



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
**JOSEPH A. CURTATONE**  
**MAYOR**

PLANNING DIVISION

***ZONING BOARD OF APPEALS MEMBERS***

HERBERT F. FOSTER, JR., *CHAIRMAN*  
ORSOLA SUSAN FONTANO, *CLERK*  
RICHARD ROSSETTI  
T. F. SCOTT DARLING, III, ESQ.  
DANIELLE EVANS  
ELAINE SEVERINO (ALT.)  
JOSH SAFDIE (ALT.)

**Case #: ZBA 2010-44**  
**Site: 42-44 Boston Avenue**  
**Date of Decision: September 15, 2010**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: September 23, 2010**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Kelley Brooks, Heather Brooks & Thomas Driscoll, III
<b>Applicant Address:</b>	42-44 Boston Avenue, Somerville, MA 02144
<b>Property Owner Name:</b>	Kelley Brooks, Heather Brooks & Thomas Driscoll, III
<b>Property Owner Address:</b>	42-44 Boston Avenue, Somerville, MA 02144
<b>Agent Name:</b>	Isais Almeida
<b>Agent Address:</b>	42 Everett Street, Medford, MA 02155

<u>Legal Notice:</u>	Applicants and Owners, Kelley Brooks, Heather Brooks, and Thomas Driscoll III, seek a Special Permit under SZO §4.4.1 to replace a previously existing deck and stairs, maintaining the previously existing size.
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<u>Zoning District/Ward:</u>	RA zone/Ward 5
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	August 12, 2010
<u>Date(s) of Public Hearing:</u>	September 15, 2010
<u>Date of Decision:</u>	September 15, 2010
<u>Vote:</u>	5-0

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Appeal #ZBA 2010-44 was opened before the Zoning Board of Appeals at Somerville City Hall on September 15, 2010. 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 is proposing to finish the deck and stairs construction, keeping the 16' x 11' deck size.

## **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."

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 since the finished space currently exists, and Staff knows of no concerns about the current existing deck or stairs. Although the original deck was not permitted, there is no record of any complaints about the structure that had been in the same location for many years. No additional work is being proposed for the exterior of the structure.

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 providing for and maintain the uniquely integrated structure of uses in the City and purpose of the RA district in altering this dwelling. The applicants purchased a dwelling with an existing deck, and proposed to rebuild that deck and stairs, keeping same size dimensions. The Board finds this to be acceptable as an initial building permit was granted in July 2010, the owners acted in good faith and supplied all information at each step of the process, and all framing was in place at the time of the first building inspection. The size of the deck at 44 Boston Avenue has received no negative comments from neighbors and all residents of the building will have access to the deck.

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 increase in legal deck size would not have an effect on the site or the area as the existing deck was the same size. No additional changes to this residence are proposed in this special permit.

## **DECISION:**

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans 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:



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#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	<p>Approval is to replace existing deck and stairs on first floor, maintaining existing size of 176 sf. This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>(8/12/2010)</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>(8/10/2010)</td><td>Existing and proposed plans submitted to OSPCD</td></tr></table> <p>Any changes to the approved plans that are not <i>de minimis</i> must receive ZBA approval.</p>	Date (Stamp Date)	Submission	(8/12/2010)	Initial application submitted to the City Clerk's Office	(8/10/2010)	Existing and proposed plans submitted to OSPCD	BP/CO	Plng.	
Date (Stamp Date)	Submission									
(8/12/2010)	Initial application submitted to the City Clerk's Office									
(8/10/2010)	Existing and proposed plans submitted to OSPCD									
2	The deck size shall be constructed at the dimensions of 16' x 11' (maintaining original size).	CO	ISD							
3	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.							



Attest, by the Zoning Board of Appeals:

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

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 \_\_\_\_\_



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