



City of Somerville

# **ZONING BOARD OF APPEALS**

City Hall 3<sup>rd</sup> Floor, 93 Highland Avenue, Somerville MA 02143

**TO:** Zoning Board of Appeals  
**FROM:** Planning, Preservation, & Zoning (PPZ) Staff  
**SUBJECT:** 74 Derby Street, P&Z 21-193  
**POSTED:** November 10, 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 74 Derby Street, identifies any additional discretionary or administrative development review that is required by the Somerville Zoning Ordinance (SZO), and provides related analysis or feedback as necessary. The application was deemed complete on October 18, 2022, and is scheduled for a public hearing on November 30, 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**

Michael and Andrea Keenan seek relief from the minimum width requirement for a rear projecting porch in the Neighborhood Residence (NR) district, which requires a Hardship Variance.

## **SUMMARY OF PROPOSAL**

Michael and Andrea Keenan are proposing to modify an existing rear projecting porch off the rear façade to provide better access to their basement from the outside of the building. The project needs a Hardship Variance for zoning relief from the minimum width requirement for a projecting porch located on the rear of their property.

## **BACKGROUND**

74 Derby Street is located in the Neighborhood Residence zoning district in the Winter Hill neighborhood represented by Ward 4 Councilor Jesse Clingan. 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 any necessary hardship variance. The Applicant's argument has been attached as an appendix to this memo.

The Applicant has stated in their Hardship Variance argument that a unique circumstance exists relating to the existing structure that creates a hardship on their ability to access the basement. As part of their application, the Applicant has submitted photos of the existing conditions that demonstrates how the existing rear porch impacts access to the basement. The Applicant is proposing to reconstruct an existing rear porch in order to provide better access down to their basement from the outside of the building. The existing porch has dimensions of 8'-1 ½"W by 4'-0 ¾"D. The Applicant proposes to construct a porch with a reduced width to improve access to their basement without moving the existing basement door (built into the existing concrete foundation), which currently is accessed via a crawl space door. The proposed width for the new porch would be 3'-6". According to SZO section 3.1.13.h, side and rear projecting porches need to have a minimum width of four (4) feet. The proposed reconstructed porch is deficient by approximately six (6) inches.

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 Neighborhood 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 Neighborhood 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, Michael and Andrea Keenan.
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.

## **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.

**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.**

An unusual characteristic of the existing deck is that it is placed over a stairway where one can at best crouch as they proceed up or down the stairs. This is not an easy way for someone with mobility issues to move around and generally not a safe way to proceed up or down any set of stairs. Given this issue, our deck rebuild plan intends to have the rebuilt first floor deck end instead of sitting over the basement door. In other words, our intention is to leave enough space so that someone can walk down the stairs without potentially walking into or hitting a body part (most likely their head) on a first floor deck extending over the door; the first floor deck would extend over the door and cause an issue, if we were to abide fully by the 4 ft. dimensional standard. Additionally, we can't carry large necessary items easily, or at all, into the basement with the existing condition of the deck and how it is placed over a door. Anything large enough needs to be taken apart and reassembled for it to fit into the basement. For these reasons, we need to make the first floor deck 3 feet and 6 inches from the first floor door.

**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.**

Literal enforcement would cause substantial hardship. Currently the existing deck provides no easy access into the basement door, other than through a crawl space. This makes the current basement entryway unusable unless one crouches or crawls under the deck. The goal of the proposed deck rebuild was for it to be done within the existing setbacks, but also to gain access into the basement in a safe manner. Enforcing the 4 foot requirement for the dimension going from the first floor back door towards the top of the basement door would be hazardous for someone walking down the existing stairs after the deck is rebuilt; one could easily hit their head or have to shift their body unnaturally in order to walk down the existing stairs into the basement. This creates a fall risk.

Literal enforcement would also cause financial hardship – we could of course move the door over to accommodate the 4 foot requirement, but moving a door that is part of the stone/brick foundation would be a significant expense. Finally, not doing anything isn't an option and continues to leave us with an unsafe situation. This is elaborated on in section C, but in short the current deck is falling apart and currently weak. We also have a major water issue going into the basement under the rotted deck wood /deck door, down the stairs, and under the basement door onto the floor.

**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.**

This deck rebuild attempts to respect all existing rules and setbacks, and we aren't requesting a hardship variance here for an excessive and luxurious addition to our home. The rebuild is instead needed for safety and usability. According to the home inspection report from December 2019, *"The two level rear deck has settled, is under-framed by today's standards, the second floor framing is decayed, the deck treads on each level are decayed, the stairs have failed, the first floor railing is loose and weak, and the railings are toe-nailed and weak. Due to the overall condition the individual deck components are beyond sectional repair. The two level deck should be rebuilt to modern construction standards now for your safety and long term serviceability."*

Allowing for us to proceed despite not having a large enough dimension - by just six inches - can only have a positive effect on the neighborhood and city by creating value and improving upon the aesthetics of the home.

I cannot see any reason why this would derogate the district or neighborhood but I would be happy to discuss this if the Zoning Board feels there is any degradation to the district by allowing us to bypass this

requirement by six inches.