



**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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DANIELLE FILLIS  
ELAINE SEVERINO (ALT.)  
JOSH SAFDIE (ALT.)

**Case #: ZBA #2009-49**  
**Site: 38 Gorham Street**  
**Date of Decision: December 16, 2009**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: December 22, 2009**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Daniel O'Rourke
<b>Applicant Address:</b>	38 Gorham Street, Somerville, MA 02144
<b>Property Owner Name:</b>	Daniel O'Rourke
<b>Property Owner Address:</b>	38 Gorham Street, Somerville, MA 02144
<b>Agent Name:</b>	N/A

<b><u>Legal Notice:</u></b>	Applicant & Owner Daniel O'Rourke proposes to convert a two-family into a three-family dwelling and seeks a variance (SZO §5.5) for lot area per dwelling unit. The Applicant also seeks a special permit (§4.4.1 & 5.1) for the alteration of a non-conforming structure in order to construct a dormer and deck within the required side yard. RB zone. Ward 7.
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<b><u>Zoning District/Ward:</u></b>	RB zone/Ward 7
<b><u>Zoning Approval Sought:</u></b>	§5.5, §4.4.1 & §5.1
<b><u>Date of Application:</u></b>	November 9, 2009
<b><u>Date(s) of Public Hearing:</u></b>	December 2, 2009
<b><u>Date of Decision:</u></b>	December 16, 2009
<b><u>Vote:</u></b>	5-0

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Appeal #ZBA 2009-49 was opened before the Zoning Board of Appeals at Somerville City Hall on December 2, 2009. 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 original proposal was to convert the structure from a two-family dwelling into a three-family dwelling; however, after the Planning Board meeting on November 19, the applicant revised the proposal. The house will remain a two family – the half-story of the house would not contain cooking facilities and would therefore not constitute a separate dwelling unit. The addition of a parking space on the property has been withdrawn. The revised proposal involves constructing an eight foot shed dormer for a bathroom and a two-story, approximately 9.5x18.5 foot deck in the rear of the property.

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

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 deck would not increase the encroachment into the side yard and only extend a few feet further into the rear yard than an existing porch that has been removed. The proposed dormer is fairly small at 8 feet wide. It would start below the ridge of the house where an existing dormer on the opposite side of the house starts. The slope of the dormer would be almost identical to this dormer.

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 conserving the value of land and buildings. The proposal of alterations to a residential structure is also consistent with the purpose of the Residence B district.

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 deck and the dormer are designed to be compatible with the built surrounding area as discussed in finding two. Also, the first story of the deck would have attractive decorative posts and planters.



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**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 an 8'± dormer and a two-story, 9.5x18.5'± deck. Approval is <u>not</u> for a third dwelling unit or the addition of a parking space. 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>Nov 9, 2009</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>Oct 21, 2009 (Nov 17, 2009)</td><td>Plans submitted to OSPCD (Site Plan)</td></tr><tr><td>(Nov 17, 2009)</td><td>Plans submitted to OSPCD (Existing Conditions: A-101A, A-101B, A-102, A-103, Floor Plans: A-200A, A-200B, A-201, Elevations: A-400, Section: A-401)</td></tr><tr><td>(Nov 30, 2009)</td><td>Revised plans submitted to OSPCD (Third floor plan: A-202)</td></tr></table>				Date (Stamp Date)	Submission	Nov 9, 2009	Initial application submitted to the City Clerk's Office	Oct 21, 2009 (Nov 17, 2009)	Plans submitted to OSPCD (Site Plan)	(Nov 17, 2009)	Plans submitted to OSPCD (Existing Conditions: A-101A, A-101B, A-102, A-103, Floor Plans: A-200A, A-200B, A-201, Elevations: A-400, Section: A-401)	(Nov 30, 2009)	Revised plans submitted to OSPCD (Third floor plan: A-202)
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(Nov 30, 2009)	Revised plans submitted to OSPCD (Third floor plan: A-202)													
Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive ZBA approval.														
2	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP											
3	The Applicant or Owner shall not install cooking facilities in the half-story.	Perpetual	ISD											
4	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.											



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 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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