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MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA #2012-45
Site: 129-129R Highland Avenue
Date of Decision: October 17, 2012
Decision: Petition Approved with Conditions
Date Filed with City Clerk: October 23, 2012

ZBA DECISION

Applicant Name:	Kenneth Lanzilli
Applicant Address:	6 Benham Street
Property Owner Name:	Angelli Realty Trust
Property Owner Address:	108 Country Road, Tewksbury, MA 01876
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145

<u>Legal Notice:</u>	Applicant Kenneth Lanzilli and Owner Angelli Realty Trust, seek a Special Permit with Site Plan Review under SZO §7.11.1.c to establish a seven (7) dwelling unit use, a Variance under SZO §5.5 for relief from the rear yard setback requirement under SZO §8.5.I, and a Special Permit to alter a nonconforming structure under SZO §4.4.1 to construct a rear addition with parking on an existing 2½ story four-family dwelling.
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<u>Zoning District/Ward:</u>	RC zone/Ward 3
<u>Zoning Approval Sought:</u>	§7.11.1.c, §5.5, §8.5.I & §4.4.1
<u>Date of Application:</u>	May 31, 2012
<u>Date(s) of Public Hearing:</u>	7/11, 8/1, 8/15, 9/5, 9/19, 10/3 & 10/17/12
<u>Date of Decision:</u>	October 17, 2012
<u>Vote:</u>	4-1

Appeal #ZBA 2012-45 was opened before the Zoning Board of Appeals at Somerville City Hall on July 11, 2012. 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 property owner currently has control over both 129 and 129R Highland Avenue. However, the Applicant and Owner are working out an agreement with some of the abutting neighbors to sell 129R Highland Avenue to two or more of the adjacent neighbors in a joint ownership agreement. In this agreement, which is still being finalized, the current owner would relinquish his rights to the 129R Highland Avenue parcel and the neighbors would become joint owners of the property. From there, the Applicant would move forward with the proposed project to convert the existing four unit structure into a seven unit building via a substantial rear addition at 129 Highland Avenue. A small portion at the rear of the existing structure would be taken off and then a two story addition with parking underneath would extend deep into the lot. The existing building portion of the structure would be converted into three dwelling units and the new addition would contain four dwelling units over the top of 12 at grade parking spaces.

Unit # 1 would be located on the first floor of the existing building and would have two bedrooms, two full bathrooms, a living area, dining area, kitchen, and an enclosed porch that would span the entire width of the structure. Units # 2 and # 5 would be located on the second and third floors of the existing building, both with two bedrooms and two full bathrooms. Unit # 2 would also contain a small study and a three sided fireplace. Units # 3, # 4, # 6, and # 7 would all be located in the newly constructed addition and have direct access via an internal/external stairway to the rear of the property. Each of these units would also have two bedrooms and two full bathrooms as well as two private outdoor balcony spaces at the side and rear of each unit, one of which connects directly to the master bedroom in each unit. These units would also have the standard living, dining, and kitchen areas. All of the units would be accessible through a common entryway/hallway that is located near the entrance to the parking area. All of the units are generally around 1,200 net square feet with the exception of Unit # 5 which would only be 930 net square feet.

The parking garage area would have 12 spaces including one handicap accessible space. This parking area would be screened around its entire perimeter with fencing to block the views of the parking area from Highland Avenue and from abutting properties. There would be also access to the 129R Highland Avenue parcel through the back of this parking area as well. A trash enclosure for the building and four bicycle parking spaces would be located in the lobby of the common entryway. The third floor dormer on the front of the building will be slightly altered to return it to a design similar to the original dormer that was constructed when the house was built in the late 1800's.

FINDINGS FOR SPECIAL PERMIT WITH SITE PLAN REVIEW (SZO §5.2 & §7.11.1.c):

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.”

