



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 Staff  
**SUBJECT:** 45 Trull Street, P&Z 22-168  
**POSTED:** April 27, 2023

**RECOMMENDATION:** Deny Administrative Appeal and Uphold Building Official's Determination

Staff memos are used to communicate background information, analysis, responses to public comments, review of statutory requirements and other information from Planning, Preservation, & Zoning staff to the Review Board members.

This memo summarizes the Administrative Appeal submitted for 45 Trull Street and provides analysis or feedback as necessary. The application was deemed complete on March 29, 2023, and is scheduled for a public hearing on May 3, 2023. Any Staff recommended findings, conditions, and decisions in this memo are based on the information available prior to any public comment at the scheduled public hearing.

## LEGAL NOTICE

Alexandra Teyssandier seeks an administrative appeal of the Building Official's determination of the building type for the building at 45 Trull Street.

## SUMMARY OF PROPOSAL

In this Administrative Appeal, the Applicant is challenging the Building Official's classification of 45 Trull Street as a Backyard Cottage Building Type. Instead, the Applicant contends that 45 Trull Street is a Cottage Building Type.

## ADDITIONAL REVIEW NECESSARY

The SZO describes an Administrative Appeal as follows in **§15.5.2.a.1**:

*"An administrative appeal is a petition to rectify a failure to act, denial of a permit, decision made, or enforcement action taken by the Building Official or Director of Planning & Zoning in an administrative development review case when an alleged error or misinterpretation has been made in the enforcement or application of the provisions of this Ordinance."*

The Zoning Board of Appeals (ZBA) is the review authority for all Administrative Appeals.

## BACKGROUND

45 Trull Street is located in the Neighborhood Residence (NR) zoning district in the Magoun Square neighborhood. This area is represented by Ward 5 Councilor Beatriz Gómez-Mouakad.

There are two buildings on the lot, each of which is used for Household Living. 45 Trull Street (1 unit) is located at the rear right corner of the lot and 47 Trull Street (2 units) is at the front. In 2003, the lot containing these two buildings was condo-ized.

The Inspectional Services Department (ISD) classifies 45 Trull Street as a Backyard Cottage Accessory Building Type and 47 Trull Street as a Detached House Principal Building Type. Only one Principal Building Type and one Accessory Building Type are permitted to exist on an NR-zoned lot as defined in the Somerville Zoning Ordinance (SZO).

On July 19, 2022, ISD advised the Applicant that 45 Trull St is considered a Backyard Cottage. ISD re-affirmed this classification to the Applicant on August 11, 2022.

The Applicant has provided a narrative presenting their reasoning for why 45 Trull Street should be classified as a Cottage (Principal Building Type) and not a Backyard Cottage (Accessory Building Type). Their narrative has been appended to this memo.

Images of the lot and structures are provided below.



*Above: front elevation. 47 Trull (foreground)- Detached House Principal Building*

*45 Trull (background, blue) – Backyard Cottage Accessory Building*



*Above: 47 Trull (foreground)- Detached House Principal Building  
45 Trull (background, blue) – Backyard Cottage Accessory Building*



47 Trull – Detached House Principal Building

45 Trull – Backyard Cottage Accessory Building

## ANALYSIS

In order to convert from one Building Type to another, the existing building must meet all requirements of the Somerville Zoning Ordinance for the proposed Building Type in order for the change to be possible. The existing building might present some non-conformities for its current building type, and those non-conformities are allowed to continue to exist. But, whenever a structure is proposed to change to a different Building Type, the structure must meet ALL zoning requirements for that proposed building type – no new non-conformities can be created. Conversion of 45 Trull Street to a Cottage Building Type would create multiple new non-conformities in terms of, at a minimum (see §3.1.7 of the SZO) :

- **Rear setback** (minimum 20 ft required, 1.8 feet existing)
- **Front setback** (maximum 20 feet allowed, 56' 3 ½" existing)
- **Side setback** (minimum 3 feet required; 2'10" existing)
- **Parking in the frontage area** (vehicles may not be parked in front of the façade of a Principal Building; existing parking is completely in front of the building façade)
- **Create a second Principal Building on the same lot** (only one Principle Building is allowed on each NR lot)
- **Primary front parking setback** (minimum required is 20 feet; existing begins at the front lot line (and violates the parking in the frontage area requirement)
- **Building separation** – 10 feet minimum required from all buildings on same and surrounding lots. Current distance from Principal Structure looks like it could be less than 10', but the Applicant must prove otherwise with a certified plot plan.

