



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2014-45
Site: 70 Lowden Avenue
Date of Decision: September 2, 2015
Decision: Petition Approved with Conditions
Date Filed with City Clerk: September 14, 2015

ZBA DECISION

Applicant Name:	John Tucci
Applicant Address:	2 Martins Street, Burlington, MA 01803
Property Owner Name:	Rudy Caruso
Property Owner Address:	70 Lowden Avenue, Somerville, MA 02144
Agent Name:	N/A

<u>Legal Notice:</u>	Applicant, John Tucci, and Owner, Rudy Caruso, seek a Special Permit per SZO §4.4.1 to alter a nonconforming structure to change rear porches to egress stairs.
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<u>Zoning District/Ward:</u>	RA zone/Ward 6
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	May 14, 2014
<u>Date(s) of Public Hearing:</u>	8/5, 8/19, 9/2/15
<u>Date of Decision:</u>	September 2, 2015
<u>Vote:</u>	4-0

Appeal #ZBA 2014-45 was opened before the Zoning Board of Appeals at Somerville City Hall on August 5, 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 three hearings of deliberation, the Zoning Board of Appeals took a vote.



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

The proposal is to change rear porches on the second and third floor from porches to egress as well as add egress from the third floor. The first floor porch will be rebuilt. The garage will be downsized from two to one bay. There is still parking for two vehicles in the driveway.

FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1):

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 the narrow side yard. The narrow sideyard will be extended but maintained at 3.6'. The rear yard will be narrowed from 18' to 15'. 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 nonconforming structures other than one- and two-family dwellings may be enlarged, extended, renovated or altered only by special permit authorized by the SPGA in accordance with the procedures of Article 5. The SPGA must find that such extension, enlargement, renovation or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming building. In making the finding that the enlargement, extension, renovation or alteration will not be substantially more detrimental, the SPGA may consider, without limitation, impacts upon the following: traffic volumes, traffic congestion, adequacy of municipal water supply and sewer capacity, noise, odor, scale, on-street parking, shading, visual effects and neighborhood character."

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 project will create rear egress conforming to the building code and zoning. At the last hearing, neighbors expressed concern with the depth of the rear deck. The building code does not allow a spiral staircase as an exterior means of egress for a 3-family. To decrease the depth of the structure requires relocation of the doors to work with the stair run *and* the interior floor plans.

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 promoting the health, safety, and welfare of the inhabitants of the City of Somerville; to protect health; and to secure safety from fire, panic and other dangers.

The proposal is consistent with the purpose of the district, which is, "To establish and preserve quiet neighborhoods of one- and two-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts." The 3-family home has existed in the neighborhood for 25 years, the rear egress will be consistent with the neighborhood.



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 one-, two-, and three-family uses in between Ball and Davis Squares.

The proposal will impact the side yard but is the best possible outcome for the health and safety of residents.

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

The project will have no effects on the existing stock of affordable housing.

6. 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 project does not contribute to the metrics of SomerVision but does allow a homeowner to make modifications to their property.



DECISION:

Present and sitting were Members Orsola Susan Fontano, Danielle Evans, Josh Safdie and Anne Brockelman with Richard Rossetti and Elaine Severino absent. Upon making the above findings, Danielle Evans made a motion to approve the request for a Special Permit. Josh Safdie 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 reconstruction and alteration of rear egress. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/ Plng.									
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>May 14, 2014</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>March 9, 2015</td><td>Modified plans submitted to OSPCD (Plot Plan)</td></tr><tr><td>August 26, 2015</td><td>Modified plans submitted to OSPCD (A101 Footing Plan, A102 First FP, A103 Second FP, A104 Third FP, A301 Side Elev, A302 Rear Elev, A303 Garage)</td></tr></table>				Date (Stamp Date)	Submission	May 14, 2014	Initial application submitted to the City Clerk’s Office	March 9, 2015	Modified plans submitted to OSPCD (Plot Plan)	August 26, 2015	Modified plans submitted to OSPCD (A101 Footing Plan, A102 First FP, A103 Second FP, A104 Third FP, A301 Side Elev, A302 Rear Elev, A303 Garage)
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Any changes to the approved plan or elevations that are not <i>de minimis</i> must receive SPGA approval.												
Construction Impacts												
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	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.	During Construction	T&P									
Design												
4	The rear decks/egress shall never be enclosed.	Perp.	Plng.									
5	In no way can the deck/egress be connected structurally or cosmetically to the garage.	Perp	Plng.									
6	The area underneath the first floor deck shall be screened.	Perp	Plng.									
Miscellaneous												



7	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	
Final Sign-Off				
8	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.	
9	The decking material shall be composite or wood that is stained as soon as possible.	Final sign off	Plng.	



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Danielle Evans
Josh Safdie
Anne Brockelman, (Alt.)

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 _____

