



**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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DANIELLE EVANS  
ELAINE SEVERINO (ALT.)  
JOSH SAFDIE (ALT.)

**Case #: ZBA # 2012-46**  
**Site: 82 Pearson Avenue**  
**Date of Decision: July 11, 2012**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: July 23, 2012**

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**ZBA DECISION**

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|                                |                                      |
|--------------------------------|--------------------------------------|
| <b>Applicant Name:</b>         | 82 Pearson, LLC                      |
| <b>Applicant Address:</b>      | 66 Cranberry Lane, Needham, MA 02492 |
| <b>Property Owner Name:</b>    | 82 Pearson, LLC                      |
| <b>Property Owner Address:</b> | 66 Cranberry Lane, Needham, MA 02492 |
| <b>Agent Name:</b>             | Richard G. DiGirolamo, Esq.          |
| <b>Agent Address:</b>          | 424 Broadway, Somerville, MA 02145   |

Legal Notice: Applicant and Owner 82 Pearson, LLC seeks a Special Permit under SZO §4.4.1 to make façade modifications to an existing nonconforming three-family structure including enlarging and constructing a third level rear deck, restoring an original second story open front porch, and to increase Floor Area Ratio (FAR) by removing an internal staircase.

|                                   |                |
|-----------------------------------|----------------|
| <u>Zoning District/Ward:</u>      | RA zone/Ward 5 |
| <u>Zoning Approval Sought:</u>    | §4.4.1         |
| <u>Date of Application:</u>       | May 31, 2012   |
| <u>Date(s) of Public Hearing:</u> | July 11, 2012  |
| <u>Date of Decision:</u>          | July 11, 2012  |
| <u>Vote:</u>                      | 5-0            |

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Appeal #ZBA 2012-46 was opened before the Zoning Board of Appeals at Somerville City Hall on July 11, 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:**

The proposal is to remove an existing two story deck on the rear of the three-family residence to construct a new enlarged deck and an entirely new deck on the third floor. The new construction would also add stairs connecting all three levels of the deck down to the backyard. The dimensions for the portion of the decks without stairs would be approximately 8 feet deep and 13 feet 3 inches wide. The stairs would add an additional 3.5 feet of depth and 7 feet of width on the left side of the deck extending outside of the envelope of the proposed deck. All three levels of the deck would have the same dimensions, except that the first floor would contain stairs from the ground level of the backyard across the entire width of the deck, and therefore the first floor deck would be shallower than the second and third floors. A door will be created on the third floor of the dwelling to access the new third floor deck.

Additionally, an internal staircase Floor Area Ratio (FAR) that connected the first, second, and third floors will be removed, which will increase the structure's FAR. The plans indicate that currently there is an enclosed front porch on the second floor, which will be converted to an original open porch. Site visit pictures from June 27, 2012 reveal that the existing condition is an open porch on the second floor of the front façade.

**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."

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. The deck will be located at the rear of the existing structure and will not be visible from the Pearson Avenue right-of-way. Additionally, the proposed deck will not expand any existing nonconformities. Electrical code requires there to be one exterior light fixture and one exterior electrical receptacle for all deck levels and the Board has included a condition to require these items.

The removal of an internal staircase will increase the structure's habitable space and therefore will also increase the building's Floor Area Ratio (FAR). The current FAR of 1.21 is already nonconforming for an RA district, and the slight increase will not be substantially more detrimental to the property or the surrounding neighborhood. Furthermore, when coupled with the new staircase on the deck at the rear of the existing structure, the property will maintain two sets of stairways for egress purposes. 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 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 (6.1.1. RA - Residence Districts), which is, "To 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." While the RA district does not permit three-family dwellings as-of-right, the project will simply be maintaining the existing nonconforming three-family residential use. Furthermore, the three-family use is generally consistent with the predominantly residential surrounding neighborhood.

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. There shall be minimal impacts to the surrounding neighborhood as the proposed deck at the rear of the dwelling would not appear to be detrimental to the immediate abutters or the surrounding area. The first and second stories of the deck already exist. The proposed changes will renovate the first and second stories of the deck as well as add a new third floor and stairs connecting all three stories to the backyard. The dimensions for the portion of the decks without stairs would be approximately 8 feet deep and 13 feet 3 inches wide. The stairs would add an additional 3.5 feet of depth and 7 feet of width on the left side of the deck extending outside of the envelope of the proposed deck. The proposed changes to the deck will not increase any of the existing nonconformities, and the new staircase will serve as an additional means of egress for the second and third floor units at the property. Furthermore, the deck would not be visible from Pearson Avenue right of way and would not alter the streetscape in any manner.

The removal of an internal staircase will increase the Net Floor Area, and therefore will also increase the building's Floor Area Ratio (FAR). The current FAR of 1.21 is already nonconforming for an RA district, and the slight increase will not be substantially more detrimental to the property or the surrounding neighborhood. Furthermore, when coupled with the new staircase on the deck at the rear of the existing structure, the property will maintain two sets of stairways for egress purposes. The property will remain a three story, three-family residential use which is consistent with the surrounding neighborhood. Therefore, there are no anticipated negative impacts from the proposal.

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 proposal. The structure will remain a three story, three-family dwelling and will continue to be used for residential purposes.



