



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

PLANNING DIVISION

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JOSH SAFDIE (ALT.)

**Case #: ZBA # 2011-49**  
**Site: 192 Powder House Boulevard**  
**Date of Decision: July 13, 2011**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: July 27, 2011**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Brenda Colborne
<b>Applicant Address:</b>	192 Powder House Blvd, Somerville, MA 02144
<b>Property Owner Name:</b>	Brenda Colborne
<b>Property Owner Address:</b>	192 Powder House Blvd, Somerville, MA 02144
<b>Agent Name:</b>	N/A

Legal Notice: Applicant and Owner Brenda Colborne, seeks a variance (SZO §5.5 and §10.7.1) to construct an eight (8) foot high fence along a twelve (12) foot section on the rear left side of the property. RA zone. Ward 7.

<u>Zoning District/Ward:</u>	RA zone/Ward 7
<u>Zoning Approval Sought:</u>	§5.5 & §10.7.1
<u>Date of Application:</u>	May 24, 2011
<u>Date(s) of Public Hearing:</u>	6/22 & 7/13/11
<u>Date of Decision:</u>	July 13, 2011
<u>Vote:</u>	5-0

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Appeal #ZBA 2011-49 was opened before the Zoning Board of Appeals at Visiting Nurses Association on June 22, 2011. 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:**

There is currently a chain link fence that encloses the backyard of the property which consists of varying heights between 3 to 4 feet along the rear property line and five (5) feet at its tallest point near the gate on the left side of the property. In 2010 the Applicant landscaped her backyard as can be seen in the submitted photos. As part of the continued improvements to the rear of the property, the Applicant would like to remove the chain link fence and install a six (6) foot high, cream colored, vinyl fence with lattice work at the top, around the entire backyard. However, along a twelve (12) foot section on the left rear side of the property, the Applicant would like to install an eight (8) foot high fence. This section of eight (8) foot high fencing would run from the 39" high retaining wall for the raised landscape area along the left property line towards the front of the property and stop at a point even with the rear of the structure (where the existing chain link fence stops). There would then be a six (6) foot high fence gate on this side to fully enclose the backyard.

**FINDINGS FOR VARIANCE (SZO §5.5 & §10.7.1):**

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."

The front to back incline of the property at 188 Powder House Boulevard, which is directly to the left of the subject property, is slightly steeper than that of 192 Powder House Boulevard which creates a small elevation change between the two lots. There is a short retaining wall that separates the walkway of 192 Powder House and the driveway of 188 Powder House. This retaining wall changes in height from one (1) foot above grade to three (3) feet above grade as it moves towards the rear of the property until it reaches the 39" high retaining wall of the raised landscaped area. If the Applicant is to erect a new fence on her property that is six (6) feet in height, it would only appear to be between five (5) feet and three (3) feet in height from the vantage point of the neighbor at 188 Powder House Boulevard, instead of its actual height. This existing elevation change would not allow for a six (6) foot high fence, as permitted in the SZO, to have the same screening effect as a six (6) foot high fence constructed on an area with level ground.

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."

The Board finds that the proposal to install a fence two (2) feet taller than the Ordinance allows is the minimum variance necessary that will grant reasonable relief to provide the adequate screening for the Applicant's backyard. The retaining wall is three (3) feet high at its tallest point and one (1) foot high at its shortest point where the Applicant is requesting to install the eight (8) foot high fence. This means that the abutter at 188 Powder House would see between approximately five (5) feet and seven (7) feet of fence when looking towards the Applicant's property. A six (6) foot high fence, which is the maximum allowable in the SZO, installed in this same location would yield a view of fencing between approximately three (3) feet and (5) feet in height. In both cases, the six (6) foot high fence that will be installed in the rest of the backyard will be higher than the fencing on this twelve (12) foot long section of the property because it would be sitting on top of the raised landscape area.

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."

The Applicant has indicated that the addition of the fence will make the backyard space more private, the property more attractive, and allow the Applicant to place her trash barrels behind the fence. The fence gate on the left side of the property will be six (6) feet high along with the rest of the fencing



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being installed to enclose the backyard, which is consistent with the SZO. The proposed section of eight (8) foot high fencing will not appear to be injurious to the neighborhood either, as the length of fencing requiring a variance is only twelve (12) feet long. With the elevation change between the two properties where the fence will be installed, the abutter at 188 Powder House would see at most between approximately five (5) feet and seven (7) feet of fence when looking towards the Applicant's property with the installation of an eight (8) foot high fence. Additionally, the neighbor at the rear of the property, without prompting, has offered to pay for half the cost of the 25 feet to be installed along the rear property line. The Applicant has indicated that both she and her neighbor to the rear feel that this fencing will benefit their properties by allowing them to entertain guests separately. Furthermore, as the eight (8) foot high section of fencing will be located in the left rear portion of the property, it would not impact views from the public way.

**DECISION:**

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Scott Darling and Elaine Severino with Danielle Evans absent. Upon making the above findings, Susan Fontano made a motion to approve the request for a Variance. 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:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes								
1	<p>Approval is to construct an eight (8) foot high fence along a twelve (12) foot section on the rear left side of the property. 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 24, 2011)</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>June 29, 1990 (June 6, 2011)</td> <td>Plot Plan</td> </tr> <tr> <td>April 21, 2011 (June 6, 2011)</td> <td>Reliable Fence Boston Site Plan</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	(May 24, 2011)	Initial application submitted to the City Clerk's Office	June 29, 1990 (June 6, 2011)	Plot Plan	April 21, 2011 (June 6, 2011)	Reliable Fence Boston Site Plan	BP/CO	Plng./ISD	
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April 21, 2011 (June 6, 2011)	Reliable Fence Boston Site Plan											
2	Applicant shall install a cream colored, vinyl fence with lattice in the top two feet as shown in the submitted photograph with OSPCD date stamp of June 6, 2011.	Final Sign Off	Plng.									
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:

Herbert Foster, *Chairman*  
Orsola Susan Fontano, *Clerk*  
Richard Rossetti  
T.F. Scott Darling, III, Esq.  
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 \_\_\_\_\_



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