



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2018-17
Site: 11 Robinson St
Date of Decision: July 18, 2018
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: July 23, 2018

ZBA DECISION

Applicant / Owner Name: Michael & AnnMarie Browne
Applicant / Owner Address: 11 Robinson Street, Somerville, MA 02143
Alderman: Mark Niedergang

Legal Notice: Applicant and Owner, Michael Browne, seeks Special Permits/Variance* to legalize a rear deck under §4.4.1 and §5.5 of the SZO. RA zone. Ward 4.**

* / ** The property is located in Ward 5 and the relief needed is Special Permit only.

<u>Zoning District/Ward:</u>	RA Zone. Ward 5.
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	January 11, 2018
<u>Date(s) of Public Hearing:</u>	6/20/18, 7/18/18
<u>Date of Decision:</u>	July 18, 2018
<u>Vote:</u>	5-0

Appeal #ZBA 2018-17 was opened before the Zoning Board of Appeals in the Aldermanic Chambers, Somerville City Hall, 93 Highland Ave, Somerville, MA. 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 July 18, 2018, the Zoning Board of Appeals took a vote.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
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DESCRIPTION:

The application contains the following statement from the Applicants regarding their proposal:

“The original 2nd floor deck (same size as the existing deck) was constructed prior to 1993. A 1/3 portion of the original 2nd floor deck was later enclosed and remained enclosed as the remaining 2/3rds became further rooted and deteriorated. On or about 2001, Owners began removing pieces of rotted sections and began rebuilding back to original size and spec in 2012. It was not known by the owners that a special permit was required to restore to original size as the existing footings were never removed. Deck restoration was completed in 2014.”

Board Note 1: The purpose of the Applicants’ appearance in front of the ZBA is to legalize the re-built deck. A special permit is needed in order to do this because the left elevation of the deck rests in the left side yard setback and the rear elevation of the deck rests in the rear yard setback. Special permits are needed for each.

Left side yard setback

The left elevation of the second floor rear deck is roughly 1.6 feet from the left property line in a zone where a minimum 8-foot setback is required. A special permit is required to rebuild the deck in this location.

Rear yard setback

The rear elevation of the second floor deck rests 8.5 feet from the rear property line in a zone where a minimum 20-foot rear yard setback is required. A special permit is required to rebuild the deck in this location.

Board Note 2: The reconstruction of the second floor deck has been the subject of investigation by ISD because it was done without receiving zoning relief. The fact that the Applicants are seeking zoning relief *ex post facto*, though not ideal from a procedural/regulatory standpoint, neither Staff nor the ZBA can take this fact into consideration when making a recommendation/determination for approval or denial of the special permits requested. This is due to the long-standing MA Supreme Court case, *Dowd vs. Dover* (1976/1977), which established case law that an Applicant’s past zoning violations cannot be used against him/her to deny them zoning relief.¹

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 §4.4.1 of the SZO. This section of the report goes through §4.4.1 in detail.

1. Information Supplied:

The Board finds that, generally, the information provided by the Applicant conforms to the requirements of §4.4.1 and 5.1.4 of the SZO.

¹ Paraphrased. See *Dowd v. Dover*. “In denying a special permit for a nursery a zoning board of appeals improperly considered the applicant's past violation of the zoning by-law. [156-157]”; <http://masscases.com/cases/app/5/5massappct148.html>

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."*

Regarding §4.4.1 of the SZO

Section 4.4.1 states that "[l]awfully existing nonconforming structures other than one- and two-family dwellings may be enlarged, extended, renovated or altered only by special permit authorized by the SPGA in accordance with the procedures of Article 5. The SPGA must find that such extension, enlargement, renovation or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming building. In making the finding that the enlargement, extension, renovation or alteration will not be substantially more detrimental, the SPGA may consider, without limitation, impacts upon the following: traffic volumes, traffic congestion, adequacy of municipal water supply and sewer capacity, noise, odor, scale, on-street parking, shading, visual effects and neighborhood character."

Left side yard setback

Presuming the veracity of the application statement that first- and second-story decks have existed on the rear of this property for more than two decades, and that the second-story deck is being re-built in the same location in which it has always existed, then the proposal is one that continues a pre-existing use/condition. The lot itself is oddly shaped, with the right property line sharply angling toward the rear of the property leaving a rear property line only 18.21 feet in *length*.

