



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 2008-47**  
**Site: 49 Electric Avenue**  
**Date of Decision: October 1, 2008**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: October 14 2008**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Mathias Neuber
<b>Applicant Address:</b>	49 Electric Avenue, Somerville, MA 02144
<b>Property Owner Name:</b>	Mathias Neuber
<b>Property Owner Address:</b>	49 Electric Avenue, Somerville, MA 02144
<b>Agent Name:</b>	N/A

<u><b>Legal Notice:</b></u>	Applicant & Owner: Mathias Neuber seeks Special Permit approval under SZO §4.4.1 for the alteration of a non-conforming structure in order to construct a deck on the roof of an existing garage. RA zone. Ward 7.
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<u><b>Zoning District/Ward:</b></u>	RA zone/Ward 7
<u><b>Zoning Approval Sought:</b></u>	§4.4.1
<u><b>Date of Application:</b></u>	August 20, 2008
<u><b>Date(s) of Public Hearing:</b></u>	October 1, 2008
<u><b>Date of Decision:</b></u>	October 1, 2008
<u><b>Vote:</b></u>	5-0

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Appeal #2008-47 was opened before the Zoning Board of Appeals at Somerville City Hall on October 1, 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 construct a wood 16 foot by 16 foot deck above an existing 19 foot by 19 foot garage that extends from the rear of the structure. The proposal includes a stairway linking an existing rear porch to the new deck. The deck is proposed to be 36" in height.

**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."

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. The deck will be located above an existing garage and the Board finds that the appearance of the garage will be improved with the deck and associated wooden railings.

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 Residence 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 would not be visually intrusive within the neighborhood. In addition, there are other decks that have been built above garages in the surrounding area.

**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 16 foot by 16 foot deck above a rear yard garage. This approval is based upon the	Building Permit	Plng.	

	following application materials and the plans submitted by the Applicant and/or the Agent: <table><tr><th>Date</th><th>Submission</th></tr><tr><td>August 20, 2008</td><td>Initial application, plot plan, site plan and elevation submitted to the City Clerk's Office</td></tr></table> Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive ZBA approval.	Date	Submission	August 20, 2008	Initial application, plot plan, site plan and elevation submitted to the City Clerk's Office			
Date	Submission							
August 20, 2008	Initial application, plot plan, site plan and elevation submitted to the City Clerk's Office							
2	No fires, barbeques, etc. shall be allowed on the deck	Cont.	Fire					
3	The deck shall be painted to match the existing rear yard deck.	CO	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  
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 \_\_\_\_\_