



CITY OF SOMERVILLE, MASSACHUSETTS
OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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MAYOR

PLANNING DIVISION

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JOSH SAFDIE (ALT.)

Case #: ZBA # 2012-30
Site: 8 Mt. Vernon Street
Date of Decision: May 16, 2012
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: May 22, 2012

ZBA DECISION

Applicant Name:	Fermin Castro & Barbara Schmidt Castro
Applicant Address:	8 Mt. Vernon Street, Somerville, MA 02145
Property Owner Name:	Fermin Castro & Barbara Schmidt Castro
Property Owner Address:	8 Mt. Vernon Street, Somerville, MA 02145
Agent Name:	N/A

Legal Notice: Applicants and Owners, Fermin and Barbara Castro, seek a Variance under SZO §5.5 and §10.7.1 to construct an 8.5 foot wall along the rear lot line.

<u>Zoning District/Ward:</u>	RB zone/Ward 1
<u>Zoning Approval Sought:</u>	§5.5 & §10.7.1
<u>Date of Application:</u>	April 17, 2012
<u>Date(s) of Public Hearing:</u>	May 16, 2012
<u>Date of Decision:</u>	May 16, 2012
<u>Vote:</u>	4-0

Appeal #ZBA 2012-30 was opened before the Zoning Board of Appeals at Somerville City Hall on May 16, 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 one hearing of deliberation, the Zoning Board of Appeals took a vote.



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DESCRIPTION:

The Owners/Applicants propose to add a new portion of wall to the existing wall on the rear lot line that separates this residential property from the parking lot for the Mount Vernon Restaurant located along Broadway. The current wall was constructed on the subject parcel prior to the Applicants taking ownership of 8 Mt. Vernon Street. The existing partition is 29 feet in length and composed of 4 feet (in height) of poured concrete with a 4'-3" chain link fence situated on top. The chain link portion is partially screened by removable slats.

The Applicants propose to add a new portion of wall to the existing wall on the side that faces Mt. Vernon Street. The improved wall would be given a flagstone veneer which would eliminate views of the parking lot and reduce sounds coming from the same direction. The new portion of this wall would result in the same height as the current wall and fence while only the width would be altered. Alterations to the wall would enable the width to become consistent for the entire height of the wall. The new portion of wall would begin four feet up from the ground, where the poured concrete reaches four feet in height and transitions into chain link. The new portion of the wall would be constructed of concrete block that is 15.5" x 7.5" x 4" and layered on top of the poured concrete. The new section of wall would be anchored to the iron posts that support the chain link fence. Wire clamps, ¼ inch in diameter, would fasten around the iron posts to tie rods located in the concrete blocks. These blocks would then be filled with concrete that is to be prepared on site. Once the concrete block has been layered to the height of the current wall, the face of the entire 29 foot long wall will be completely covered in flagstone.

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.

Please find the Applicants' responses to these questions on their application form attached to this decision.

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 Board recognizes that when historic residential properties, such as the subject parcel, abut commercial businesses located in a Transit Oriented Development district, conflicts often arise over land use which can, in turn, call for actions that would allow these uses to coexist in a manner that is not disruptive to the use of either property.

Due to the nature of the business conducted by the Mt. Vernon Restaurant and the Applicants desire for a quiet and peaceful rear yard, these conflicting uses and their proximity to each other cause a substantial loss of privacy not experienced by other neighboring properties. The Board finds that the proximity of these conflicting uses causes special circumstances relating to structures which especially affect the subject land and structures, but not affecting generally the zoning district, causing a substantial hardship for the Applicants.

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 Applicants indicated on their application that the current wall presents a hardship because it restricts the privacy of the backyard, does not address the disruptive noise level of the parking lot, and is an interruption to the historical context of the building as well as the surrounding parcels. The existing wall, composed of poured concrete and chain link fence, provides no aesthetic value nor does it improve privacy. The proposed wall modifications would allow the Owners/Applicants to regain privacy of their backyard, address the current noise level, and present a more appropriate backdrop for their historic building than the current wall and fence. The Board finds that the requested wall height Variance is the minimum Variance necessary to grant reasonable relief to the Applicants or if it is the necessary amount for reasonable use of the land.



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 new portion of wall would only be visible from Mt. Vernon Street, so there will be no detriment to the public welfare through any changes visible from the parking lot of the Mt. Vernon Restaurant. The final result will enhance the aesthetic of the rear of the property as well as allow the Owners/Applicants to regain privacy of their backyard, address the disruptive noise level that permeates from the parking area of the Restaurant, and present a more appropriate backdrop for their historic building than the existing wall and chain link fence. The Board finds that the request for the Variance would be in harmony with the general purpose and intent of the Ordinance and would not be injurious to the neighborhood or otherwise detrimental to the public welfare.

DECISION:

Present and sitting were Members Richard Rossetti, Danielle Evans, Scott Darling and Elaine Severino with Orsola Susan Fontano recused and Herbert Foster and Josh Safdie absent. Upon making the above findings, Scott Darling made a motion to approve the request for a Variance. Elaine Severino 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	<p>Approval is for a Variance to construct an 8.5 foot wall along the rear lot line of 8 Mt. Vernon Street. 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>(April 17, 2012)</td> <td>Initial application submitted to the City Clerk’s Office</td> </tr> <tr> <td>June 22, 2012 (April 26, 2012)</td> <td>Plot plan submitted to OSPCD</td> </tr> <tr> <td>(April 26, 2012)</td> <td>Site plans submitted to OSPCD (8 Mt. Vernon Street, & Specifications)</td> </tr> <tr> <td>(April 26, 2012)</td> <td>Additional site plans submitted to OSPCD (Sheets 1, 2, 3, & 4)</td> </tr> </tbody> </table> <p>Any changes to the approved site plan that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	(April 17, 2012)	Initial application submitted to the City Clerk’s Office	June 22, 2012 (April 26, 2012)	Plot plan submitted to OSPCD	(April 26, 2012)	Site plans submitted to OSPCD (8 Mt. Vernon Street, & Specifications)	(April 26, 2012)	Additional site plans submitted to OSPCD (Sheets 1, 2, 3, & 4)	BP/CO	ISD/PIng.	
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2	Prior to obtaining a building permit, the Applicant shall submit to Staff written acknowledgement of the proposal from the Mt. Vernon Street Restaurant.	Prior to Bldg Permit	PIng.											
3	The Applicant or Owner shall meet the Fire Prevention Bureau’s requirements.	CO	FP											

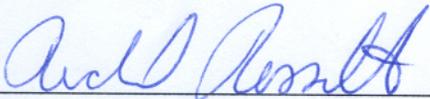


4	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final Sign Off	Plng.	
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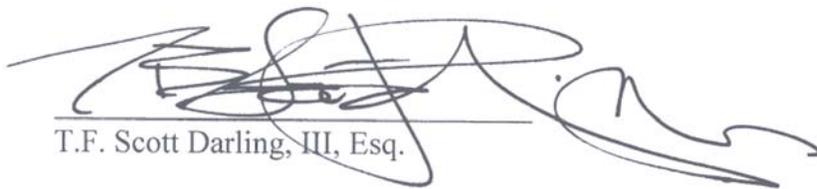


Attest, by the Zoning Board of Appeals:

Richard Rossetti, *Acting Chairman*
T.F. Scott Darling, III, Esq., *Acting Clerk*
Danielle Evans
Elaine Severino (Alt.)



Richard Rossetti



T.F. Scott Darling, III, Esq.



Danielle Evans



Elaine Severino, (Alt.)

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 _____



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