



City of Somerville

ZONING BOARD OF APPEALS

City Hall 3rd Floor, 93 Highland Avenue, Somerville MA 02143

TO: Zoning Board of Appeals
FROM: OSPCD Staff
SUBJECT: 17 Hudson Street, ZP25-000094
POSTED: January 30, 2026

RECOMMENDATION: No change

This memo is supplemental to the PPZ Staff Memo dated November 26, 2025 [here](#).

The applicant requested a continuance to the December 17, 2025 ZBA meeting to allow Staff to review additional submitted materials.

BACKGROUND

This memo serves as a reply and supplemental information to the new documents submitted by the applicant.

ANALYSIS

The following analysis is in response to several arguments raised in the document titled "Reply to Staff Report" submitted on December 2, 2025.

Pursuant to MGL chapter 40A sections 8 and 14, the ZBA is empowered to hear and decide appeals by persons aggrieved by the orders or decisions of the Inspector of Buildings that may violate the SZO or the provisions of G.L. 40A. It is staff's opinion that items 1-3 which summarize the applicant's main arguments are best categorized as allegations that certain administrative procedures violate the SZO or G.L. c. 40A. It is within the authority of the ZBA to address not only whether ISD and PPZ did the proper analysis under the zoning ordinance, but also whether the procedures themselves violate G.L. c. 40A. While this staff report addresses items 1-3, whether the procedures violate the statute is ultimately a question of law. The law department is available to address the questions of law. In light of the above, it is conceivable in theory for the ZBA to conclude that PPZ and ISD did the proper zoning analysis, but that underlying process and procedures violate G.L. c. 40A, in which case the decision would reflect that the appeal is successful

Staff has provided an assessment of items 1-3 below and believes that the procedures followed are in compliance with the requirements of the SZO and G.L. 40A.

1. Development review was limited only to the land platting and should have included the resulting development enabled by the lot split.

The plans, analysis, and other documentation that are required to be submitted for a zoning permit are set forth in the Submittal Requirements Manual adopted

by the individual review boards. The scope of what must be illustrated on any required plan is limited to the scope of what is being proposed by the applicant and what requires review by the board. By-right development cannot be reviewed by the Zoning Board of Appeals (ZBA).

In this case of the lot split, the 'plan' that must be submitted is known as a 'land plat'. A land plat shows the existing and proposed platting of land overlain on a Land Title Survey of the property. A land plat must be drawn in accordance with Code of Massachusetts Regulations and stamped by a MA registered Land Surveyor and accurately showing existing conditions of the property as determined by a survey. The Director of PPZ reviewed the 'plan' and confirmed compliance with zoning requirements because it met the dimensional standards required for a lot in the Neighborhood Residence District. SZO 2.4.2.b.i.a states that lots must have dimensions appropriate for one or more of the building type(s) or civic spaces permitted for the district where the lot is located

2. To correctly implement its authority to establish rules and procedures of a Minor Site Plan Approval (mSPA) process, the ZBA should have enacted standards as follows:
 - A. Establish criteria for the minor site plan approval process.
 - B. Distinguished between those development activities that do not require the procedural steps for Site Plan Approval but are still deserving of plan review.
 - C. Establish the actual plan review process for development activities that are worthy of plan review.

This three point proposal by the appellant is not required by any local or state law and some of its criterion conflicts with the powers granted to the ZBA by the Somerville Zoning Ordinance (SZO) and to the inspector of buildings, building commissioner, or local building inspector by MGL 40A.

- A. Establish criteria: The ZBA is authorized by the SZO only to reduce the procedural steps normally required for Site Plan Approval for activities it deems to be minor. The ZBA is not authorized to establish any criteria different from what is required for Site Plan Approval.
- B. Distinguish between activities: The ZBA has distinguished which activities are minor and do not require all of the procedural steps of Site Plan Approval by listing them in their Rules of Procedure and Policies (RPP)
- C. Establish a plan review process: As specified by MGL 40A s. 7, enforcement of the zoning ordinance is conducted by the inspector of buildings, building commissioner, or local building inspector and thus the actual zoning compliance review of submitted plans is conducted by the staff of ISD through that authority.

Plan review is carried out by comparing labeled dimensions on plans and other documentation submitted by licensed professionals for compliance with any regulated dimensions. This plan review is conducted for all zoning and building

permits, regardless of if the development is by-right or requires an administrative or discretionary zoning permit.

