



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
**JOSEPH A. CURTATONE**  
**MAYOR**

MICHAEL F. GLAVIN  
EXECUTIVE DIRECTOR

PLANNING DIVISION

**ZONING BOARD OF APPEALS MEMBERS**

ORSOLA SUSAN FONTANO, CHAIRMAN  
RICHARD ROSSETTI, CLERK  
DANIELLE EVANS  
ELAINE SEVERINO  
JOSH SAFDIE (ALT.)

**Case #: ZBA 2015-21**  
**Site: 78 Bay State Avenue**  
**Date of Decision: May 6, 2015**  
**Decision: Petition Approved with Conditions**  
**Date Filed with City Clerk: May 12, 2015**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Moses Ortiz
<b>Applicant Address:</b>	44 Marathon Street, Arlington, MA 02474
<b>Property Owner Name:</b>	James McCarthy
<b>Property Owner Address:</b>	78 Bay State Avenue
<b>Agent Name:</b>	N/A

Legal Notice: Applicant, Moses Ortiz, and Owner, James McCarthy, seek a Special Permit to expand a rear nonconforming deck.

<u>Zoning District/Ward:</u>	RA zone/Ward 6
<u>Date of Application:</u>	April 6, 2015
<u>Date(s) of Public Hearing:</u>	May 6, 2015
<u>Date of Decision:</u>	May 6, 2015
<u>Vote:</u>	4-0

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Appeal #ZBA 2015-21 was opened before the Zoning Board of Appeals at Somerville High School Auditorium on May 6, 2015. 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 proposal is to demolish the two-story rear porch and build a larger one in its place. The first floor of the porch would be 12 by 18 and the second floor would be slightly larger at 14 by 20 and be cantilevered over the first floor.

**FINDINGS FOR SPECIAL PERMIT:**

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 structure is currently nonconforming with respect to dimensional requirements, including left side yard setback. The proposed porch will be slightly larger than the existing porch which is in the side yard setback. The existing porch is 2.8 feet to the side property line and 26 feet to the rear property line. The proposed porch is 2.8 feet to the side property line and 22 feet to the rear property line. The required setbacks are 8 feet for the side yard and 20 feet for the rear yard. This alteration to a nonconforming structure requires the Applicant to obtain special permits under §4.4.1 of the Somerville Zoning Ordinance (SZO). Section 4.4.1 states that "[l]awfully existing one-and two-family dwellings which are only used as residences, which are nonconforming with respect to dimensional requirements, may be enlarged, extended, renovated or altered by special permit granted by the SPGA in accordance with the procedures of Article 5."

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. There is an existing two-story porch at this property and the proposed porch will only be slightly larger. The rear yard will continue to have a conforming rear yard setback.

The Mayor's Office of Strategic Planning and Community Development has submitted an ordinance to the Board of Alderman to overhaul the current zoning ordinance. The re-advertised date of the legal notice was February 17. Massachusetts General Law 40a, Section 6 states that a zoning ordinance shall apply to a special permit issued after the first notice of the public hearing for such an ordinance. Therefore, staff and boards should evaluate all applications based on the current and proposed ordinances so that there are no issued posed under either ordinance.

Under the proposed zoning ordinance, the house is a house building type. The side setback for the house is 5 feet and the rear yard setback is 20 feet. In the proposed code, the nonconforming deck could be altered by Special Permit. Therefore if the Special Permit is granted the proposal could move forward under the current and proposed codes.

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 maintaining the uniquely integrated structure of uses in the City.



The proposal is consistent with the purpose of the district, which is, “[t]o 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.” The porch expansion will improve the usability of it and retain a compliant rear yard.

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."*

Many of the houses in the neighborhood have two-story rear decks. The proposed will be slightly unique in having a cantilevered second floor; however, it will not be out of character with a traditional rear porches.

5. Housing Impact: *Will not create adverse impacts on the stock of existing affordable housing.*

The improvements to the two-family dwelling will not significantly impact the affordability of it.

6. SomerVision Plan: *Complies with the applicable goals, policies and actions of the SomerVision plan, including the following, as appropriate: Preserve and enhance the character of Somerville’s neighborhoods, transform key opportunity areas, preserve and expand an integrated, balanced mix of safe, affordable and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups; and, make Somerville a regional employment center with a mix of diverse and high-quality jobs. The areas in the SomerVision map that are designated as enhance and transform should most significantly contribute towards the SomerVision goals that are outlined in the table below. The areas marked as conserve are not expected to greatly increase the figures in the table since these areas are not intended for large scale change.*

This property is marked as an area to conserve and the proposal meets this goal.

<i>SomerVision Summary</i>	<i>Existing</i>	<i>Proposed</i>
<i>Dwelling Units:</i>	2	2



**DECISION:**

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Elaine Severino with Josh Safdie absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals voted **4-0** 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 a rear porch. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/Plng.									
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>April 6, 2015</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>(April 30, 2015)</td> <td>Modified plans submitted to OSPCD (elevation, footings/landing, 1<sup>st</sup> &amp; 2<sup>nd</sup> floor framing)</td> </tr> <tr> <td>March 22, 2015</td> <td>Plans submitted to OSPCD (Plot plan)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	April 6, 2015	Initial application submitted to the City Clerk's Office	(April 30, 2015)	Modified plans submitted to OSPCD (elevation, footings/landing, 1 <sup>st</sup> & 2 <sup>nd</sup> floor framing)	March 22, 2015	Plans submitted to OSPCD (Plot plan)
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March 22, 2015	Plans submitted to OSPCD (Plot plan)											
Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive SPGA approval.												
2	An exterior light and electrical receptacle is required for all levels of the porch.	Final sign off	Wiring Inspector									
<b>Final Sign-Off</b>												
3	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:

Orsola Susan Fontano, *Chairman*  
Richard Rossetti, *Clerk*  
Danielle Evans  
Elaine Severino

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 \_\_\_\_\_

