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Case #: ZBA # 2012-67
Site: 28-30 Newberne Street
Date of Decision: September 19, 2012
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: September 25, 2012

ZBA DECISION

Applicant Name:	Andrew H. Kim & Jo Eun Choi
Applicant Address:	28 Newberne Street, Somerville, MA 02144
Property Owner Name:	Andrew H. Kim & Jo Eun Choi
Property Owner Address:	28 Newberne Street, Somerville, MA 02144
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145

Legal Notice: Applicants and Owners Andrew H. Kim and Jo Eun Choi, seek a Special Permit to alter a nonconforming structure under SZO §4.4.1 to enclose private outdoor space on the first floor of the north and south facades of an existing six unit residential building.

<u>Zoning District/Ward:</u>	RC zone/Ward 6
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	July 30, 2012
<u>Date(s) of Public Hearing:</u>	September 19, 2012
<u>Date of Decision:</u>	September 19, 2012
<u>Vote:</u>	5-0

Appeal #ZBA 2012-67 was opened before the Zoning Board of Appeals at the Visiting Nurse Association on September 19, 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 one hearing of deliberation, the Zoning Board of Appeals took a vote.



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DESCRIPTION:

This particular proposal focuses on the unit that was created when Units # 3 and # 4 were combined into one dwelling. The Applicant is looking to take approximately 137 gross square feet of private outdoor deck space and enclose it to create additional living space for the unit. On the southern façade there is currently a 50 gross square foot deck space that has two doors, both of which lead into the master bedroom. There is a 4.5 foot high solid wall railing that shields views into this space from the walkway at the rear of the property and from the Community Path. This space would be entirely enclosed and included into the space of the master bedroom. Two new side by side windows would be installed that would look out towards the Community Path. On this side of the dwelling unit the Property Owners would still have substantial private outdoor space in the form of an at grade patio that is surrounded with substantial landscaping. On the north elevation there is a good sized L-shaped deck with a solid wall railing that faces out towards the rear of the homes with frontage onto Morrison Avenue. The Applicant is proposing to enclose the 87 gross square foot area of deck that steps in towards the building. This newly enclosed square footage would be added to one of the secondary bedrooms in the dwelling. The remaining outdoor deck space would be rectangular in shape and the two existing windows on the façade would simply be pushed out towards the main exterior wall of the unit.

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 Permit.
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 proposed alterations, which would enclose an existing deck on the south façade and a portion of a deck on the north façade, would not be substantially more detrimental to the neighborhood than the existing structure. Both of the newly enclosed spaces would be within the existing footprint of the building and would not extend the living space outward from the existing structure. On the south façade, the two doors out to the deck space would be replaced with two windows which is somewhat of an improvement aesthetically to the building and would not impact views from the Community Path. On the north façade, the five foot high solid parapet wall would maintain the existing look of the façade and the changes would most likely not be noticeable to the abutters on Morrison Avenue. The east elevation would only see minimal changes as the solid façade of that wall would simply be extended both north and south. The reduction of outdoor space would potentially reduce the amount of noise that might be generated from these spaces when being used, as reducing the amount of outdoor space would reduce the occupant capacity for each area. Furthermore, private outdoor space would still be retained on both the north and south sides of the unit with patio space on the south side and deck space on the north side. The overall property will remain a three story, multi-family residential use with a small commercial space component in a separate structure, 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 protect health; to secure safety from fire, panic



and other dangers; to provide adequate light and air; 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 in which the residential building is located, (6.1.3. RC - Residence Districts), which is, “To establish and preserve a district for multi-family residential and other compatible uses which are of particular use and convenience to the residents of the district.”

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 proposal to enclose 137 square feet of private outdoor deck space on the first floor of the north and south facades of the existing six unit residential building would have a minimal impact, if any, on the abutters and surrounding neighborhood. Both of the newly enclosed spaces would be within the existing footprint of the building and would not extend the living space outward from the existing structure. Both of the outdoor deck spaces also currently have solid wall railings that limit visibility into and out of the units. On the north façade this railing would be maintained, but on the southern façade this would be replaced with a solid wall with two windows. This particular dwelling unit is at the back of the building and is a substantial distance from Newberne Street, Morrison Avenue, and Willow Avenue. In fact, the outdoor deck spaces for this unit are located on the interior of the neighborhood block. On the south façade the two doors out to the deck space would be replaced with two windows which is somewhat of an improvement aesthetically to the building and would not impact views from the Community Path. On the north façade, the five foot high solid parapet wall would maintain the existing look of the façade and most likely not be noticeable to the abutters on Morrison Avenue. The east elevation would only see minimal changes as the solid façade of that wall would simply be extended both north and south.

Each of the outdoor spaces that would be enclosed are set well back from the roadways in the area, as well as the Community Path. Additionally, the reduction of outdoor space would potentially reduce the amount of noise that might be generated from these spaces when being used, as reducing the amount of outdoor space would reduce the occupant capacity for each area. Furthermore, private outdoor space would still be retained on both the north and south sides of the unit with patio space on the south side and deck space on the north side. The overall property will remain a three story, multi-family residential use with a small commercial space component in a separate structure, 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, dust, 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 overall property will remain a three story, multi-family residential use with a small commercial space component in a separate structure, which is consistent with the surrounding neighborhood.

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Elaine Severino with Scott Darling absent. Upon making the above findings, Susan Fontano made a motion to approve the request for a Special Permit. Richard Rossetti 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	<p>Approval is to alter a nonconforming structure to enclose private outdoor space on the first floor of the north and south facades of an existing six unit residential building under SZO §4.4.1. 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>(July 30, 2012)</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>September 10, 2012 (September 11, 2012)</td> <td>Orientation Plan and Zoning Table, South Deck Enclosure, North Deck Enclosure, Existing and Proposed South Elevation, Existing and Proposed East Elevation, and Existing and Proposed North Elevation (A0 – A5)</td> </tr> <tr> <td>June 16, 2009 (September 11, 2012)</td> <td>Architectural Site Plan (A-1)</td> </tr> </tbody> </table> <p>Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	(July 30, 2012)	Initial application submitted to the City Clerk's Office	September 10, 2012 (September 11, 2012)	Orientation Plan and Zoning Table, South Deck Enclosure, North Deck Enclosure, Existing and Proposed South Elevation, Existing and Proposed East Elevation, and Existing and Proposed North Elevation (A0 – A5)	June 16, 2009 (September 11, 2012)	Architectural Site Plan (A-1)	BP/CO	ISD/PIng.	
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June 16, 2009 (September 11, 2012)	Architectural Site Plan (A-1)											
2	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									
3	The Applicant shall meet the Fire Prevention Bureau's requirements.	CO	FP									
4	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									



5	The Applicant shall install one exterior light fixture and one electrical receptacle on the outdoor deck space.	CO	Wiring Inspector	
6	New siding type and color, roofing, trim, and materials of the enclosed spaces shall match or be complimentary to the rest of the existing structure.	CO	Plng.	
7	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*
Orsola Susan Fontano, *Clerk*
Richard Rossetti
Danielle Evans
Elaine Severino (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 _____

