoning Board of Appeals took a vote.

DESCRIPTION & FINDINGS:

In June 2004 the applicant was granted a Special Permit with Site Plan Review to demolish an existing garage and construct a ten unit building under SZO §7.11.1.c. The applicant also received variances from side yard setback requirements (SZO §8.5.H), rear yard setback requirements (SZO §8.5.I) and front yard setback requirements (SZO §8.5.G).

In December 2004 the applicant was granted a Minor Revision for revised plans for the development, which were the result of a legal challenge to the original Special Permit and a subsequent Settlement Agreement. This agreement, dated December 15, 2004, was also incorporated into the revised approval.

In April 2007 the applicant requested a Minor Revision and received approval to modify plumbing; the number and placement of windows; the number, size, and placement of doors, closets, condenser locations, and other ADA and safety-related changes to the plans approved under the Special Permit. Other changes requested in that application were not granted, being found to be "major".

Applicant and Owner 131 Willow Avenue, LLC, is currently requesting a Revision to Special Permit with Site Plan Review approval ZBA 2004-05, in order to legalize the structure as built. The applicant requires this Revision approval to obtain certificates of occupancy for Units 3, 7 and 10.

Items that have been built without approval and for which approval is sought are:

- 1) The third floor porch roof on the northeastern corner of the development.

A third floor deck on the northeastern corner of the building along Morrison Avenue was constructed with a roof. The roof is an extension of the entire building's roof.

- 2) Relocated doors and windows on the second and third floor porches (units 7 and 10).

Two sets of doors were designed for access onto the decks. It was determined that the second set of doors would not fit into the intended locations for structural reasons. The second doors were each replaced with a window matching the other windows at the relevant locations.

The Zoning Board finds that the third floor porch roof would not create substantial detriment to the surrounding neighborhood if mitigation measures are undertaken. There have been numerous meetings and discussions involving the applicant, Alderman, Staff and community since the last Board hearing. Various landscaping and funding proposals have been proposed. The result of those discussions led to the applicant's hiring of a landscape architect that has worked closely with the City's Parks and Open Space group and Planning to develop a mitigation proposal. The Board finds that this proposal will address concerns regarding the screening of the third floor porch roof and the general massing of the structure. Several community meetings have been held and the current proposal has been presented to the community.

Landscaping: In March 2008 the Board suggested a substantial improvement to the landscaping, both on the 135 Willow Avenue property and on the adjacent section of bike path, that will visually mitigate the increase in scale created by the porch roof and improve the appearance of the entire project. The proposal includes the planting of several additional trees along the Morrison Street side of the building on the applicant's property to screen the porch from the street views. Views of the porch roof from the bike path will be screened with a 4"-5" caliper Chinese Pine tree. For the length of the bike path along the applicant's property, a gently sloping berm will be constructed that will act to block views of the gas meters and the building's foundation. A combination of trees, shrubs and ground cover on this berm will effectively screen the mass of the structure. A ten foot wide buffer between the berm and the bike path will be incorporated into the plan to provide space in the event the City moves forward with drainage improvements in the area.

Painting: The applicant has agreed to paint the foundation of the building and, subject to approval of NSTAR, paint the transformer located in front of the property. The painting will act to improve the appearance of the structure.

Request #2:

The Board finds that the relocated doors and windows on the second and third floor porches to be acceptable alterations, having minimal impact on the appearance of the structure.

Overall, the Board finds that the mitigation would balance any negative effects of the building as it exists. The final product will produce a more appealing building and substantially improve the bike path for the use of the community.

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Fillis and Scott Darling. Upon making the above findings, 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 revision of an approved ten unit building to allow for the third floor porch in the north east corner bordering Morrison Avenue to have a roof and to allow for a change in door and window locations on the second and third floor northeastern porches. This approval is based upon the following materials and the plans submitted by the Applicant:	CO	PLNG.									
	<table><tr><th>Date</th><th>Submission</th></tr><tr><td>December 14, 2004</td><td>Site Plans and Elevations</td></tr><tr><td>April 4, 2007</td><td>Photographs of as-built façade and floor plans</td></tr><tr><td>November 14, 2008</td><td>Photograph of as-built façade (R-1), second and third floor porch plans (P-1, P-2) and landscaping plans (P-2A, P-4B, P-4P)</td></tr></table>				Date	Submission	December 14, 2004	Site Plans and Elevations	April 4, 2007	Photographs of as-built façade and floor plans	November 14, 2008	Photograph of as-built façade (R-1), second and third floor porch plans (P-1, P-2) and landscaping plans (P-2A, P-4B, P-4P)
	Date				Submission							
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November 14, 2008	Photograph of as-built façade (R-1), second and third floor porch plans (P-1, P-2) and landscaping plans (P-2A, P-4B, P-4P)											
Any changes to the approved site plan, elevations, or landscaping proposal that are not <i>de minimis</i> must receive ZBA approval. These conditions replace all conditions attached to prior permits.												
2	All landscaping at the site must be planted and maintained according to National Nurseryman’s standards	Final CO issuance	PLNG.	Original Permit Condition 6/24/04 (Modified)								
3	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, and parking areas, ensuring they are clean, well kept and in good and safe order;	Cont.	ISD.	Original Permit Condition 6/24/04								
4	Certificate of Compliance must be obtained from the Fire Department prior to the issuance of final Certificates of Occupancy	CO	ISD	Original Permit Condition 6/24/04 (Modified)								

5	Since there will be openings in the south and east elevations of the garage to allow for cross ventilation, the Applicant shall ensure that these openings are strongly secured with a lattice type detail or similar structure.	CO	PLNG.	Original Permit Condition 6/24/04 (Modified)
6	The applicant shall paint the foundation of the building Sherwin Williams #6250 – Granite Peak	CO	ISD	
7	The Certificate of Occupancy for unit seven (7) shall not be issued until the approved landscaping proposal of November 14, 2008 has been executed and received Planning Staff approval.	Final CO issuance	ISD/ PLNG.	
8	The applicant shall submit as-built elevations for Planning Staff confirmation and inclusion in the file.	Final CO issuance	PLNG.	
9	The applicant shall create a restriction in the master deed that no porches on the structure shall be enclosed.	Cont.	ISD	
10	The Applicant must contact the Planning Staff at least five working days in advance of a request for a final Certificate of Occupancy issuance to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final CO issuance	PLNG.	

Attest, by the Zoning Board of Appeals:

Herbert Foster, Chairman
Orsola Susan Fontano, Clerk
Richard Rossetti
Danielle Fillis
T.F. Scott Darling, III, Esq.

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
ZBA proceedings are filed in the Somerville Planning Dept.

CLERK'S CERTIFICATE

Any appeal of this decision must be filed within twenty (20) 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 special permit, or any extension, modification or renewal thereof, 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. The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services is 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 either

_____ 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.

Signed _____

City Clerk Date _____