



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

PLANNING DIVISION

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DANIELLE EVANS  
ELAINE SEVERINO (ALT.)  
JOSH SAFDIE (ALT.)

**Case #: ZBA # 2012-09**  
**Site: 139 Shore Drive**  
**Date of Decision: March 14, 2012**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: March 16, 2012**

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**ZBA DECISION**

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<b>Applicant Name:</b>	Carl R. Stevens
<b>Applicant Address:</b>	139 Shore Drive, Somerville, MA 02145
<b>Property Owner Name:</b>	Carl R. Stevens
<b>Property Owner Address:</b>	139 Shore Drive, Somerville, MA 02145
<b>Agent Name:</b>	Richard G. DiGirolamo, Esq.
<b>Agent Address:</b>	424 Broadway, Somerville, MA 02145

Legal Notice: Applicant and Owner Carl Stevens, seeks a Variance under SZO §5.5 from the dimensional requirement of SZO §8.5.B requiring a minimum of 2,250 square feet of lot area per dwelling unit to establish a two-family use.

<u>Zoning District/Ward:</u>	RA zone/Ward 4
<u>Zoning Approval Sought:</u>	§5.5 & §8.5.B
<u>Date of Application:</u>	January 31, 2012
<u>Date(s) of Public Hearing:</u>	2/29 & 3/14/12
<u>Date of Decision:</u>	March 14, 2012
<u>Vote:</u>	5-0

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Appeal #ZBA 2012-09 was opened before the Zoning Board of Appeals at Somerville City Hall on February 29, 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:**

The history of this project goes back to February of 2006 when the Applicant applied for and received a building permit to alter the structure at the property by adding a second floor. In 2006 when the building permit was applied for, the structure on the lot was a 1½-story single-family wood-frame building. The structure was nonconforming with respect to the side yard setback along Temple Road because for a 1½ story structure a six foot minimum setback is required on each side of a building and the combined side yards must equal at least 14 feet. The right side yard setback at this property is only 5.7 feet which means that the structure is nonconforming and the Applicant should have obtained a Special Permit under §4.4.1 of the Somerville Zoning Ordinance (SZO) to add on a full second story.

Due to an oversight, the Applicant was awarded a building permit to perform the work of constructing a second story addition on the dwelling without obtaining the necessary Special Permit to alter the nonconforming structure. Pursuant to the building permit that was issued, the roof of the structure was removed in March of 2006. In May of 2006, the Applicant again applied for and received a second building permit to perform more work on the second story addition without being required to obtain the necessary Special Permit. The same incident occurred again for a third time in June of 2006. Also occurring in June, the Applicant was forced to fire his contractor because he stopped showing up around the time the first floor of the dwelling flooded due to there being no roof on structure and the dwelling became unlivable. The Applicant then hired a new contractor to make the building weather tight so that it could become habitable again. At this point in time the work on the second floor addition was essentially suspended because the Applicant did not have the financing to move forward with the work. After several months went by, the Applicant was able to secure funding again to finish the remaining work on the second story addition and hired an electrician, a carpenter, a gas fitter, and plasterers to complete the work. Each of these contractors obtained the necessary building permits to perform the work, all the work was inspected by the Inspectional Services Division (ISD), and all the work received final sign offs from ISD. Ultimately, this addition was constructed pursuant to a building permit that was issued in error as a Special Permit should have been obtained before the original building permit was issued.

When the work was completed and all the final sign offs had been issued, the Applicant contacted ISD to determine what the next step was to make the structure a legal two-family dwelling. The Applicant was told to apply at ISD to establish a two-family residential use at his property, which he did, and he was subsequently denied this request based on the fact that no Special Permit had ever been issued to alter the nonconforming structure and also because the lot size was 197 square feet short of meeting the necessary square footage to have two dwelling units on a lot in an RA district. Therefore, in early 2007, the Applicant sought zoning relief from the Zoning Board of Appeals to legalize the work and obtain the necessary Special Permit and Variance. The Applicant went before the Zoning Board of Appeals and was awarded the Special Permit to alter the nonconforming structure in April of 2007. However, in moving through the Special Permit process, the Applicant ended up withdrawing his Variance application for the relief from the lot area per dwelling unit requirement in the RA district because the Alderman in Ward 4 at that time was not supportive of his Variance application.

The Applicant is now back before the Zoning Board of Appeals requesting a Variance from the lot area per dwelling unit requirement in SZO §8.5.B under §5.5.3 to be able to convert his single-family dwelling into a two-family dwelling. The Applicant stated in his application that if had he known before the first building permit was ever issued that he needed a Variance to construct a second dwelling unit at the property, he would have not moved forward with any of the work at his property.



