



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

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ANNE BROCKELMAN, (ALT.)

Case #: ZBA 2016-40
Site: 165 Lowell Street
Date of Decision: May 4, 2016
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: May 12, 2016

ZBA DECISION

Applicant Name:	Zev Fisher
Applicant Address:	165 Lowell Street, Somerville, MA 02143
Property Owner Name:	Zev Fisher
Property Owner Address:	165 Lowell Street, Somerville, MA 02143
Agent Name:	N/A

<u>Legal Notice:</u>	165 Lowell Street. Applicant and Owner, Zev Fisher, seeks a Special Permit per SZO §4.4.1 to extend the landing of an existing deck within the rear side yard setback.
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<u>Zoning District/Ward:</u>	RA zone/Ward 3
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	March 31, 2016
<u>Date(s) of Public Hearing:</u>	May 4, 2016
<u>Date of Decision:</u>	May 4, 2016
<u>Vote:</u>	5-0

Appeal #ZBA 2016-40 was opened before the Zoning Board of Appeals at Somerville City Hall on May 4, 2016. 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
(617) 625-6600 EXT. 2500 • TTY: (617) 666-0001 • FAX: (617) 625-0722
www.somervillema.gov

DESCRIPTION:

The Applicant proposes to increase the size of the rear deck such that the rear yard setback is reduced by two feet. The required rear setback in the RA zone is 20 feet. However, because the existing structure is already within the required rear yard setback, the extension of the existing deck triggers the need for a Special Permit.

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 §4.4.1 of the SZO. This section of the report goes through §4.4.1 in detail.

1. **Information Supplied:**

The Board finds that the information provided by the Applicant conforms to the requirements of §4.4.1 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."

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 §4.4.1 of the SZO, the Board finds that the proposed alterations would not be substantially more detrimental to the neighborhood than those already present on the existing structure. The enlargement of a small, existing deck is a reasonable accommodation to allow for residents to enjoy usable outdoor space in an otherwise densely-built and densely populated area.

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 Board finds that the proposal is consistent with the purpose of the RA 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."

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."

In considering a special permit under §4.4.1 of the SZO, the Board finds that the alterations proposed are compatible with the surrounding neighborhood which is comprised of 2- and 3-family houses of similar size, scale, massing, and design as 165 Lowell on similarly-sized lots.

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



The proposal will not add to the existing stock of affordable housing.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Elaine Severino and Josh Safdie. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit. Elaine Severino 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 the enlargement of an existing rear deck.	BP/CO	ISD/Plng.					
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>March 31, 2106</td><td>Initial application submitted to the City Clerk's Office</td></tr></table>				Date (Stamp Date)	Submission	March 31, 2106	Initial application submitted to the City Clerk's Office
	Date (Stamp Date)				Submission			
March 31, 2106	Initial application submitted to the City Clerk's Office							
Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive SPGA approval. Whether or not a change is <i>de minimis</i> in nature must be determined by the Planning Office.								
Design								
2	The proposed deck shall be constructed of wood (not pressure-treated wood and not synthetic materials).	CO	Planning Staff / ISD					
3	Neither the deck nor any portion thereof shall be allowed to be enclosed now or at any time in the future.	In perpetuity	Planning Staff / ISD					
Construction Impacts								
4	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					
5	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					
Electrical								
6	Any exterior lighting installed must first receive a permit from the Electrical/Wiring Inspector prior to installation	Installation of Utilities	Wiring Inspector					
Public Safety								
7	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements including, but not limited to the prohibition on storing and using grills on porches and decks.	CO	FP					



8	Any exterior lighting that is installed must be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	Plng.	
Final Sign-Off				
9	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.	



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Richard Rossetti, *Clerk*
Danielle Evans
Elaine Severino
Josh Safdie

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 _____

