



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

MEMBERS

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DANIELLE FILLIS
ELAINE SEVERINO (ALT.)

Case #: ZBA 2008-29

Site: 261 Highland Avenue

Date of Decision: August 6, 2008

Decision: *Petition Approved with Conditions*

Date Filed with City Clerk: August 8, 2008

ZBA DECISION

Applicant Name:	Natasha Onken
Applicant Address:	261 Highland Avenue, #4, Somerville, MA 02143
Property Owner Name:	Natasha Onken
Property Owner Address:	261 Highland Avenue, #4, Somerville, MA 02143
Agent Name:	Michael Nionakis
Agent Address:	3 Seminary St, Unit #1, Charlestown, MA 02129

Legal Notice: Applicant & Owner: Natasha Onken seeks a special permit under SZO §4.4.1 to construct a roof deck that is approximately 10 feet by 20 feet. RC zone. Ward 3.

<u>Zoning District/Ward:</u>	RC zone/Ward 3
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	June 30, 2008
<u>Date(s) of Public Hearing:</u>	7/23 & 8/6/08
<u>Date of Decision:</u>	August 6, 2008
<u>Vote:</u>	5-0

Appeal #ZBA 2008-29 was opened before the Zoning Board of Appeals at Somerville City Hall on July 23, 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 two (2) hearing(s) of deliberation, the Zoning Board of Appeals took a vote.

DESCRIPTION:

The proposal is to construct an approximately 200 square foot roof deck on the eastern side of the building. The Applicant provided letters from the condominium association with approval and documentation for roof rights for unit 261-4. The deck would provide outdoor space to be used exclusively by this unit. No barbeques or open flames would be allowed. The Applicant also submitted a letter from an engineer stating that the deck could be supported by the existing roof.

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." To the extent possible for a nonconforming structure, the proposal complies with the standards of the zoning ordinance. The deck is designed to only affect the front yard setback, which is minimally impactful along this busy street.
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 purposes of the ordinance, including, "[t]o 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 roof deck will provide outdoor space for a unit that does not otherwise have outdoor space.
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 is designed to be compatible with the surrounding area. It will be minimally visible from the street and should not impact the surrounding neighbors.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Fillis, Scott Darling and Elaine Severino with Herbert Foster recused. Upon making the above findings, Richard Rossetti 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 approximately 200 square foot roof deck. This approval is based upon the following application materials and the plans submitted by the Applicant and/or its contractor:	PB and CO	Plng.					
	<table><tr><th>Date</th><th>Submission</th></tr><tr><td>June 30, 2008</td><td>Initial application submitted to the City Clerk’s Office</td></tr></table>				Date	Submission	June 30, 2008	Initial application submitted to the City Clerk’s Office
	Date				Submission			
June 30, 2008	Initial application submitted to the City Clerk’s Office							
Any changes to the approved site plan that are not <i>de minimis</i> must receive ZBA approval.								
2	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.					
3	The railing of the roof deck must be 46 inches minimum in height from the deck to top of the railing.	PB	ISD/Plng.					
4	Entry way to the roof deck must be locked at all times when not in use.	Perpetual	ISD					

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Acting Chairman*
Richard Rossetti, *Acting Clerk*
T.F. Scott Darling, III, Esq.
Danielle Fillis
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 _____