



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

PLANNING DIVISION

**ZONING BOARD OF APPEALS MEMBERS**

HERBERT F. FOSTER, JR., *CHAIRMAN*  
ORSOLA SUSAN FONTANO, *CLERK*  
RICHARD ROSSETTI  
DANIELLE EVANS  
ELAINE SEVERINO (ALT.)  
JOSH SAFDIE (ALT.)

**Case #: ZBA # 2012-62**  
**Site: 5 Hall Avenue**  
**Date of Decision: November 7, 2012**  
**Decision: SP Withdrawn without Prejudice**  
**Variance Denied**  
**Date Filed with City Clerk: November 19, 2012**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Hall Avenue, LLC
<b>Applicant Address:</b>	444 Somerville Avenue, Somerville, MA 02143
<b>Property Owner Name:</b>	Hall Avenue, LLC
<b>Property Owner Address:</b>	444 Somerville Avenue, Somerville, MA 02143
<b>Agent Name:</b>	Richard G. DiGirolamo, Esq.
<b>Agent Address:</b>	424 Broadway, Somerville, MA 02145

Legal Notice: Applicant/Owner Hall Avenue, LLC in order to convert an existing structure into a 3-family dwelling seek a variance (SZO §5.5) for lot area per dwelling unit (§8.5.b) and special permit (§5.1) for alteration to a nonconforming structure (§4.4.1) to construct a 241 sf rear deck.

<u>Zoning District/Ward:</u>	RB zone/Ward 6
<u>Zoning Approval Sought:</u>	§5.5, §8.5.b, §5.1 & §4.4.1
<u>Date of Application:</u>	July 11, 2012
<u>Date(s) of Public Hearing:</u>	8/15, 9/5, 9/19, 10/3, 10/17 & 11/7/12
<u>Date of Decision:</u>	November 7, 2012
<u>Vote:</u>	5-0

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Appeal #ZBA 2012-62 was opened before the Zoning Board of Appeals at Somerville City Hall on August 15, 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 hearings of deliberation, the Zoning Board of Appeals took a vote.



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## **DESCRIPTION:**

The proposal is to reestablish the structure as a three-family dwelling. The only alteration to the structure that is required is the installation of a rear egress for each of the units. The proposal is to remove the rear stairs from the first story and construct a three story deck that is approximately 241 sf on each level. Doors will be constructed and windows shifted to accommodate the decks. There is currently no parking onsite and the original proposal did not include adding parking.

At the August 15 meeting of the Zoning Board of Appeals, the Board asked staff to investigate the possibility of installing a driveway at 5 Hall Avenue in the side or rear yards. A curb cut would be required on Hall Ave for a driveway in the side yard. Staff checked with the Highway Department and after an initial review it appears that a curb cut could be possible off of Hall Ave. The Applicant submitted a site plan showing driveway with room for two parking spaces.

To place a driveway in the rear yard, access would need to be possible via the alley that runs along the back of the property onto College Ave. From the information that we have been able to gather thus far, it does not appear that access would be possible off of the alley in the rear of the property. The street maps at the Engineering Department do not show ownership of this land and the City does not maintain the alley. It appears that the alley functions as an exit driveway for the church parking lot that abuts it.

## **FINDINGS FOR VARIANCE (SZO §5.5, §8.5.I):**

In order to grant a Variance the Board must make certain findings and determinations as outlined in §5.5.3 of the SZO.

1. There are “special circumstances relating to soil conditions, shape or topography of land or structures which especially affect such land or structures but not affecting generally the zoning district in which it is located, causing substantial hardship, financial or otherwise.”

Richard Rossetti, Susan Fontano and Elaine Severino found that there are special circumstances related to the lot that cause financial hardship. The property owners are not able to expand the lot by subdivision because the abutting lots would become more nonconforming if they were reduced in size. The back of the property abuts an alleyway that cannot be reduced in width to add more square footage to the subject lot. The structure is built as a three-family dwelling and would only need a rear egress to meet current building code egress requirements. Removing one of the units would require a large amount of renovation that would cause financial hardship. Josh Safdie and Danielle Evans did not find that there were special circumstances related to the parcel.

2. The variance requested is the “minimum variance that will grant reasonable relief to the owner, and is necessary for a reasonable use of the building or land.”

Richard Rossetti, Susan Fontano and Elaine Severino found that prior to the use of the property by the Somerville Mental Health Association, the building functioned as a three-family dwelling. The interior and exterior form of the building has not changed. It is a reasonable use of the building and land in a Residence B zoning district to use it in its current form as a three-family dwelling. Josh Safdie and Danielle Evans found that a two-family use was a reasonable use for the property as the form and surrounding properties are two-families.

3. “The granting of the variance would be in harmony with the general purpose and intent of this Ordinance and would not be injurious to the neighborhood or otherwise detrimental to the public welfare.”

Richard Rossetti, Susan Fontano and Elaine Severino found that the proposal is in harmony with the purpose and intent of the Ordinance. A three-family use is consistent with the purpose of the Residence B zoning district. The property would become less nonconforming by changing from a health center back to a residence.



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The property is located in an area with multi-family residences that do not meet the lot area per dwelling unit requirements and they are not detrimental to the public welfare or out of character with the neighborhood. Having one additional unit at the property beyond what the lot area per dwelling unit allows in a structure that was built as and functioned as a three-family dwelling would not be detrimental. Josh Safdie and Danielle Evans found that the proposal was injurious to the neighborhood. The driveway would remove a public on-street space for a private parking space. Danielle Evans also found that the parking for three condos was more impacted than parking for a mental health clinic.

**DECISION:**

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Elaine Severino and Josh Safdie with Herbert Foster recused. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Variance. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals voted **3-2** to approve the request for a Variance. Danielle Evans and Josh Safdie voted in opposition and the motion did not carry. Wherefore, the Zoning Board of Appeals **DENIED** the request for a Variance. Richard Rossetti made a motion to approve the request to withdraw the special permit application without prejudice. Josh Safdie seconded the motion. The Zoning Board of Appeals voted **5-0** to **APPROVE** the request to **WITHDRAW THE SPECIAL PERMIT APPLICATION WITHOUT PREJUDICE**.



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Acting Chairman*  
Richard Rossetti, *Acting Clerk*  
Danielle Evans  
Elaine Severino (Alt.)  
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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