



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 #2009-33
Site: 196 Pearl Street
Date of Decision: August 19, 2009
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: August 31, 2009

ZBA DECISION

| | |
|--------------------------------|--|
| Applicant Name: | Qui Vo |
| Applicant Address: | 196 Pearl Street, Somerville, MA 02145 |
| Property Owner Name: | Qui Vo |
| Property Owner Address: | 196 Pearl Street, Somerville, MA 02145 |
| Agent Name: | N/A |

Legal Notice: Applicant & Owner Qui Vo seek a special permit under §4.4.1 to construct a deck within the required rear yard setback. RB zone. Ward 5.

| | |
|-----------------------------------|-----------------|
| <u>Zoning District/Ward:</u> | RB zone/Ward 5 |
| <u>Zoning Approval Sought:</u> | §4.4.1 |
| <u>Date of Application:</u> | June 24, 2009 |
| <u>Date(s) of Public Hearing:</u> | August 19, 2009 |
| <u>Date of Decision:</u> | August 19, 2009 |
| <u>Vote:</u> | 5-0 |

Appeal #ZBA 2009-33 was opened before the Zoning Board of Appeals at Somerville City Hall on August 19, 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.

DESCRIPTION:

The Applicant is seeking a special permit under SZO §4.4.1 to construct an 11ft 6 inches by 12ft deck attached to the rear of house. The deck floor would be 3ft from the ground with small staircase located at the rear northeast corner of the proposed deck and a matching wooden railing approximately 3ft 6 inches in height. The deck would be 23ft 4inches from the rear property line and 2ft 9 inches from the side property line (along the west side of the property).

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 Board finds that any negative impacts associated with the appearance and/or privacy of the neighbors to be minimal. The deck would be located in an area that is currently paved with cement; no landscaping or pervious surfaces will be eliminated.

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 B (RB) zoning district in which the property is located, namely "(t)o establish and preserve medium density neighborhoods of one-, two- and three-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 proposed deck would be a positive addition to the house and overall neighborhood appearance as it would activate a currently underutilized paved rear yard. The Board also finds the low profile of the deck will create minimal visual impact to the immediate neighbors and surrounding neighborhood.

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 11ft 6inches by 12ft deck. This approval is based upon the following application materials and the plans submitted by the Applicant and/or the Agent: | Building Permit | Plng. | | | | | |
| | <table><tr><th>Date(OSPCD stamp)</th><th>Submission</th></tr><tr><td>(6/24/09)</td><td>Initial application, plot plan and renderings submitted to the City Clerk's Office</td></tr></table> | | | | Date(OSPCD stamp) | Submission | (6/24/09) | Initial application, plot plan and renderings submitted to the City Clerk's Office |
| | Date(OSPCD stamp) | | | | Submission | | | |
| (6/24/09) | Initial application, plot plan and renderings submitted to the City Clerk's Office | | | | | | | |
| Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive ZBA approval. | | | | | | | | |
| 2 | The applicant shall submit a landscaping plan for Staff approval. | Building permit | Plng | | | | | |
| 3 | 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

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 _____