



City of Somerville

# ZONING BOARD OF APPEALS

City Hall 3<sup>rd</sup> Floor, 93 Highland Avenue, Somerville MA 02143

2023 AUG -2 P 4: 29

## DECISION

**PROPERTY ADDRESS:** 29 Lake Street  
**CASE NUMBER:** P&Z 23-033  
**OWNER/APPLICANT:** Esther Silberstein and David Mlaver  
**ADDRESS:** 29 Lake Street, Somerville, MA 02143  
**DECISION:** Approved with Conditions (Hardship Variance)  
**DATE OF VOTE:** July 19, 2023  
**DECISION ISSUED:** August 2, 2023

CITY CLERK'S OFFICE  
SOMERVILLE, MA

This decision summarizes the findings made by the Zoning Board of Appeals (the "Board") regarding the Hardship Variance request submitted for 29 Lake Street.

## 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.

## RECORD OF PROCEEDINGS

On July 19, 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, Vice-Chair Anne Brockelman, Clerk Katherine Garavaglia, Zachary Zaremba, Alternate Brian Cook, and Alternate Sisia Daglian. The Applicant provided a brief presentation to the Board. Chair Fontano opened public testimony, and City Councilor J.T. Scott spoke in support of the application. The Board deliberated and identified that unique characteristics exist relating to the existing structure that meet criterion 1 for Hardship Variance findings. Following the discussion and consideration of the required findings, the Board moved to vote on the matter.

## PLANS & DOCUMENTS

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

Document	Pages	Prepared By	Date	Revision Date
29 Lake Street Plans	6	Travers Architects 785 Cambridge Street Cambridge, MA 02141	May 5, 2023	n/a
29 Lake Street Narrative	4	David Mlaver & Esther Silberstein 29 Lake Street, #2 Somerville, MA 02143	July 15, 2022	n/a
29 Lake Street Certified Plot Plan	1	Boston Survey, Inc. Unit C-4 Shipway Place Charlestown, MA 02129	March 1, 2023	n/a

## 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 Residence (NR) district in which the land or structure is located;*

The Board finds that special circumstances relate to the existing structure not generally affecting the Neighborhood Residence (NR) district in which the 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*

The Board finds that literal enforcement of this provision of the Ordinance would involve a substantial hardship to the petitioners, Esther Silberstein and David Mlaver, due to their unique circumstances.

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.*

The Board finds that the requested 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 Residence (NR) district in this Ordinance or the Ordinance in general.

## DECISION

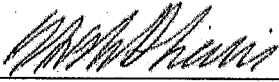
Following public testimony, review of the submitted plans, and discussion of the statutorily required considerations, Clerk Garavaglia moved to approve the **Hardship Variance** seek relief from the maximum amount of stories permitted in the Neighborhood Residence (NR) district with the conditions included in the Staff Memo dated July 12, 2023. Brockelman seconded. The Board voted **4-1** (Daglian against) to approve the permit, subject to the following conditions:

Perpetual

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

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chair*  
Anne Brockelman, *Vice-Chair*  
Katherine Garavaglia, *Clerk*  
Zachary Zaremba  
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 \_\_\_\_\_