In addition to not meeting Cottage dimensional standards, conversion of 45 Trull Street to the Cottage Building Type which is considered a Principal Building Type, would violate the fundamental underpinning of the zoning ordinance which permits only one Principal Building per lot. There is already Detached House on the lot. A Detached House Building Type is a Principal Building in the NR district per the SZO. The Applicant's proposal would create a situation where there would be two principal buildings per lot and such a situation is not allowed.

### Building type classification and dimensional regulations

The SZO regulates structures as Principal Buildings, Accessory Buildings, or Accessory Structures. *Principal Buildings* and *Accessory Buildings* are further classified into various 'building types' that are permitted in each zoning district.

Building types are defined by their combined disposition, configuration, and function and are differentiated from each other by *dimensional standards*, customized for each building type. Each building type permitted within a zoning district is presented in detail in the SZO.

To properly administer a building type-based zoning ordinance like Somerville's, the Superintendent of Inspectional Services ('Building Official') must determine which Building Type is the appropriate classification for every existing structure in Somerville. All of the Building Type descriptions, standards, dimensions and other related provisions are taken into consideration in addition to the purpose of the zoning district when classifying an existing structure. Structures are not classified in isolation, but in consideration of multiple standards.

The Building Official must also classify existing uses as falling within either one of the permitted categories of uses, or the specific existing use is determined to be a non-conforming pre-existing use. The classification of existing uses is common to the administration of all zoning ordinances. The classification of existing structures is necessary for any ordinance that differentiates between the class (type) of structures it regulates, such as Somerville's.

Though non-conformities exist for the 45 Trull Street Backyard Cottage in terms of rear and side setbacks, these are considered pre-existing non-conformities which may remain. In terms of staying within the dimensional confines for maximum floor plate, building width, length, story height, number of stories, roof type and fenestration, the structure appears to meet the criteria for the Backyard Cottage Building Type (see **§3.1.12** of the SZO). Any currently unidentified non-conformities are allowed to remain for this Backyard Cottage.

### *One Lot, One Principal Building*

The SZO does not allow more than one principal building on the same lot. The entire structure of the SZO is predicated on the fundamental rule of *one lot, one principal building*. This concept holds across all zoning districts. If the ZBA permits 45 Trull Street to convert from an Accessory Building (Backyard Cottage) to a Principal Building (Cottage), then the Board will be violating the fundamental underpinning of the entire zoning ordinance.

Regarding the Neighborhood Residence (NR) district the SZO expressly states this restriction in **§ 3.1.6.a** as follows: "*One (1) principal building and one (1) accessory building are permitted on each lot.*"

**§ 3.1.6.b** then lists each building type that is considered a Principal Building type in the NR district:

- i. Cottage
- ii. Detached House
- iii. Semi-Detached House
- iv. Duplex
- v. Detached Triple Decker

The SZO continues in § 3.1.6.d to state that a Backyard Cottage is considered an Accessory Building type in the NR district as follows:

*“The following Accessory Building Types are permitted by right in the Neighborhood Residence district:*

*i. Backyard Cottage”*

In its *current* configuration, the lot in question complies with this fundamental underpinning of the zoning ordinance of one Principal Building type and one Accessory Building type per lot; 47 Trull St. is classified as a Detached House and 45 Trull St. is classified as a Backyard Cottage.