In considering a Special Permit with Site Plan Review under §7.11.1.c of the SZO, the Board finds that the use proposed would not be substantially more detrimental to the neighborhood than the existing use. The Applicant is meeting all dimensional and parking requirements of Article 8 and Article 9 in the design of the proposed addition with the exception of the rear yard setback requirement. The reasoning behind this is that Applicant and Owner are working out an agreement with the neighbors where the parcel at 129R Highland Avenue would be transferred into joint ownership of the neighbors before the project is constructed. This means that the Applicant could no longer use the depth of the 129R Highland Avenue parcel towards meeting the rear yard setback requirement, which would trigger the need for a Variance since the project would be constructed with only seven feet of setback from the rear property line. Other than this Variance request, the Applicant is meeting all other dimensional requirements, including lot area per dwelling unit at the site.

3. Purpose of 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 proposal is consistent with the purpose of the district (6.1.3. RC - Residence Districts), which 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."

4. Site and Area Compatibility: The Applicant has to ensure that the project "is 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 buildings are compatible with those prevalent in the surrounding area."

The proposed use would be compatible with the surrounding residential uses of the neighborhood. The property is located in an RC zoning district that runs along both sides of Highland Avenue. Immediately to left of the property is a group home, to the right is the Highland Masonic Temple Association, and at the rear is an RA zoning district with a mixture of single- and two-family dwellings. Along Highland Avenue there are a number of uses including several multi-family dwellings, institutional uses, and commercial/retail entities. Many of the structures along Highland Avenue are between four and seven stories in height, while the residential neighborhood behind the project site is mostly 2½ and 3 story structures. The proposed size and massing of the rear addition is in keeping with the overall context of the structures along Highland Avenue. The rear addition would be lower than the existing structure at the front of the property and at 34 feet in height, still 6 feet below the maximum allowable height requirement in the RC district. Additionally, by maintaining the existing structure right up against Highland Avenue and locating the parking at the rear of the lot, the project helps to maintain the existing streetscape experience along Highland Avenue and to promote a more friendly pedestrian environment. The project would still be maintaining the lot area per dwelling unit requirements for the district, along with all other dimensional requirements with the exception of the required rear yard setback. However, this is mainly due to the fact that the property Owner has agreed to sell his rights to the 129R Highland Avenue parcel, which has no frontage, to the neighbors as part of developing the 129 Highland Avenue lot. The 129R Highland Avenue parcel will function as open space, but for the purposes of zoning it could not be counted towards the rear yard setback requirement in the 129 Highland Avenue lot.

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

The site meets the accepted standards for a functional design. The proposal will build off of the existing 2½ story structure at the site and expand deeper into the lot with a portion of the structure that will contain four dwelling units and the project's 12 parking spaces underneath this addition at grade. The parking area has sufficient space for vehicles to maneuver and exit the site in a forward direction. The Applicant will need to confirm with the City Engineer that the drainage system is acceptable, as conditioned.

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 approval of the Special Permit with Site Plan Review shall be contingent upon the City Engineer's determination that no adverse impacts on public systems will result from the development. The current use at the site is a four-family residential use and the Board is anticipating that the proposed three additional units will not adversely impact the public services, street system, or sidewalks in the area.

7. Environmental Impacts: The Applicant has to ensure that the project "will not create adverse environmental impacts, including those that may occur off the site, or such potential adverse impacts will be mitigated in connection with the proposed development, so that the development will be compatible with the surrounding area."

Due to the residential nature of the proposed structure, no environmental impacts are foreseen as a direct result of this development. No new glare, smoke, vibration, nor emissions of noxious materials nor pollution of water ways or ground water nor transmission of signals that interfere with radio or television reception are anticipated as part of the proposal. There may be a slight increase in noise with the addition of three units to the site, but in the context of a mixed-use streetscape environment with heavy traffic on Highland Avenue, the impacts will be fairly minimal. The structure on the

property will remain a multi-family residential building in an RC District, which is consistent with the surrounding neighborhood.