The SZO states that lot splits are subject to site plan approval (See Section 10.1.1). The Zoning Board of Appeals as the decision-making authority for the NR district may adopt rules of procedures for a minor Site Plan Approval. The ZBA affirmatively took this step by designating lot splits as a minor development activity which shall be administered by the Director of PPZ.

3. The Zoning Board of Appeal's Rules of Policy and Procedure had a typo that incorrectly referenced the Somerville SZO's Planning Board Delegation of minor Site Plan Approval activities.

A typo in the Zoning Board's Rules of Policy and Procedures does not negate the power delegated and granted by City Council. These powers are delegated in the SZO. Regardless of whether there was an error in prior rules, and without acknowledging that it is consequential, Planning Staff hereby reaffirms that the approval of the lot split by the PPZ Director was consistent with its revised rules and regulations. Planning Staff also recommend that the ZBA reaffirm that the Planning Director had the authority to act under the revised rules and regulations and that the approval of the lot split by the PPZ Director was consistent with its revised Rules and Regulations.

The remainder of the applicant's items address substantive arguments on the interpretation of specific provisions of the SZO. Staff's position is that ISD staff properly interpreted and applied the relevant requirements of the SZO.

4. SZO Section 12.1.2. applies affordable housing requirements to any lot.

The full sentence of 12.1.2.a. is "This Section is applicable to all development required to provide one (1) or more affordable dwelling units (ADUs) and to any subdivision or lot split that results in two or more lots intended for residential use, sale, legacy, or development at any time."

It is staff's interpretation, upon consultation with the law department, that the use of "and" in section 12.1.2. is best interpreted as an inclusive "or." Therefore, the affordable housing provisions of Article 12 apply (i) if a development is independently required to provide an affordable unit, or (ii) the lot split results in two or more lots which are intended for use. Importantly though, the SZO's affordable housing requirements are designated for each zoning district. Therefore, the analysis must factor in after the lot-split whether the zoning district includes an affordable housing requirement. Yes, this land was split into two or more lots intended for residential use, but there are no resulting requirements for affordable housing for the zoning district (Neighborhood Residence) where these properties are located.

Required affordable housing units are identified for each building type via a table included in their respective dimensional requirement tables. As the required affordable housing unit tables were removed from the entirety of the NR district in conjunction with Ordinance amendment No. 2023-23, there are no longer any affordable unit requirements associated with development in the NR zoning district. If an affordable housing requirement was indeed triggered by this lot split, there would need to be a corresponding requirement for a specific number of affordable units to be required for the proposed principal buildings, but no such requirement is identified by SZO 3.1.11.

The Ordinance that repealed the affordable housing requirement that once was in the NR Zoning District was ordained on November 21, 2023 (Ordinance Number: 23-23), linked [here](#).

While the ADU calculator provided with the SZO may allege that one unit is required, the calculator tool provides the following disclaimer:

Disclaimer: The calculators are to be used for informational purposes only. No warranty, express or implied, is made regarding the accuracy, adequacy, completeness, legality, reliability, or usefulness of the information obtained from use of the calculators. All information should be verified with City staff.

The following analysis is a response to the dimensional compliance aspects raised in item of the Reply to Staff Report as well as aspects from pages 3-6 of the document entitled “Denises Testimony” dated December 8, 2025.

5. The backyard cottage is non-compliant with the dimensional standards for a backyard cottage Accessory Building Type and is too big.

The applicant contends that the backyard cottage does not meet the dimensional requirements for backyard cottages or standards for accessory structures.

All of the provisions of the Somerville Zoning Ordinance are equally in effect simultaneously and are to be construed harmoniously when covering the same subject.

The substance of the appellant’s argument is that the backyard cottage seems too large to meet that building type’s definition as a, “small, detached, accessory building type.” While the backyard cottage’s overall massing may not be in alignment with certain understandings of what an accessory dwelling unit should look like, the SZO further articulates what is considered ‘small’ by establishing prescriptive dimensional regulations for that building typology, such as a maximum floor plate size and maximum number of stories (1.5). The proposed

backyard cottage maximizes the entitlements provided for in SZO 3.1.12, but conforms to the dimensional criteria established therein and is considered a compliant accessory building.

The appellant further claims that the backyard cottage's basement should be considered a story and that therefore the backyard cottage does not comply with the story count requirements. However, sections SZO 2.4.4.a.vii 'Story Height' and 2.4.4.a.viii 'Number of Stories' provide instructions for how the number of stories proposed in any building is counted under the ordinance.