Left side yard setback

As with the discussion above, presuming the veracity of the application statement that a first- and second-story deck have existed on the rear of this property for more than two decades and that the second-story deck is being re-built in the same location in which it has always existed, then the proposal is one that continues a pre-existing use/condition. The lot itself is oddly shaped, with the right property line sharply angling toward the rear of the property leaving a rear property line only 18.21 feet in *length*.

General determinations

A deck is not found to have any impact on traffic volumes, traffic congestion, adequacy of municipal water supply, sewer capacity, or on-street parking; it is a means of providing outdoor space for the residents of the second-floor unit. Regarding noise and odor, abutting properties should anticipate sound and smells from activities typically associated with people using an outdoor deck.

As stated earlier, front and rear decks/porches are part of the character of residential structures in Somerville. In this area of Robinson Street and Central Street, the houses are particularly sandwiched together, leaving the rear deck clearly visible from several abutting properties.

There is always the possibility of some shading caused by the existence of a deck or other building component so close to a property line. The abutting property to the right has several solar panels installed on the roof elevation directly facing 11 Robinson. The rear deck will not have any shading effect on these solar panels.

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 Board finds that the proposal is consistent with the purposes of the RA zone which are “[T]o 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 reconstruction of a deck has no impact on the purpose of the RA zone in terms of allowed use (density). The property is and shall remain a two-family use. In general, in a densely-built urban environment, the use of front and rear decks/porches on multiple stories of residential buildings is a typical manner in which City residents are able to enjoy some outdoor space.

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."*

Robinson Street, immediately-surrounding streets and, in fact the entirety of Somerville is replete with front and/or rear porches/decks.

5. Housing Impact: *Will not create adverse impacts on the stock of existing affordable housing.*

The proposal will not add to the existing stock of affordable housing.

DECISION:

Special Permit under §4.4.1

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Elaine Severino, Danielle Evans, Josh Safdie, Anne Brockelman, and Pooja Phaltankar. Upon making the above findings, Richard Rossetti 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. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
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1	Approval is for the (already completed) reconstruction of a second story rear deck within the left and rear yard setbacks.		BP/CO	ISD/Plng.									
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>January 11, 2018</td><td>Application submitted to City Clerk’s office.</td></tr><tr><td>April 14, 2018</td><td>Plot plan submitted to OSPCD.</td></tr><tr><td>June 29, 2018</td><td>Deck plans submitted to OSPCD</td></tr></table>					Date (Stamp Date)	Submission	January 11, 2018	Application submitted to City Clerk’s office.	April 14, 2018	Plot plan submitted to OSPCD.	June 29, 2018	Deck plans 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. Whether or not a change is <i>de minimis</i> in nature must be determined by the Planning Office.													
Design													
1	All materials, including, but not limited to windows, exterior finishes, siding, and similar shall be submitted to, reviewed and approved by Planning Staff prior to the issuance of a building permit.		BP	ISD/Plng									
Construction Impacts													
2	The Applicant shall, at his 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									
3	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/ISD									
4	The name(s) and contact information of all entities working on the site shall be posted in an area easily-visible from the public way for the passing public to see.		During Construction	ISD									
5	Prior to the issuance of a building permit, the Applicant shall submit full engineering plans to the Engineering Department for their review and approval.		BP	ISD/Plng/Eng.									
Public Safety													
6	The Applicant or Owner shall meet the Fire Prevention Bureau’s requirements.		CO	FP									
7	All smoke detectors shall be hard-wired.		CO	Fire Prevention / ISD									
8	All exterior lighting on the site shall be downcast and shall not cast light onto surrounding properties in any fashion.												

9	In accordance with City of Somerville ordinances, no grills, barbeques, chimineas or the like shall be allowed on decks and porches. These requirements shall be written into any rental agreements or condo documents. Proof of the inclusion of this language shall be shown to Planning Staff prior to the issuance of a CO.	CO/Perpetua l	ISD/PlngF P	
Final Sign-Off				
10	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:

Orsola Susan Fontano, *Chairman*
Richard Rossetti
Danielle Evans
Elaine Severino
Josh Safdie
Anne Brockelman (*Alt.*)
Pooja Phaltankar (*Alt.*)

Attest, by City Planner: _____

Sarah White

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 _____

