



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: 29 Lake Street, P&Z 23-033
POSTED: July 12, 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 29 Lake Street, 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 5, 2023, and is scheduled for a public hearing on July 19, 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

Esther Silberstein and David Mlaver seek relief from the maximum amount of stories permitted in the Neighborhood Residence (NR) district, which requires a Hardship Variance.

SUMMARY OF PROPOSAL

Esther Silberstein and David Mlaver are proposing to modify the rear addition to their semi-detached house, which requires a Hardship Variance to exceed the maximum amount of stories permitted for a rear addition in the Neighborhood Residence (NR) district.

BACKGROUND

29 Lake Street is located in the 0.50mi Transit Area in the Neighborhood Residence (NR) district in the Union Square neighborhood represented by Ward 2 Councilor J.T. 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 Neighborhood Residence (NR) district.

ANALYSIS

The Applicant is proposing to modify the rear addition to their semi-detached house to three (3) stories from the existing two (2) stories. Pursuant to SZO Article 3.1.13.p.b., the maximum number of stories permitted for a rear addition is two (2) stories.

The Applicant submitted a study of properties within the neighborhood that currently consist of three (3) stories for the rear addition as a part of the application. PPZ Staff has reviewed the document and notes that the properties submitted as a part of this study were constructed prior to the adoption of the current SZO.

The Applicant has provided a narrative as part of this application addressing the review criteria for the requested Hardship Variance. The following is PPZ Staff's analysis related to the review criteria for the requested Hardship Variance:

In their narrative, the Applicant addresses criterion 1, arguing that a unique circumstance exists with the rear of their property because the parcel is approximately 33 feet on the lot frontage and 20 feet on the rear lot line, which creates a narrower lot. PPZ Staff agrees that this is a unique characteristic of the shape of the existing lot. However, PPZ Staff does not believe that there is a direct correlation between this unique characteristic and the relief that has been requested, or that the reduced width at the rear lot line affects the Applicant's ability to comply with the SZO's requirements for the number of stories permitted for rear additions.

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 not 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, Esther Silberstein and David Mlaver, 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 the maximum amount of stories permitted, 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.