

**The Backyard Cottage at 17 Hudson Does Not Comply with the SZO
Testimony of Denise Provost, submitted Dec. 8, 2025**

Honorable Members of the Somerville Board of Zoning Appeals,

Due to unforeseen and pressing family matters, I will have to go abroad before the December 17 hearing on my appeal. Since I cannot be sure that I will have access to Zoom, I am submitting written testimony for your consideration.

The story of this appeal starts with a tree. There is a very old, majestic silver maple tree on my property. It is about 5 stories high, and as wide as I am tall. When I moved into my house in January of 1988, this already huge tree was growing directly behind the cinderblock garage at the back of the 17 Hudson Street lot.

Anticipating the demolition of the garage, I read Somerville's tree ordinance, and contacted city arborist Vanessa Boukili. Due to her efforts, ISD put 3 excellent tree protection conditions.

Unfortunately, North America Development (NAD) ignored these permit conditions when it demolished the garage on December 5, 2024, just days after Thanksgiving. My only notice came by text the night before. My daughter filmed video from her window of NAD's excavator digging up against the trunk of the tree, and workmen coming through the breach, on to my property.

NAD's excavator had smashed my fence. The area around the tree was a debris field of broken cement broken plants. My statue of the

Madonna have been moved and decapitated. NAD did not contact me about the damage, nor did it respond to my subsequent email and letters about the damage, breaking any trust I had.

Weeks later, my Ward Councilor, Naima Sait, discovered that the city had approved NAD's request for a lot split, days after the demolition. Eventually, I learned that NAD proposed to build 8 condominium units in 4 buildings, behind my back fence. One of its "backyard cottages" would have destroyed the root system of the silver maple.

Once again, Dr. Boukili took action to save the tree, and succeeded. NAD withdrew the application to build a foundation for this cottage. Soon after, ISD issued foundation permits for the 2 structures on the west side of the 17 Hudson Street lot, now known as Lot A. My attorney, Bill White, filed a timely appeal, and here we are.

As I've observed NAD excavate and build foundations taller than my back fence, I've continued to study NAD's plan book for this project. I sat down with an architect, to make sure I was understanding them properly, and learn what I was overlooking. Then I evaluated these plans against Somerville's Zoning Ordinance.

The aim of this testimony, then, is not to moan about how NAD's construction of massive buildings against the southern exposure of my garden will block the sunlight and kill my plants and trees. It's to bring to your attention the misrepresentations and errors which have brought us to this appeal.

I appreciate the opportunity to be heard.

Sincerely yours,

Denise Provost

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City's Position: The Planning staff report asserts that "The Building Permits in question [3 foundation permits for 17 Hudson Street] are a by-right, zoning compliant proposal and thus no review by the Zoning Board of Appeals would be appropriate or necessary. The ZBA has no purview over **zoning compliant by-right** developments."

Appellant's Response: North America Development (NAD) on June 17, 2025, proposed construction of a "backyard cottage" behind a principal 3-family structure. It

was later permitted by ISD, despite being zoning non-compliant, in two respects. The by-right backyard cottage use does not comply with:

1. the SZO's dimensional standards for backyard cottages, or
2. the SZO's development standards for accessory structures.

The 17 Hudson backyard cottage fails to comply with either of these requirements.

1. Dimensional non-compliance

In 2019, the City of Somerville adopted a comprehensive "form-based" zoning ordinance. It defined the "backyard cottage" as a "small, detached, **accessory building** type, typically providing space for one (1) small dwelling unit, a home occupation, a playhouse for children, or vehicular parking on the same lot as a principal building type." This description has not changed and is codified at SZO sec. 3.1.12.

SZO sec. 3.1.6.c, as amended in 2024, made the backyard cottage an as-right use in Neighborhood Residence (NR) zones.

SZO sec 3.1.12.c "Massing and Height" (see dimensional table) states that the **maximum number of stories for a backyard cottage is 1.5**, with a **maximum height of 12 feet per story**. <https://online.encodeplus.com/regs/somerville-ma/doc->

[viewer.aspx#secid-337](#) . (as amended in 2023) This building size is illustrated by the backyard cottage buildings that SZO 3.1.12 shows as typical examples, and by the orientation examples diagram at SZO 3.1.8.

The SZO defines “story” as “The portion of a building located between the surface of a habitable floor and the surface of the habitable floor or roof next above.”<https://online.encodeplus.com/regs/somerville-ma/doc-viewer.aspx#secid-11>

The “Building Code Review” on the 4th page of the NAD plan book states that the cottage has a “grand total” of 3 stories – basement, first, and second floors.

However, the “Zoning Dimensional Table” provided on the 7th page of the 17 Hudson plans proposes that the cottage will have *1 ½ stories*. The accompanying elevation drawing shows the cottage in “floors,” *measured differently* than the SZO’s “stories.” NAD’s plans show “floors” from the top of the above-grade foundation, disregarding the habitable basement story.

This building elevation, with its substitute measurement, masks the non-compliance of this “cottage,” which is at minimum 2 ½ stories, not 1 ½.

Additionally – though its measurements are rather ambiguous - the same drawing appears to show the height of the “floors” as 14 feet, not the 12 feet represented in the Zoning Dimensional Table on the same page.

A small photograph on this same page, labeled as “existing structure,” shows the single-family house which formerly stood on the 17 Hudson lot. (The same photo is on p.5, also labeled as an “existing structure.”) This structure was demolished in December 2024.

The plans for the 17 Hudson Condominium were submitted to ISD in June, 2025. ISD would have known that the house no longer existed. It had granted the demolition permit for it, in 2024, and knew that the demolition had been carried out in December of that year.

