



City of Somerville

# ZONING BOARD OF APPEALS

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

## DECISION

2025 MAY -6 A 9:16

**PROPERTY ADDRESS:** 238 Summer Street  
**CASE NUMBER:** ZP25-000005  
**OWNER:** Mary Agner & Denis Moskowitz  
**OWNER ADDRESS:** 238 Summer St, Somerville, MA 02143  
**APPLICANT:** Jared Gardiner, Morse Constructions  
**APPLICANT ADDRESS:** 57 Central St, Somerville, MA 02143  
**DECISION:** Approved with Conditions (Hardship Variance)  
**DATE OF VOTE:** April 30, 2025  
**DECISION ISSUED:** May 5, 2025

CITY CLERK'S OFFICE  
SOMERVILLE, MA

This decision summarizes the findings made by the Zoning Board of Appeals (the "Board") regarding the Hardship Variance Application submitted for 238 Summer Street.

## LEGAL NOTICE

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

## RECORD OF PROCEEDINGS

On April 30, 2025, 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, Ann Fullerton, Acting Clerk Brian Cook, and Sisia Daglian. Vice-Chair Anne Brockleman recused herself, as she is an abutter to the property. The Applicant provided a statement that the requested relief would allow them to continue use of their property as it would create a code compliant means of egress. The Chair then allowed for public comments. One comment in support of the project, received from a direct neighbor via email, was read aloud.

Following the public comment portion of the hearing, the Board discussed the application with the Applicant. The Board asked the Applicant about the existing stairs and contextual questions about the AC condensers that would prevent the stairs from being placed in a compliant location.

Following discussion of the requested Hardship Variance, the Board moved to approve the requested Hardship Variance for zoning relief from the sum of side setbacks requirement for a stoop building component for a cottage house in the Neighborhood Residence zoning district.

## PLANS & DOCUMENTS

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

Document	Pages	Prepared By	Date	Revision Date
238 Summer St Plot Plan	1	C&G Survey Company 37 Jackson Rd Scituate, MA 02066	11/27/2024	N/A
238 Summer Street Site Plan	2	Morse Construction 57 Central St, Somerville MA 02143	10/08/2023	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 zoning district in which the land or structure is located.*

The Board finds that special circumstances exist relating to the shape and size of the parcel, specifically being that the existing structures is 0.1 feet away from the property line one side.

2. *Literal enforcement of the provision of the Ordinance for the district where the subject land or structure is located would involve substantial hardship, financial or otherwise, to the petitioner or appellant.*

The Board finds that literal enforcement of the ordinance regarding the sum of side setbacks requirement for the district, subject to this parcel, creates a substantial hardship to the petitioners, because the owners would like to stay in their home as mobility may decrease and the requested relief allows them to stay in their home.

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.*

The Board finds that desirable relief can be granted without substantial detriment to the public good and without nulling or substantially derogating from the intent and purpose of the Neighborhood Residence zoning district and the Ordinance in general.

**DECISION**

Following public testimony, review of the submitted plans, and discussion of the statutorily required considerations, Brian Cook moved to approve the Hardship Variance for the sum of side setbacks minimum. Ann Fullerton seconded. The Board voted **4-0** to approve the permit, subject to the following conditions:

**General**

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, and Zoning Division for the public record.

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chair*  
Ann Fullerton  
Brian Cook, *Alternate*  
Sisia Daglian, *Alternate*

**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 \_\_\_\_\_