



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:** 2 Village Terrace, ZP24-000056  
**POSTED:** October 9, 2024

Staff memos are used to communicate background information, analysis, responses to public comments, review of statutory requirements and other information from the PPZ staff to the Review Board members.

This memo summarizes the Administrative Appeal submitted for 2 Village Terrace and provides analysis as necessary. The application was submitted on June 19, 2024, confirmed to be completed on July 24, 2024, and is scheduled for a public hearing on October 16, 2024 (at the request of the Appellants). 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**

Village Terrace Condominium Association seeks an administrative appeal of a code violation notice (File #23-018998) issued by City of Somerville Inspectional Services regarding a chicken coop.

## **SUMMARY OF PROPOSAL, GROUNDS FOR APPEAL**

Jill Frushtick, Ying Li, Kaitlyn Becker, Frederick Hirsch, and Michael Bell are the Trustees of the Village Terrace Condominium Trust and collective owners of 2 Village Ter, Units 1-5. Hereafter, all parties shall be referred to as the "Appellants." The property at 2 Village Terrace, and more specifically a violation notice (File # 23-018998), is the subject of the appeal.

The violation notice states that an inspection conducted on October 4, 2023 found violations with regard to the location of the chicken coop, including that it is located within an easement on an adjacent lot and that it violates setback requirements for aviculture activity and accessory structure.

The Appellants allege that the violations listed misinterpret both the lot line designations and the recorded easement, as in described in the Analysis below.

As owners of the property, the Appellants have standing to file this Administrative Appeal. The Appeal was filed within the 30 days of the date of the violation notice, as established in M.G.L. Ch.40A, Section 15.

## **BACKGROUND**

An Administrative Appeal is a petition to rectify a failure to act, denial of a permit, decision made, or enforcement action taken by the Building Official or Director of Planning, Preservation & Zoning in an administrative development review case when an alleged error or misinterpretation has been made in the enforcement or application of the provisions of this Ordinance. The Zoning Board of Appeals (ZBA) is the decision-making authority for all administrative appeals. A concurring vote of at least four members of the board is necessary to reverse the decision of the Building Official.

### **Subject Property and History**

2 Village Terrace is located in the Urban Residence (UR) zoning district south of Union Square in a neighborhood represented by Ward 2 Councilor JT Scott. The subject property includes one Apartment Building comprised of five (5) separate units, constructed in 2014. The chicken coop was constructed in early 2021, according to satellite imagery.

On October 4 2023, the Building Official conducted an inspection of the property and found the aforementioned violations with regards to the chicken coop. On May 24, 2024, the Building Official issued a violation notice. On June 19, 2024, the Appellants filed the Administrative Appeal, and a public hearing with the ZBA was scheduled for October 16, 2024. (The Appellants requested this date and waived the statutory deadline for a hearing.)

### **Documents List**

The documents provided from the Appellants to the ZBA for review include the following:

- Administrative Appeal Narrative w/ Attachments, prepared by the Appellants.
- Violation Notice (File #23-018998)

## **ANALYSIS**

In the violation notice, the Building Official states that they found the following four (4) violations, and the Appellants have provided the following rebuttals:

