



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2014-16
Site: 82 Highland Avenue
Date of Decision: June 18, 2014
Decision: Petition Approved with Conditions
Date Filed with City Clerk: June 25, 2014

ZBA DECISION

Applicant Name:	LaRosa Development Corporation
Applicant Address:	12 Worcester Drive, Norwood, MA 02062
Property Owner Name:	Gabriel & Gladys Ragusa
Property Owner Address:	44 Old Nahant Road, Wakefield, MA 01880
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145

Legal Notice: Applicant, LaRosa Development Corporation, and Owner, Gabriel & Gladys Ragusa, seek a Special Permit under §4.4.1 and §7.11.1.c to substantially alter a nonconforming structure to building a 6 unit residential dwelling and a Variance for 3 parking spaces (§9.5). Zone RC. Ward 3.

<u>Zoning District/Ward:</u>	RC zone/Ward 3
<u>Zoning Approval Sought:</u>	§4.4.1 & §7.11.1.c & §9.5
<u>Date of Application:</u>	March 6, 2014
<u>Date(s) of Public Hearing:</u>	6/4 & 6/18/14
<u>Date of Decision:</u>	June 18, 2014
<u>Vote:</u>	4-0

Appeal #ZBA 2014-16 was opened before the Zoning Board of Appeals at the Visiting Nurse Association on June 4, 2014 and the Argenziano School Cafeteria on June 18, 2014.. 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 hearings of deliberation, the Zoning Board of Appeals took a vote.



DESCRIPTION:

The proposal is to substantially alter the structure to construct a six-unit residential building. There would be five parking spaces in the basement of the building and two at-grade parking spaces at the back of the site. There would be 2 units per floor and two bedrooms in each unit.

FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1 and §7.11.1.c):

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 alterations proposed would not be substantially more detrimental to the neighborhood than the existing structure specifically with regard to traffic, parking, noise, odor, scale, shading, visual effects, or neighborhood character. The existing site is nonconforming in terms of lot size, landscaped area, pervious surface, and front and side yard setbacks. The new structure reduces or eliminates some of the nonconformities. The landscaped area and pervious surface will become conforming at 25% and 32%, consecutively. The front yard setback will remain nonconforming with the front bays on the property line and the primary face of the building setback approximately two feet. The right side yard will use the existing side yard nonconformity for a bay and the primary side wall will be setback less than a foot to two feet. The left side yard will become more conforming for the majority of the structure. It will be just less than ten feet from the side lot line. The stair on this side will project into the side yard leaving an approximately four foot setback.

The remaining dimensional requirements will continue to be conforming as is noted on the plans.

The number of parking spaces on-site requires a variance and the details and findings for this permit are in Section 3 below. The bicycle parking requirement is for one space. A recommended condition of approval is that the Applicant provides at least 3 bike racks in the garage to satisfy the requirement and allow for at least some of the residents to be able to bike as an alternative to driving.

A six-unit dwelling on Highland Avenue requires a Special Permit under §7.11.1.c. Six-unit buildings are common along Highland Avenue and are an appropriate and common building type for this thoroughfare in the City.

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 general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to encouraging the most appropriate use of land throughout the City.

The proposal is consistent with the purpose of the Residence C district, which includes establishing multi-family residential structures.

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 building has been designed to be compatible with the surrounding area. The building is a familiar form with a mansard roof, appropriately scaled dormers, a common front door on the street, and projecting bays. The building will be at the front and side property line which is not uncommon for apartment buildings on Highland Avenue. The parking will mostly be concealed in the basement.

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.*

The applicant submitted a report on the subsurface investigation of the site because the site is currently used as a drycleaner and there can be contamination issues with this use. The report states that some PCE-contaminated soil and concentrations of VOCs are present but not to levels that are required to be reported to the DEP. The report does recommend that a Licensed Site Profession be involved in the construction planning and that the new building should be constructed to protect against potential vapor intrusion issues. Implementing these recommendations are conditions of approval.

6. Housing Impact: *Will not create adverse impacts on the stock of existing affordable housing.*

There is currently one residential unit on the site. The proposal will increase the amount of housing on the site to six units and increase the overall supply of housing in the City. Increasing the supply of housing will help to off-set price increases for housing since the demand is so high in the City.

7. SomerVision Plan: *Complies with the applicable goals, policies and actions of the SomerVision plan, including the following, as appropriate: Preserve and enhance the character of Somerville's neighborhoods, Transform key opportunity areas, Preserve and expand an integrated, balanced mix of safe, affordable and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups; and, make Somerville a regional employment center with a mix of diverse and high-quality jobs.*

This proposal will increase the supply of housing along Highland Avenue which is labeled in SomerVision as a place to enhance.

FINDINGS FOR VARIANCE FOR PARKING (SZO §5.5 & §9.5):

A variance is required for three parking spaces. Six two-bedroom units requires 9 spaces and 1 space for visitors for a total of 10 spaces. Seven will be provided. 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 site is unique in that due to the slope of the site, five parking spaces can be located in the basement of the building on this fairly small lot. On a flat lot underground parking may impossible due to the length of a ramp required to get parking underground. It is beneficial to have parking spaces located in the structure and out of view. The resulting situation is that a driveway and some landscaping are needed on the rest of the site leaving space for only two additional parking spaces outside of the building. Situating the building, parking, access points, and landscaping on the site becomes difficult and there is tension between these elements of the site plan. A redevelopment plan with fewer units and compliant parking requirements is not financially viable and would not meet the expectations of quality design set out by the required findings for development in the SZO.



