



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:** 231 Morrison Avenue, P&Z 22-143  
**POSTED:** November 22, 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 231 Morrison Avenue, 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 19, 2022 and is scheduled for a public hearing on December 14, 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**

David Fang seeks relief from the maximum height requirement for a pergola accessory structure in the Neighborhood Residence (NR) district, which requires a Hardship Variance.

## **SUMMARY OF PROPOSAL**

David Fang has constructed a pergola accessory structure in his front yard that does not conform to the height requirements for that type of accessory structure, and requires relief. The Applicant has constructed a pergola that is ten (10) feet in height, where the SZO (section 10.2.2.q.i) requires pergolas not to exceed eight (8) feet in height.

## **BACKGROUND**

The Applicant constructed the pergola accessory structure without any issued Building Permits or prior approvals. Once notified of the violation, the Applicant applied for a Building Permit. On October 3, 2022, the Inspectional Services Department (ISD) informed the Applicant that the pergola accessory structure was not compliant with the zoning and the Building Permit request was denied. The Applicant was told via further communications that they would need to get zoning relief in the form of a Hardship Variance to rectify the zoning violation.

231 Morrison Avenue is located in the NR zoning district in the Davis Square neighborhood represented by Ward 6 Councilor Lance Davis. 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.

As noted above, the Applicant has already constructed the pergola accessory structure for a Japanese Wisteria flowering vine, located in the front yard of the property. The pergola was constructed with the purpose of supporting the growth of the Wisteria. The constructed pergola measures ten (10) feet in height, which is two (2) feet over the maximum allowed height of eight (8) feet for a pergola accessory structure.

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.

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 NR 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 NR 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.

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, David Fang.
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) digital 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.