The Applicant contends that 45 Trull Street should be re-classified as a Cottage. The definition of a Backyard Cottage and a Cottage follow:

A **Backyard Cottage** is “[a] small floor plate, detached, accessory building type typically providing space for one (1) small dwelling unit, a home occupation, a playhouse for children, or vehicular parking on the same lot as a principal building type.

A **Cottage** is “[a] small floor plate, detached, principal building type with one (1) dwelling unit. The cottage is the smallest type of detached principal building in Somerville. Two variants exist, one with a half-story under pitched roof and another with a full height second story and a shallow pitched roof or a flat roof.”

*Applicant Narrative*

Staff provides brief feedback below regarding the arguments in the Applicant’s submitted narrative.

Item 1. As noted throughout this report, Building Types are not determined merely by the definitions at the outset of the SZO. Building Types are determined by also considering all of the dimensional requirements laid out in the SZO, the dimensions of the structure being evaluated, zone, use, and the existing site conditions. No portion of the SZO is stand-alone.

Item 2. The Applicant lists three other properties that they believe support their argument to change their building type classification and, therefore, the number of principal buildings on their lot: 34 Madison Street, 20 Quincy Street, and 12 Granite Street. The ZBA cannot consider Building Type determinations made by ISD on other lots. Neither the ZBA nor the Applicant is privy to the specific property/site conditions that led to how the buildings on these other properties were classified. Therefore, the examples provided are moot and the ZBA must make their determination about 45 Trull Street solely based on the conditions of this building and site.



Item 3. The Applicant refers to definitions, ideas, and regulations that are not in use by the SZO. The manner in which other Massachusetts municipalities, such as Newton, define and otherwise regulate land use and buildings is exclusive to them and does not apply to Somerville – this extends to how other view ownership of a structure. Quotes and concepts extracted from blogs and for-profit websites do not change how ISD interprets the SZO nor how the ZBA can apply the SZO. As for the MassHousing website, MassHousing is an organization that raises money for and lends to buyers, renters, and developers of affordable housing.

## **CONSIDERATIONS & FINDINGS**

In addition to the creation of multiple new dimensional non-conformities, the core wrong that would be created if the ZBA approves the Applicant's Administrative Appeal to change the Building Type of 45 Trull Street from a Backyard Cottage to a Cottage, would be allowing *two principal structures* on the same lot. Such a derogation from the SZO would fundamentally subvert how the SZO functions and regulates development. Staff cannot emphasize this enough.

After reviewing all available information regarding 45 Trull Street along with the SZO, Staff concurs with ISD's determination that 45 Trull Street is a Backyard Cottage Accessory Building type and that the Building Official's determination of such should be upheld.

If the Board finds that the existing conditions at 45 Trull Street reflect a Backyard Cottage Accessory Building type, the Board should deny the Administrative Appeal and uphold ISD's determination.

If the Board finds that the existing conditions at 45 Trull Street reflect a Cottage Principal Building type, the Board should approve the Administrative Appeal and overturn ISD's determination.

Alex Teyssandier  
45 Trull Street

To the Members of the Zoning Board of Appeals,

This administrative appeal pertains to the property located at 45 Trull street located in the Neighborhood Residence (NR) district.. I am petitioning the ZBA to change the classification of 45 Trull street from Backyard Cottage to a Cottage for the following reasons:

1. The zoning ordinance does not provide sufficient definition of **accessory building** in order to properly define my property as such. Neither is the term **principal building** restrictive enough to prohibit my building from being defined as such. See the following definitions:
  - The Zoning ordinance defines a backyard cottage as a “small floor plate, detached, **accessory building** type typically providing space for one (1) small dwelling unit, a home occupation, a playhouse for children, or vehicular parking on the same lot as a principal building type.”
  - An **accessory building** is in turn defined as “a building or structure designed, used, or occupied in relation to the **principal use(s)** of a given lot.”
  - A **principal building** is a structure designed, used, or occupied for the principal use(s) of a given real property.
  - An **accessory use** (as opposed to a principal use) is “a use(s) of a lot, structure or portion thereof that is **incidental and related to** a principal building [...] and located on the same lot as the principal building or use of land”

Since the definition of “in relation to” is not clearly defined, we can infer that an **accessory building** should have an **accessory use** that is incidental to the principal building. This is shown through examples of existing and proposed backyard cottages that are built as a playhouse, a small in-law suite, parking structure, a workshop, etc.. This **accessory use** is not applicable to my primary dwelling unit since it is the only building exclusively in use by me, and therefore better fits the definition of a **principal building**.

