



**CITY OF SOMERVILLE, MASSACHUSETTS**  
***MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT***  
**JOSEPH A. CURTATONE**  
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MICHAEL F. GLAVIN  
EXECUTIVE DIRECTOR

PLANNING DIVISION

***ZONING BOARD OF APPEALS MEMBERS***

ORSOLA SUSAN FONTANO, CHAIRMAN  
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DANIELLE EVANS  
ELAINE SEVERINO  
JOSH SAFDIE (ALT.)

**Case #: ZBA 2015-06**  
**Site: 18 Ivaloo Street**  
**Date of Decision: March 18, 2015**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: March 24, 2015**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Mika Cheng
<b>Applicant Address:</b>	18 Ivaloo Street, Somerville, MA 02143
<b>Property Owner Name:</b>	Mika Cheng
<b>Property Owner Address:</b>	18 Ivaloo Street, Somerville, MA 02143
<b>Agent Name:</b>	Dan Flynn
<b>Agent Address:</b>	18 Ivaloo Street, Somerville, MA 02143

<u>Legal Notice:</u>	Applicant and Owner, Mika Cheng, seeks a Special Permit to alter a nonconforming structure to alter windows and doors, a Variance to legalize a second dwelling unit, and a Special Permit to not provide one parking space.
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<u>Zoning District/Ward:</u>	RB zone/Ward 2
<u>Date of Application:</u>	January 26, 2015
<u>Date(s) of Public Hearing:</u>	March 18, 2015
<u>Date of Decision:</u>	March 18, 2015
<u>Vote:</u>	4-0

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Appeal #ZBA 2015-06 was opened before the Zoning Board of Appeals at Somerville City Hall on March 18, 2015. 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.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143  
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**DESCRIPTION:**

The property was recently purchased by an owner who is taking the steps that have been outlined in the property records to legalize the second unit. The proposal includes making the height of the front door to the unit the required height and changing a window to a door on the rear of the property to serve as a second means of egress. The unit is partially underground but is technically a first floor unit. The work will require digging wells to get the full door height required. Interior work will include raising pipes to achieve the full required head height.

The Applicant provided pictures of the first floor unit and exterior of the house.

**FINDINGS FOR SPECIAL PERMIT:**

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."*

The structure is currently nonconforming with respect to dimensional requirements, including minimum front yard setbacks, lot area, and street frontage.

The proposal to increase the height of the door to the first floor unit will alter the structure in the nonconforming front yard. The house is approximately 10 feet to the front property line and the requirement is a 15 feet setback. This alteration to a nonconforming structure requires the Applicant to obtain special permits under §4.4.1 of the Somerville Zoning Ordinance (SZO). Section 4.4.1 states that "[l]awfully existing one-and two-family dwellings which are only used as residences, which are nonconforming with respect to dimensional requirements, may be enlarged, extended, renovated or altered by special permit granted by the SPGA in accordance with the procedures of Article 5."

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. The alteration to the front façade does not create a new nonconformity and will be minimally impactful to the appearance of the house.

The lot area per dwelling unit dimension will become nonconforming and requires a variance. The variance findings are below.

One additional parking space is required under the special residential conversion in SZO §9.5.2.a. There is a driveway on the site that is partially on the neighbor's property and there is an easement for this arrangement. The driveway fits one car and there is no room to add an additional parking spot on the site. Under SZO §9.13.a, the ZBA can modify parking requirements for nonconforming lots if the total number of parking spaces required is less than 6.

The Mayor's Office of Strategic Planning and Community Development has submitted an ordinance to the Board of Alderman to overhaul the current zoning ordinance. The re-advertised date of the legal notice was February 17. Massachusetts General Law 40a, Section 6 states that a zoning ordinance shall apply to a special permit issued after



the first notice of the public hearing for such an ordinance. Therefore, staff and boards should evaluate all applications based on the current and proposed ordinances so that there are no issued posed under either ordinance.

Under the proposed zoning ordinance, the structure is a house building type. The front yard setback is 10 feet and therefore the front yard setback would be conforming and this alteration would be allowed. One parking space would be required for the additional unit; however, by Special Permit the space would not be required. The lot area per dwelling unit requirement is not in the proposed code and two-units are allowed in a house building type. If the current application is approved the project would be able to move forward under the current and proposed codes.

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 maintaining the uniquely integrated structure of uses in the City.

The proposal is consistent with the purpose of the Residence B district, which is, "[t]o establish and preserve medium density neighborhoods of one-, two- and three-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts." The proposal legalizes a unit to provide for a typical two-family house as the property was used in the past.

The proposal is consistent with the purpose of the §9.1. Not providing a parking space will not create hazards for pedestrians nor increase traffic on the streets.

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."*

There are one-, two-, and three-family homes in the neighborhood. Several properties do not include off-street parking for each residential unit.

The design of the door makes it visible yet understated so that it fits with the character of the house and does not distract from the main entrance to the house.

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

The proposal will legalize a small residential unit that adds to the variety of housing options in terms of size and therefore price in the neighborhood.

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.*



This property is marked as an area to conserve and the proposal meets this goal as a two-family house is in character with the uses of similar houses.

<i><u>SomerVision Summary</u></i>	<i>Existing</i>	<i>Proposed</i>
<i>Dwelling Units:</i>	1	2

### **FINDINGS FOR VARIANCE:**

In order to grant a variance the Board must make certain findings and determinations as outlined in §5.5.3 of the SZO. The Applicant is asking for a Variance (SZO §5.5) from Section 8.5. of the SZO for the lot area per dwelling requirement in the code. The lot size is approximately 2,055 square feet and 3,000 square feet is required for two-units.

“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 existing structure has typical dimensions and interior space for a two-family structure and has been on the same size lot since its existence. The house is a two-family as it has been for years and it would be a financial hardship to remove the unit.

“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.”

It is a reasonable use of the land as a two-family as this site has been used for this purpose going back to the 1960's. This proposal would not substantially change the use of the property and would fit within the surrounding properties of two-family houses.

“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 use as a two-family house is in harmony with the purpose of the district and would not be injurious to the neighborhood or to the public welfare. There is sufficient yard space, access to the unit from the street and light into the interior of the space for this unit to be a legal unit again.



**DECISION:**

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Elaine Severino with Josh Safdie absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit and 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	Approval is for the use as a two-family house with no additional parking spaces and alterations to add doors to the house. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/PIng.									
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>Jan 26, 2015</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>Sept 10, 2014</td><td>Modified plans submitted to OSPCD (Easement Plan)</td></tr><tr><td>Mar 4, 2015</td><td>Modified plans submitted to OSPCD (Site Plan, Elevations &amp; Floor Plans Existing &amp; Proposed, Floor plans – downstairs, first, second, third)</td></tr></table>				Date (Stamp Date)	Submission	Jan 26, 2015	Initial application submitted to the City Clerk’s Office	Sept 10, 2014	Modified plans submitted to OSPCD (Easement Plan)	Mar 4, 2015	Modified plans submitted to OSPCD (Site Plan, Elevations & Floor Plans Existing & Proposed, Floor plans – downstairs, first, second, third)
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Any changes to the approved elevations or use that are not <i>de minimis</i> must receive SPGA approval.												
2	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									
3	Applicant shall comply with Fire Prevention Bureau’s requirements.	CO	FP									
4	A third electrical meter shall be installed if there is common space in the building.	BP	Wiring									
Final Sign-Off												
5	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	PIng.									



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*  
Richard Rossetti, *Clerk*  
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.
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**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 \_\_\_\_\_

