



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

GEORGE J. PROAKIS  
EXECUTIVE DIRECTOR

PLANNING DIVISION

**ZONING BOARD OF APPEALS MEMBERS**

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JOSH SAFDIE  
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DREW KANE, (*ALT.*)

**Case #: ZBA 2018-180**  
**Site: 14 Cutler Street**  
**Date of Decision:** June 19, 2019  
**Decision:** *Approved with Conditions*  
**Date Filed with City Clerk:** June 28, 2019

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**ZBA DECISION**

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**Site:** 14 Cutler Street  
**Applicant/Owner Name:** Margaret O'Meara  
**Applicant/Owner Address:** 14 Cutler Street  
**City Councilor:** Mark Niedergang

Legal Notice: Applicant and Owner, Margaret O'Meara, seeks a special permit under SZO §4.4.1 to alter a nonconforming structure by constructing a rear deck within the required right side yard setback. RB Zone. Ward 5.

<u>Zoning District/Ward:</u>	RB Zone. Ward 5.
<u>Zoning Approval Sought:</u>	SZO §4.4.1
<u>Date of Application:</u>	December 5, 2018
<u>Date(s) of Public Hearing:</u>	4/3, 4/17, 5/1, 5/15, 6/5, 6/19
<u>Date of Decision:</u>	June 19, 2019
<u>Vote:</u>	5-0

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Case number # **ZBA 2018-180** was opened before the Zoning Board of Appeals at the Visiting Nurse Association 3<sup>rd</sup> Floor Community Room, 259 Lowell Street. 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. On June 19, 2019, the Zoning Board of Appeals took a vote.



## **I. PROJECT DESCRIPTION**

The proposal is to extend the existing deck. The deck is currently situated in the rear of the structure and measures 8'3" (w) x 8'11" (d) and is proposed to become 13' (w) x 12'6" (d).

## **II. FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1):**

### 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."*

The structure is currently nonconforming with respect to the following dimensional requirements: Lot area, landscaped area, pervious area, front yard setback, right yard setback and street frontage.

The proposal will impact the nonconforming dimension of the right side yard setback. The current dimension is 1.77 feet measure from the edge of the house to the property line. The proposal is to extend the rear deck out to the edge of the structure. Due to the angle of the right lot line, the proposed right side yard setback will be slightly less than the existing 1.77 feet. The requirement in the district for a 1 1/2 story structure is 6 feet in the RB district. This alteration to a nonconforming structure requires the Applicant to obtain special permits under §4.4.1 of the Somerville Zoning Ordinance (SZO).

Section 4.4.1 states that "[l]awfully existing one-and two-family dwellings which are only used as residences, which are nonconforming with respect to dimensional requirements, may be enlarged, extended, renovated or altered by special permit granted by the SPGA in accordance with the procedures of Article 5."

In considering a special permit under §4.4 of the SZO, the Board is unable to find that the alterations proposed would not be substantially more detrimental to the neighborhood than the existing structure. The existing house is already 1.77 feet from the right lot line and the Board is not supportive of the proposed extension of the rear deck to less than 1.77 feet.

### 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 not consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to promote the health, safety, and welfare of the inhabitants of the City of Somerville; to protect health; to secure safety from fire, panic and other dangers; to provide adequate light and air; and to conserve the value of land and buildings.



The proposal is not consistent with the purpose of the RB district, 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.”

*Surrounding Neighborhood:* The subject property is located on the southern side of Cutler Street which is a small street between Charles E Ryan Road and Hinckley Street. It is a residential street made up of two structures including the subject property and a three-unit dwelling next door. Opposite Charles E Ryan Road is the entrance of the mechanical shop to the Somerville Department of Public Works.

Impacts of Proposal (Design and Compatibility): The proposed deck is of a traditional style. Its proximity to the property line as proposed will be just less than 1.77 feet to the right property line. Generally that is of concern to the Board to respect encroachments toward abutting properties. However, there is no abutting property. Instead the proposed deck would encroach toward a public right of way (Charles E Ryan Road) a dead end street. This part of the street is only used by Department of Public Works employees to enter their mechanical garage.

5. Housing Impact: Will not create adverse impacts on the stock of existing affordable housing.
6. SomerVision Plan: Complies with the applicable goals, policies and actions of the SomerVision plan, including the following, as appropriate: Preserve and enhance the character of Somerville’s neighborhoods.

### **III.DECISION:**

Present and sitting were, Susan Fontano, Danielle Evans, Josh Safdie, Anne Brockelman, Elaine Severino, and Drew Kane. Upon making the above findings, Danielle Evans made a motion to approve the request for a Special Permit. Elaine Severino seconded the motion. The Zoning Board of Appeals voted **5-0** to **APPROVE** the request **WITH CONDITIONS**. The following conditions were attached:



#	Condition	Timeframe for Compliance	Verified (initial)	Notes								
1	Approval is for the extension of a rear deck. 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>December 6, 2018</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>April 29, 2019</td> <td>Modified plans submitted to OSPCD (pages 1-9)</td> </tr> <tr> <td>June 11, 2019</td> <td>Modified plans submitted to OSPCD (pages 1-14)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	December 6, 2018	Initial application submitted to the City Clerk's Office	April 29, 2019	Modified plans submitted to OSPCD (pages 1-9)	June 11, 2019	Modified plans submitted to OSPCD (pages 1-14)
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Any changes to the approved site plan that are not <i>de minimis</i> must receive SPGA approval.												
<b>Construction Impacts</b>												
2	The applicant shall post the name and phone number of the general contractor at the site entrance where it is visible to people passing by.	During Construction	Plng.									
3	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									
4	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									
5	For the convenience of and respect for the neighborhood, during the construction phase, construction work shall not begin prior to 7:30am and shall finish no later than 5pm Monday through Friday. There shall be no construction or construction-related work performed on weekends or holidays.	During Construction	ISD									
<b>Design</b>												
6	Applicant shall provide final material samples for decking and railings to Planning Staff for review and approval prior to the issuance of a building permit.	BP	Plng.									
<b>Site</b>												



7	Landscaping shall be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Plng. / ISD	
8	The Applicant shall submit a Landscape Plan with the inclusion of permeable pavers in the areas shown on the plan, to be reviewed and approved by Planning Staff.	Perpetual	Plng.	
9	The Applicant, its successors and/or assigns, shall be responsible for maintenance of both the building and all on-site amenities, including landscaping, fencing, lighting, parking areas and storm water systems, ensuring they are clean, well kept and in good and safe working order.	Cont.	ISD	
<b>Public Safety</b>				
10	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
11	Per Somerville fire safety regulations, grills, barbecues, chimineas and the like are NOT permitted on decks or porches.	Perpetual	FP/ISD	
12	To the extent possible, all exterior lighting must be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	Plng.	
<b>Final Sign-Off</b>				
13	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:

Susan Fontano, *Chairman*  
Danielle Evans, *Clerk*  
Josh Safdie  
Elaine Severino  
Anne Brockelman  
Drew Kane (Alt.)

Attest, by Administrative Assistant: \_\_\_\_\_  
Monique Baldwin

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 \_\_\_\_\_

