



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: 18 Ivaloo Street, P&Z 22-158
POSTED: March 27, 2023

RECOMMENDATION: Deny (Hardship Variance)

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 18 Ivaloo 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 March 6, 2023, and is scheduled for a public hearing on April 5, 2023. 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

Mike Cheng and Dan Flynn seek relief from the side setback encroachment requirement for a rear projecting porch in the Neighborhood Residence (NR) district, which requires a Hardship Variance.

SUMMARY OF PROPOSAL

Mike Cheng and Dan Flynn are proposing to replace an existing porch on the rear of their detached home with a new porch, which requires a Hardship Variance for the setback encroachment on the east side setback of the property.

BACKGROUND

18 Ivaloo Street is located in the Neighborhood Residential (NR) zoning district in the Duck Village neighborhood represented by Ward 2 Councilor JT Scott. Following the Board's decision regarding the Hardship Variance, the proposal will require a Building Permit. The Zoning Board of Appeals is the decision-making authority for all discretionary or administrative permits required for the NR zoning district.

ANALYSIS

The Applicant is required to provide an argument addressing the review criteria for the necessary requested Hardship Variance. The Applicant's arguments have been

attached as an appendix to this memo. PPZ Staff have provided the following analysis related to the review criteria for the requested Hardship Variance:

The Applicant intends to replace and expand a rear projecting porch on their property at 18 Ivaloo Street. The proposal is to expand the size of the deck to provide egress, a functional furniture area, and stairs. The Applicant's current proposal violates the side setback encroachment (0 feet permitted) requirement for a rear projecting porch on the east side of their property. (A setback encroachment of 0 feet means that a rear projecting porch must meet the same setback requirements as the principal building). The existing principal structure has numerous pre-existing nonconformities that do not have to be addressed; however, as the proposed rear projecting porch will create a new nonconformity related to the side setback encroachment on the eastern side, it must receive a Variance. Inspectional Services Staff have confirmed that variances are not required for the west side setback and the building separation zoning requirements.

In their Hardship Variance argument, the Applicant states that the lot width at 18 Ivaloo Street is very narrow compared to other lots with detached homes in the NR district, and argues that is a special circumstance of their parcel. The Applicant provided the following data points in their argument:

- There are 8,669 detached houses in the NR district, with an average lot width of 44.7 feet.
- 18 Ivaloo Street has a lot width of 25.7 feet, making it 19 feet or 42% narrower than the average detached house in the NR district.

After analysis, Staff believe that the Applicant can build a zoning-complaint rear projecting porch that complies with provisions of SZO section 3.1.13.h. If the Applicant reduced the width of the porch by 8 feet, then it would be complaint with the SZO. While Staff can confirm that the data that the Applicant provided is accurate, the lot width being 42% narrower than the average detached house in the NR district does not prevent them from building a complaint porch. Staff do not believe that the special circumstance that the Applicant identified is creating a hardship from their ability to comply with the SZO.

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 should not 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.

Granting the requested Hardship Variance should not substantially degrade from the broader intent of the Somerville Zoning Ordinance, including, but not limited to, the following:

- 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.
- 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 Residential 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 petitioners, Mike Cheng and Dan Flynn, due to said special circumstances; and
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 Residential district in this Ordinance or the Ordinance in general.

PERMIT CONDITIONS

Should the Board approve the required Hardship Variance for the side setback encroachment, PPZ Staff recommends the following conditions:

Permit Validity:

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

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. Materials must be submitted in accordance with the document format standards of relevant Submittal Requirements.
- 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.

Mika Cheng & Dan Flynn
18 Ivaloo Street
Somerville MA 02143

March 5, 2023

Zoning Board of Appeals
City Hall
93 Highland Avenue
Somerville, MA 02143

Re: DRA for 18 Ivaloo Street Back Deck Replacement

To the Zoning Board of Appeals,

We are applying for hardship variance and zoning relief for replacement and expansion of our backyard deck at our home at 18 Ivaloo St. The plan expands the size of the deck to allow for safe entry and egress, functional furniture area and stairs, appropriate sized landings and stairs that meet code. We reviewed our plan, lot conditions, and zoning codes with the Planners for our Ward, and have designed and revised our plan based on their advice.

We are applying for a hardship variance and zoning relief from a setback requirement for our plan, as illustrated in our attached drawings.

East side (non-driveway side) setback: Variance requested from requirements for 3' setback from lot line. Our house is 0.4' from the lot line and our existing deck is set back 4' from the lot line; our proposed deck will have a 1' setback from the lot line. This will allow us to build a functional furniture area of the deck (our current deck is too small for furniture and smaller than ZBA minimum requirements).

Variance Findings: To approve a variance, we understand the ZBA must make the following three findings for each variance request. Below is our explanation of why we feel we meet those findings.

1. **Special circumstances relating to the shape of our lot:** A challenge in developing our deck plan has been our unusual lot dimensions; we have a very narrow, sloping lot. The Planners shared city data with us as context for our lot dimensions, noting:

Number of Detached Houses in the NR District = 8,669

- Average lot width = 44.7'
- Median lot width = 42'
- Mode lot width = 40'

With a width of 25.7', our house at 18 Ivaloo St. is 19 feet narrower (42% narrower) than the average Detached NR lot.

2. **Literal enforcement of the zoning code causes hardship** and conflict between building code

and zoning code. Our deck is in need of repair/replacement, but if we rebuilt it as is, we would not be able to establish building code-compliant stairs and landings, or have a functional furniture area. We are requesting zoning code relief in order to allow a design that will be building code compliant and more functional.

3. **Requested relief can be granted without causing detriment to the public good** and without nullifying or substantially derogating from the intent and purpose of the NR District in Zoning Ordinance. Our proposed deck will expand outdoor recreation space and be typical of other decks in our neighborhood, including those in our immediate block.

Thank you for your consideration.

Mika Cheng and Dan Flynn

Dimensional tables

Somerville's Zoning Ordinance provides guidance for setbacks and dimensional tables for porches so we have used the format from those guidelines as a guide.

Porch Component			
Dimension	Zoning Req.	Existing	Proposed
Width	12' min	10' 10½"	18'
Projection	6' min	7' 3½"	10' 2"
Clearance	8' min	N/A (currently has no roof)	8'
Furniture area	6 x 6' min	6' x 3'	9' x 10'
Setback Encroachment			
- Front	100%	N/A	N/A
- Side (Driveway side)	0'	0'	0'
- Side (Non-driveway, east side)	0'	House: 2.6' Porch: 0'	House: 2.6' Porch: 2'
- Rear	0'	0'	0'

Setbacks and building separation with respect to the existing and proposed porch are below. The existing setbacks to the house itself on the Non-driveway (East) side is only 0.4' from the lot line, and that remains unchanged in the proposed deck plan.