8. Consistency with Purposes: The Applicant has to ensure that the project "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."

The proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to providing for and maintaining "the uniquely integrated structure of uses in the City; to lessen congestion in the streets; to protect health; to secure safety from fire, panic and other dangers; to conserve the value of land and buildings; and to encourage the most appropriate use of land throughout the City."

The proposal is also consistent with the purpose of the district (6.1.3. RC - Residence Districts), which 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."

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."

At this site there will be minimal, if any, grading to construct the project and there is no concern of erosion or the stripping of steep slopes as the site is relatively flat. On the 129 Highland Avenue parcel, the landscaping at the front and side of the property will be cleaned up and enhanced as part of the project. The landscaping at the front of the property will be visible from the Highland Avenue streetscape and will enhance the attractiveness of the neighborhood. Additionally, as part of this proposal, a significant area of greenspace will be preserved as the Applicant and Owner are working out an agreement with the neighboring property owners to have the 129R Highland Avenue parcel become jointly owned by multiple abutting neighbors. This parcel would then remain preserved as open space for all the abutting properties to enjoy and will act as a rear yard buffer for the proposed project.

10. Relation of Buildings to Environment: The Applicant must ensure that "buildings are: 1) located harmoniously with the land form, vegetation and other natural features of the site; 2) compatible in scale, design and use with those buildings and designs which are visually related to the development site; 3) effectively located for solar and wind orientation for energy conservation; and 4) advantageously located for views from the building while minimizing the intrusion on views from other buildings."

The existing building's massing and strong presence along Highland Avenue will not change as part of this project. The proposed addition will be entirely at the rear of the property therefore will not greatly alter the streetscape experience along Highland Avenue in any manner. The scale and massing of the proposed addition is also keeping in context with the surrounding neighborhood. The rear addition will be slightly lower than the existing building and will be well within the height limitations for the RC district at 34 feet. By maintaining the context of the existing structure on Highland Avenue and locating the parking at the rear of the lot, the project helps to maintain the existing streetwall pattern along Highland Avenue and will promote a more friendly pedestrian environment. Furthermore, by relinquishing rights to 129R Highland Avenue parcel and extending the proposed addition into the rear portion of the project site, much of the existing vegetation on this land locked parcel will be preserved for the neighboring properties to enjoy.

11. Stormwater Drainage: The Applicant must demonstrate that "special attention has been given to proper site surface drainage so that removal of surface waters will not adversely affect neighboring properties or the public storm drainage system. Storm water shall be removed from all roofs, canopies, and powered area, and routed through a well-engineered system designed with appropriate storm water management techniques. Skimming devices, oil, and grease traps, and similar facilities at the collection or discharge points for paved surface runoff

should be used, to retain oils, greases, and particles. Surface water on all paved areas shall be collected and/or routed so that it will not obstruct the flow of vehicular or pedestrian traffic and will not create puddles in the paved area. In larger developments, where practical, the routing of runoff through sheet flow, swales or other means increasing filtration and percolation is strongly encouraged, as is use of retention or detention ponds. In instances of below grade parking (such as garages) or low lying areas prone to flooding, installation of pumps or other devices to prevent backflow through drains or catch basins may be required.”

While additional review is required of drainage plans, any approval of the Special Permit with Site Plan Review should be conditional upon the City Engineer’s approval of such plans and determination that no adverse impact will result to the drainage system from the project’s design. The Board has included this as a condition of the Special Permit with Site Plan Review.

12. Historic or Architectural Significance: The project must be designed “with respect to Somerville’s heritage, any action detrimental to historic structures and their architectural elements shall be discouraged insofar as is practicable, whether those structures exist on the development parcel or on adjacent properties. If there is any removal, substantial alteration or other action detrimental to buildings of historic or architectural significance, these should be minimized and new uses or the erection of new buildings should be compatible with the buildings or places of historic or architectural significance on the development parcel or on adjacent properties.”

