



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2014-97
Site: 8-12 Main Street
Date of Decision: November 5, 2014
Decision: Petition Denied
Date Filed with City Clerk: November 13, 2014

ZBA DECISION

Applicant Name:	Nguyen Trivan
Applicant Address:	120 Second Street, Medford, MA 02155
Property Owner Name:	Nguyen Trivan
Property Owner Address:	120 Second Street, Medford, MA 02155
Agent Name:	N/A

Legal Notice: Applicant and Owner, Nguyen Trivan, seek a Special Permit per SZO §9.13 for parking relief to establish 2 residential units.

<u>Zoning District/Ward:</u>	NB zone/Ward 4
<u>Zoning Approval Sought:</u>	§9.13
<u>Date of Application:</u>	September 11, 2014
<u>Date(s) of Public Hearing:</u>	10/15 & 11/5/14
<u>Date of Decision:</u>	November 5, 2014
<u>Vote:</u>	5-0

Appeal #ZBA 2014-97 was opened before the Zoning Board of Appeals at Somerville City Hall on October 15, 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 one hearing of deliberation, the Zoning Board of Appeals opened and continued then heard took a vote.



DESCRIPTION:

The proposal is for 1 space of parking relief to establish the residential units.

FINDINGS FOR SPECIAL PERMIT (SZO §9.13):

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."*

Due to the Neighborhood Business district two dwelling units are allowed by-right. The subject property, at 3,569 square feet also meets the lot area per dwelling unit calculation of 875 square feet per unit.

A special permit is required for parking relief. The SZO §9.4 states that a change in use with no change in floor area should be subject to the following formula:

$$\text{New Use} - \text{Old Use} / 2.$$

The second floor uses, a church and 2 dwelling units, both require 3 spaces for a total of 6. The previous use, a physical therapy office, required 4 spaces. Using the formula above:

$$(4-6)/2 = 1 \text{ space of relief is needed.}$$

Under SZO §9.13 a special permit is required since the Applicant is not provided any parking.

In considering a Special Permit under §9.13 of the SZO, the Board finds that the alterations proposed would be substantially more detrimental to the neighborhood than the existing use. Although the City generally encourages a mix of uses along corridors the building form is commercial. The only changes proposed are one-for-one window alterations to make egress windows and a small bit of landscaping in the rear of the building. The City has a preference for commercial development and maintaining commercial buildings. Planning Staff asked the property owner to make more significant changes to the building to signify the residential use on the upper floors but these requests were not granted.

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 not consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to promoting the health, safety, and welfare of the inhabitants of the City of Somerville; to lessen congestion in the streets; to provide adequate light and air; to conserve the value of land and buildings; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality. The units, as designed, have limited access to light and air. In particular, Unit 2 has one window.



The proposal is not consistent with the purpose of the district, which is, “To establish and preserve areas for small-scale retail stores, services and offices which are located in close proximity to residential areas and which do not have undesirable impacts on the surrounding neighborhoods.” Planning Staff recommends maintaining the commercial use in a commercial building type that has close proximity to residential buildings.

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 surrounding neighborhood is a mix of uses. The Main Street and Broadway intersection is the last commercial node before Magoun Square. The intersection provides neighborhood services, mostly in residential buildings with a shopfront. OSPCD is currently leading a Somerville By Design neighborhood planning process for Winter Hill and a streetscape planning process for the Broadway corridor.

The conversion of commercial uses to a residential use will be detrimental to the building by providing substandard units with little access to light and air. The use will also be detrimental to the tax base.

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.*

In considering a special permit under §9.13 of the SZO the SPGA may grant such a special permit only when consistent with the purposes set forth in Section 9.1. One space of parking relief could contribute to traffic volumes or congestion.

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

The project will have no effect on any existing affordable house.

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. The areas in the SomerVision map that are designated as enhance and transform should most significantly contribute towards the SomerVision goals that are outlined in the table below. The areas marked as conserve are not expected to greatly increase the figures in the table since these areas are not intended for large scale change.*

The property is in the enhance district of the SomerVision Map. The area is a node of commercial activity. One of the SomerVision goal states, “promote municipal financial self-determination and reduce fiscal dependence on state aid and residential taxes and fees.” The building, without additional modification, will create substandard housing units in a building originally intended for a commercial use. Since the application, the Economic Development staff have been working with the Applicant to find a commercial tenant for his property. Most recently, Economic Development has notified the Arts Council that this space is available and may work for artists as well. This hasn't resulted in a tenant but possible lessees have viewed the property.



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 deny the request for a Special Permit. Richard Rossetti seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **DENY** the request.

Attest, by the Zoning Board of Appeals:

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

