



**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.)*

**Case #: ZBA 2008-05**  
**Site: 209 Cedar Street**  
**Date of Decision: February 20, 2008**  
**Decision: Petition Approved with Conditions**  
  
**Date Filed with City Clerk: February 27, 2008**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Ryan Evans & Darcy Duke
<b>Applicant Address:</b>	209 Cedar Street, Somerville, MA 02145
<b>Property Owner Name:</b>	Ryan Evans & Darcy Duke
<b>Property Owner Address:</b>	209 Cedar Street, Somerville, MA 02145
<b>Agent Name:</b>	Josh Fenollosa/Brown Fenollosa Architects, Inc.
<b>Agent's Address:</b>	700 Massachusetts Avenue, Cambridge, MA 02139

**Legal Notice:** Applicants & Owners Ryan Evans and Darcy Duke seek Special Permit approval under SZO §4.4.1 for the alteration of a non-conforming structure in order to build a two level deck with stairs. The Applicants seek Special Permit approval under SZO §8.5H to build 4.5' into the required sideyard. RB Zone. Ward 5.

<b><u>Zoning District/Ward:</u></b>	Residence B (RB) zone/Ward 5
<b><u>Zoning Approval Sought:</u></b>	§4.4.1 & §8.5.H
<b><u>Date of Application:</u></b>	January 14, 2008
<b><u>Date(s) of Public Hearing:</u></b>	February 20, 2008
<b><u>Date of Decision:</u></b>	02/20/2008
<b><u>Vote:</u></b>	5-0

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Appeal #ZBA 2008-05 was opened before the Zoning Board of Appeals at Somerville City Hall on February 20, 2008. 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 (1) hearing(s) of deliberation, the Zoning Board of Appeals took a vote.

**DESCRIPTION:**

The Applicant is seeking a special permit under SZO §4.4.1 to add a two-story unenclosed deck at the rear of the property. The deck would be 18' 3" wide by 17' 11" deep and would align with the side of the house. There is an existing 6' by 11' roofed, two-story unenclosed deck that is proposed to be removed in the same side yard location where the proposed deck would be. The proposed deck will be partially

roofed and constructed of mahogany. New windows and doors will be added to the second floor kitchen along the sides and rear of the building.

**FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1):**

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 Applicant requires a special permit under §4.4.1 of the SZO. Under §4.4.1, "the SPGA, as a condition of granting a special permit under this Section must find that such extension, enlargement, renovation or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming structure."

The Board finds that the Applicant's proposal **would not be substantially more detrimental** to the surrounding neighborhood than the existing structure, as required under §4.4.1 of the SZO. The proposal is not more detrimental in visual effects or privacy concerns. While the deck is extending in depth, most of the proposed deck would be further away from the property boundary than the existing home and the existing deck.

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 purposes set forth in Article 1 of the Zoning Ordinance, and with, to the extent possible for a lawful pre-existing nonconforming structure, those purposes established for the Residential A (RA) zoning district in which the property is located, namely "(t)o 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."

The Board finds that the proposal **is compatible** with the site and area. The deck and the modification of windows and doors would not be visually intrusive within the neighborhood.

**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 a 18' 3" wide x 17' 11" deep partially covered deck that will be dimensionally nonconforming in terms of the side yard setback under SZO §8.5.H. This approval is based upon the following application materials and the plans submitted by the Applicant and/or the Agent:	Building Permit	Plng.									
	<table><tr><th>Date</th><th>Submission</th></tr><tr><td>January 14, 2008</td><td>Initial Plans submitted to the City Clerk's Office (A1.1)</td></tr><tr><td>February 1, 2008</td><td>Modified plan submitted to OSPCD (A0.0)</td></tr><tr><td>February 15, 2008</td><td>Modified plan submitted to OSPCD (A2.1)</td></tr></table>				Date	Submission	January 14, 2008	Initial Plans submitted to the City Clerk's Office (A1.1)	February 1, 2008	Modified plan submitted to OSPCD (A0.0)	February 15, 2008	Modified plan submitted to OSPCD (A2.1)
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Any changes to the approved site plan must receive ZBA approval.												
2	The color of the deck shall match that of the house.	CO	Plng.									
3	No future enclosure of the deck shall be allowed.	Cont.	Plng.									
4	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.	CO	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 Zoning Board of Appeals 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 (20) 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 special permit, or any extension, modification or renewal thereof, 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. The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services is 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 either

\_\_\_\_\_ 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.

Signed \_\_\_\_\_

City Clerk Date \_\_\_\_\_