Please see the attached memorandum from Preservation Planner Kristi Chase dated June 28, 2012.

13. Enhancement of Appearance: The Applicant must demonstrate that “the natural character and appearance of the City is enhanced. Awareness of the existence of a development, particularly a non residential development or a higher density residential development, should be minimized by screening views of the development from nearby streets, residential neighborhoods of City property by the effective use of existing land forms, or alteration thereto, such as berms, and by existing vegetation or supplemental planting.”

The appearance of the new seven unit building and the site in general will enhance the surrounding neighborhood. The proposal will renovate the existing structure at the front of the property, including landscaping, and the proposed rear addition will be substantially screened by the existing structure as it is lower in height. The parking for the project is located at the rear of the property and will be substantially screened by the existing building and proposed fencing for the project. Since almost the entire existing structure will be retained and the only alteration to the front of the building will be altering the oversized third floor gable dormer, the streetscape along Highland Avenue will not be impacted in any manner. In fact, by removing the existing oversized gable dormer at the front of the property and replacing it with a new dormer that is more in keeping with original dormer design when the building was constructed, the architectural integrity of the neighborhood will actually be enhanced.

14. Lighting: With respect to lighting, the Applicant must ensure that “all exterior spaces and interior public and semi-public spaces shall be adequately lit and designed as much as possible to allow for surveillance by neighbors and passersby.”

The lighting will be residential in nature and conditioned to not interfere with neighboring properties.

15. Emergency Access: The Applicant must ensure that “there is easy access to buildings, and the grounds adjoining them, for operations by fire, police, medical and other emergency personnel and equipment.”

Emergency vehicles and personnel will have access to Unit # 1 in the building directly off of Highland Avenue through the front entrance. All other units in the structure will need to be accessed through the common entrance and hallway near the entryway to the parking garage. The proposed driveway is 14 feet wide which meets the required width for emergency vehicles since the entire building will be fire suppressed. However, the curb cut on Highland Avenue is only 13 feet wide and the Board has included a condition that this be widened by one foot to 14 feet to meet this emergency vehicle access requirement. Emergency equipment and apparatus can also be taken down both the left and right sides of the proposed addition as the structure has been pulled back away from each side property line.

16. 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 existing site has one 13 foot wide curb cut on Highland Avenue that will be maintained as part of this project. This will be the only way into and out of the parking area at the rear of the property and therefore the existing traffic patterns at the site will remain the same. Fire Prevention is requiring that this curb cut be widened by one foot to 14 feet to accommodate for the appropriate emergency vehicle access width. The Board has included this as a condition of the Special Permit.

17. Utility Service: The Applicant must ensure that “electric, telephone, cable TV and other such lines and equipment are placed underground from the source or connection, or are effectively screened from public view.”

The Applicant is proposing to tie into the existing City services for electric, telephone and cable. Any new lines would be placed underground in accordance with the SZO and the policies of the Superintendent of Lights and Lines.

18. Prevention of Adverse Impacts: The Applicant must demonstrate that “provisions have been made to prevent or minimize any detrimental effect on adjoining premises, and the general neighborhood, including, (1) minimizing any adverse impact from new hard surface ground cover, or machinery which emits heat, vapor, light or fumes; and (2) preventing adverse impacts to light, air and noise, wind and temperature levels in the immediate vicinity of the proposed development.”

The existing use of the property is already a multi-family dwelling (4 units) and therefore the addition of three new units at the site would not greatly alter the impact of the property on the surrounding neighborhood as the area already has several three- and multi-family dwellings nearby. Most of the construction at the project site will take place at the rear of the property and should be contained by the existing structure at the front of the property and the vacant lot of 129R Highland Avenue. A six foot high fence will be installed around 3 sides of the property, with an opening at the rear of the property, to provide a visual buffer for neighbors from the parking spaces and condensing units which are located at grade. Additionally, since the project will only be taking place on the 129 Highland Avenue parcel, a substantial amount of greenspace (5,674 square feet) will be retained as open space which is a benefit that will be seen by all properties that abut the 129R Highland Avenue parcel.