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**FINDINGS FOR VARIANCE (Minimum Lot Area per Dwelling Unit SZO §8.5.B):**

In order to grant a Variance the Zoning Board of Appeals 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 subject property is an undersized lot at 4,303 square feet, but it is actually larger than several neighboring lots containing two-family dwellings. Many of the lots in this area are undersized and subject to the space constraints that this Applicant is also subject too. Due to an oversight by the Inspectional Services Division of the necessary zoning relief required by the Applicant to construct the project, including the second dwelling unit, the Applicant built out the entire project before he was informed of the required zoning relief. The Applicant then was required to return before this Board to ask for the necessary relief with the project already completed. The Board finds this circumstance to be a hardship bestowed upon the Applicant. The Board additionally finds that the amount of additional land necessary for the Applicant to meet the requirements for having a two-family dwelling, 197 square feet (or an additional 4% of lot area), on the property is de minimis in nature in this particular instance and this space constraint of the Applicant’s lot has also created a hardship for the Applicant. Therefore, the Board finds that the combination of these circumstances at the property affecting the lot area per dwelling unit requirements at the site cause substantial hardship for the Applicant.

2. “The specific variance as may be granted by the Board 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 Applicant indicated the following in response to this particular Variance finding in his application: “I would be greatly relieved if the variance was granted. This has been a major burden on me, both financially (and) emotionally. I have dealt with a huge amount of stress due to this whole project and the poor guidance I was given by those who I hired to do the work and most importantly, the I.S. Department’s mistakes as outlined above. Bottom line is that the original issuing inspector was at the job site many times and knew what was being built. Work was never stopped by any inspectors during any and all inspections. Everything was approved (See Building Permit, Electrical, Plumbing and Gas Permits).”

The subject property lacks the necessary 4,500 square feet required to create a second dwelling unit on the site by 197 square feet. Since there is no way to meet this requirement by acquiring additional land, nor by reducing the size of the structure, this Variance would be the minimum needed to add a second dwelling unit to the property. The Applicant had set out from the beginning of the project to construct a two-family dwelling under the building code. Unfortunately, the oversight by the Inspectional Services Division of the necessary zoning relief required by the Applicant to construct the project, including the second dwelling unit, caused the Applicant to build out the entire project before he was informed of the required zoning relief. The Applicant has completed the entire project and is now simply seeking to legalize the structure as a two-family dwelling. Furthermore, the amount of additional land necessary for the Applicant to meet the requirements for having a two-family dwelling (197 square feet) is only an additional 4% of lot area. Due to these circumstances at this particular property, the Board finds that this amount of relief would be the minimum Variance necessary to allow a two-family dwelling on the lot to now make reasonable use of the property.

3. “The granting of the variance will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. In addition to considering the character and use of the nearby buildings, the Board, in making its findings, shall take into account the number of persons residing or working in such buildings or upon such land, and the present and probable future traffic conditions.”



The Applicant indicated the following in response to this particular Variance finding in his application:  
“Granting me the variance would be in harmony with the entire neighborhood of two-family houses. By finishing this difficult project, I have improved the area significantly, added off-street parking and blended with the area. I receive nothing but compliments from neighbors and people walking by, many of whom have commented to me that all the work I have done has made a great improvement to the area, and how nice it looks.”

A two-family dwelling use on a lot of such a small size is typical of the surrounding neighborhood. There are even smaller lots in this area that are operating as two-family dwellings. This proposed use would still be consistent with the purposes of the RA district which are “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.” Therefore, the Board finds that the creation of a second dwelling unit at the property would not be substantially more detrimental or injurious to the public or the surrounding neighborhood than the existing structure or use.

**DECISION:**

Present and sitting were Members Herbert Foster, Richard Rossetti, Scott Darling, Elaine Severino and Josh Safdie with Susan Fontano and Danielle Evans absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a variance. Elaine Severino 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 for a Variance under SZO §5.5 from the dimensional requirement of SZO §8.5.B requiring a minimum of 2,250 square feet of lot area per dwelling unit to establish a two-family use. 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>(January 31, 2012)</td> <td>Initial application submitted to the City Clerk’s Office</td> </tr> <tr> <td>February 13, 2006 (February 8, 2012)</td> <td>Plot Plan</td> </tr> <tr> <td>June 20, 2006 (February 8, 2012)</td> <td>Stevens Residence Drawings – Floor Plans and Elevations (Drawings # 1 – # 7)</td> </tr> <tr> <td>(February 8, 2012)</td> <td>Supplemental Front Elevation</td> </tr> </tbody> </table> <p>Any changes to the approved use, site plan, or elevations that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	(January 31, 2012)	Initial application submitted to the City Clerk’s Office	February 13, 2006 (February 8, 2012)	Plot Plan	June 20, 2006 (February 8, 2012)	Stevens Residence Drawings – Floor Plans and Elevations (Drawings # 1 – # 7)	(February 8, 2012)	Supplemental Front Elevation	BP/CO	ISD/PIng.	
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(February 8, 2012)	Supplemental Front Elevation													
2	The Applicant shall meet the Fire Prevention Bureau’s requirements.	CO	Fire Prevention											



3	The Applicant shall bring the property into compliance with the minimum required percentage of landscaped area under SZO §8.5.D (25%).	CO	Plng.	
4	The Applicant is advised that no additional dwelling units may be created without receiving the appropriate permits and zoning relief.	Perpetual	ISD	
5	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.	



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Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*  
Richard Rossetti, *Acting Clerk*  
T.F. Scott Darling, III, Esq.  
Elaine Severino (Alt.)  
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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