



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2014-84
Site: 101 Orchard Street
Date of Decision: September 17, 2014
Decision: Petition Approved with Conditions
Date Filed with City Clerk: September 23, 2014

ZBA DECISION

Applicant Name:	Deborah Baskin & Robert Larsen
Applicant Address:	101 Orchard Street, Somerville, MA 02144
Property Owner Name:	Deborah Baskin & Robert Larsen
Property Owner Address:	101 Orchard Street, Somerville, MA 02144
Agent Name:	N/A

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

<u>Zoning District/Ward:</u>	RB zone/Ward 6
<u>Zoning Approval Sought:</u>	§5.5 & §10.7.1
<u>Date of Application:</u>	July 31, 2014
<u>Date(s) of Public Hearing:</u>	September 17, 2014
<u>Date of Decision:</u>	September 17, 2014
<u>Vote:</u>	5-0

Appeal #ZBA 2014-84 was opened before the Zoning Board of Appeals at Somerville City Hall on September 17, 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 took a vote.



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DESCRIPTION:

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

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

In order to grant a Variance, the Board must make certain findings and determinations as outlined in §5.5.3 of the SZO.

1. There are "special circumstances relating to soil conditions, shape or topography of land or structures which especially affect such land or structures but not affecting generally the zoning district in which it is located, causing substantial hardship, financial or otherwise."

Staff Response: The building is located near the side property line which makes private outdoor space difficult to enjoy within close proximity of the adjacent parking lot. The shape of the lot and neighborhood uses present a hardship to 101 Orchard when attempting to utilize the private outdoor space.

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

2. The variance requested is the "minimum variance that will grant reasonable relief to the owner, and is necessary for a reasonable use of the building or land."

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

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

3. "The granting of the variance would be in harmony with the general purpose and intent of this Ordinance and would not be injurious to the neighborhood or otherwise detrimental to the public welfare."

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



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

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Elaine Severino with Josh Safdie 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 **5-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
1	Approval is for a Variance to construct a 14 foot fence around the Lower and Middle School play yard. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/Plng	
	Date (Stamp Date) Submission			
	(July 31, 2014) Initial application submitted to the City Clerk’s Office			
	(September 11, 2014) Fence elevation, site plan, & photos submitted to OSPCD			
	(September 11, 2014) Plot plan			
	Any changes to the approved site plan that are not <i>de minimis</i> must receive SPGA approval.			
2	The Applicant or Owner shall meet the Fire Prevention Bureau’s requirements.	CO	FP	
3	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final Sign Off	Plng.	
4	The Applicant will provide for Planning Staff review and approval a fence design that is attractive, complimentary to existing fence and includes an 8’ section only at the rear deck.	BP	Plng.	



5	The Applicant will remove existing deck partition.	BP	Plng.	
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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 _____