19. Signage: The Applicant must ensure that “the size, location, design, color, texture, lighting and materials of all permanent signs and outdoor advertising structures or features shall reflect the scale and character of the proposed buildings.”

Due to the residential nature of the building, signage is not anticipated on the site. Any signage in the future would have to conform to the sign standards for residential districts.

20. 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.”

The trash enclosure for the building will be located in the lobby of the common entryway. This enclosure is a full enclosure (enclosed on all sides, including the top) and will be located inside the building. The condensing units for the project are located along the left side of the existing structure. These will be screened from the neighboring properties by the existing building as well as by the six foot privacy fence that will be erected along the left side property line. Transformers are not being proposed for this project, however, the Board has also included a condition to screen transformers if they were to ever to be implemented.

21. Screening of Parking: The Applicant must ensure that “the parking areas should be screened or partitioned off from the street by permanent structures except in the cases where the entrance to the parking area is directly off the street.”

All 12 of the required parking spaces will be well screened from Highland Avenue as the parking area is located behind the existing structure and underneath the rear addition. Where the existing building does not block views of the parking area a screening fence will be used to partition off the parking spaces from the street as well as the neighboring properties. In the current design, there is not screening to block views of the parking area looking directly up the driveway from Highland Avenue, however, the Board has included a condition that the Applicant be required work with Staff to ensure that an acceptable solid screening be implemented in this area if possible and acceptable to the Fire Department.

FINDINGS FOR SPECIAL PERMIT (SZO §5.1 & §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. This section of the report goes through §5.1.4 in detail.

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."

In considering a Special Permit under §4.4 of the SZO, the Board finds that the renovations and expansions proposed would not be substantially more detrimental to the neighborhood than the existing structure. The renovations to the existing structure as well as the enhanced landscaping will beautify the existing property, which will benefit the surrounding neighborhood. While the proposed addition may seem quite substantial at first glance, it is a fairly reasonable addition considering the new construction meets all of the dimensional requirements of the zoning district with the exception of the rear yard setback requirement. This is due to the large size of the 129 Highland Avenue lot which is 9,775 square feet. The existing use of the property is already a multi-family dwelling (4 units) and therefore the addition of three new units at the site would not greatly alter the impact of the property on the surrounding neighborhood as the area already has several three- and multi-family dwellings nearby. The proposal is providing all of the required parking on-site, at the rear of the property, underneath the new addition. As a result, there should be minimal impacts, if any, on the parking situation in the surrounding neighborhood and the view of much of the proposed on-site parking will be screened by the retained existing structure. Additionally, since almost the entire existing structure will be retained and the only alteration to the front of the building will be altering the oversized third floor gable dormer, the streetscape along Highland Avenue will not be impacted in any manner. In fact, by removing the existing oversized gable dormer at the front of the property and replacing it with a new dormer that is more in keeping with original dormer design when the building was constructed, the architectural integrity of the neighborhood will actually be enhanced. Lastly, since the project will only be taking place on the 129 Highland Avenue parcel, a substantial amount of greenspace (5,674 square feet) will be retained as open space which is a benefit that will be seen by all properties that abut the 129R Highland Avenue parcel.

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."

Please see Item 8 in Section II for the consistency with purposes finding which is the same for the Special Permit and the Special Permit with Site Plan Review.

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 project is compatible with the characteristics of the surrounding residential neighborhood. For the most part, all of the structures in the area are between 2½ and 3 stories. At 34 feet in height, the rear addition is consistent in scale and massing with the structures in the surrounding area. In fact, the building is actually shorter than a number of buildings along Highland Avenue. Additionally, when completed, the seven dwelling units at the site would also be consistent with density of many of the other properties along Highland Avenue. Further, by making the 129R Highland Avenue parcel an open space lot, the project separates itself from the RA residential neighborhood at its



rear where most of the properties are single- and two-family dwellings. By maintaining the presence of the existing structure along Highland Avenue and locating the parking towards the rear of the lot underneath the addition, the project helps to maintain the existing streetwall along Highland Avenue and promote a more pedestrian friendly environment.

