



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2014-84

Date: September 11, 2014

Recommendation: Unable to Recommend

PLANNING STAFF REPORT

Site: 101 Orchard Street

Applicant & Owner Name: Deborah Baskin & Robert Larsen

Applicant Address: 101 Orchard Street, Somerville, MA 02144

Alderman: Rebekah Gewirtz

Legal Notice: Applicant and Owner, Deborah Baskin & Robert Larsen, seek a Variance under SZO §5.5 and §10.7.1 to construct an 8 foot fence along the side property line within the rear yard. RB Zone. Ward 6.

Dates of Public Hearing: Zoning Board of Appeals – September 17, 2014

I. PROJECT DESCRIPTION

1. Subject Property: The subject parcel is 5,600 square feet and comprised of a single-family dwelling. The building is 2 1/2 stories in height and contains approximately 2,500 habitable square feet. The surrounding neighborhood is predominantly residential with a mix of single, two-, three- and multi-family housing and Davis Square nearby.

The subject parcel has not received any prior zoning relief.

2. Proposal: The Applicant proposes to raise the height of the existing wood fence by 2'-2" through the use of cedar lattice at the top. This height extension would be located along the north side property line and extend approximately 30 feet to the rear of the property. Due to landscaping and positioning of the dwelling at the lot line, the fencing would not be visible from the sidewalk. The adjacent building at 103-105 Orchard Street is an 8-unit apartment that has a unit entrance and parking near the private outdoor space of the occupants at 101 Orchard Street. The consistent parking activity at the rear of the adjacent lot is disturbing to the 101 Orchard St occupants on a regular basis when using the rear yard.

3. Nature of Application: The Somerville Zoning Ordinance, under §10.7.1, limits maximum fence height to 6 feet above the existing grade. To create a new nonconformity, where the fence height would become nonconforming requires approval of a variance.

4. Surrounding Neighborhood: Located in near the intersection of Milton and Orchard streets, this is a residential neighborhood with a mix of dwelling units. The subject property is located in a Residence B district within the larger Davis Square neighborhood.

5. Impacts of Proposal: The proposal to add 2' of height to create an 8' fence is not detrimental to the dwelling on this parcel and will provide occupants at 101 Orchard and 103-105 Orchard additional privacy when within their respective rear yards. This additional height would not be visible from the street and would appear to maintain the character of the neighborhood.

Fire Prevention: Has been contacted but has not yet provided comments.

Ward Alderman: Alderman Gewirtz has been contacted but is very supportive of this application. Alderman Connolly is also in support of this application.

II. FINDINGS FOR VARIANCE (SZO §5.5.3 and §10.7.1):

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.”

Staff Response: The building is located near the side property line which makes private outdoor space difficult to enjoy within close proximity of the adjacent parking lot. While Staff does not support that special circumstances exist related to soil conditions, shape, or topography of land, Staff does recognize that the adjacent use as an 8-unit apartment building has presented a hardship to 101 Orchard when attempting to utilize the private outdoor space.

Applicant Response: It would appear that the best solution for the privacy/screening issue between the two adjacent yards, which are used in very different ways, would be the installation of trees and plant material as the applicant has done on the other lengths of the property at 101 Orchard Street. Due to the space and ground material constraints, the applicant is not able to plant trees along this particular length of the property line. Two weeks ago, the applicant offered to pay for and install 8 arbor vitae trees to be planted along the rear length of the neighbor's property line where it is possible to install tall plantings. This would be the mutual benefit of having a “green screen” between the two properties. For unknown reasons the properly owner of 103-105 Orchard St refused the offer.

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.”

Staff Response: Due to the close proximity of the adjacent apartment building and use of the rear yard as a parking lot, occupants of 101 Orchard have difficulty utilizing their rear yard. The Applicant believes the increased height of the fence will further reduce or eliminate vehicular noise enough to be able to utilize the private outdoor space.

Applicant Response: The applicant often uses the backyard and patio for eating meals, entertaining friends, and as plays space for kids. As the current fence only rises 3’-8” above the raised patio, the adjacent parking lot and all its activities are in clear view and hearing range. This can be disruptive during meals or just when trying to talk to one another. Granting our request to build a lattice extension would be the minimum approval necessary to grant us reasonable relief and would result in a reasonable use of the structure.

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.”

Staff Response: Granting a Variance will enable the occupants on both sides of the fencing to have a better quality of life as they can more fully enjoy their private outdoor space through the added height of the fence. The fence enables both single-family and multi-dwelling residential uses to exist harmoniously in a dense urban environment. The additional height will have minimal to no effect on the streetscape as well as adjacent properties.

Applicant Response: The extension to the cedar fence would in no way be injurious to the neighborhood because this section of the fence is obscured by a large shrub in the front yard and is barely visible from the street. In addition, doing so would provide an additional service to the neighbors, as tenants of one of the units have a small deck on the right side of the building facing the applicant’s fence, and extending its height would increase their privacy as well. In addition, the contemporary design of the latticed cedar fence extension would be enjoyable from both sides. The granting of this variance is in harmony with the SZO because it is consistent with the mission that aims to enhance, protect and allow growth in our urban neighborhoods by encouraging a mix of uses and sizes of dwellings, but without compromising the physical environment and quality of life for residents.

III. RECOMMENDATION

Variance under SZO §5.5.3 and §10.7.1

Based on the materials submitted by the Applicant, the above findings and subject to the following conditions, the Planning Staff is **UNABLE TO RECOMMEND** approval of the requested **VARIANCE** at this time.

The recommendation is based upon a technical analysis by Planning Staff of the application material based upon the required findings of the Somerville Zoning Ordinance, and is based only upon information submitted prior to the public hearing. This report may be revised or updated with new recommendations, findings and/or conditions based upon additional information provided to the Planning Staff during the public hearing process.

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
1	Approval is for a Variance to construct a 14 foot fence around the Lower and Middle School play yard. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/PIng.	
	Date (Stamp Date) Submission			
	(July 31, 2014) Initial application submitted to the City Clerk’s Office			
	(September 11, 2014) Fence elevation, site plan, & photos submitted to OSPCD			
	(September 11, 2014) Plot plan			
	Any changes to the approved site plan that are not <i>de minimis</i> must receive SPGA approval.			
2	The Applicant or Owner shall meet the Fire Prevention Bureau’s requirements.	CO	FP	
3	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final Sign Off	PIng.	

