



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 (PPZ) Staff  
**SUBJECT:** 27 Fountain Avenue, P&Z 23-037  
**POSTED:** July 26, 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 27 Fountain Avenue, identifies any additional discretionary or administrative development review that is required by the Somerville Zoning Ordinance (SZO), and provides related analysis or feedback as necessary. The application was deemed complete on June 26, 2023, and is scheduled for a public hearing on August 2, 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**

Andrea Traviglia & Andre Pelletier seek relief from the required sum of setbacks and minimum landing projection for a new stoop in the Neighborhood Residence (NR) district, which requires two (2) Hardship Variances.

## **SUMMARY OF PROPOSAL**

Andrea Traviglia & Andre Pelletier are proposing to develop a new stoop for their detached house that encroaches on the required sum of side setbacks, and the landing projection of the stoop is below the minimum required, which requires two (2) Hardship Variances. The Applicant is proposing approximately four (4) feet for the sum of side setbacks and three (3) feet for the stoop's landing projection. Pursuant to SZO Article 3.1.8.b.c. and Article 3.1.13.f.b., the required sum of side setbacks for lots with front driveway access is twelve (12) feet, and the minimum landing projection is four (4) feet, respectively.

## **BACKGROUND**

27 Fountain Avenue is located in the 0.25mi Transit Area in the Neighborhood Residence (NR) district in the East Somerville neighborhood represented by Ward 1 Councilor Matthew McLaughlin. 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 Neighborhood Residence (NR) district.

## ANALYSIS

The Applicant is proposing to develop a new stoop that encroaches on the required sum of side setbacks, and the landing projection of the stoop is below the minimum required. Pursuant to SZO Article 3.1.8.b.c. and Article 3.1.13.f.b., the required sum of side setbacks for lots with front driveway access is twelve (12) feet, and the minimum landing projection is four (4) feet, respectively. The Applicant is proposing a total of 4.4 feet for the required sum of side setbacks (a reduction from the existing 7.3 feet) and three (3) feet for the stoop's landing projection.

The Applicant has provided a narrative as part of this application addressing the review criteria for the requested Hardship Variance. In their narrative, the Applicant addresses three (3) Hardship Variance requests; however, only two (2) Hardship Variances are necessary for this proposal. The Applicant was provided with this information and informed that a revised narrative was recommended on July 13, 2023. The Applicant has not submitted a revised narrative at this time. The following is PPZ Staff's analysis related to the review criteria for the requested Hardship Variance:

PPZ Staff **does not** believe special circumstances exist relating to the soil conditions, shape, or topography of a parcel of land or the unusual character of the subject property and the existing structure regarding the first Hardship Variance criterion. In the narrative, the Applicant argues that the nonconforming sum of side setbacks is typical to the neighborhood and does not make an argument for how Criterion 1 is satisfied with the minimum landing projection. PPZ Staff notes that, although the nonconforming sum of side setbacks is typical to the neighborhood, it does not affect the Applicant's ability to comply with the minimum landing projection requirement. In fact, it further affirms that unique circumstances do not exist pertaining to the subject property or the existing structure. The Applicant can redesign the proposal to retain a compliant minimum landing projection and not further increase the nonconformity of the sum of side setbacks. The existing sum of side setbacks is 7.3 feet where twelve (12) feet is required, and as proposed, the Applicant will further extend the nonconformity to approximately four (4) feet.

Generally, PPZ Staff **does not** provide analysis or recommendations concerning the existence of actual hardship, financial or otherwise, regarding the second Hardship Variance criterion.

Upon analysis of the material submitted by the Applicant, PPZ Staff **does believe** that the granting of the requested Hardship Variance would cause a substantial detriment to the public good or nullify or substantially derogate from the intent and purpose of the Neighborhood Residence (NR) 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.

Additionally, PPZ Staff does not believe that granting the requested Hardship Variance would substantially derogate 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 Residence (NR) 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 petitioner or appellant, Andrea Traviglia & Andre Pelletier, 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 Residence (NR) district in this Ordinance or the Ordinance in general.

## **PERMIT CONDITIONS**

Should the Board approve the required Hardship Variance for from the required sum of setbacks, PPZ Staff recommends the following conditions:

### **Validity**

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

### **Public Record**

2. A digital 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.