5. Adverse 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.

No adverse environmental impacts are anticipated as part of this proposal. No new glare, smoke, vibration, nor emissions of noxious materials nor pollution of water ways or ground water, nor transmission of signals that interfere with radio or television reception are anticipated as part of the proposal. There may be a slight increase in noise with the addition of three units to the site, but in the context of a mixed-use streetscape environment with heavy traffic on Highland Avenue, the impacts will be fairly minimal. The structure on the property will remain a multi-family residential building in an RC District which is consistent with the surrounding neighborhood.

6. Vehicular and Pedestrian Circulation: The circulation patterns for motor vehicles and pedestrians which would result from the use or structure will not result in conditions that create traffic congestion or the potential for traffic accidents on the site or in the surrounding area.

The traffic flow and parking situation for the project are not anticipated to negatively impact the surrounding neighborhood. The proposal is providing all of the required parking on-site (12 spaces), at the rear of the property, underneath the new addition. As a result, there should be minimal impacts, if any, on the parking situation in the surrounding neighborhood and the view of much of the proposed on-site parking will be screened by the retained existing structure. The traffic flow for the project is also not anticipated to negatively impact the neighborhood as the project's location on Highland Avenue for bus service will also help to reduce potential traffic impacts that the project may create.

FINDINGS FOR VARIANCE (SZO §5.5 & §8.5.I):

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."

The Applicant indicated the following response to this question in their application:

"The special circumstances affecting the land relative to this project is the shape of the lot, it is an RA lot and RC lot which creates an odd shaped lot and thus requires the variance for the rear yard setback. This has therefore, created a hardship under these special circumstances with the unusual shape of the lot as proposed in the site plan."

The Applicant's proposed project is triggering the need for a rear yard setback Variance because the existing structure on the project site currently meets the minimum rear yard setback requirement of 20 feet, but the proposed addition would not. The existing structure has a rear yard setback of 150 feet because the current site includes both the 129 and 129R Highland Avenue parcels. However, the proposed addition at the rear of the existing structure would only be seven feet from the rear property line due to the proposed transfer of the 129R Highland Avenue parcel into joint ownership of the surrounding neighbors. This transfer of ownership of the 129R Highland Avenue parcel to the neighbors is something that the abutters had pushed for and allows for that parcel to remain as undeveloped open space for all abutting properties to enjoy. In essence, this parcel will be acting as a setback and buffer for all of the neighbors at the rear of the property and it would create a more substantial setback than the normally required 20 feet. This transfer of ownership rights is something that the neighbors had requested and the

owner is amenable to, but it does create a nonconformity for the proposed rear addition. Therefore, the Board finds that there are special circumstances affecting the property that are causing a substantial hardship.

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 Applicant indicated the following response to this question in their application:

“The variance is the minimal approval necessary to grant reasonable relief to the owner/applicant with the lot’s odd shape it would be difficult to present a building on the site that would meet other requirements and achieve the seven (7) residential units. This therefore, results in the most reasonable use of the land since there would be three (3) additional residential units on the site as well as enough on site parking to accommodate all seven (7) of the dwelling units. As stated, the lot’s odd shape gives the Applicant very few options to develop the site to its full potential. In this proposal there will be seven (7) residential units with sufficient parking all on the site, this type of proposal is very rare and especially with lots that are of odd shape.”