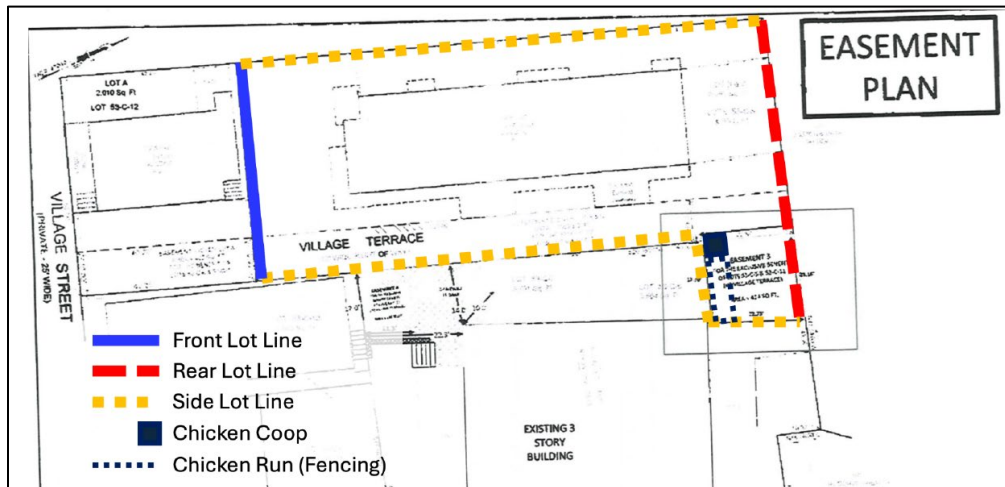
1. The chicken coop is located within a yard easement on the 35 Dane Street lot, in violation of SZO §9.2.14.c.ii.d.

**Appellants' Rebuttal:** The recorded easement (recorded June 2, 2020 in Middlesex South Registry of Deeds Book 74804 Page 173) states that the Yard Easement, shown as Easement 3 on the Easement Plan, is "for all purposes for which backyards are commonly used." The Appellants argue that backyards are commonly used for aviculture.

2. The chicken coop is located within 20 FT of a front lot line, in violation of SZO §9.2.14.c.ii.f.

**Appellants' Rebuttal:** The Appellants argue that the front lot line should be designated as the line running parallel to Village Street, as acknowledged by the

ZBA in their decision to grant a special permit for a rear balcony (ZBA 2018-132). The Appellants provide the following map of their interpretation of the lot lines:



NOTE: This plan does not accurately depict the property lines of 2 Village Terrace, which is a rectangular as shown in Middlesex South Registry of Deeds Plan Book 2014 Plan 255 (attached to this memo).

3. The chicken coop is located within an easement on the 35 Dane Street lot and therefore is less than 3 FT from a property line, in violation of SZO §10.2.1.d.

**Appellants' Rebuttal:** The Appellants again cite the recorded easement, arguing that the coop should be allowed in Yard Easement, per the purposes of the easement as described. They do not address that the coop, being an accessory structure subject to SZO §10.2.1.d., is located less than 3 FT from a property line.

4. The chicken coop encroaches in the maximum front setback along Village Terrace, in violation of SZO §10.2.1.e.

**Appellants' Rebuttal:** As with Violation #2, they argue that the front lot line should be designated as the line running parallel to Village Street

#### Additional Information:

As interpreted by ISD in this case, the lot line running perpendicular to Village Street along the eastern boundary of the Village Terrace right-of-way is the front lot line. As interpreted in the case of ZBA 2018-132 (and as interpreted by the Appellant), the lot line running parallel to Village Street is the front lot line. This latter interpretation would absolve the Appellant of Violations #2 and #4 as described in the violation notice.

With regards to Violation #1, SZO §9.2.14.c.ii.d. states regarding aviculture (emphasis added):

“Ownership, care, and control is the responsibility of a resident of a dwelling unit **on the lot.**”

The Appellants do have an easement “for all purposes for which backyards are commonly used” over a portion of the property at 35 Dane Street, but 35 Dane Street is not the lot where they reside. Following the SZO, the responsibility party of the coop in its current location would in fact be the resident(s) of 35 Dane Street.

Furthermore, with regards to Violation #3, even if the easement area was considered part of the 2 Village Terrace lot, the coop is an accessory structure which is subject to SZO §10.2.1.d., which states (emphasis added):

“Unless otherwise specified, accessory structures are permitted to encroach any side or rear setback, provided that **at least three (3) feet is maintained from the vertical plane of any lot line.**”

According to the map provided by the Appellant, the coop structure appears to be directly on top of (or at least immediately abutting) the 35 Dane Street lot line, in violation of this provision of the Ordinance.