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**DECISION:**

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, , Scott Darling and Josh Safdie with Danielle Evans and Elaine Severino absent 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:



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| #                                   | Condition  | Timeframe for Compliance | Verified (initial) | Notes          |  |                                |                     |                                     |                      |                                |                       |                                     |   |                                     |   |                                  |                                  |                                  |  |                                     |   |       |           |  |
|-------------------------------------|--|--------------------------|--------------------|----------------|--|--------------------------------|---------------------|-------------------------------------|----------------------|--------------------------------|-----------------------|-------------------------------------|---|-------------------------------------|---|----------------------------------|----------------------------------|----------------------------------|--|-------------------------------------|---|-------|-----------|--|
| 1                                   | <p>Approval is to alter a nonconforming structure under SZO §4.4.1 to make façade modifications to an existing nonconforming three-family structure including enlarging and constructing a third level rear deck, restoring an original second story open front porch, and to increase Floor Area Ratio (FAR) by removing an internal staircase. 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>(May 31, 2012)</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>May 2, 2012<br/>(June 28, 2012)</td> <td>Certified Plot Plan</td> </tr> <tr> <td>January 19, 2007<br/>(June 28, 2012)</td> <td>Title Sheet (1 of 6)</td> </tr> <tr> <td>May 2, 2012<br/>(June 28, 2012)</td> <td>Condominium Site Plan</td> </tr> <tr> <td>January 19, 2007<br/>(June 28, 2012)</td> <td>Floor Plans Existing Conditions and Demolition (2 of 6)</td> </tr> <tr> <td>January 19, 2007<br/>(June 28, 2012)</td> <td>Exterior Elevations Existing Conditions and Demolition (3 of 6)</td> </tr> <tr> <td>June 27, 2012<br/>(June 28, 2012)</td> <td>Floor Plans New Layouts (4 of 6)</td> </tr> <tr> <td>June 27, 2012<br/>(June 28, 2012)</td> <td>Exterior Elevations Alterations (5 of 6)</td> </tr> <tr> <td>January 19, 2007<br/>(June 28, 2012)</td> <td>Foundation/Basement Plan, Floor Framing Plans, Roof Framing Plan (6 of 6)</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         | (May 31, 2012) | Initial application submitted to the City Clerk's Office | May 2, 2012<br>(June 28, 2012) | Certified Plot Plan | January 19, 2007<br>(June 28, 2012) | Title Sheet (1 of 6) | May 2, 2012<br>(June 28, 2012) | Condominium Site Plan | January 19, 2007<br>(June 28, 2012) | Floor Plans Existing Conditions and Demolition (2 of 6) | January 19, 2007<br>(June 28, 2012) | Exterior Elevations Existing Conditions and Demolition (3 of 6) | June 27, 2012<br>(June 28, 2012) | Floor Plans New Layouts (4 of 6) | June 27, 2012<br>(June 28, 2012) | Exterior Elevations Alterations (5 of 6) | January 19, 2007<br>(June 28, 2012) | Foundation/Basement Plan, Floor Framing Plans, Roof Framing Plan (6 of 6) | BP/CO | ISD/PIng. |  |
| Date (Stamp Date)                   | Submission   |                          |                    |                |  |                                |                     |                                     |                      |                                |                       |                                     |   |                                     |   |                                  |                                  |                                  |  |                                     |   |       |           |  |
| (May 31, 2012)                      | Initial application submitted to the City Clerk's Office   |                          |                    |                |  |                                |                     |                                     |                      |                                |                       |                                     |   |                                     |   |                                  |                                  |                                  |  |                                     |   |       |           |  |
| May 2, 2012<br>(June 28, 2012)      | Certified Plot Plan  |                          |                    |                |  |                                |                     |                                     |                      |                                |                       |                                     |   |                                     |   |                                  |                                  |                                  |  |                                     |   |       |           |  |
| January 19, 2007<br>(June 28, 2012) | Title Sheet (1 of 6)   |                          |                    |                |  |                                |                     |                                     |                      |                                |                       |                                     |   |                                     |   |                                  |                                  |                                  |  |                                     |   |       |           |  |
| May 2, 2012<br>(June 28, 2012)      | Condominium Site Plan  |                          |                    |                |  |                                |                     |                                     |                      |                                |                       |                                     |   |                                     |   |                                  |                                  |                                  |  |                                     |   |       |           |  |
| January 19, 2007<br>(June 28, 2012) | Floor Plans Existing Conditions and Demolition (2 of 6)  |                          |                    |                |  |                                |                     |                                     |                      |                                |                       |                                     |   |                                     |   |                                  |                                  |                                  |  |                                     |   |       |           |  |
| January 19, 2007<br>(June 28, 2012) | Exterior Elevations Existing Conditions and Demolition (3 of 6)  |                          |                    |                |  |                                |                     |                                     |                      |                                |                       |                                     |   |                                     |   |                                  |                                  |                                  |  |                                     |   |       |           |  |
| June 27, 2012<br>(June 28, 2012)    | Floor Plans New Layouts (4 of 6)   |                          |                    |                |  |                                |                     |                                     |                      |                                |                       |                                     |   |                                     |   |                                  |                                  |                                  |  |                                     |   |       |           |  |
| June 27, 2012<br>(June 28, 2012)    | Exterior Elevations Alterations (5 of 6)   |                          |                    |                |  |                                |                     |                                     |                      |                                |                       |                                     |   |                                     |   |                                  |                                  |                                  |  |                                     |   |       |           |  |
| January 19, 2007<br>(June 28, 2012) | Foundation/Basement Plan, Floor Framing Plans, Roof Framing Plan (6 of 6)  |                          |                    |                |  |                                |                     |                                     |                      |                                |                       |                                     |   |                                     |   |                                  |                                  |                                  |  |                                     |   |       |           |  |



|   |   |                     |                  |  |
|---|---|---------------------|------------------|--|
| 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 install one exterior light fixture, one electrical receptacle, and emergency lighting on each level of the rear deck space.   | CO                  | Wiring Inspector |  |
| 5 | The Applicant shall at his 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 | 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  
T.F. Scott Darling, III, Esq.  
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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