



City of Somerville
ZONING BOARD OF APPEALS
City Hall 3rd Floor, 93 Highland Avenue, Somerville MA 02143

3 MAY 2023 MEETING MINUTES

This meeting was conducted via remote participation on GoToWebinar.

NAME	TITLE	STATUS	ARRIVED
Susan Fontano	Chair	<i>Present</i>	
Anne Brockelman	Vice Chair	<i>Absent</i>	
Katherine Garavaglia	Clerk	<i>Present</i>	
Ann Fullerton	Member	<i>Present</i>	
Zachary Zarembo	Member	<i>Absent</i>	
Brian Cook	Alt. Member	<i>Present</i>	
Sisia Daglian	Alt. Member	<i>Present</i>	

City staff present: Emily Hutchings (Planning, Preservation, & Zoning), Andrew Graminski (Planning, Preservation, & Zoning), Sarah White (Planning, Preservation, & Zoning), Wendy Sczechowicz (Planning, Preservation, & Zoning)

The meeting was called to order at 6:02pm and adjourned at 9:17pm.

PUBLIC HEARING: 18 Ivaloo Street (P&Z 22-158)

The applicant team reviewed the request for relief from the side setback requirement to expand usable deck space. They provided their argument for why they meet the criteria for a Hardship Variance and described the new deck plan.

Chair Fontano opened public comment.

Christopher Dwan (26 Ivaloo St) – fully supported the request. He found the applicants to be very communicative and collaborative and believed the plan would preserve the beauty of the backyard.

Paula Garbarino (16 Ivaloo St) – stated that she previously submitted an email in support of the project. She believed they deserve usable yard space. She noted that she is the neighbor that the expansion would be directed towards; she did not have issues with the proposal and felt it wouldn't impact them.

Stephen Clark (19 Ivaloo St) – shared his support of the applicant's request and read his previously submitted written testimony aloud.

City Councilor JT Scott stated that the applicants are just making the most of a very cramped lot. He stated that planning for your future, including a proper egress with safe handrails and suitable landings, so that folks can age-in-place in Somerville is important. Mr. Scott added that he is in full support of this well-thought-out plan that will add livable space for the applicants.

The Board asked the applicant team for clarifications regarding the egresses for each unit, the proposed footprint, why the applicants feel they meet the hardship criteria, and if they considered alternative plans for the deck. The Board asked Staff if it could be conditioned that this variance was only for an open-air deck and not enclosed building space. The Board also asked Staff to review this case with the Legal Department because one Board Member recalled a Supreme Court case (Bellalta vs. Brookline) that may impact the outcome of cases such as this.

The Board reviewed the merits of the argument for the Hardship Variance and whether it was an inconvenience or a hardship. The Board wanted to add a condition that it remains an open deck and cannot be enclosed in the future. Staff confirmed that a condition could be added that states that the porch, in the future, cannot be screened, enclosed, or converted to another type of porch. Additionally, a condition could be added that the deck can only be accessed from the top unit. The Board and Staff discussed the Bellalta vs. Brookline court case and how that is not relevant to this case. Staff also confirmed how Somerville has a form-based zoning code and the definition of a Hardship Variance, including the three criteria that must be met to approve a Hardship Variance. The Board and Staff reviewed condition language.

The Board discussed the Hardship Variance criteria: that the request meets the first criteria due to the size of the lot, that enforcement of the code would create a substantial hardship as it would limit their accessory living space and cause them to spend additional money to create a large enough informal dining space, and for criteria 3 they found that the proposed work would not be substantially detrimental to the neighborhood than the existing house.

Following a motion by Clerk Garavaglia, seconded by Member Fullerton, the Board voted unanimously (5-0) to approve the Hardship Variance, subject to the conditions discussed this evening.

RESULT:

APPROVED WITH CONDITIONS

PUBLIC HEARING: 483 Broadway (P&Z 23-016)

The applicant team reviewed the request for re-approval of a previously granted, and now expired, Hardship Variances for story height and the minimum number of stories. The request is for the same size and plan as what was originally approved the first time; however, the materials have changed. Staff clarified that since the original variance expired, the request is for a new variance.