2. The SZO stipulation that there is only one principal building per lot fails to acknowledge my property's unique situation.
  - SZO Article 3.6 Section (e) stipulates that “One (1) **principal building** and one (1) **accessory building** are permitted on each lot”.

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There are extremely few properties in Somerville NR districts that consist of two **principal buildings** on a single lot. The majority of lots with multiple buildings are Detached Houses with true backyard cottages owned by the principal building owner, and in accessory use. This is a gap and an oversight in the ordinance definitions that is the result of the small number of **principal buildings** that exist on the same lot as another **principal building**. A few buildings that do fit this criteria are 34 Madison Street, 20 Quincy street and 12 Granite street



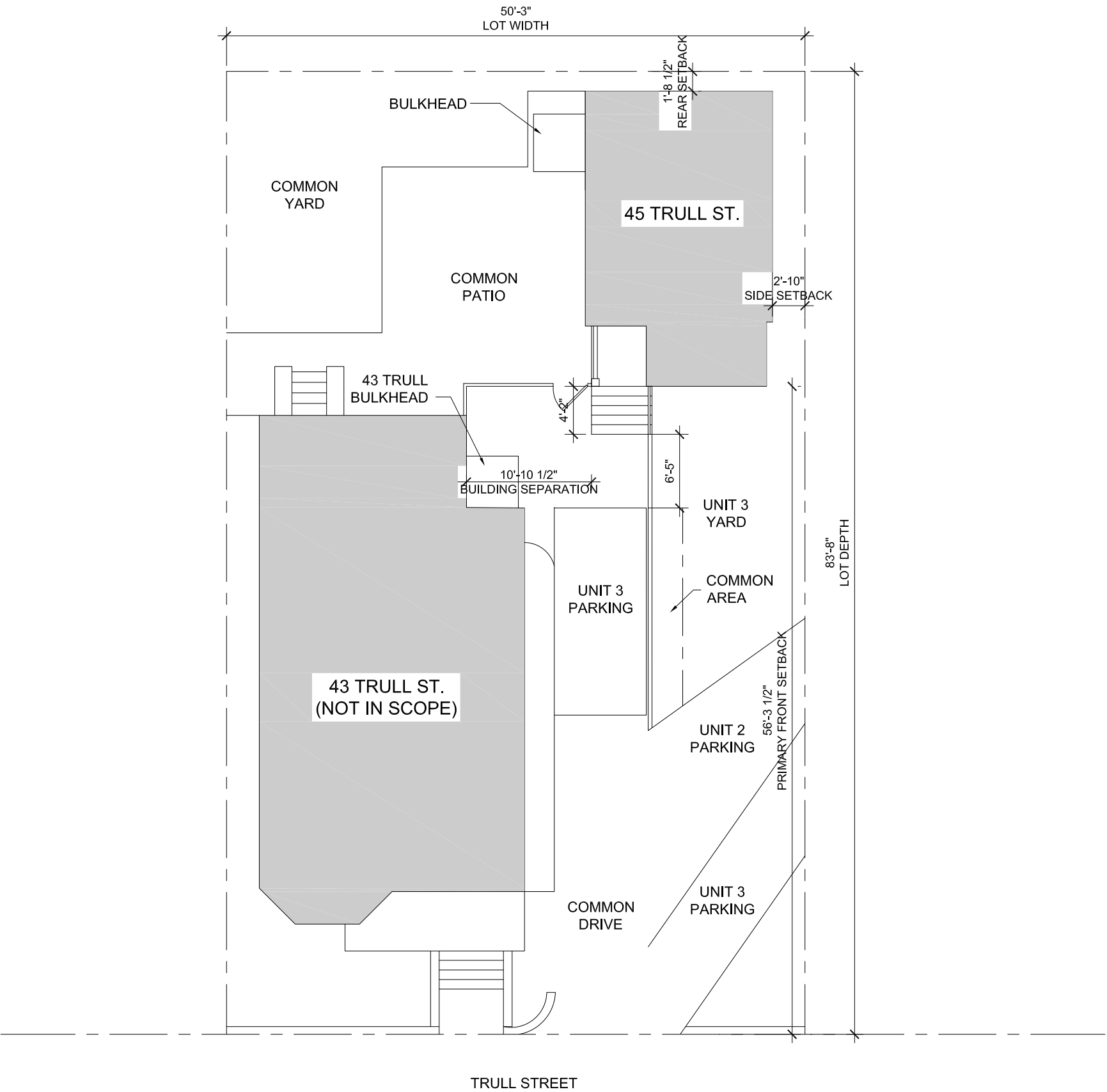
which are, structurally, more like Cottages. The last of which, 12 Granite Street, is a confirmed Detached House on the same lot as 14 Granite Street, another Detached House. The question that the zoning ordinance fails to answer is why are 12 and 14 Granite Street allowed to be **principal buildings** on a shared lot while 45 Trull is an **accessory building** even though its use of **Household living** more accurately fits with that of a principal building..