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.”*

Six residential units is a reasonable use for this site where the lot area per dwelling unit requirement will be met. Each unit will have a dedicated parking space and there can be a visitors space which is a reasonable number of parking spaces for this type of development in this area of the City. If visitors require on-street parking, the parking study submitted showed that an average of 29 parking spaces were available during the weekday mid-day period and an average of 89 parking spaces were available during the weekend evening period which is more than adequate to accommodate any additional demand generated by the five residential units. Detailed parking findings can be found in the report.

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 proposal is in harmony with the intent of the Ordinance and it would not be injurious to the neighborhood. The proposal provides one parking space per unit and one visitor space, which will likely be sufficient for the residents. The Applicant submitted a parking assessment that states that the provision of 7 parking spaces will have a negligible impact due to the proximity to public transit, transportation modes and characteristics and on-street and municipal parking utilization. Providing additional off-street parking attracts buyers with extra vehicles, and encourages owners to buy and keep extra vehicles. The parking is hidden from view and landscaped areas will be visible in the front and side yards, improving the site from its current state. Approving the variance will facilitate a redevelopment that meets or exceeds the expectations of the SZO.



DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti and Elaine Severino with Danielle Evans absent. 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 **4-0** to **APPROVE** the request. 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 **4-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes										
1	Approval is for the construction of a six unit residential structure with seven parking spaces. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/PIng.											
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>March 6, 2014</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>April 3, 2014</td> <td>Plans submitted to OSPCD (Plot Plan)</td> </tr> <tr> <td><u>May 30, 2014</u></td> <td>Modified plans submitted to OSPCD (C1 Site Use Plan)</td> </tr> <tr> <td>Feb 10, 2014</td> <td>Modified plans submitted to OSPCD (A1-A2 Floor Plans, A3 Building Section, A4-A5 Elevations)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	March 6, 2014	Initial application submitted to the City Clerk's Office	April 3, 2014	Plans submitted to OSPCD (Plot Plan)	<u>May 30, 2014</u>	Modified plans submitted to OSPCD (C1 Site Use Plan)	Feb 10, 2014	Modified plans submitted to OSPCD (A1-A2 Floor Plans, A3 Building Section, A4-A5 Elevations)
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Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive SPGA approval.														
Pre-Construction														



2	<p>If the revised site plan and drainage report does not address the following items, it shall be edited until it is approved by the City Engineer. Specifically, the following items shall be addressed:</p> <ul style="list-style-type: none"> • The Existing Conditions section of the Stormwater Management Report indicates the runoff is tributary to the Beech Street combined sewer. It is not clear how runoff from Highland Ave and Prescott St is contributory to Beech St. Please clarify. • Based on the existing and proposed site grades overland and groundwater flows are directed towards the rear of the parcel. The proposed drywell is located extremely close to the adjacent property line. The design engineer needs to state if there are concerns concentrating stormwater infiltration in that area that may naturally flow to the adjacent basement. • Proposed fire service is not sized. • Please indicate curb cut width. • What material is the proposed 6" sewer service? • A note shall be added to the plan indicating prior to construction, soil testing shall be performed to confirm assumed, in-situ soil conditions. A representative from the City of Somerville Engineering Dept. shall be present. Results shall be submitted to the Somerville Engineering Dept to be filed. 	BP	Eng.	
3	<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	
Construction Impacts				
4	<p>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.</p>	CO	DPW	
5	<p>Applicant shall make every effort to protect the street tree on Highland Ave during construction. If damaged, the Applicant shall replace the tree per DPW standards.</p>			
6	<p>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.</p>	During Construction	T&P	
Design				



7	Applicant shall provide final material samples for siding, trim, windows, and doors (to the Design Review Committee for review and comment and) to Planning Staff for review and approval prior to construction.	BP	Plng.	
8	An exterior light and electrical receptacle is required for the first (or all) level of the porch and an electrical receptacle is required for the second level (if there is no access to the ground).	Final sign off	Wiring Inspector	
Site				
9	Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Plng. / ISD	
10	There shall be a minimum of one tree planted on the site under SZO §10.3.			
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	Applicant will supply at least 3 bicycle parking spaces in the garage.	CO	Plng.	
Traffic & Parking				
13	Applicant shall purchasing and delivering to the City/Traffic and Parking 3 Pedestrian Impact Recovery Systems to be installed in the vicinity of the proposed development for pedestrian safety.			
Miscellaneous				
14	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.	Cont.	ISD	
Public Safety				
15	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
16	Notification must be made, within the time period required under applicable regulations, to the Massachusetts Department of Environmental Protection (DEP) if there is any release of oil, hazardous materials, or regulated hazardous substances at the site. The City's OSE office, Fire Department and the Board of Health shall also be notified.	CO	OSE/FP/B OH	
17	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.	CO	Plng.	
18	The Applicant shall provide notice of intent to strictly comply with applicable State and Federal regulations regarding air quality including without limitation continuous dust control during demolition and construction.	CO	Plng/OSE	



19	<p>Because of the history of the site and the intended use, the Applicant shall, prior to issuance of any foundation permit and/or any building permit for the project, provide to the Planning Department and the Inspectional Services Division:</p> <p>a) a statement signed by an LSP describing (i) the management of oil and hazardous materials/waste at the site, including release abatement measures intended to achieve a level of no significant risk for residential use at the site, treatment and storage on site, transportation off-site, and disposal at authorized facilities, (ii) a plan for protecting the health and safety of workers at the site, and (iii) a plan for monitoring air quality in the immediate neighborhood.</p>	Foundation Permit	Plng / ISD	
20	<p>Design of the structure shall incorporate a vapor barrier and passive soil gas mitigation system below the basement, in accordance with DEP guidance on construction techniques. Provision should be made to convert the passive system to an active system if needed.</p>	BP	Plng / ISD	
Final Sign-Off				
21	<p>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.</p>	Final sign off	Plng.	



Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*
Orsola Susan Fontano, *Clerk*
Richard Rossetti
Elaine Severino

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 _____

