



City of Somerville

ZONING BOARD OF APPEALS

City Hall 3rd Floor, 93 Highland Avenue, Somerville MA 02143

DECISION

PROPERTY ADDRESS: 18 Ivaloo Street
CASE NUMBER: P&Z 22-158
OWNER/APPLICANT: Mike Cheng and Dan Flynn
OWNER ADDRESS: 18 Ivaloo Street, Somerville, MA 02143
DECISION: Approved with Conditions (Hardship Variance)
DATE OF VOTE: May 3, 2023
DECISION ISSUED: May 9, 2023

2023 MAY - 9 A 10: 45

CITY CLERK'S OFFICE
SOMERVILLE, MA

This decision summarizes the findings made by the Zoning Board of Appeals (the "Board") regarding the Hardship Variance application submitted for 18 Ivaloo Street.

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.

RECORD OF PROCEEDINGS

On May 3, 2023, 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, and Alternates Brain Cook and Sisia Daglian. The Applicants and Owners provided a presentation to the Board and their argument for the requested Hardship Variance. After the presentation by the Applicant, Chair Fontano open up public testimony. Testimony given was in support of the Hardship Variance request.

After the public testimony portion of the hearing, the Board went into discussion with the Applicant and Staff. Items discussed included further clarification into the proposed deck footprint, why the Applicant feels they meet the criteria for a receiving a Hardship Variance, and asked Staff if the project could be conditioned that the deck remained open, without screening or enclosure. The Board discussed the merits of the Applicant's argument and whether the dimensional standards create an inconvenience or a hardship. A few Board members discussed the functionality of the property could be considered a hardship due to the lot size. The Board asked Staff if they could assist with condition language for the proposed deck to remain open, without the possibility of enclosure in the future. Staff responded that they would work on exact condition language that meets the intentions of the Board. After discussions with the Applicant and Staff, the Board discussed how the request meets the three criteria for granting a Hardship Variance. After a quick discussion of the criteria, the Board moved to approve the Hardship Variance with conditions discussed.

PLANS & DOCUMENTS

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

Document	Pages	Prepared By	Date	Revision Date
18 Ivaloo Street Hardship Variance Narrative	3	Mika Cheng & Dan Flynn, [18 Ivaloo Street, Somerville, MA 02143]	March 5, 2023	n/a
18 Ivaloo Street Plan of Land	1	Everett M. Brooks CO., [49 Lexington Street, West Newton, MA 02465]	November 16, 2022	n/a
18 Ivaloo Street Plan Set	2	Luke McKneally Architect LM Works LLC, [26 Whitney Rd, Medford, MA 02156]	November 4, 2021	August 30, 2022 October 24, 2022 February 10, 2023

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:

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;*

The Board finds that special circumstances do exist relating to the narrow lot width, and unusual characteristics of the existing principal structure being located very close to both side lot lines.

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*

The Board finds that literal enforcement of the provisions of the Zoning Ordinance for the district where the subject structure is located would involve substantial hardship, both logistically and financially to the petitioners. Literal enforcement of the Zoning Ordinance would limit the petitioners' use of their outdoor living space and cause them to need to spend additional money to create a large enough informal dining space elsewhere on the property.

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.*

The Board finds that desirable relief can 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 or the Zoning 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** to for the side setback encroachment requirement for a rear projecting porch with the conditions included in the staff memo and discussed at the hearing. Member Fullerton seconded. The Board voted **5-0** to approve the Hardship Variance, subject to the following conditions:

Perpetual

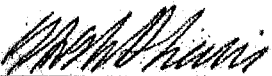
1. This decision must be recorded with the Middlesex South Registry of Deeds.
2. The rear projecting porch cannot be modified in the future to be further enclosed or screened.
3. The rear projecting porch can only be accessed and used by the dwelling unit that includes the first and second floor of the existing principal structure.

Prior to Building Permit

4. 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.
5. Construction documents must be substantially equivalent to the approved plans and other materials submitted for development review.

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chair*
Katherine Garavaglia, *Clerk*
Ann Fullerton
Brian Cook, *Alternate*
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 _____