The ZBA may vote to either:

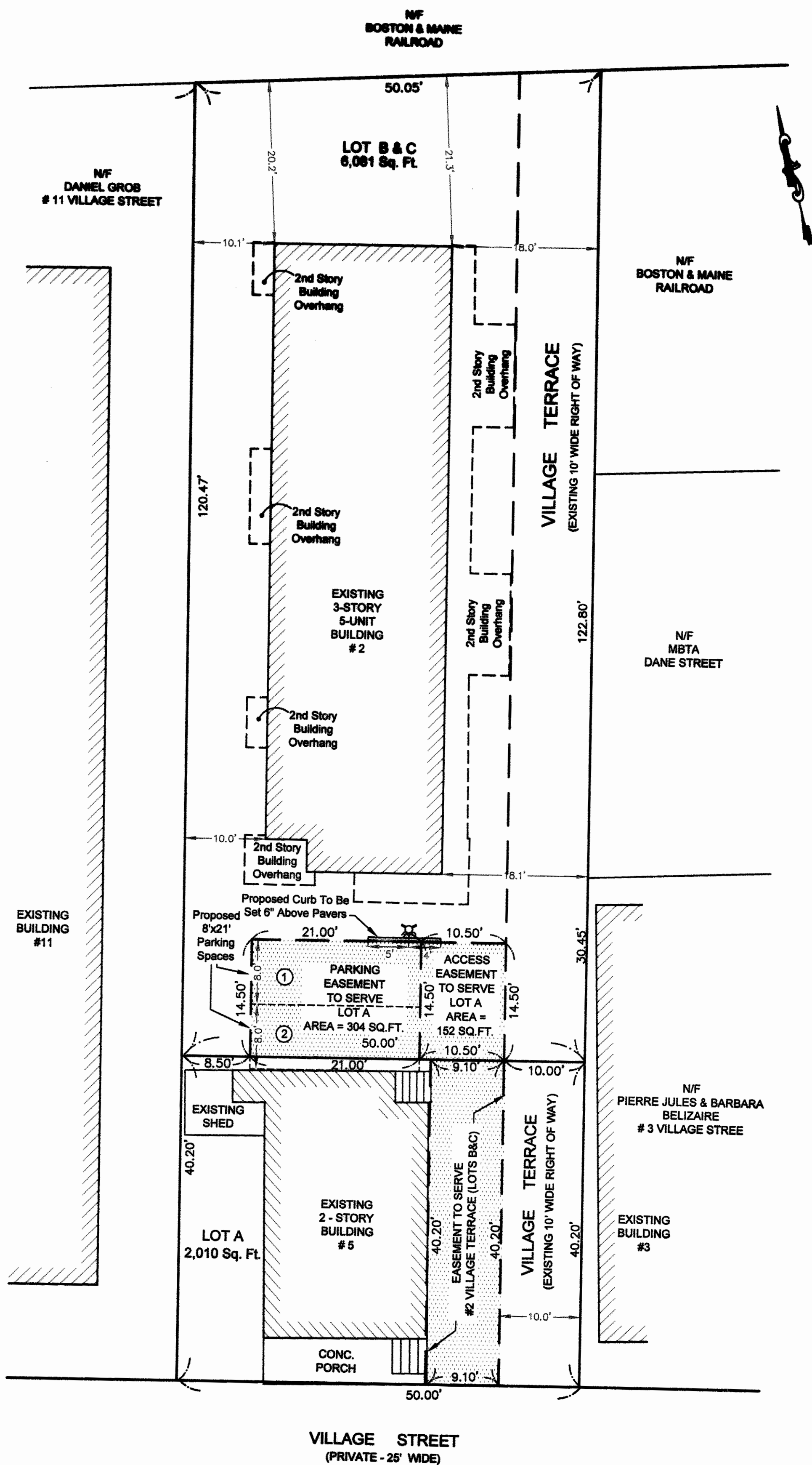
1. Deny the Administrative Appeal and uphold the Building Official’s finding of violations (File #23-018998) regarding the location of a chicken coop at 2 Village Terrace.
2. Approve the Administrative Appeal and overturn the Building Official’s finding of violations.