A fabricated “shadow,” roughly the shape of the proposed “cottage,” is superimposed on the image of the since-demolished original house. It creates an appearance that the “cottage” is considerably shorter and just as sleek as the demolished 2 ½ story house. The apparent overall size of that house is further diminished by the extreme elongation of the house pictured to its right.

The 17 Hudson Condominium plan set proposal misrepresents the 2 ½ story backyard cottage’s as 1 ½ stories. ISD appears to have accepted NAD’s proposal for the cottage without examining its details or asking for more information. Had ISD done its due diligence, it would have seemed that the cottage was not compliant with Somerville’s Zoning Ordinance.

2. The 17 Hudson backyard cottage is non-compliant with the SZO's development standards for accessory structures

SZO Sec. 3.1.6 (d) ("Building Types") specifies that such "Accessory structures are regulated according to Article 10: Development Standards of this Ordinance." <https://online.encodeplus.com/regs/somerville-ma/doc-viewer.aspx#secid-470>, Ord. 2023-23, 11/21/2023; amended by Ord. 2024-14, 11/26/2024: <https://online.encodeplus.com/regs/somerville-ma/doclibrary.aspx?id=b91d8d6c-b005-4b94-b59e-d0fb01c31e5a> (at page 22.)

SZO Section 10.2.1 ("Accessory Structures") defines "accessory building" as "a building or

structure designed, used, or occupied in relation to the principal use(s) of a given lot." <https://online.encodeplus.com/regs/somerville-ma/doc-viewer.aspx#secid-11>; <https://online.encodeplus.com/regs/somerville-ma/doc-viewer.aspx#secid-401>

ISD's failed to ensure compliance with the Article 10 Development Standards. ISD either did not make findings required by SZO 10.2.1, or failed to apply the evidence which would have verified compliance with Accessory Structures 10.2.1 in these specific ways:

- a. "Unless otherwise specified, accessory structures are permitted by-right.
- b. Accessory structures may not be constructed prior to the following:
 - i. construction of a principal building"

As previously noted, ISD had granted the demolition permit for the existing house at 17 Hudson in 2024. NAD submitted its plans to ISD for the 17 Hudson Condominium in June, 2025. ISD would – or should - have known that the house had been demolished in December 2024. At the time of ISD's issuance of the permits now appealed, there was no existing structure.

The cottage is under construction simultaneously with the principal building. That principal building has not been constructed "prior to" construction of the accessory backyard cottage, in violation of this subsection.

c. The Building Official shall determine when a structure is accessory to the principal building of a lot

To determine that a structure is accessory, the Building Official must find that the structure:

i. is customarily found in association with a permitted principal or accessory use;

ii. is clearly incidental and subordinate to the principal building in terms of area, size, function, and location; and

The backyard cottage at 17 Hudson is a stand-alone condominium unit with 3 floors of living space, 3 bedrooms, and 2 ½ bathrooms. Only one of the 3 units in the front building has 3 bedrooms; the other has 2. This non-compliant “cottage” is clearly not “subordinate” to the 3 unit “principal” condominium building on the lot.

iii. is operated and maintained under the same ownership as the principal building.”

The backyard cottage at 17 Hudson is a stand-alone, single-family condominium unit, designed and intended to be sold separately from the 3-unit condominium building at the front of the lot.

The ISD Building Official apparently did not make the required SZO 10.2.1 findings with respect to the 17 Hudson Street Condominium. The essential finding of compliance with Art. 10 is contradicted by the evidence. In either case, the backyard cottage at 17 Hudson is non-compliant, and the permit for the backyard cottage was issued improperly, and should be revoked.

Respectfully submitted,

Denise Provost
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Notes with text:

NR Building Types (<https://online.encodeplus.com/regs/somerville-ma/doc-viewer.aspx#secid-470>) (2023)

“3.1.12 Backyard Cottage

"The following accessory building types are permitted by right in the Neighborhood Residence district:

Backyard Cottage

a. d.

Accessory structures are regulated according to Article 10: Development Standards of this Ordinance."

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Backyard Cottages are defined and assigned building standards in section 3.1 NEIGHBORHOOD RESIDENCE (NR)

<https://online.encodeplus.com/regs/somerville-ma/doc-viewer.aspx#secid-337>

3.1.12 Backyard Cottage [defined]

"A small floor plate, detached, accessory building type typically providing space for one (1) small dwelling unit, a home occupation, a playhouse for children, or vehicular parking on the same lot as a principal building type," and are also subject to these dimensional standards:

Width (max)	24 ft	Ground Story Fenestration (min/max)
Depth (max)	32 ft	
<u>Floor plate</u> (max)	576 ft	
<u>Story</u> Height (max)	12 ft	
Number of Stories (max)	1.5 stories	
Roof Type	Flat,	<u>Use & Occupancy</u>

<https://online.encodeplus.com/regs/somerville-ma/doc-viewer.aspx#secid-337>

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What is a story?

SOMERVILLE, MA ZONING ORDINANCE

2. GLOSSARY & OVERVIEW

“Story

“The portion of a building located between the surface of a habitable floor and the surface of the habitable floor or roof next above.”

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Backyard Cottages are also subject to Development Standards in Article 10:

- a. **Accessory Structures 10.2.1**
- b. <https://online.encodeplus.com/regs/somerville-ma/doc-viewer.aspx#secid-401>
- c. **Unless otherwise specified, accessory structures are permitted by-right.**
- d. **"Accessory structures may not be constructed prior to the following:**
 - construction of a principal building; or**
 - issuance of a special permit for an accessory use, as applicable.**
- e. **The Building Official shall determine when a structure is accessory to the principal building of a lot**

To determine that a structure is accessory, the Building Official must find that the structure:

- is customarily found in association with a permitted principal or accessory use;
- is clearly incidental and subordinate to the principal building in terms of area, size, function, and location; and
- is operated and maintained under the same ownership as the principal building.