



City of Somerville

# ZONING BOARD OF APPEALS

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

## DECISION

2022 DEC 20 A 10: 29

**PROPERTY ADDRESS:** 231 Morrison Avenue  
**CASE NUMBER:** P&Z 22-143  
**OWNER:** David Fang  
**OWNER ADDRESS:** 231 Morrison Avenue, Somerville, MA 02144  
**DECISION:** Approved with Conditions (Hardship Variance)  
**DATE OF VOTE:** December 14, 2022  
**DECISION ISSUED:** December 20, 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 231 Morrison Avenue.

## 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.

## 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 Brian Cook. David Fang, the property owner and Applicant, spoke on this case. He reviewed the case and his application materials, including maps and photographs of the property to the Board. He also reviewed detailed information on Japanese Wisteria and the conditions under which it grows, including how the plant remains healthiest on a pergola of more than the maximum height of eight (8) feet. After the presentation by the Applicant, Chair Fontano opened the floor to public testimony, and testimony provided was in support of granting the Hardship Variance.

After the close of the public testimony section of the hearing, the Board went into discussion. One of the Board members made a comment that they remember seeing the Japanese Wisteria many years ago and that it is a beautiful plant. Before an official vote was taken, one Board member asked Staff why the pergola accessory structure was given a maximum height of eight (8) feet in the SZO. Staff responded that they do not know the exact intent but can look into that inquiry. One Board member noted that a deviation of two (2) feet is not significantly perceivable.

Following discussion, the Board made findings and moved to approve the requested Hardship Variance for zoning relief from the maximum height requirement for a pergola accessory structure 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            |
|---|-------|---|-----------------|
| Heigh Request for Wisteria Pergola Narrative at 231 Morrison Avenue   | 4     | David Fang [231 Morrison Avenue, Somerville, MA 02144]        | Not specified   |
| Hardship Variance Argument for 231 Morrison Avenue  | 2     | David Fang [231 Morrison Avenue, Somerville, MA 02144]        | Not specified   |
| Land Title Survey for 231 Morrison Avenue   | 1     | Needham Survey Association [281 Chestnut Street, Needham, MA] | Not specified   |
| Additional Height Hardship Variance Request for 231 Morrison Avenue Wisteria Landscape Pergola at 231 Morrison Avenue | 4     | David Fang [231 Morrison Avenue, Somerville, MA 02144]        | October 6, 2022 |
| The Japanese Wisteria and our family Narrative for 231 Morrison Avenue  | 4     | David Fang [231 Morrison Avenue, Somerville, MA 02144]        | Not specified   |
| Reasoning for Granting the Hardship Variance additional Narrative Document for 231 Morrison Avenue                    | 7     | David Fang [231 Morrison Avenue, Somerville, MA 02144]        | Not specified   |
| Pergola Drawing for 231 Morrison Avenue   | 1     | David Fang [231 Morrison Avenue, Somerville, MA 02144]        | Not specified   |
| Constructed Pergola Photos at 231 Morrison Avenue   | 8     | David Fang [231 Morrison Avenue, Somerville, MA 02144]        | Not specified   |
| Reference Materials for 231 Morrison Avenue   | 9     | David Fang [231 Morrison Avenue, Somerville, MA 02144]        | 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 soil conditions at this property.

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.*

The Board finds that literal enforcement of the maximum height for a pergola accessory structure 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 maximum height for a pergola accessory structure**. 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  
Brian Cook, *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 \_\_\_\_\_