3. Conventionally, the definition of accessory dwelling units requires that both the **accessory building** and the **principal building** are owned by the same person.

While the SZO does not explicitly define this stipulation, many sources, including some from other cities in Massachusetts state that the owner of the principal building is the same owner is the accessory building

- [Accessory Dwellings dot org](#):
  - "legally an ADU is part of the same property as the main home. It cannot be bought or sold separately, as a condominium [...] might be.
  - "The owner of the ADU is the owner of the main home"
  - "One of the defining characteristics of accessory dwelling units (ADUs) within the real estate, lending, and planning fields is that they are \*second\* units on otherwise standard single family properties"
- [Investopedia](#)
  - "An accessory dwelling unit (ADU) is a legal and regulatory term for a secondary house or apartment that shares the building lot of a larger, primary home. The unit cannot be bought or sold separately,"
- [NewtonMa](#)
  - "No accessory apartment shall be held in separate ownership from the principal structure/ dwelling unit"
  - "They are, by design, clearly subordinate to the principal dwelling unit"
- [MassHousing](#)
  - These are older regulations but worth reviewing for the sake of definitions and consistency over the ownership stipulation.

The statement I'm making is that my building, which has a principal use of **Household Living**, does not fit either conventional definitions of or those definitions provided by the SZO, of **accessory use** and **accessory building** and should therefore be considered a **principal building**. This no longer fits the classification of Backyard Cottage, whose main distinction is that it is an **accessory building**. it should instead be classified as a Cottage, the smallest allowable detached **principal building**.

