



City of Somerville

ZONING BOARD OF APPEALS

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

TO: Zoning Board of Appeals
FROM: Planning, Preservation, & Zoning (PPZ) Staff
SUBJECT: 36 Berkeley Street, P&Z 22-068
POSTED: October 6, 2022

RECOMMENDATION: None

Staff memos are used to communicate background information, analysis, responses to public comments, review of statutory requirements and other information from PPZ staff to the Review Board members.

This memo summarizes the Hardship Variance request submitted for 36 Berkeley Street, identifies any additional discretionary or administrative development review that is required by the Somerville Zoning Ordinance, and provides related analysis or feedback as necessary. The application was deemed complete on September 1, 2022, and is scheduled for a public hearing on October 26, 2022. Any Staff-recommended findings, conditions, and decisions in this memo are based on the information available to date prior to any public comment at the scheduled public hearing.

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.

SUMMARY OF PROPOSAL

Erich Ludwig and Allison Ross are proposing to develop a rear addition to their existing detached house. The project needs zoning relief from the exterior sidewall setback requirement for a rear addition, which requires the side walls to be set in one (1) foot on each side in the NR district. One of the sidewalls is set in less than one (1) foot, which requires a Hardship Variance.

ADDITIONAL REVIEW NECESSARY

36 Berkeley Street is located in the Neighborhood Residence zoning district in the Spring Hill neighborhood represented by Ward 5 Councilor Beatriz Gomez Mouakad. The ZBA is the review board for Hardship Variance requests. No additional review beyond the requested Hardship Variance is necessary.

ANALYSIS

The Applicant is required to provide an argument addressing the review criteria for each of the necessary hardship variances. The Applicant's argument has been attached as an appendix to this memo.

The Applicant is proposing to enclose an existing two (2)-story porch and convert it to a rear addition. A rear addition is a permitted building component type in the NR zoning district for a detached housing type. The Applicant will not be altering the existing massing on the rear porch. The right sidewall, as proposed, is not set in one (1) foot, as required by section 3.1.13.p of the SZO. The existing right sidewall is set in by approximately 3 ¾" from the main massing of the home. The Applicant needs a Hardship Variance to rectify this zoning violation.

Staff have not found any unique circumstances related to the lot's shape, topography or soil condition that create a hardship on the Applicant's ability comply with the SZO. Staff have also not found anything unusual about the current structure that would create a hardship on the Applicant's ability to comply with zoning, although the Applicant would have to adjust the existing porch structure to be set in further from the main massing of the principal building.

Generally, PPZ Staff does not provide analysis or recommendations concerning the existence of actual hardship, financial or otherwise, regarding the second Hardship Variance criterion.

Granting the requested hardship variance cannot cause a substantial detriment to the public good or nullify or substantially derogate from the intent and purpose of the Neighbored Residence zoning district, copied here:

Intent

- To implement the objectives of the comprehensive plan of the City of Somerville.
- To conserve already established areas of detached and semi-detached residential buildings.

Purpose

- To permit the development of one-, two-, and three-unit detached and semi-detached residential buildings on individual lots.
- To permit contextual modifications to existing detached and semi-detached residential buildings.
- To permit the adaptive reuse of certain existing nonconforming buildings for arts & creative enterprise and retail uses compatible with residential areas.
- To create dwelling unit types, sizes, and bedroom counts ideal for larger households in houses, semi-attached houses, duplexes, and triple-deckers.
- To create dwelling unit types, sizes, and bedroom counts ideal for smaller households in cottages and backyard cottages.

Staff believe that proposal as designed, will not cause substantial detriment to the public good or nullify or substantially derogate from the intent and purpose of the Neighborhood Residence zoning district.

Further, Staff do not believe that this proposal as designed will substantially derogate from the broader intent of the Somerville Zoning Ordinance, including:

- To preserve and enhance the existing character of Somerville's traditional housing and respect existing built form and development patterns.
- To provide distinct physical habitats at different scales, including the lot, block, and neighborhood, so that meaningful choices in living arrangement can be provided to residents with differing physical, social, and emotional needs.

Massachusetts courts have stated that variances will naturally deviate from the intent and purpose of a zoning ordinance to some degree and that the discretionary approval of a variance is defensible if the deviation is not substantial or significant in comparison to the intent and purpose for the district in appraising the effect of the proposal on the entire neighborhood, including future impacts and other development approved or denied in the general vicinity of the development site.

CONSIDERATIONS & FINDINGS

In accordance with the Somerville Zoning Ordinance, the Zoning Board of Appeals may grant a Hardship Variance only upon deliberating and finding all of the following at the public hearing for each requested 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 Urban Residence zoning district in which the land or structure is located;
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, Erich Ludwig and Allison Ross.
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 Urban Residence district in this Ordinance or the Ordinance in general.

PERMIT CONDITIONS

Should the Board approve the requested Hardship Variance, PPZ Staff recommends the following conditions:

Permit Validity

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

Public Record

- 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.