The existing structure at the 129-129R Highland Avenue project site is conforming to its 20 foot rear yard setback requirement but the proposed addition would not be conforming with only seven feet of setback from the rear property line. While this new nonconformity is created because the 129R Highland Avenue parcel will be transferred to the ownership of the abutting neighbors, the existing four unit structure would still not have a rear setback nonconformity if the 129R parcel changed ownership. The addition that adds three new dwelling units is causing the need for the Applicant to seek a rear yard setback Variance. To address this, the Board has included Condition #21 to restrict development of any kind on the 129R Highland Avenue parcel. Therefore, with this added condition, the Board finds that the request for the rear yard setback Variance is the minimum amount of relief necessary to make reasonable use of the property.

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 Applicant indicated the following response to this question in their application:

“The granting of the variance will be in harmony with the Somerville Zoning Ordinance and not be injurious to the neighborhood or otherwise detrimental to the public welfare, as the proposal will provide three (3) additional residential dwelling to the site and there will be sufficient parking for all seven (7) of the units on the site itself. Therefore, there will not be taking any of the on street parking from the neighborhood.”

The proposed Variance is in harmony with the intent of the Ordinance and it does not appear that it would be injurious to the surrounding neighborhood. Even though the Applicant is requesting a rear yard setback Variance to construct the project, it will only have a minimal impact to the immediate abutters. The rear yard setback nonconformity of the project is triggered by the fact that the 129R Highland Avenue parcel will no longer be owned by the current property owner if this project moves forward. Once this property changes ownership, the project site could no longer count the 129R Highland Avenue parcel towards the distance needed to meet the rear yard setback requirement. The land swap agreement that will take place will turn the 129R Highland Avenue parcel into an open space lot that will act as a buffer to all the neighbors at the rear of the project site and, in a sense, function as a rear yard setback of between 50 and 60 feet. Had the Owner not decided to work out an agreement with the neighbors, the land area of 129R Highland Avenue could have been used towards the required rear yard setback for the project. Therefore, the Board finds that approving the Variance will facilitate a development that meets or exceeds the expectations of the SZO and that the requested Variance would not be injurious to the neighborhood or detrimental to the public welfare.

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Elaine Severino. Upon making the above findings, Susan Fontano made a motion to approve the request for a Special Permit with Site Plan Review. Richard Rossetti seconded the motion. Wherefore the Zoning Board of Appeals voted **4-1** to **APPROVE** the request with Danielle Evans voting in opposition. Upon making the above findings, Susan Fontano made a motion to approve the request for a Special Permit. Richard Rossetti seconded the motion. Wherefore the Zoning Board of Appeals voted **4-1** to **APPROVE** the request with Danielle Evans voting in opposition. Upon making the above findings, Susan Fontano made a motion to approve the request for a Variance. Richard Rossetti seconded the motion. Wherefore the Zoning Board of Appeals voted **4-1** to **APPROVE** the request with Danielle Evans voting in opposition. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes																				
1	<p>Approval is for the establishment of a seven (7) unit residential use under SZO §7.11.1.c, for relief from the minimum rear yard setback requirement under SZO §8.5.I, and to make renovations to an existing nonconforming structure under SZO §4.4.1 to construct a rear addition with parking. This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>(May 31, 2012)</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>August 27, 2012 (August 28, 2012)</td> <td>Cover Sheet</td> </tr> <tr> <td>January 5, 2012 (August 28, 2012)</td> <td>Plot Plan</td> </tr> <tr> <td>September 27, 2012 (September 27, 2012)</td> <td>Zoning Compliance Sheets (Z-1, Z-2, and Z-3)</td> </tr> <tr> <td>September 27, 2012 (September 27, 2012)</td> <td>Views (A-OR)</td> </tr> <tr> <td>September 27, 2012 (September 27, 2012)</td> <td>3D Views (AO.1)</td> </tr> <tr> <td>September 27, 2012 (September 27, 2012)</td> <td>First Floor/Parking Level and Front & Rear Elevations & Section (A-1 and A-4)</td> </tr> <tr> <td>August 27, 2012 (August 28, 2012)</td> <td>Second Floor Plan and Third Floor Plan (A-2 and A-3)</td> </tr> <tr> <td>August 27, 2012 (August 28, 2012)</td> <td>Driveway Elevation and Side Elevation (A-5 and A-6)</td> </tr> </tbody> </table> <p>Any changes to the approved plans or elevations that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	(May 31, 2012)	Initial application submitted to the City Clerk's Office	August 27, 2012 (August 28, 2012)	Cover Sheet	January 5, 2012 (August 28, 2012)	Plot Plan	September 27, 2012 (September 27, 2012)	Zoning Compliance Sheets (Z-1, Z-2, and Z-3)	September 27, 2012 (September 27, 2012)	Views (A-OR)	September 27, 2012 (September 27, 2012)	3D Views (AO.1)	September 27, 2012 (September 27, 2012)	First Floor/Parking Level and Front & Rear Elevations & Section (A-1 and A-4)	August 27, 2012 (August 28, 2012)	Second Floor Plan and Third Floor Plan (A-2 and A-3)	August 27, 2012 (August 28, 2012)	Driveway Elevation and Side Elevation (A-5 and A-6)	BP/CO	ISD/Plng.	
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2	<p>The Applicant shall develop a demolition plan in consultation with the City of Somerville Inspectional Services Division. 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.</p>	Demolition Permitting	ISD																					



