



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**ZONING BOARD OF APPEALS**  
**JOSEPH A. CURTATONE**  
**MAYOR**

**MEMBERS**

*Herbert F. Foster, Jr., Chairman*  
Orsola Susan Fontano, *Clerk*  
Richard Rossetti  
T. F. Scott Darling, III, Esq.  
Danielle Fillis  
Elaine Severino (Alt.)  
Josh Safdie (Alt.)

**Case #: ZBA 2008-67-R0409**  
**Site: 42 Allen Street**  
**Date of Decision: May 20, 2009**

**Decision: Revision Approved with Conditions**  
**Date Filed with City Clerk: June 1, 2009**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Marc Resnick
<b>Applicant Address:</b>	183 Harvard Avenue, Allston, MA 02134
<b>Property Owner Name:</b>	Marc Resnick
<b>Property Owner Address:</b>	183 Harvard Avenue, Allston, MA 02134
<b>Agent Name:</b>	Alissa Devlin, Esq.
<b>Agent Address:</b>	183 Harvard Avenue, Allston, MA 02134

Legal Notice: Applicant & Owner Marc Resnick seeks a revision to special permit 2008-67 in order to remove a condition of approval that required access to two rear yard parking spaces. RB zone. Ward 2.

<u>Zoning District/Ward:</u>	RB zone/Ward 2
<u>Zoning Approval Sought:</u>	Revision to Special Permit# 2008-67
<u>Date of Application:</u>	April 28, 2009
<u>Date(s) of Public Hearing:</u>	May 20, 2009
<u>Date of Decision:</u>	May 20, 2009
<u>Vote:</u>	5-0

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Appeal #ZBA 2008-67-R0409 was opened before the Zoning Board of Appeals at Somerville City Hall on May 20, 2009. After one hearing of deliberation, the Zoning Board of Appeals took a vote.

**DESCRIPTION & FINDINGS FOR SPECIAL PERMIT REVISION**

The properties at 42 Allen Street and 36 Allen Street each have single residential structures constructed on the lots. There is a large paved area between the two structures which straddles the lot line. This area is accessed by a single curb cut on Allen Street, which provides direct access onto the 36 Allen Street property; but has also been used in the past to access two parking spaces in the rear yard of 42 Allen Street.

Before early 2008, the properties at both 42 Allen Street and 36 Allen Street were under single ownership. The owner held separate mortgages on each property. In early 2008 both properties went into foreclosure and were sold off separately by the individual banks. Since the curb cut that provides access to the parking area for both lots only directly serves 36 Allen Street, the parking spaces on the 42 Allen Street property are not legally recognized by the City as there is no legal right to access.

The condition of approval was an effort by the ZBA to get two off-street parking spaces on the lot since on-street parking is non-existent in this area of Allen Street. The condition required the applicant to either secure an easement from the neighbor at 36 Allen to provide access to the parking area in the rear yard, or for the applicant to submit a new site plan that incorporated a driveway and new curb cut on Allen Street to provide access.

Option #1- Easement: The applicant and the owner of 36 Allen Street have worked to negotiate an easement to provide the access, however a final agreement has not been reached. Staff has spoken with both owners. The owner of 36 Allen Street has reservations about agreeing to an easement on his property and monetary terms for a long term lease agreement to provide access was not met. Several leases and agreements for the use of a portion of the property at 36 Allen Street, submitted by the applicant, are attached to this report. Staff has not verified that the owner of 36 Allen Street received this exact contract, but from discussions with the neighbor the terms of the contract are in accordance with what was received. The Board finds that adequate negotiations were conducted and appropriate efforts were made by the applicant to reach an agreement.

Option #2 - Site Plan and Curb Cut: The applicant discussed the possibility of a new curb cut on Allen Street with Stan Koty and Steve MacEachern at DPW. DPW would not agree to a curb cut in the necessary location due to a street water drain that exists in that area. Moving the drain and the repaving the area could be an option, but the Board finds this to be prohibitively expensive for the applicant.

The Board finds that since no legal access to the parking area is available that the existing number of spaces on the lot is zero. Since there is no increase in the number of units or bedrooms, no parking is required on the property under the SZO. The Board finds that the current unfinished condition of the building on this property is having a negative impact on the neighborhood and denying this application will ensure that the building remains in this condition for the foreseeable future. Though on-street parking is very limited in this area, Union Square and access to public transportation is within an easy walking distance. The proposed Green Line station is also within a close proximity to this property which will provide residents with additional public transportation alternatives.

In addition, the applicant has submitted a new landscaping plan that will replace the asphalt area along the side and rear of the property with trees, bushes and pervious materials. This will considerably increase the amount of landscaping on the site and will generally improve the appearance of the property and neighborhood.

Based on the above, the Zoning Board finds that the Applicant has made good faith efforts to overcome the issues associated with the parking and to comply with condition of approval #3.

## **DECISION:**

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Fillis and Scott Darling. Upon making the above findings, Susan Fontano made a motion to approve the request for a special permit. Scott Darling 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 construction of an approximately 15.3' deep by 26.8' wide, two story rear addition. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	Plng.									
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>(11/26/08)</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>1/30/09(2/3/09)</td><td>Elevations</td></tr><tr><td>11/10/08(1/29/09)</td><td>Site Plan</td></tr></table>				Date (Stamp Date)	Submission	(11/26/08)	Initial application submitted to the City Clerk's Office	1/30/09(2/3/09)	Elevations	11/10/08(1/29/09)	Site Plan
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11/10/08(1/29/09)	Site Plan											
Any changes to the approved elevations that are not <i>de minimis</i> must receive ZBA approval.												
2	A landscaping plan shall be submitted to OSPCD for approval.	Building Permit	Plng/ISD									
3	A code compliant fire alarm system shall be installed.	CO	FP									
4	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									
5	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final sign-off on the building permit 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.									
6	The applicant shall submit a final elevation drawing for Staff approval that indicates the siding materials to be used.	Building Permit	Plng./ISD									

Attest, by the Zoning Board of Appeals:

Herbert Foster, Chairman  
Orsola Susan Fontano, Clerk  
Richard Rossetti  
T.F. Scott Darling, III, Esq.  
Danielle Fillis

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  
ZBA 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 \_\_\_\_\_

Date: May 26, 2009  
Case #: ZBA 2008-67-R0409  
Site: 42 Allen Street