Applicant* *Erich Ludwig & Allison Ross*

Applicant Address* *36 Berkeley St, Somerville, MA 02143*

Owner* *Erich Ludwig & Alli Ross*

Owner Address* *36 Berkeley St, Somerville, MA 02143*

Primary Point of Contact Email* erichludwig@gmail.com, rossalli@gmail.com,
adamconstruction@gmail.com, dsidel@mixdesigndevelop.com

Street Address for the Proposed Development* *36 Berkeley St, Somerville, MA 02143*

Zoning District* *NR*

Variance Type* *Building Dimensional Standards, Building Component Standards*

Hardship Review Criteria

Please note that the summary Review Criteria given here will not replace the requirement to submit a detailed description of the hardship and explanation of how each criteria is met as part of the application and as listed in the submittal requirements.

Per Article 15 of the Somerville Zoning Ordinance, the Zoning Board of Appeals may only grant a Hardship Variance upon finding **all** of the following:

Review Criteria A*

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 zoning district in which the land or structure is located.

Please briefly describe the special circumstances existing on this site.

The special circumstances that exist on this site requiring a hardship variance is that the proposed structure already exists.

Because we are requesting to maintain the existing house's use as a single-family home, including using its existing structure, we are not affecting generally the zoning district.

The existing single family house we own has an existing 2-story rear addition. It was enclosed long ago, and since we purchased the home in 2014 we have used it as a mudroom, play space, workout space, and storage. The structure & interior of the space is in need of maintenance, and we (the owners & occupants) would like to better utilize the space.

The structure is already set in from both sides of the house, but on one side is set in less than the required 1 foot on the side yard (it is set in only 4 inches, rather than 12 inches).

Therefore it is currently a non-conforming rear addition component.

The shape of the house (ie - the shape that has existed for at least the preceding 30-40 years) will NOT change as a result of this project. Denial of this variance would result in

greater disruption to the structure, to the existing plants in the garden/yard, and to the neighbors.

Additionally, when we purchased this home, the structure was a 2-family home. We've done significant renovation & improvements to the home as we transitioned it to a single family home. Especially during COVID as we've both worked from home, the space in question has become essential to our ability to continue to do our jobs. Improving this space and better utilizing it will make this house more suitable for our long term desire to stay in Somerville.

Review Criteria B*

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 due to said special circumstances.

Please briefly describe your hardship.

The 1 foot setback from the side of the house for the Rear Addition Component would require that we, the owners, rebuild (in part or in whole) the existing rear structure in order to simply improve the existing interior space. This would make any improvements substantially more expensive in order for us to use space already available to us otherwise. Our contractor has indicated that if this variance is denied we're looking at a MINIMUM of an \$25,000 in additional construction costs. If we have to do a full rebuild the costs will inevitably be much higher.

Frankly speaking, this is a LOT of money, and represents a substantial financial hardship for us.

As you are all well aware, this variance process represents a roughly 4 month commitment to compliance. We are very happy to live in Somerville, and want to be good citizens and neighbors, so we're happy to do everything by the book. And, in a city with a significant amount of older homes which have a variety of "pre-existing, non-conforming" situations, home-owners need some guidance and zoning leeway to improve our homes, especially as we bring them into compliance on safety related improvements, while not changing existing envelopes of the structure.

If we are granted this variance, the environmental and carbon impact of this project will also be lessened. If denied the variance, we'll have to demolish exterior walls, adjust the existing foundation and rebuild exterior walls. If granted the variance, these materials will stay in place - keeping construction debris out of landfills and ultimately using less of our earth's resources. Additionally, if we can improve this space (rather than demolish & rebuild) it will be easier for us to improve the insulation to meet new code as well as tie this space into our existing heat pumps to heat & cool the space in an efficient manner.

Finally - as mentioned in Review Criteria A, with both of us working from home - this space is essential to our ability to live and work in this changed environment.

Review Criteria C*

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 a specific district in this Ordinance or the Ordinance in general.

Please briefly describe the relief requested.

*Since the desired renovation would not change the footprint of the house nor specifically the existing rear addition, **the proposed renovation has little to no detrimental impact on the public good or neighborhood.** It is already an existing rear addition that is not visible from the street - it is only visible from the adjacent and rear neighbors' houses.*

If we are denied a variance and have to do a partial or full demolition & rebuild of the space, the impact via noise & dust disturbances to our neighborhood will be much higher than if the variance is granted.

Because we have young children (6 & 9 years old), and our neighborhood is filled with kids who play at each others houses, doing this project also gives us the opportunity to bring the stairs into this space up to code, improving the safety for all of these children. Finally, it is worth mentioning that we're using a local contractor (who we know from living near in our previous home), as well as a local designer (whose children go to public school with our children). It is important to us that we're active and engaged members of our community, and hope that our commitment to the public good in our city is clear.

We will be bringing with us to the hearing letters of support from our neighbors for this project.