Chair Fontano opened public comment. No one indicated they wished to speak. Chair Fontano closed public comment.

The Board reviewed the Hardship Variance criteria: there are special circumstances due to the fact that the boundary line separating Somerville and Medford run through the front of the lot; the enforcement of the ordinance would cause substantial hardship due to the boundary running through the front of the lot and Medford would only allow a two-story building in height and so the applicant can't meet Somerville's and Medford's requirements; and allowing for a lower story height where three is required will not cause a substantial detriment to the public good or substantially derogate the intent of the ordinance.

Following a motion by Clerk Garavaglia, seconded by Member Fullerton, the Board voted unanimously (5-0) to approve the Hardship Variance for story height and minimum number of stories, with the conditions and findings as noted in the Staff Memo and discussed.

RESULT:

APPROVED WITH CONDITIONS

PUBLIC HEARING: 45 Trull Street (P&Z 22-168)

The applicant team reviewed the request for an Administrative Appeal of the Building Official's determination that the rear structure at 45 Trull Street is a Backyard Cottage and is instead a Cottage building type. The existing rear structure is an existing, non-conforming structure.

Chair Fontano opened public comment.

Stefanie Bridges (47 Trull St) – shared her support of the project to better the home for the applicant’s family.

Meredith Porter (104 Josephine Ave) – asked for additional clarification on the proposal and potential plans if the building type was changed.

Chair Fontano closed public comment.

Staff clarified they did not include any assessment of possible construction or use because, per the Legal Department, the ZBA cannot take that into account in their determination. Staff reviewed the various reasons for the current building type and the fundamental issue that there can only be one principal structure per lot.

The applicant team noted that the intent of the zoning ordinance is not to have “one principal structure on one lot”, the intent of the code states that it is to “equitably balance the regulation of real property with the interest of the community as a whole”. They stated that the Inspectional Services Department (ISD) can classify properties, but they can also make mistakes, and it is the power of the ZBA to correct those mistakes.

The applicant team also explained why they are making their request and their understanding of the situation, including how what the city calls an accessory structure is the applicant’s primary residence.

The Board reviewed the merits of the request. They discussed the differences between a principal use and accessory use and whether the proposed plans for the property could be discussed during deliberation. They also took into consideration how utilities are provided to the structure and the conversion of the building to a condominium. The Board noted that they were having difficulty deciding on how to vote on the item.

Following a motion by Clerk Garavaglia, seconded by Member Cook, the Board voted (2-3), with Chair Fontano, Member Fullerton, and Member Daglian dissenting, to approve the Administrative Appeal and determine the building type as a Cottage.

The Building Official’s determination of a Backyard Cottage stands.

RESULT:

DENIED

Following a motion by Member Cook, seconded by Member Fullerton, the Board voted unanimously (5-0) to enter into a short recess at 8:36pm. The Board returned from recess at 8:45pm.

PUBLIC HEARING: 21 Francesca Ave (P&Z 23-001)

The applicant team reviewed the request for an Administrative Appeal of the Building Official’s determination that the Carriage House in the rear of 21-23 Francesca Ave is an outbuilding instead of a Backyard Cottage building type. They also reviewed the multiple-year timeline of the project and how zoning amendments have affected their project.

Member Fullerton notified the rest of the Board and Staff that she knows the applicants but felt that she could be fair and impartial. Staff noted that there is clear recusal direction if there is a financial incentive, but Staff is unclear if Member Fullerton must recuse herself in this case, as Staff is not the city’s attorney. Chair Fontano noted that it is the practice of the ZBA to recuse when there is any affiliation. Staff also noted that the Board would still have a quorum if Member Fullerton recused herself; Member Fullerton recused herself from the case. The Board and applicant team discussed whether to continue the case to the next meeting to allow for five voting members to be present; the applicant team requested to continue the case.

Following a motion by Clerk Garavaglia, seconded by Member Daglian, the Board voted unanimously (4-0-1), with Member Fullerton abstaining due to recusing herself from the case, to continue the case to 17 May 2023.

RESULT:	CONTINUED
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NOTICE: These minutes constitute a summary of the votes and key discussions at this meeting. A recording of these proceedings can be accessed at any time by using the registration link at the top of the meeting agenda.