3	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	
4	The Applicant will be required to demonstrate that the project meets the current City of Somerville stormwater policy. Utility, grading, and drainage plans must be submitted to the Engineering Department for review and approval.	BP	Eng.	
5	Applicant shall provide final material samples for siding, trim, windows and doors to the Planning Staff for review and approval prior to construction.	BP	Plng.	
6	The Applicant shall provide a Landscape Plan to Planning Staff for review and approval, prior to the issuance of a Building Permit. The Landscape Plan should indicate specific plantings at the site and also identify a proposed location for a transformer should the need arise to install one.	BP	Plng.	
7	The Applicant/Owner shall work with Planning Staff on the particular type of screening fence for the privacy fence at the perimeter of the project site and for the parking area.	BP	Plng.	
8	The Applicant/Owner shall obtain permission for and implement a one (1) foot expansion to the curb cut on Highland Avenue to provide a 14 foot wide access lane from Highland Avenue into the project site.	BP	Plng.	
9	The Owner shall file the appropriate paperwork with the Middlesex South Registry of Deeds that relinquishing the Owner's rights to the 129R Highland Avenue parcel to the neighbors. A copy of this documentation should be provided to Planning Staff.	BP	Plng.	
10	The Applicant or Owner shall work with the Fire Prevention Bureau to provide adequate access along each side of the building while still maintaining landscaping requirements in these areas as specified under SZO §2.2.81.	CO	FP and Plng.	
11	The electric, telephone, cable TV and other such lines and equipment shall be placed underground from the source or connection. The utilities plan shall be supplied to the Wiring Inspector before installation.	Installation of Utilities	Wiring Inspector	
12	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
13	The screening fence for the parking area shall only be four (4) feet in height.	CO	FP	
14	If possible, the screening fence for the parking area shall be implemented to block views of the rear parking area from Highland Avenue looking up the driveway for the project.	CO	Plng.	

15	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 DPW standard.	CO	DPW	
16	If implemented, any transformers shall be fully screened.	CO	Plng.	
17	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.	Perpetual	ISD	
18	Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards.	Perpetual	Plng. / ISD	
19	To the extent possible, all exterior lighting must be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.	Perpetual	ISD	
20	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	Plng.	
21	The developer shall sell the 129R Highland Avenue parcel with a permanent deed restriction on the property that restricts development and parking. Prior to recording, the restriction shall be submitted for review and approval by Planning Staff. The restriction shall also state that no dwelling units or parking shall be constructed on the 129R Highland Avenue parcel.	BP	Plng.	

Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*
Orsola Susan Fontano, *Clerk*
Richard Rossetti
Danielle Evans
Elaine Severino (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 _____