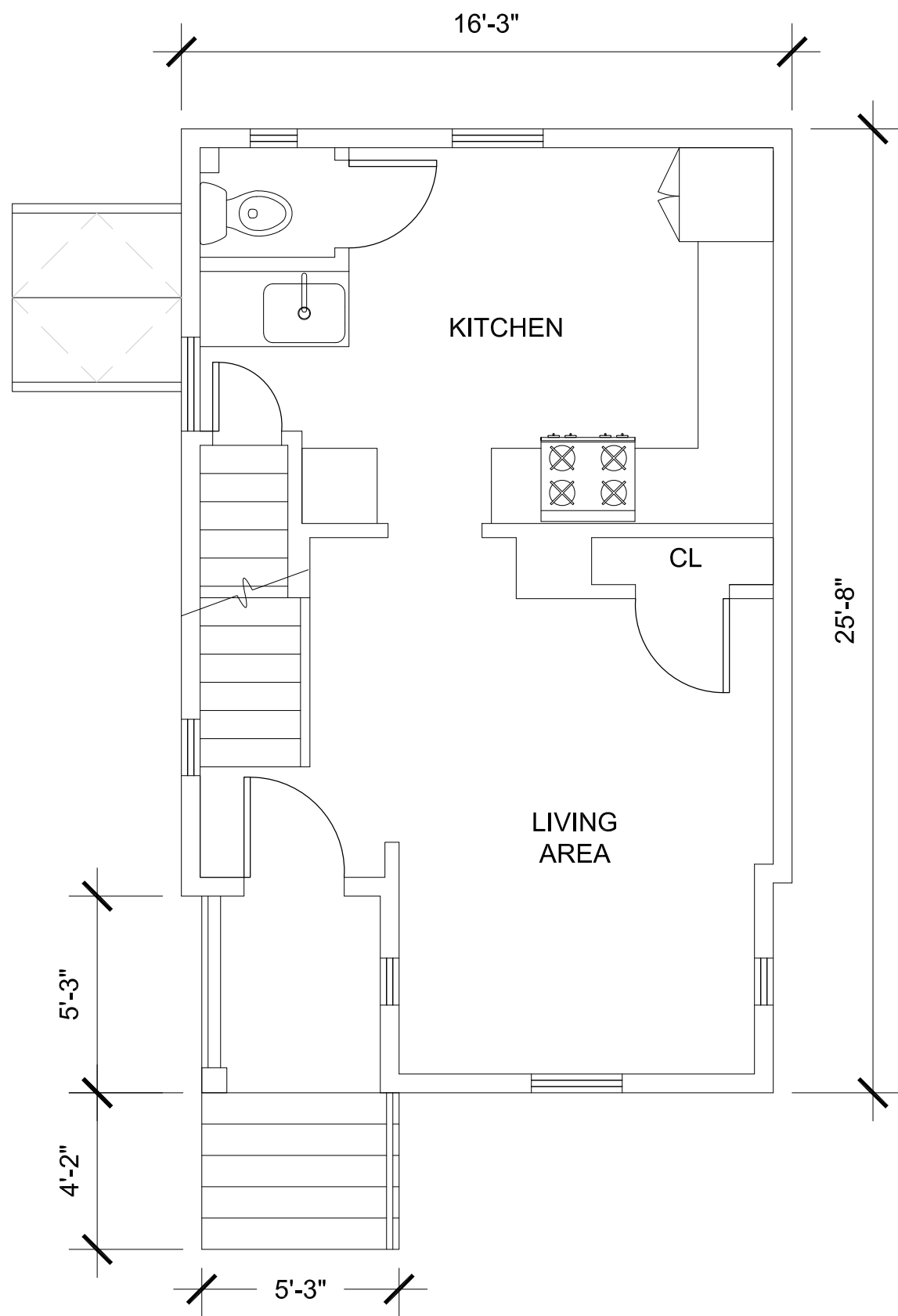


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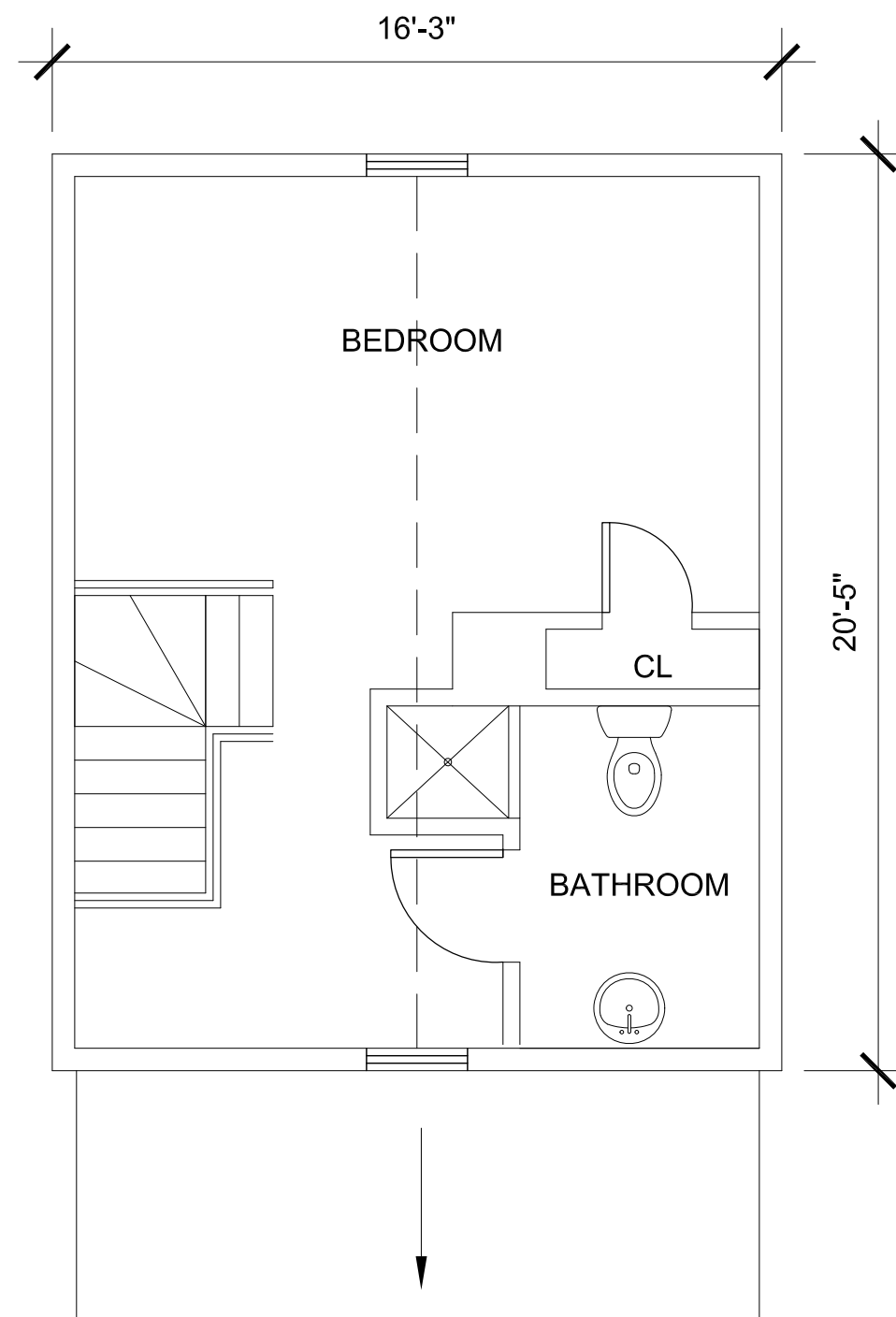
EXISTING ZONING DIAGRAM

3/32" = 1'-0"

Project	RENOVATION TO 45 TRULL STREET SOMERVILLE, MA		Title	ZONING DIAGRAM EXISTING	
Designed	Checked	Project No.	Scale	Date	
		22013	AS NOTED	09.06.22	
Drawing No.		<div>Z1</div>			



## FIRST FLOOR PLAN



## SECOND FLOOR PLAN

Project  
RENOVATION TO  
45 TRULL STREET  
SOMERVILLE, MA

Title

FLOOR PLANS  
EXISTING



Designed

Checked

Project N° 3.

Project No.  
22013

Scale

1/4"=1'-0"

Date

Date 08.05.22

Drawing No.