## CONSIDERATIONS & FINDINGS

M.G.L. ch.40A, Section 15 states that, when making its decision, the Zoning Board of Appeals (ZBA) should clearly set forth the reason for its decision and of its official actions. Whether the ZBA votes to uphold or overturn the Building Official’s decision to issue a Building Permit for the subject property, the ZBA should clearly state its reasoning within any motion.

When considering the facts of the case and the Application, the ZBA should consider whether procedural errors have been made by the granting authority (the Building Official) and whether there is sufficient evidence to approve the Administrative Appeal and overturn the Building Official’s decision.





Middlesex Registry of Deeds,  
Southern District  
Cambridge, Massachusetts  
Plan No. 255 of 2014  
Rec'd 4-1 2014  
at 10 H 00 M  M

Attest  
*[Signature]*  
Register

For Registry Use Only

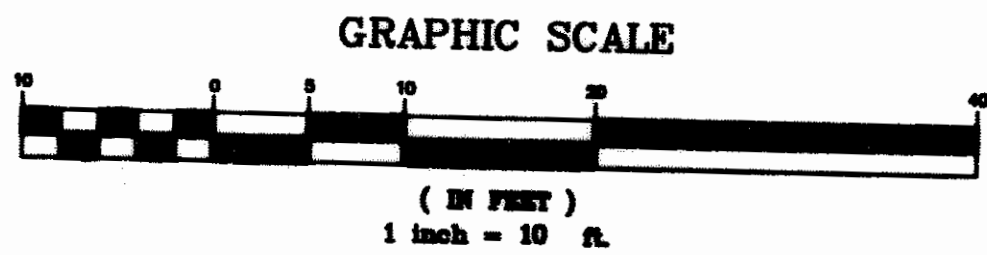
I HEREBY CERTIFY THAT THIS PLAN  
CONFORMS WITH THE RULES AND  
REGULATIONS OF THE REGISTERS OF DEEDS.

I HEREBY CERTIFY THAT THE PROPERTY  
LINES SHOWN ON THIS PLAN ARE THE LINES  
DIVIDING EXISTING OWNERSHIPS, AND THE  
LINES OF STREETS AND WAYS SHOWN ARE  
THOSE OF PUBLIC OR PRIVATE STREETS OR  
WAYS ALREADY ESTABLISHED AND THAT NO  
NEW LINES FOR DIVISION OF EXISTING  
OWNERSHIPS OR FOR NEW WAY ARE SHOWN.

*[Signature]*  
Patrick J. Roseingrave  
Professional Land Surveyor

REGISTERED  
PATRICK  
ROSEINGRAVE  
NO. 35790  
PROFESSIONAL  
LAND SURVEYOR

- NOTES:**
- \* Registered Owner of 2 Village Ter.:  
Village Terrace, LLC
  - \* Deed Ref.: Book 63410, Page 84
  - \* Registered Owner of 5 Village St.:  
BruceDharma, LLC
  - \* Deeds Ref.: Book 55881, Page 416
  - \* Assessors Ref.: Map 53 Block C Lots 5,11,12
  - \* Plan Ref.: Plan No. 951of 1947  
Book 11784, Page 512  
Plan No. 1405 of 1969  
Book 25725, Page 221  
Plan No. 898 of 1995
  - \* Zone: RC



**Easement Plan**  
2 Village Terrace  
& 5 Village Street  
Somerville, MA

Plan Prepared By:  
**LAND MAPPING**  
10 Andrew Sq. Suite 201B  
South Boston, MA 02127  
Tel. 857-544-3061  
Date: March 28, 2014