



**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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T. F. SCOTT DARLING, III, ESQ.  
DANIELLE EVANS  
ELAINE SEVERINO (ALT.)  
JOSH SAFDIE (ALT.)

**Case #: ZBA 2010-39**  
**Site: 24 Fairmount 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>         | David Liu  |
| <b>Applicant Address:</b>      | 24 Fairmount Ave, Somerville, MA 02144           |
| <b>Property Owner Name:</b>    | David Liu  |
| <b>Property Owner Address:</b> | 24 Fairmount Ave, Somerville, MA 02144           |
| <b>Agent Name:</b>             | Adam Dash, Esq.                                  |
| <b>Agent Address:</b>          | 48 Grove Street, Suite 304, Somerville, MA 02144 |

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|----------------------|--|
| <u>Legal Notice:</u> | Applicant and Owner, David Liu, seeks a Special Permit under SZO §4.4.1 to legalize existing basement improvements that increase floor area ratio. |
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|                                   |                    |
|-----------------------------------|--------------------|
| <u>Zoning District/Ward:</u>      | RA zone/Ward 7     |
| <u>Zoning Approval Sought:</u>    | §4.4.1             |
| <u>Date of Application:</u>       | July 27, 2010      |
| <u>Date(s) of Public Hearing:</u> | 9/1 & 9/15/10      |
| <u>Date of Decision:</u>          | September 15, 2010 |
| <u>Vote:</u>                      | 5-0                |

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Appeal #ZBA 2010-39 was opened before the Zoning Board of Appeals at Somerville City Hall on September 1, 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 two hearings of deliberation, the Zoning Board of Appeals took a vote.



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## **DESCRIPTION:**

The applicant is proposing to legalize the existing 753 nsf of existing basement improvements. The applicant also proposes to install 2 window wells for emergency egress and to make minor improvements. There will be no structural changes to the dwelling. The finished basement will continue to serve, and be part of, the first floor unit at the premises, and will not be an additional unit. The property will remain a two-family dwelling.

## **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 find that the alterations proposed would not be substantially more detrimental to the neighborhood than the existing structure since the finished space currently exists, and the planning staff knows of no concerns about the currently existing basement level. No 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. That applicant purchased a dwelling with existing basement rooms, and proposes to legalize those improvements. The board finds this to be acceptable if those rooms are considered part of the first floor unit, and will not be rented separately. Use of these rooms allows more options for the first floor occupant, and creates more bedrooms and a unit type that is more appealing to families.

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 living space would not have an effect on the site or the area as no exterior alterations are proposed except for window wells and the basement space is currently finished. Adding the two window wells for emergency egress is approved as a valuable improvement to this residential dwelling.

## **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   | Approval is to legalize an existing finished basement space of 753 nsf. 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>(7/27/2010)</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>(7/27/2010)</td><td>Existing and proposed plans submitted to OSPCD</td></tr></table>                               |                          |                    |       | Date (Stamp Date)  | Submission | (7/27/2010) | Initial application submitted to the City Clerk's Office | (7/27/2010) | Existing and proposed plans submitted to OSPCD |
|   | Date (Stamp Date)   |                          |                    |       | Submission   |            |             |  |             |  |
|   | (7/27/2010)   |                          |                    |       | Initial application submitted to the City Clerk's Office |            |             |  |             |  |
|   | (7/27/2010)   |                          |                    |       | Existing and proposed plans submitted to OSPCD           |            |             |  |             |  |
| Any changes to the approved plans that are not <i>de minimis</i> must receive ZBA approval. |   |                          |                    |       |  |            |             |  |             |  |
|   |   |                          |                    |       |  |            |             |  |             |  |
|   |   |                          |                    |       |  |            |             |  |             |  |
| 2   | There shall be no more than two units within the structure.   | CO                       | ISD.               |       |  |            |             |  |             |  |
| 3   | No further off-street parking spaces shall be constructed.  | 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. | Final sign off           | Plng.              |       |  |            |             |  |             |  |
| 5   | The Applicant shall add egress door from basement if required by ISD and provide updated plans to Planning staff for review and approval.   | BP                       | 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 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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