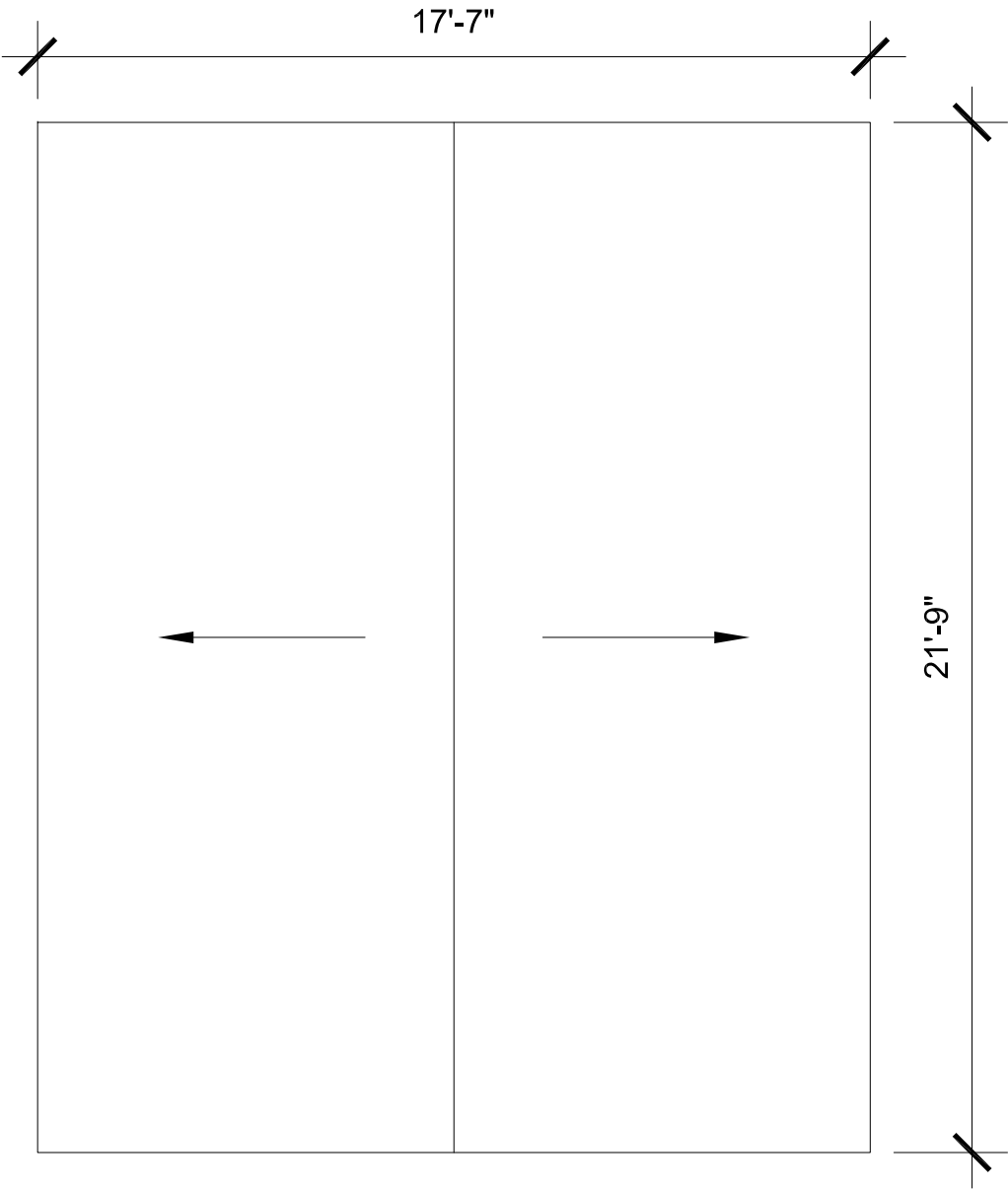
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## EXISTING FLOOR PLANS

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1/4" = 1'-0"

**X1**



ROOF PLAN

A1

EXISTING ROOF PLAN

1/4" = 1'-0"

Project RENOVATION TO 45 TRULL STREET SOMERVILLE, MA					Designed	Checked	Project No. 22013	Scale 1/4"=1'-0"	Date 08.05.22
Title FLOOR PLANS EXISTING					Drawing No. <div>X2</div>				

