



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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JOSH SAFDIE (ALT.)

Case #: ZBA # 2011-98
Site: 33-35 Dimick Street
Date of Decision: April 4, 2012
Variance Decision: *Petition Withdrawn without Prejudice*
Special Permit Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: April 6, 2012

ZBA DECISION

Applicant Name:	Steven Courtemanche
Applicant Address:	10 Walden Drive, Merrimack, NH 03054
Property Owner Name:	Steven Courtemanche
Property Owner Address:	10 Walden Drive, Merrimack, NH 03054
Agent Name:	N/A

Legal Notice: Applicant and Owner Steven Courtemanche, seeks a Variance under SZO §5.5 for relief from the rear yard setback requirement and a Special Permit under SZO §4.4.1 to enclose porches in the side and rear yards of an existing three-family dwelling. RB zone. Ward 2.

<u>Zoning District/Ward:</u>	RB zone / Ward 2
<u>Zoning Approval Sought:</u>	§5.5 & §4.4.1
<u>Date of Application:</u>	December 15, 2011
<u>Date(s) of Public Hearing:</u>	2/1, 2/15, 2/29, 3/14, & 4/4
<u>Date of Decision:</u>	April 4, 2012
<u>Vote:</u>	5-0

Appeal #ZBA 2011-98 was opened before the Zoning Board of Appeals at the Visiting Nurses Association on February 1, 2012. 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) hearings of deliberation, the Zoning Board of Appeals took a vote.



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DESCRIPTION:

The existing three-family dwelling has three identical units, each with a living room, dining room, kitchen, two full bathrooms, and three bedrooms. Each unit also has a 9 foot deep by 28.4 foot wide unenclosed rear porch. The Applicant is proposing to enclose 7 of the 9 feet of depth of each of these rear porches to create habitable living space, turning part of each porch into a sitting area. The Applicant is also proposing to extend the outdoor portion of the decks another 1.75 feet deeper into the lot which would create a 3.75 foot deep outdoor porch space. The sitting area on the first floor would contain nine windows, sliding doors to access the outdoor porch space, and a relocated door that would lead out to stairs down to the ground. The sitting areas on the second and third floors would also contain nine windows and sliding doors to access the outdoor porch space. The external stairs on the right side of the structure would be relocated to provide access directly out of the rear egress stairwell where a new external door would be installed.

FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1, §5.1):

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."

In considering a Special Permit under §4.4 of the SZO, the Board finds that the alterations proposed to the rear side of the structure would not be substantially more detrimental to the neighborhood than the existing structure. The existing porches are already in place with footings, a roof, railings, and support beams on all three floors, and the proposal would only extend the outdoor decks 1.75 feet deeper into the property. Partially enclosing these rear porches and extending the outdoor portion of them would not make the existing structure any more invasive to the surrounding properties of the area. In fact, by partially enclosing the rear porches this would actually provide some noise reduction for the area by reducing noise generated from people using these porches as some noise will now be contained inside the structure. The partial enclosing of the rear porches and the extension of the outdoor portion of the decks should also not greatly impact the amount of sunlight being received by surrounding structures or limit the views from abutting properties. The property will remain a three-story, three-family residential use which is consistent with the surrounding neighborhood.

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 promoting "the health, safety, and welfare of the inhabitants of the City of Somerville; to provide for and maintain the uniquely integrated structure of uses in the City; to provide adequate light and air; to prevent the overcrowding of land; to conserve the value of land and buildings; to encourage the most appropriate use of land throughout the City; and to encourage housing for persons of all income levels."

The proposal is also consistent with the purpose of the district (6.1.2. RB - Residence Districts), which is, "To 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."



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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 project is compatible with the characteristics of the surrounding neighborhood. The existing porches are already in place with footings, a roof, railings, and support beams on all three floors, and the proposal would only extend the outdoor decks 1.75 feet deeper into the property. Partially enclosing these rear porches and extending the outdoor portion of them would not make the existing structure any more invasive to the surrounding properties of the area. In fact, by partially enclosing the rear porches this would actually provide some noise reduction for the area by reducing noise generated from people using these porches as some noise will now be contained inside the structure. The partial enclosing of the rear porches and the extension of the outdoor portion of the decks should also not greatly impact the amount of sunlight being received by surrounding structures or limit the views from abutting properties. The property will remain a three-story, three-family residential use which is consistent with the surrounding neighborhood.

5. Adverse Environmental Impacts: The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.

No adverse environmental impacts are anticipated from this proposal. No new noise, glare, smoke, vibration, nor emissions of noxious materials nor pollution of water ways or ground water nor transmission of signals that interfere with radio or television reception are anticipated as part of the project. The property will remain a three-story, three-family residential use which is consistent with the surrounding neighborhood.



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DECISION:

Present and sitting were Members Herbert Foster, Richard Rossetti, Danielle Evans, Scott Darling, and Josh Safdie with Orsola Susan Fontano absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a special permit and approve the request to withdraw the variance without prejudice. Scott Darling seconded the motion. Wherefore the Zoning Board of Appeals voted **(5-0)** to **APPROVE** the request for a special permit and to approve the request to withdraw the variance without prejudice. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes																		
1	<p>Approval is for a Special Permit to alter a nonconforming structure under SZO §4.4.1 to partially enclose the rear porches and extend the outdoor portion of the rear decks in the side and rear yards, add a door and relocate stairs on the right side, and to increase the floor area ratio of an existing three-family dwelling under SZO §8.5.E. This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>(December 15, 2011)</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>(March 5, 2012)</td> <td>Updated application submitted to OSPCD</td> </tr> <tr> <td>June 25, 2001 (March 5, 2012)</td> <td>Site Plan (Current View)</td> </tr> <tr> <td>June 25, 2001 (March 5, 2012)</td> <td>Site Plan (Proposed View)</td> </tr> <tr> <td>(January 17, 2012)</td> <td>Basement Floor Plan</td> </tr> <tr> <td>(March 5, 2012)</td> <td>First, Second, and Third Floor Plans</td> </tr> <tr> <td>(March 5, 2012)</td> <td>Diagrammatic Section</td> </tr> <tr> <td>(March 5, 2012)</td> <td>Current and Proposed Left, Rear, and Right Side Elevations</td> </tr> </tbody> </table> <p>Any changes to the approved site plans that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	(December 15, 2011)	Initial application submitted to the City Clerk's Office	(March 5, 2012)	Updated application submitted to OSPCD	June 25, 2001 (March 5, 2012)	Site Plan (Current View)	June 25, 2001 (March 5, 2012)	Site Plan (Proposed View)	(January 17, 2012)	Basement Floor Plan	(March 5, 2012)	First, Second, and Third Floor Plans	(March 5, 2012)	Diagrammatic Section	(March 5, 2012)	Current and Proposed Left, Rear, and Right Side Elevations	BP/CO	ISD/PIng.	
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2	A code compliant fire alarm system and carbon monoxide detectors shall be in place.	CO	FP	
3	The Applicant shall submit window and trim detail samples to Planning Staff for review and approval.	BP	Plng.	
4	New siding type and color, trim, and materials of the enclosed porches shall match that of the existing structure.	CO	Plng.	
5	The Applicant shall at their 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 to DPW standard.	CO	DPW	
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	The newly created "Sitting Areas" shown on the floor plans at the rear of each unit shall not be used as bedrooms.	Perpetuity	ISD/Plng.	
8	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*
Richard Rossetti, *Acting Clerk*
T.F. Scott Darling, III, Esq.
Danielle Evans
Josh Safdie (Alt.)

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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