- i) Ground story is defined in SZO Section 2.1: Glossary as "the lowest story of a building with a finished floor at or above the finished ground level next to a building at the façade"
 - (1) This definition sets which story is the ground story.
 - (2) This definition is equivalent to the MA State Building Code.
- ii) The total number of stories of a building is calculated as follows:
 - (1) The ground story is counted as one (1) story. (See SZO 2.4.4.a.viii.a.i)
 - (2) Each upper story is counted as one (1) additional story. (See SZO 2.4.4.a.viii.a.ii.)
 - (3) Basements are not counted as one (1) story unless the finished floor of the ground story is five (5) feet or more above the average ground level of the lot. See SZO 2.4.4.a.viii.a.iv.)
 - (4) Habitable space located directly under a pitched roof is counted as a half story, assuming it meets criteria from SZO 2.4.4.a.viii.a.i and SZO 2.4.4.a.viii.a.ii. (See also SZO 2.4.4.a.viii.a.vi.a.i)
- iii) The average ground level is defined in SZO Section 2.1: Glossary as "[t]he mean (average) of the finished ground level next to a building at the exterior walls"

The proposed backyard cottage's first floor level is identified on p. A-302A of the plans at elevation 104.04', and the average ground level of the lot is identified at 99.14'. As the first floor is not more than 5' above the average ground level of the lot, the basement is not considered a story, in accordance with the provisions of SZO 2.4.4.a.viii.a.iv. Additionally, p. A-401A of the plans show a cross section of the backyard cottage, demonstrating the roof framing's compliance with the half-story requirements articulated by 2.4.4.a.viii.b.

6. ISD did not conduct a substantive review or ask the developer for more information on zoning compliance.

The Appellant also claims that, "ISD appears to have accepted NAD's proposal for the cottage without examining its details or asking for more information." (See page 4 of 'Denise's Testimony'). This claim is inaccurate, as ISD sent the

following review comments to the proponent pertaining to the proposed backyard cottage's story count and average ground level calculations, and are part of the building permit file B25-000077:

[“Plan Review Comments – 2/26/2025](#)

- Provide detailed average grade calculations in a table to verify the proposed building's compliance with SZO 2.4.4.a.viii.(a.)(iv.) Average grade calculations should account for the grade at the sunken patio and window wells.

[Plan Review Comments – 4/8/2025](#)

- *UNRESOLVED - provided average grade calculation table for the Backyard Cottage does not appear to be accounting for the grade at the window well - reconcile and resubmit* Provide detailed average grade calculations in a table to verify the proposed building's compliance with SZO 2.4.4.a.viii.(a.)(iv.) Average grade calculations should account for the grade at the sunken patio and window wells.

[Plan Review Comments – 4/28/2025](#)

- *UNRESOLVED - architectural plans identify finished floor elevation for the BC at 103' 2", where the stamped survey identifies the floor level at 105.08', which would mean the basement counts as a story. Additionally, the provided average grade calculation table for the Backyard Cottage does not appear to be accounting for the grade at the window well - reconcile and resubmit* Provide detailed average grade calculations in a table to verify the proposed building's compliance with SZO 2.4.4.a.viii.(a.)(iv.) Average grade calculations should account for the grade at the sunken patio and window wells.” (Emphasis added)

It should also be noted that ISD imposed approval conditions on the building permit that require rough and final inspections to verify the project's conformance with the approved plans, and the submission of final average grade calculations to be reviewed prior to final Certificate of Occupancy issuance to verify the building is in compliance with the story height/count requirements.

7. The backyard cottage is non-compliant with the standards for Accessory Structures.

A backyard cottage is an Accessory Building type permitted in the Neighborhood Residence zoning district, not an accessory structure. Accessory structures are regulated by SZO Section 10.2 Accessory Structures, which includes 23 different permitted accessory structures. SZO 3.1.6.d. Correctly reads that Accessory structures are regulated according to Article 10: Development Standards of this Ordinance, but the Backyard Cottage accessory building type is not an accessory structure and not regulated by Article 10.

The standards of Section 10.2 Accessory Structures are not applicable to the Backyard Cottage Accessory Building type. Section 10.2.1 does not include a

definition of accessory building and does not use the term accessory building because the section regulates accessory structures, not accessory building types.

The similar naming of Accessory *Buildings* and Accessory *Structures* may be deserving of clarification but are clearly separately and distinctly regulated classifications under the SZO.

CONSIDERATIONS & FINDINGS

No change from previous staff report.

PERMIT CONDITIONS

No change from previous staff report.