



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 # 2012-19
Site: 240 Summer Street
Date of Decision: April 4, 2012
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: April 6, 2012

ZBA DECISION

Applicant Name:	Frank Fazzolari
Applicant Address:	164 Vernon Avenue, Apt. 38, Vernon, CT 06066
Property Owner Name:	Salvatore Fazzolari & Lina Fazzolari
Property Owner Address:	240 Summer Street, Somerville, MA 02143
Agent Name:	N/A

<u>Legal Notice:</u>	Applicant Frank Fazzolari and Owners Salvatore and Lina Fazzolari, seek a Special Permit to alter a nonconforming structure under SZO §4.4.1 to erect an approximately 3.5 foot high railing on the left side of the second story of an existing single-family residence. RB zone. Ward 5.
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<u>Zoning District/Ward:</u>	RB zone/Ward 5
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	March 5, 2012
<u>Date(s) of Public Hearing:</u>	4/4
<u>Date of Decision:</u>	April 4, 2012
<u>Vote:</u>	5-0

Appeal #ZBA 2012-19 was opened before the Zoning Board of Appeals at Somerville City Hall on April 4, 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 (1) hearing of deliberation, the Zoning Board of Appeals took a vote.



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DESCRIPTION:

The Applicant applied for and received a building permit to construct an as-of-right second story addition on the rear of the structure. There is no attic in the existing structure and the newly constructed addition is being used as unfinished storage space for the single-family dwelling. As part of the construction of this addition, the Applicant also built a 3.5 foot high railing on the second story that runs along 12 feet of the left side of the house and four feet across the rear. In winters past, due to the flat roof that was on the rear of the dwelling, snow would accumulate on the roof and would need to be removed to prevent damage to the structure and the roof. To remove snow in past winters before the addition was built, the property owner would climb out the rear window onto his roof and shovel the snow off of the top of the building. To provide an extra safety measure for future possible snow removal activities, as part of the addition project the Applicant also built this 3.5 foot high railing which fences in the remaining 48 square feet roof area on the rear of the dwelling. This fenced in roof area can only be accessed through a small half door in the side of building and will only be accessed for necessary snow removal purposes. The Applicant was unaware that this railing necessitated a Special Permit and when the Inspectional Services Division found that the railing had been constructed, they instructed the Applicant to apply for the necessary zoning relief.

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 would not be substantially more detrimental to the neighborhood than the existing structure. As can be seen in the photograph above, the railing is only slightly visible from the public right-of-way, but does not impact any views from the neighbors or of the surrounding area. Since the Applicant is indicating that the small, 48 square foot fenced in roof area will only be accessed for snow removal purposes, noise and privacy concerns should not become issues with the abutters. To prevent any privacy or noise issues with the surrounding neighbors from ever arising, the Board has included a condition that prohibits the occupants of the dwelling from using this fenced in roof area as a private outdoor space. The property will remain a two story, single-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; and to encourage the most appropriate use of land throughout the City."

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 railing is only slightly visible from the public right-of-way, but does not impact any views from the neighbors or of the surrounding area as it is located at the rear of the structure and within the existing footprint of the building. The railing will provide the property owners access to this small portion of flat roof to prevent any heavy snow accumulation from occurring there and potentially damaging the structure. The design and size of the railing is not out of context with the architecture of the subject building or with the surrounding neighborhood. The property will remain a two story, single-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 structure will remain a two story, single-family dwelling and will continue to be used for residential purposes.



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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. 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	Approval is to alter a nonconforming structure under SZO §4.4.1 to erect an approximately 3.5 foot high railing on the left side of the second story of an existing single-family residence. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/Plng.											
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>(March 5, 2012)</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>November 22, 2011 (March 15, 2012)</td> <td>Plot Plan</td> </tr> <tr> <td>December 18, 2011 (March 15, 2012)</td> <td>Second Floor Addition (REV – 1.2)</td> </tr> <tr> <td>(March 15, 2012)</td> <td>Railing Elevation (1a)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	(March 5, 2012)	Initial application submitted to the City Clerk's Office	November 22, 2011 (March 15, 2012)	Plot Plan	December 18, 2011 (March 15, 2012)	Second Floor Addition (REV – 1.2)	(March 15, 2012)	Railing Elevation (1a)
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(March 15, 2012)	Railing Elevation (1a)													
Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive SPGA approval.														
2	The Applicant shall meet the Fire Prevention Bureau's requirements.	Final Sign Off	FP											
3	The fenced in roof area on the second story of the left side of the structure shall not be used as a private outdoor space for the occupants of the dwelling.	Cont.	ISD											
4	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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