



City of Somerville

# **ZONING BOARD OF APPEALS**

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

## **DECISION**

2022 DEC 16 A 9:40

**PROPERTY ADDRESS:** 74 Derby Street  
**CASE NUMBER:** P&Z 21-193  
**OWNER:** Michael and Andrea Keenan  
**OWNER ADDRESS:** 74 Derby Street, Somerville, MA 02145  
**DECISION:** Approved with Conditions (Hardship Variance)  
**DATE OF VOTE:** December 14, 2022  
**DECISION ISSUED:** December 16, 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 74 Derby Street.

### **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.

### **RECORD OF PROCEEDINGS**

On December 14, 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, Anne Brockelman, and alternate Sisia Daglian. The Applicant presented their plans 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 for clarification on what is occurring on the second floor with the second story porch extending out from the building. The Applicant responded by saying that he has reviewed this with Inspectional Services Department Staff and the existing rear setback is an existing vested right. He continued to say that the design of the upper story porch is allowed as long as it does not encroach past the existing rear setback. Following discussion, the Board moved to approve the requested Hardship Variance for zoning relief from the minimum width requirement for a rear projecting porch in the Neighborhood Residence zoning district. After the vote was taken, the Applicant asked how long the Hardship Variance is valid and when they would need to apply for a Building Permit and Staff responded.

### **PLANS & DOCUMENTS**

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

Document	Pages	Prepared By	Date
Hardship Variance Narrative for 74 Derby Street	2	Michael and Andrea Keenan [74 Derby Street, Somerville, MA 02145]	Not specified
Land Title Survey for 74 Derby Street	1	Medford Engineering & Survey [15 Hall Street, Medford, MA 02155]	October 2, 2022
Plan Set for 74 Derby Street	9	Milhaus Architecture [28 Corey Street, Medford, MA 02155]	September 22, 2022
Existing Conditions Plan for 74 Derby Street	3	Milhaus Architecture [28 Corey Street, Medford, MA 02155]	August 8, 2022
3D Model Renderings for 74 Derby Street	9	Michael and Andrea Keenan [74 Derby Street, Somerville, MA 02145]	Not specified
Existing Conditions Exhibit for 74 Derby Street	3	Michael and Andrea Keenan [74 Derby Street, Somerville, MA 02145]	Not specified
Photos of Existing Conditions	2	Michael and Andrea Keenan [74 Derby Street, Somerville, MA 02145]	Not specified

## 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 the building's age and design.

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.*

The Board finds that literal enforcement of the minimum width for a rear projecting porch 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 zoning relief from the minimum width requirement for a rear projecting porch**. Ms. Fullerton seconded. The Board voted **5-0** to approve the Hardship Variance subject to the following conditions:

### Perpetual

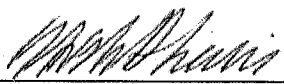
- This Decision must be recorded with the Middlesex South Registry of Deeds.

### 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  
Sisia Daglian, *Alternate*



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 \_\_\_\_\_