



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: 238 Summer St, ZP25-000005
POSTED: April 24, 2025

RECOMMENDATION: Deny

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 238 Summer St, identifies any additional discretionary or administrative development review that is required by the Somerville Zoning Ordinance, and provides related analysis or feedback as necessary. The application was deemed complete on February 28, 2025, and is scheduled for a public hearing on April 30, 2025. 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

Mary Agner and Denis Moskowitz seek relief from SZO §3.1.7.b, regarding the minimum sum of side setbacks, which requires a Hardship Variance.

SUMMARY OF PROPOSAL

The Applicant is proposing to construct a stoop (stairs and landing) on an existing residential home (a cottage building type). The landing and stairs (approx. total area 52 square feet) constitute a stoop building component. Per the Somerville Zoning Ordinance (SZO) §3.1.13.f., stoops must have a 4 ft minimum projection and width. Per the SZO §3.1.7.b, the minimum combined side setbacks for cottages in the NR district is 12 feet. Because the stoop is designed in such a way that the sum of the side setbacks is less than 12 feet, the Applicant seeks relief from the sum of side setbacks requirement.

BACKGROUND

238 Summer St is located in a Neighborhood Residence (NR) zoning district in the Spring Hill neighborhood represented by Ward 5 Councilor Naima Sait. If the Board approves the Hardship Variance, the proposal will be by-right. The Zoning Board of Appeals is the decision-making authority for all discretionary or administrative permits required for the NR zoning district.

ANALYSIS

The property is located on Summer St. The property is composed of a cottage house fronting the street with a detached garage to the rear of the property.

The parcel and neighboring parcels are zoned Neighborhood Residential (NR). The neighborhood is primarily composed of a mix of detached houses and cottages. The right side of the structure currently has a set of stairs with no landing.

To meet the Somerville Zoning Ordinance (SZO) dimensional requirements for a stoop, the proposed stoop must have a minimum width of 4 feet. The minimum side setback in the Neighborhood Residential district is 3 feet, and that requirement is met under the current proposal. Per the SZO §3.1.7.b, the sum of the side setbacks for a parcel with Front Driveway Access is 12 feet. Because the structure is .1 feet away from the left side setback, and the proposed stoop would be 9 feet away from the right-side setback, the combined setback proposed is 9.1 feet. The relief requested by the applicant is 2.9 feet from the minimum sum of side setbacks. The current stairs stand at 12.9 feet away from the right-side setback.

Pursuant to MGL Chapter 40A, Section 10, the Applicant must meet the following criteria to qualify for a Hardship Variance:

- a. 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 zoning district in which the land or structure is located;
- b. 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 due to said special circumstances; and
- c. 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 a specific district in this Ordinance or the Ordinance in general.

The Applicant addresses criterion 1 by stating that the left side setback being .1 feet creates an existing special circumstance, and relief would allow a code-compliant egress for the owners and their guests. To meet the minimum stoop requirements for a code-compliant means of egress would mean that this proposal must project 4 feet, not allowing the applicant to meet the combined setback requirements for a Cottage House Type in the NR district. It is PPZ staff's opinion that this does not qualify as a special circumstance. While the current stairs do not conform to any of the building component standards, they are existing and do not project into the setback further than the existing building and do not pose a zoning compliance issue.

The Applicant addresses criterion 2 for a hardship variance by stating that moving the egress to the rear of the structure is not possible due to the layout of the house and the financial hardship of the cost of moving existing AC condensers. Generally, PPZ staff do not provide analysis or recommendations concerning the existence of actual hardship, financial or otherwise, regarding the second Hardship Variance criterion.

The Applicant addresses criterion 3 by stating that the minor stoop building component would not be detrimental to the neighborhood. The staircase would be visible from the public way, but there is an existing fence around the side and rear property lines so that the stoop would not be visible by direct neighbors.

The applicant has submitted both a written narrative and more detailed responses to each criterion through the Citizenserve Application function.

Upon analysis of the material submitted by the Applicant, PPZ Staff do not believe that the granting of the requested hardship variances would cause a substantial detriment to the public good or nullify or substantially derogate from the intent and purpose of the Neighborhood Residence district, copied here:

Intent

- a) To implement the objectives of the Comprehensive Plan of the City of Somerville.
- b) To conserve already established areas of detached and semi-detached residential buildings.

Purpose

- a) To permit the development of one-, two-, and three-unit detached and semi-detached residential buildings on individual lots.
- b) To permit contextual modifications to existing detached and semi-detached residential buildings.
- c) To permit the adaptive reuse of certain existing nonconforming buildings for arts & creative enterprise and retail uses compatible with residential areas.
- d) To create dwelling unit types, sizes, and bedroom counts ideal for larger households in houses, Semi-Attached Houses, Duplexes, and Triple Deckers.
- e) To create dwelling unit types, sizes, and bedroom counts ideal for smaller households in Cottages and Backyard Cottages.

Additionally, PPZ Staff do not believe that granting the requested hardship variance would undermine the broader intent of the Somerville Zoning Ordinance, including, but not limited to, the following:

- a) To protect the health, safety, and general welfare
- b) To encourage contemporary architectural design for new construction that compliments the established character of existing buildings.

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 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 zoning district in which the land or structure is located; and
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, Mary Agner & Denis Moskowitz 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 district in this Ordinance or the Ordinance in general.

PERMIT CONDITIONS

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

Permit 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.