



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

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JOSH SAFDIE (ALT.)

**Case #: ZBA 2007-29**  
**Site: 30 College Avenue**  
**Date of Decision: December 17, 2008**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: December 30, 2008**

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**ZBA DECISION**

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<b>Applicant Name:</b>	D.F. Valente, Architect & Planner
<b>Applicant Address:</b>	571 Main Street – Rear, Medford, MA 02155-6552
<b>Property Owner Name:</b>	Mouhab Rizkallah
<b>Property Owner Address:</b>	30 College Avenue, Somerville, MA 02144
<b>Agent Name:</b>	N/A

<b><u>Legal Notice:</u></b>	The ZBA will reopen proceedings for a special permit (#ZBA2007-29) sought by Owner M.Z. Rizkallah and Applicant D.F. Valente, in order to hold a new hearing on the applicant's request to construct a new front addition, an exterior stairway, and a third floor onto an existing building (SZO §4.4.1). CBD zone. Ward 6.
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<b><u>Zoning District/Ward:</u></b>	CBD zone/Ward 6
<b><u>Zoning Approval Sought:</u></b>	§4.4.1
<b><u>Date of Application:</u></b>	May 23, 2007
<b><u>Date(s) of Public Hearing:</u></b>	5/21, 6/4, 6/18, 7/9, 7/23, 8/6, 8/20, 9/3, 9/17, 10/1, 10/15, 11/5, 11/19, 12/3 & 12/17/08
<b><u>Date of Decision:</u></b>	December 17, 2008
<b><u>Vote:</u></b>	4-0

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Appeal #ZBA 2007-29 was opened before the Zoning Board of Appeals at Somerville City Hall on May 21, 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 three (3) hearing(s) of deliberation, the Zoning Board of Appeals took a vote.

**DESCRIPTION:**

The Applicant is proposing several additions to an existing nonconforming structure, principally including a new front addition, a new third story, and a new emergency egress staircase at the

rear. The purpose of the proposal is to satisfy Americans with Disabilities Act (ADA) requirements and emergency egress requirements, as well as to create additional office space. More details on these are below.

Front addition for elevator: The front addition would be three stories high and would align with the existing façade along College Avenue; this addition is proposed to contain stairs and an ADA-compliant elevator.

In the revised proposal, no changes would be made to this aspect of the design.

Rear addition for egress stair: A rear stair measuring approximately 8' by 19' is proposed outside the existing building envelope, at the rear of the structure. The proposed stair is required under 780 CMR (State building code) in order for the Applicant to retain access to the existing second floor. In response to concerns about length of the stair's projection, the Applicant has revised the design by rotating it 90 degrees, so that the long side abuts the building rather than the adjoining property line. The material for the enclosure is now proposed to be glass block rather than stucco, in order to allow the passage of more sunlight to the northerly parcel.

This aspect of the plan has been revised as requested by abutters. In the revised proposal, the material would be stucco matching the existing structure. In addition, the stair would be relocated away from the common property line a distance of three feet, as requested by the abutters.

Expansions for office space: Parts of the first and second floors would also be extended along much of the rear (west) and right side (north) property lines, in order to align with the existing first floor; one first floor bay window would be extended outward three feet and up one story, in order to align with the rear portion of the structure. These changes would accommodate existing storage space for the existing orthodontics practice (less than 40 s.f. on the first floor, and less than 200 s.f. on the second floor), as well as provide just over 2,000 s.f. of office space on the third floor.

This aspect of the plan has been revised as requested by abutters. In the revised proposal, the first floor would remain as previously proposed, with the elevator additions already described and an approximately three-foot-deep by 11-foot-wide expansion to the northern property line, where an existing bay window would box out for more office space. In a change from the original proposal, the second floor would be contained entirely within its existing footprint. The third floor would be built only to the existing limits of the second-floor footprint in the rear, with the total area remaining less than the second floor.

#### **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 Staff 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 Permit.
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."

While nonconforming structures by definition do not comply with the zoning standards, the structure meets most standards for the CBD, the district in which the structure is almost entirely located (excluding the proposed rear

stair). The nonconformity results from its deficient rear yard setback and its adjacency and height to the nearest property located in the RB district. The rear stair and the proposed third floor addition in the rear would increase the nonconformity with SZO §8.6.12 and §8.6.20, which, respectively, govern setbacks and height limits near residential districts. Furthermore, as the proposal has been revised to pull the rear stair and additions at the second and third floor levels further away from the property lines, the degree of nonconformity of the additions would be less than originally proposed. As such, the proposal would **not** be substantially more detrimental than the existing condition.

