



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.)

**Case #: ZBA 2008-31**

**Site: 2-10 Highland Road/64 Morrison Avenue**

**Date of Decision: August 6, 2008**

**Decision: *Petition Approved with Conditions***

**Date Filed with City Clerk: August 12, 2008**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Alan Peterson
<b>Applicant Address:</b>	7 Fairfield Street, Medford, MA 02155
<b>Property Owner Name:</b>	Richard & Nina Suchecki
<b>Property Owner Address:</b>	5215 S.W. 13 <sup>th</sup> Avenue, Cape Coral, FL 33514

**Legal Notice:** Applicant: Alan Peterson & Owners: Richard & Nina Suchecki seek Special Permit approval under SZO §4.4.1 for the alteration of a non-conforming structure in order to construct two townhouses. RA zone. Ward 6.

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

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Appeal #ZBA 2008-31 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 applicant seeks Special Permit approval under SZO§4.4.1 to alter and expand a non-conforming structure to build a 4,400 n.s.f. two and a half-story structure. Two, three bedroom townhouse units are proposed to front on Highland Road. The existing structure will be removed except a portion of the

foundation that will be used to support the front porches. Four parking spaces will be located in the side and rear yards.

### **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 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 substantially more detrimental in all relevant categories, including visual effects and neighborhood character. This development will replace a factory in poor condition and replace it with a residential structure of similar scale to the surrounding neighborhood bringing the property into use conformance. The proposal includes side yards that are greater in depth than required for a townhouse development in an RA district and the nearest abutting structure is at minimum 20' away. Rear yard requirements of 20', maximum ground coverage and landscaping requirements will be met. The nonconforming set back on Highland Road will be maintained for the location of the front porch. The undersized lot will remain non-conforming under the SZO requirements.

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 Zoning Board finds that the proposal **is consistent** with the purposes set forth in Article 1 of the Zoning Ordinance; and, to the extent possible for a lawful pre-existing nonconforming structure, with those purposes established for the Residential A (RA) zoning districts in which the property is located, namely "To 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". This proposal is for a two-family townhouse which is consistent with the purpose of the RA zone.

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 Zoning Board finds that the proposal **is consistent** with the site and area. The proposed residential structure will feature clapboard siding typical of other homes in the area and will maintain the 2.5 story context of the surrounding built environment. The Board finds the design to be of high quality and will be a substantial improvement over the current one-story concrete structure. This location is a high profile

area due to the bike path entrance and the design will improve the appearance of the bike path and provide a better connection to the residential area to the north.

**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 alteration of a non-conforming structure to build a two-unit, 2.5-story townhouse development. This approval is based upon the following application materials and the plans submitted by the Applicant and/or its contractor:		Plng.							
	<table><tr><th>Date</th><th>Submission</th></tr><tr><td>June 23, 2008</td><td>Initial application submitted to the City Clerks Office</td></tr><tr><td>June 30, 2008</td><td>Plans submitted to OSPCD (A0-A7, and Site Plan)</td></tr></table>				Date	Submission	June 23, 2008	Initial application submitted to the City Clerks Office	June 30, 2008	Plans submitted to OSPCD (A0-A7, and Site Plan)
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Any changes to the approved site plan or elevations that are not di minimis must receive ZBA approval.										
2	Landscaping shall be installed and maintained in compliance with the American Nurserymen’s Association.	Perpetual	Plng. / ISD							
3	The applicant shall provide a fire alarm detection system and automatic fire suppression system compliant with all applicable codes, standards, laws, etc.	CO	FP							
4	The Applicant, successors and/or assigns, shall be responsible for maintenance of both the building and all on-site amenities, including landscaping, fencing, lighting, parking areas and any storm water systems, ensuring they are clean, well kept and in good and safe working order.	Cont.	ISD							
5	The Applicant shall at his expense replace any existing equipment (including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheel chair ramps, granite curbing, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity. All new sidewalks and driveways must be constructed of	CO	DPW							

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
	concrete subject to DPW approval.			
6	All construction materials and equipment must be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P	
7	To the maximum extent feasible applicant will utilize strategies during demolition and construction to mitigate dust and control air quality, to minimize noise and to implement a waste recycling program for the removed debris.	During Demolition & Construction	OSE/ISD	
8	The applicant shall develop a demolition plan in consultation with the City of Somerville Inspectional Services Division. Full compliance with proper demolition procedures shall be required, including advance notification to abutters of demolition date and timing, animal control measures, minimization of dust, noise, odor, and debris outfall, and sensitivity to existing landscaping on adjacent sites;	Demolition Permitting	ISD/OSE	
9	Before demolition/building permits are issued, soil tests must be conducted. If soil contamination is observed by soil test results, the Applicant shall, prior to issuance of any foundation permit and/or any building permit for the project, provide to the Planning and the Inspectional Services Divisions: a) a copy of the Response Action Outcome (RAO) Statement, signed by a Licensed Site Professional (LSP) and filed with DEP, verifying that a level of no significant risk for the proposed residential use has been achieved at the site; or b) if remediation has not reached the RAO stage, a statement signed by an LSP describing (i) the management of oil and hazardous materials/waste at the site, including release abatement measures intended to achieve a level of no significant risk for residential use at the site, treatment and storage on site, transportation off-site, and disposal at authorized facilities, (ii) a plan for protecting the health and safety of workers at the site, and (iii) a plan for monitoring air quality in the immediate neighborhood.	Demolition /Building Permitting	ISD/Plng.	
10	Notification must be made, within the time period required under applicable regulations, to the Massachusetts Department of Environmental Protection (DEP) if there is any release of oil, hazardous materials,	CO	OSE /BOH	

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
	or regulated hazardous substances at the site. The City's OSE office and the Board of Health shall also be notified.			
11	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.	

Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*  
Orsola Susan Fontano, *Clerk*  
Richard Rossetti  
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 \_\_\_\_\_