



**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 # 2011-05**  
**Site: 23 Porter Street**  
**Date of Decision: June 8, 2011**  
**Decision: *Petition Denied***  
**Date Filed with City Clerk: June 16, 2011**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Lalo Development, LLC
<b>Applicant Address:</b>	311 Highland Avenue, Somerville, MA 02144
<b>Property Owner Name:</b>	Lalo Development, LLC
<b>Property Owner Address:</b>	311 Highland Avenue, Somerville, MA 02144
<b>Agent Name:</b>	Richard G. DiGirolamo, Esq.
<b>Agent Address:</b>	424 Broadway, Somerville, MA 02145

Legal Notice: Applicant and Owner Lalo Development, LLC seeks an appeal (pursuant to SZO §3.1.9) from a decision of the Superintendent of Inspectional Services to issue a certificate of occupancy for a three-family dwelling at 23 Porter Street.

<u>Zoning District/Ward:</u>	RB zone/Ward 3
<u>Zoning Approval Sought:</u>	§3.1.9
<u>Date of Application:</u>	January 13, 2011
<u>Date(s) of Public Hearing:</u>	5/18 & 6/8/11
<u>Date of Decision:</u>	June 8, 2011
<u>Vote:</u>	5-0

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Appeal #ZBA 2011-05 was opened before the Zoning Board of Appeals at Somerville City Hall on May 18, 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 hearing of deliberation, the Zoning Board of Appeals took a vote.



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**DESCRIPTION:**

The subject property was purchased by Elm Oak Realty Trust in 1985 as what they thought to be a 13,630 square foot lot with a four-family dwelling on it according to the Offer to Purchase and Purchase & Sale Agreement. Apparently, at that time, the Inspectional Services Division did not recognize the structure as a legal four-family dwelling unit. In 2006, Elm Oak Realty Trust applied to legalize the structure as a four-family dwelling unit and the application was denied by Inspectional Services on the grounds that the conversion of existing dwelling units for up to four to six units is not allowed in an RB zoning district. Elm Oak Realty Trust then appealed this decision to the Zoning Board of Appeals in early 2007 on the basis that the existing structure was a four-family dwelling prior to the adoption of Somerville Zoning Ordinance (SZO) 7.11.2.c. As part of this appeal, Elm Oak Realty Trust filed the following information as evidence that structure had already been operating for many years as a four-family dwelling:

- 1) The Offer to Purchase, Purchase & Sale Agreement, and Deed for the Property (Exhibit A);
- 2) A Tenant List for the Property in the early 1980s (Exhibit B);
- 3) Certificates of Compliance from the Department of Public Safety – Division of Fire Prevention (for the Commonwealth) in 1984 and from the Bureau of Fire Prevention (for the City of Somerville) in 1985 stating that each entity had inspected the subject property and approved it for smoke detectors for four (4) dwellings units (Exhibit C);
- 4) Permission granted by the Office of Commissioner of Electric Lines and Lights to the Boston Edison Co., to install meters in four areas at the subject property (Exhibit D); and
- 5) Real Estate Tax Bills from 1987 to 2003 showing the subject property as containing four to eight apartments (Exhibit E).

The 2007 appeal to legalize the structure as four dwelling units was met with substantial opposition from the neighborhood. As a compromise, the surrounding neighbors submitted a letter to the Zoning Board of Appeals signed by 12 neighbors to allow the landlord to convert the four illegal units into three legal dwelling units. The case was continued by the Board several times and Elm Oak Realty Trust finally decided to withdraw the administrative appeal without prejudice thereby never settling the legal question of the number of units allowed. As the site could be converted to a three-family dwelling unit under the RB district, the Applicant submitted plans to reduce the building to three units, and a Certificate of Occupancy was issued for three dwelling units for the property in April of 2008. Elm Oak Realty Trust, however, never completed the work to reduce the site to three dwelling units.

In March of 2010, Lalo Development, LLC purchased the property from Elm Oak Realty Trust and filed this Administrative Appeal from the decision of the Superintendent of Inspectional Services to issue a Certificate of Occupancy for a three-family dwelling at the subject property. Lalo Development, LLC also believes that the existing structure has been operating as a four-family dwelling prior to the adoption of SZO 7.11.2.c. The new Applicant, Lalo Development, LLC, has resubmitted the above listed pieces of information as well as voting records for the subject property as far back as 1952 (Exhibit F) and street index research based upon information collected by Preservation Planner Kristi Chase (Exhibit G), as evidence for their appeal to the decision of the Superintendent of Inspectional Services. It should also be noted that the Assessor's Office currently recognizes the subject property as having four to eight apartment units and, also according to their database, there are three properties containing four to eight apartment units and four properties containing over eight apartment units within 350 feet of the subject property. Six of those seven properties are in the same zoning district as 23 Porter Street.