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 development site is located almost entirely within a Central Business District (CBD) and would extend partially into the Residence B (RB) zoned parking lot. The CBD seeks to "preserve and enhance central business areas for retail, business services, housing, and office uses and to promote a strong pedestrian character and scale in those areas." The RB district seeks to "establish and preserve a district for multi-family residential and other compatible uses which are of particular use and convenience to the residents of the district." The proposal would not change the use of the site and these purposes would still be satisfied by the expanded office use.

The proposal is also consistent with the general purposes of the Ordinance as set forth under §1.2, which includes "conserv[ing] the value of land and buildings." The elevator and stair are required under State codes in order for the property owner to have use of the *existing* upper floors of the structure. He has requested additional office space in order to support his existing orthodontics practice as well as to offset the added maintenance expenses for the new facilities.

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."

With the revised design, and as conditioned, Staff find that the addition is necessary and compatible with surrounding CBD development and that the impact on neighboring residentially zoned properties has been minimized to the greatest reasonable degree. Furthermore, the pattern of development is consistent with other CBD properties in the area, many of which also abut residential districts.

## **DECISION:**

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti and Elaine Severino. Upon making the above findings, Susan Fontano made a motion to approve the request for a special permit. Richard Rossetti seconded the motion. Wherefore the Zoning Board of Appeals voted **4-0** 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: <ul style="list-style-type: none"><li>▪ Front addition for the elevator shaft;</li><li>▪ Rear addition for the egress stair;</li><li>▪ Northerly expansion for first floor office space; and</li><li>▪ Addition of third floor on rear of structure.</li></ul> This approval is based upon the following application materials and the plans submitted by the Applicant and/or the Agent:	Building Permit and CO	ISD and Plng.	
	<table><tr><td>Plan Date</td><td>Submission</td></tr></table>			
Plan Date	Submission			

#	Condition		Timeframe for Compliance	Verified (initial)	Notes
	(Stamp Date)				
	November 10, 2008 (11/26/08)	Plans A1 and A2, stamped revised, showing relocated rear stair.			
	Any non <i>de minimis</i> changes to the approved elevations and plans of exterior walls must receive ZBA approval.				
2	The existing dumpster shall be relocated away from residentially used properties and screened from public view.		CO	ISD / Plng.	
3	As provided in Condition 1, the work on the portion of the building along College Avenue will proceed in accordance with the submitted plans.		BP/ CO	ISD / Plng.	
4	As provided in Condition 1, the new third floor will be constructed directly above the footprint of the current second floor, with no projections outside that footprint.		BP/ CO	ISD / Plng.	
5	As provided in Condition 1, the new rear egress stair will be made of matching stucco rather than glass block; would be moved away from the common property line at least three feet (plus or minus one inch); and would be constructed with scaffolding configured so as not to use the neighboring property for construction or maintenance.		BP/ CO	ISD / Plng.	
6	Any new construction requires a plan and construction of a new drainage system that will prevent run-off onto abutters' property.		BP/ CO	ISD / Plng.	
7	The Chief or Deputy Chief of the Fire Department must provide written assurance that he has reviewed and approved the proposal of the new addition with regard to potential fire hazards before construction begins, in accordance with his letter of May 21, 2008.		BP	FP	
8	New constructed must include a plan, and must be conducted, so as to mitigate dust, noise, and any hazardous materials (e.g., asbestos) encountered during construction.		BP / During Construction	ISD	
9	Every effort must be made to ensure that construction materials, construction debris, and extraneous materials (e.g., coffee cups, cigarette butts, etc.) will be properly disposed of and not permitted to fall into abutters' yards.		During Construction	ISD	
10	The exterior parts of the new construction shall be completed, from start to finish, within a six-month timeframe. Construction may only be performed on weekdays between 7:30 a.m. and 7:00 p.m.		During Construction	ISD	
11	No construction materials, tools or apparatus of any kind, including ladders, staging, etc., may be placed on the property of the abutters at 4 Park Ave.		During Construction	ISD	
12	In the event that there is any damage to abutters' property, including landscaping or structures, the applicant will be responsible for the reasonable costs of restoration.		During Construction		
13	All construction will be performed from the applicant's own property and not from abutting properties.		During Construction	ISD	
14	Any modifications to the fire alarm system and sprinkler system due to this renovation will require plans to be submitted for Fire Prevention approval. A new Certificate of Compliance will be required for occupancy.		CO	FP	

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
15	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	
16	The Applicant will permit the abutter at 4 Park Ave to plant ivy along walls abutting their property.	Cont.		
17	Subject to appropriate weather conditions, the Applicant shall consent to the removal of the portion of the shared breezeway that is not on his property, and shall repair his common wall according to the attached plans, in the event of such partial demolition.	As applicable	ISD	

Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*  
Orsola Susan Fontano, *Clerk*  
Richard Rossetti  
Elaine Severino (Alt.)

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  
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 \_\_\_\_\_