



City of Somerville

ZONING BOARD OF APPEALS

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

DECISION

2022 OCT 27 P 1:46

PROPERTY ADDRESS: 36 Berkeley Street
CASE NUMBER: P&Z 22-068
OWNER: Erich Ludwig and Allison Ross
OWNER ADDRESS: 36 Berkeley Street, Somerville, MA 02143
DECISION: Approved with Conditions (Hardship Variance)
DATE OF VOTE: October 26, 2022
DECISION ISSUED: October 27, 2022

CITY CLERK'S OFFICE
SOMERVILLE, MA

This decision summarizes the findings made by the Zoning Board of Appeals (the "Board") regarding the development review application submitted for 36 Berkeley Street.

LEGAL NOTICE

Erich Ludwig and Allison Ross seek relief from the exterior sidewall setback requirement for a rear addition building component type in the Neighborhood Residence (NR) district, which requires a Hardship Variance.

RECORD OF PROCEEDINGS

On October 26, 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 Board Members Chair Susan Fontano, Clerk Katherine Garavaglia, Ann Fullerton, and Anne Brockelman. The Applicant team presented their plans of the proposed project to create a rear addition from an existing two-story porch, and their argument for the requested Hardship Variance. After the presentation by the Applicant, Chair Fontano opened the floor to public testimony, and none was given.

After the close of the public testimony section of the hearing, the Board went into discussion. The Board asked questions of the Applicant, including when they bought their home, how long has the current porch has existed, how much the current space will be reconfigured, and how much the project will change the look of the existing conditions from the outside. The Board also asked Staff to clarify why the Applicant needs to pursue a rear addition building type and asked Staff could confirm that the current home is a single-family unit. Staff responded by saying that it is prohibited to enclose an existing porch and turn it into habitable space according to zoning, and that the Applicant needs to pursue a rear addition building component type to achieve their desired plans. Staff also confirmed that the detached home is one unit.

Following discussion on, the Board moved to approve the requested Hardship Variance for zoning relief from the exterior sidewall setback requirement for a rear addition building component type in the Neighborhood Residence zoning district.

PLANS & DOCUMENTS

Application plans, documents, and supporting materials submitted and reviewed are identified below.

Document	Pages	Prepared By	Date
Hardship Variance Narrative for 36 Berkeley Street	3	Erich Ludwig & Allison Ross	June 29, 2022
Plot Plan of Land for 36 Berkeley Street	1	Spruhan Engineering, 80 Jewett St, Ste 2, Newton, MA 02458	August 24, 2022
Architectural Plan Set for 36 Berkeley Street	3	Mix Design and Development, 10 Grand View Ave, Somerville, MA 02143	March 25, 2022

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:

Hardship Variance Considerations

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 zoning district in which the land or structure is located;*

The Board finds that special circumstances exist relating to the existing detached home, specifically that the massing of the porch existed before the Applicants purchased the property, and that the desired project to turn the porch into a rear addition will not affect the existing character.

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, David Smith and Jeanne Riley.*

The Board finds that literal enforcement of the exterior sidewall setback for a rear addition building component type requirement of the ordinance, subject to this parcel, creates a substantial hardship to the petitioners.

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 district in this Ordinance or the Ordinance in general.*

The Board finds that desirable relief can be granted without substantial detriment to the public good and without nulling or substantially derogating from the intent and purpose of the Neighborhood Residence zoning district and the Ordinance in general.

DECISION

Following public testimony, review of the submitted plans, and discussion of the statutorily required considerations, Clerk Garavaglia moved to approve **the Hardship Variance for the exterior sidewall setback requirement for a rear addition building component type**. Ms. Fullerton seconded. The Board voted **4-0** to approve the Hardship Variance subject to the following conditions:

Perpetual

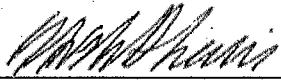
- This Decision must be recorded with the Middlesex South Registry of Deeds.

Prior to Building Permit

- A copy of the recorded Decision stamped by the Middlesex South Registry of Deeds must be submitted to the Planning, Preservation & Zoning Division for the public record.
- One (1) physical copy of the original application materials and one (1) digital and (1) physical copy of all required application materials reflecting any physical changes required by the Board, if applicable, must be submitted to the Planning, Preservation & Zoning Division for the public record.

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chair*
Katherine Garavaglia, *Clerk*
Anne Brockelman
Ann Fullerton



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 _____