



**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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RICHARD ROSSETTI  
T. F. SCOTT DARLING, III, ESQ.  
DANIELLE EVANS  
ELAINE SEVERINO (ALT.)  
JOSH SAFDIE (ALT.)

**Case #: ZBA # 2012-36**  
**Site: 76 Boston Street**  
**Date of Decision: June 6, 2012**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: June 7, 2012**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Anne Slater
<b>Applicant Address:</b>	12 Williams Street, Newton, MA 02464
<b>Property Owner Name:</b>	Anne Slater
<b>Property Owner Address:</b>	12 Williams Street, Newton, MA 02464
<b>Agent Name:</b>	N/A

Legal Notice: Applicant and Owner, Anne Slater, seeks a Special Permit to alter a nonconforming structure under SZO §4.4.1 to construct a third story deck at the rear of an existing two-family dwelling.

<u>Zoning District/Ward:</u>	RA zone/Ward 3
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	May 8, 2012
<u>Date(s) of Public Hearing:</u>	June 6, 2012
<u>Date of Decision:</u>	June 6, 2012
<u>Vote:</u>	5-0

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Appeal #ZBA 2012-36 was opened before the Zoning Board of Appeals at Somerville High School on June 6, 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:**

Applicant, Anne Slater, proposes to alter her nonconforming two-family dwelling to construct a third story deck at the rear of the building.

The proposed deck was constructed during a 2006-2007 renovation by the existing owner who failed to acquire all of the appropriate permits for their modifications at that time. The property is currently being offered for sale by the Applicant. Per the request of a potential purchaser, a search of the records at the Inspectional Services Division did not produce a Building Permit or a Special Permit for the construction of the third story deck. Therefore, the Applicant, who is also the current owner, seeks a Special Permit to legalize the existing third story deck prior to the sale of the building.

The deck, located above the second story of the rear addition, is approximately 17 feet in length by 11 feet in width with 42 inch high balustrades on all sides. The deck is accessible only through the attic and the surface of the deck lies approximately one foot above the floor of the attic. According to the current owner, during the 2006-2007 renovation, the flat roof above the second story addition was reinforced. The present owner has also had a structural engineer analyze the integrity of the third floor deck. A memo from the engineer, dated April 25, 2012, states that the deck is composed of 2" x 8" pressure-treated joists that connect with galvanized hangers to either a ledger board on the face of the house or to a continuous 2" x 10" pressure-treated beam that spans 5'-10" between posts. The 4" x 4" posts extend beyond the exterior walls below the roofing membrane. The memo also explains that the analysis was done according to present load requirements. In the professional opinion of David Brosnan, P.E., Structural Integrity Engineering Group, Inc., the conclusions and recommendations are as follows:

- 1) The construction of the exterior wood deck at the third floor level can safely support the loads required by the Massachusetts State Building Code, 8<sup>th</sup> edition (residential), except as noted below.
- 2) The existing wood ledger to the face of the gable wall needs to be supplemented with two new "Ledger-Lok" screws engaging each stud.

The Applicant, and current owner, has followed through with the engineer's recommendations and a licensed contractor supplemented the attachment of the wood ledger to the face of the gable wall with two Ledger-Loc screws engaging each stud. The Applicant has provided an invoice from the contractor and pictures that illustrate this recommendation was completed in May 2012.

## **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 design of the third story deck has left the architectural details of the gable intact. Although the deck is somewhat visible from Boston Street, the majority of the deck is located behind the main massing of the building. Therefore, the deck does not greatly impact the view the Boston Street streetscape.



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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 secure safety from fire, panic and other dangers; to provide adequate light and air; to conserve the value of land and buildings; to preserve the historical and architectural resources of the City; and to preserve and increase the amenities of the municipality."

The proposal is 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."

The proposed third story deck has been existent for five years and is compatible with the neighborhood and the RA district as it is located at the rear of the structure. The deck does not negatively impact abutters or the character of the streetscape.

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 proposed third story deck has been designed to be compatible with the built and unbuilt surrounding area. The design of the third story deck has left the architectural details of the gable intact. Although the deck is somewhat visible from Boston Street, the majority of the deck is located behind the main massing of the building. The proposed deck has been existent for five years and is compatible with the neighborhood and the RA district. The deck does not negatively impact abutters or the character of the streetscape.



**DECISION:**

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Scott Darling. 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:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes												
1	Approval is for a Special Permit to alter a nonconforming structure to construct a third story deck at the rear of an existing two-family dwelling. 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>(May 8, 2012)</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>May 8, 2012 (May 29, 2012)</td> <td>Plot plan submitted to OSPCD</td> </tr> <tr> <td>April 17, 2012 (May 29, 2012)</td> <td>Photographs of existing deck submitted to OSPCD</td> </tr> <tr> <td>April 25, 2012 (May 29, 2012)</td> <td>Structural Assessment Letter submitted to OSPCD</td> </tr> <tr> <td>May 16, 2012 (May 29, 2012)</td> <td>Letter of Supplemented Deck Support submitted to OSPCD</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	(May 8, 2012)	Initial application submitted to the City Clerk's Office	May 8, 2012 (May 29, 2012)	Plot plan submitted to OSPCD	April 17, 2012 (May 29, 2012)	Photographs of existing deck submitted to OSPCD	April 25, 2012 (May 29, 2012)	Structural Assessment Letter submitted to OSPCD	May 16, 2012 (May 29, 2012)	Letter of Supplemented Deck Support submitted to OSPCD
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Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive SPGA approval.																
2	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP													
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.													
4	The Applicant shall work with Planning Staff to pull the right side of the railing away from the right side property line to where the full height of the railing fits underneath the eave of the roof on the gable end.	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.  
Danielle Evans

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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