



City of Somerville

ZONING BOARD OF APPEALS

City Hall 3rd Floor, 93 Highland Avenue, Somerville MA 02143

DECISION

PROPERTY ADDRESS: 26 Clyde Street #2
CASE NUMBER: P&Z 22-038
OWNER: Jeff Byrnes and Leah Byrnes
OWNER ADDRESS: 26 Clyde Street #2
DECISION: Approved with Conditions
DECISION DATE: May 13, 2022

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CITY CLERK'S OFFICE
SOMERVILLE, MA

This decision summarizes the findings made by the Zoning Board of Appeals ("the Board") regarding the Hardship Variance submitted for 26 Clyde Street #2.

LEGAL NOTICE

Jeff Byrnes seeks relief from the required percentage of windows on the face width of a shed dormer in the Neighborhood Residence (NR) district, which requires a Hardship Variance.

RECORD OF PROCEEDINGS

On April 20, 2022, the Zoning Board of Appeals held a public hearing advertised in accordance with M.G.L. 40A and the Somerville Zoning Ordinance. Present and sitting at the public hearing were Chair Susan Fontano, Ann Fullerton, Anne Brockelman, and Acting Clerk Katherine Garavaglia. The Applicant presented their argument to the Board with plans that were not formally submitted as a part of the application. The Board members expressed to the Applicant that the plans submitted as a part of the formal application are not sufficient to make a motion. The plans presented to the Board at the hearing must be submitted formally for the record to be taken into consideration. The Board continued the public hearing.

On May 4, 2022, the Board resumed the public hearing. Present and sitting at the public hearing were Chair Susan Fontano, Ann Fullerton, Anne Brockelman, and Acting Clerk Katherine Garavaglia. The Board members discussed whether the Hardship Variance request meets the findings. The members all agreed with Acting Clerk Garavaglia on the notion that the dormer is larger than what is typical, which contributes to unusual characteristics to the structure, and further addition of windows could create privacy concerns for both the Applicant and the neighborhood. Members Brockelman and Fullerton expressed concerns with the discrepancy between the Applicant's amount of relief (9 feet) being requested pursuant to 3.1.13.(1) and Inspectional Services Department (ISD)'s interpretation of the relief needed (5 feet). Member Fullerton requested a condition that accounts for the discrepancy and clarifies that no further reduction of the windows within the dormer is permitted.

HARDSHIP VARIANCE FINDINGS

In accordance with M.G.L. 40A and the Somerville Zoning Ordinance, the Board may grant a hardship variance only upon finding all of the following for each hardship variance:

1. *Special circumstances exist relating to the soil conditions, shape, or topography of a parcel of land or the unusual character of an existing structure but not affecting generally the Neighborhood Residence (NR) zoning district in which the land or structure is located.*

The Board finds the existing dormer is larger than the typical sizes of dormers within the Neighborhood Residence (NR) zoning district, which creates an unusual characteristic of an existing structure. In addition, the existing dormer violations were inherited by the Applicant when the property was purchased without prior knowledge.

2. *Literal enforcement of the provision of this Ordinance for the district where the subject land or structure is located would involve substantial hardship, financial or otherwise, to the petitioner or appellant, Jeff Byrnes, due to said special circumstances.*

The Board finds that the Applicant would be subject to significant financial hardship in correcting the required percentage of windows of the dormer.

3. *Desirable relief could be granted without causing substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Neighborhood Residence (NR) district in this Ordinance or the Ordinance in general.*

The Board finds that the granting of this variance would alleviate privacy concerns for both the Applicant and the neighborhood.

DECISION

Following public testimony, review of the submitted plans, and discussion of the statutorily required considerations, Acting Clerk Katherine Garavaglia moved to approve the **Hardship Variance** request for relief from the required percentage of windows on the face width of a shed dormer. Anne Brockelman seconded. The Board voted **4-0** to approve the permit, subject to the following conditions:

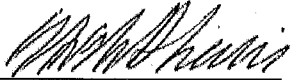
Perpetual

1. This relief is specific to the existing conditions of the windows within the dormer. No further reduction of the dormer windows is permitted.

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chair*

Anne Brockelman
Ann Fullerton
Katherine Garavaglia, *Alternate*

A handwritten signature in black ink, appearing to read 'Sarah Lewis', written over a horizontal line.

Sarah Lewis, Director of Planning, Preservation, & Zoning
Office of Strategic Planning & Community Development

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. 15.5.3.

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.

FOR SITE PLAN APPROVAL(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 _____