



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

PLANNING DIVISION

***ZONING BOARD OF APPEALS MEMBERS***

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

**Case #: ZBA # 2011-10**  
**Site: 76 Church Street**  
**Date of Decision: March 2, 2011**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: March 14, 2011**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Carlos Amaral
<b>Applicant Address:</b>	90 Ferncroft Road, Tewksbury, MA 01876
<b>Property Owner Name:</b>	Rui Amaral
<b>Property Owner Address:</b>	226 River Road, Winthrop, MA 02152
<b>Agent Name:</b>	N/A

<u>Legal Notice:</u>	Applicant Carlos Amaral and Owner Rui Amaral seek a special permit to alter a nonconforming 3-family house (SZO §4.4.1) to add a second means of egress to the third floor unit by converting a window to a door, construct a deck on the roof of an existing one-story portion of the structure and construct stairs in the side and rear yard setbacks.
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<u>Zoning District/Ward:</u>	RB zone/Ward 2
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	January 19, 2011
<u>Date(s) of Public Hearing:</u>	March 2, 2011
<u>Date of Decision:</u>	March 2, 2011
<u>Vote:</u>	5-0

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Appeal #ZBA 2011-10 was opened before the Zoning Board of Appeals at Somerville City Hall on March 2, 2011. 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 Applicants seek to add a second means of egress for the second floor unit. ISD has indicated that this is required to provide legal access and continue to occupy all three units of the structure. To meet this requirement, the proposal includes changing a window on the second story to a door, constructing a deck on the existing one-story portion of the building, and constructing stairs into the rear and side yards. The deck will be located eight feet from the rear property line. The stairs will be three feet from the rear property line and only one foot from the side property line. Since the stairs will be closer than three feet from the property line, the stairs must be constructed out of a noncombustible material. The Applicants are proposing to use an aluminum decking that meets fire prevention requirements. The Applicant has indicated that this particular product stays cool in the sun and does not make a "ping" sound (a negative quality to most aluminum products).

In order to continue to access the rear yard, and to provide egress to the street, the applicant is proposing to bring stairs down to a landing in the side yard that will then provide access to both the front of the house, via the side yard, and the rear yard area, via the rear steps.

The applicants considered, and staff reviewed, an alternative concept that would place steps along the Summer Street façade of the house. Generally, the Board and the applicants agreed that this design would be more detrimental to the neighborhood.

## **FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1 & §5.1):**

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. The existing house currently has minimal setbacks and the proposal only increases the nonconformities in the side and rear yards to accommodate the stairs.

The proposed deck in the rear yard will be located approximately 12 feet from the second story of the neighboring property. Many of the houses in the area are within close proximity of each other. The abutters voiced concern regarding the proposal. The Board feels that this design does its best to minimize neighborhood impact and, while it does have some impacts on the abutting property, is not substantially more detrimental than the existing condition on the lot.

The material chosen for the decking and stairs adequately addresses issues that arise with being close to the property line. The aluminum material chosen is noncombustible, will not get hot in the sun, and does not emit a loud when something hits against it.

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."



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The proposal to add a second means of egress for the second floor residential unit 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 and providing for and maintain the uniquely integrated structure of uses in the City. The proposal is also consistent with the RB district to preserve the three-family home.

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 stairs will encompass a portion of the backyard, and complicate access to the back yard, although the design does express how to provide that access. If the the stairs were located along the Summer Street side of the house, this alternative would be very visible and disruptive to the appearance of the house.

### **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:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	Approval is for the alteration of a nonconforming 3-family house to add a second means of egress to the second floor unit by converting a window to a door, construct a deck on the roof of an existing one-story portion of the structure and construct stairs in the side and rear yard setbacks. 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>1/19/11</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>9/8/10</td><td>Plans submitted to OSPCD (C-1 Plot Plan, A-1 Lower Roof Plan, A-2 Elevation, S-1 Details)</td></tr></table>				Date (Stamp Date)	Submission	1/19/11	Initial application submitted to the City Clerk's Office	9/8/10	Plans submitted to OSPCD (C-1 Plot Plan, A-1 Lower Roof Plan, A-2 Elevation, S-1 Details)
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	9/8/10				Plans submitted to OSPCD (C-1 Plot Plan, A-1 Lower Roof Plan, A-2 Elevation, S-1 Details)					
Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive SPGA approval.										
2	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP							
3	The maximum number of dwelling units in the structure shall be three.	Perpetual	ISD							
4	The deck and stairs shall be made of Versadeck Aluminum Decking, as proposed, or a similar product or wrought iron.	Final sign off	Plng.							
5	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.							



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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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