**FINDINGS FOR ADMINISTRATIVE APPEAL (SZO §3.1.9):**

1. Role of the ZBA: In an administrative appeal hearing, the ZBA hears appeals from the decision of the Superintendent of Inspectional Services. The process for such appeals is set out in MGL 40A, Section 8 and Section 3.2 of the SZO. An appeal may be taken by any person aggrieved by an order or decision of the Superintendent of Inspectional Services. The ZBA must determine whether to affirm the ISD decision or overturn it, and why.



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The Board recognizes that Lalo Development, LLC, as the property owner, has status as an aggrieved party in this circumstance and that the appeal is properly before the Board.

2. Analysis of the Appeal: The Board has reviewed: 1) the administrative appeal application from Lalo Development, LLC and 2) the materials submitted as evidence that the structure has been operating as a four-family dwelling unit. A discussion of those materials is as follows:

1) *The Offer to Purchase, Purchase & Sale Agreement and Deed for the Property (Exhibit A).*

The Offer to Purchase and the Purchase & Sale Agreement both state that the existing structure on the subject property is a four-family dwelling unit. However, the deed for the property that the Applicant submitted as an exhibit and the current deed submitted as part of the administrative appeal application, both do not state anything regarding the structure being a four-family dwelling unit. Additionally, all four items, including the existing deed, do not state the Inspectional Services Division's stance on the legality of the four units in the existing structure.

2) *A Tenant List for the Property in the early 1980s (Exhibit B).*

The Tenant List provided by the Applicant lists the date, amount, and the names for the security deposits paid at 23 Porter Street. The Unit #3 deposit was paid in 1982, the Unit #1 deposit was paid in 1983, and the Unit #2 and #4 deposits were paid in 1984. There are no other tenant names, years, or deposit amounts listed.

3) *Certificates of Compliance from the Department of Public Safety – Division of Fire Prevention (for the Commonwealth) in 1984 and from the Bureau of Fire Prevention (for the City of Somerville) in 1985 stating that each entity had inspected the subject property and approved it for smoke detectors for four (4) dwellings units (Exhibit C).*

Both the Commonwealth's Division of Fire Prevention in 1984 and the City's Bureau of Fire Prevention in 1985 recognized the structure as containing four dwelling units.

4) *Permission granted by the Office of Commissioner of Electric Lines and Lights to the Boston Edison Co., to install meters in four areas at the subject property (Exhibit D).*

On January 24, 1951, the Office of Commissioner of Electrical Lines and Lights issued four certificates of permission to Boston Edison Co. to install meters in four locations at 23 Porter Street. These certificates list the locations as 1<sup>st</sup> fl. front, 2<sup>nd</sup> fl. front, 1<sup>st</sup> fl. rear, and 2<sup>nd</sup> fl. rear. It does not state on the certificates that these areas are separate dwelling units or suites. Also on January 24, 1951, the Office of Commissioner issued permission to install a public meter on the premises. This certificate does not make reference to any number of dwelling units on the subject property. The Applicant also submitted a card from the Inspector of Wires in Somerville that states that 80 outlets, five lighting meters, and four suite phones were permitted to be installed in the structure as of January 8, 1951.

5) *Real Estate Tax Bills from 1987 to 2003 showing the subject property as containing four to eight apartments (Exhibit E).*

The real estate tax bills that the Applicant has submitted all display a land use code of "111" which has a description in the city database as "Apartment of 4 to 8 units".

6) *Voting records for the subject property dating back to 1952 (Exhibit F).*

The voting records for the subject property submitted by the Applicant and compiled by the Elections Department date back to 1952. The first time that the records show there are four separate



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voting households in the subject property is 1954. This occurs again during 1962-64, 1969, 1978-82, 1984-93, 1995-98, 2002-05, and 2007-09. However, it should be noted that four separate, numbered, dwelling units are not indicated in the records until 1988. Before this time, the records only indicate the names of the voting residents at the address, but not the numbering of the units at the subject property.

7) *Street Index research based upon information collected by Preservation Planner Kristi Chase (Exhibit G).*

Preservation Planner Kristi Chase performed a street index research for the property and discovered the following as far back as 1950. The property was not occupied between 1950 and 1953. Four separate last names are not shown in the records until 1988, which is also the first time that unit numbers are listed for the property (four were listed in 1988).

3. Conclusion: It is likely, but not definite, that four units were located in the building as early as 1954, as Exhibits D, F, and G back up this information. The Inspectional Services Division has, in the past, issued a Certificate of Occupancy for a unit that can be established to have existed prior to 1960. But, as a resolution of previous issues with this property, ISD did issue a valid Certificate of Occupancy for three units. Therefore, after review of the issues raised in the appeal, the Board finds they will **DENY** the Applicant's appeal to overturn the decision from the Inspectional Services Division.

**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 deny the request for an Administrative Appeal. Richard Rossetti seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **DENY** the request.



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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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