



City of Somerville  
**ZONING BOARD OF APPEALS**  
City Hall 3<sup>rd</sup> Floor, 93 Highland Avenue, Somerville MA 02143

**4 FEBRUARY 2026 MEETING MINUTES**

This meeting was conducted via remote participation on Zoom.

NAME	TITLE	STATUS	ARRIVED
Susan Fontano	Chair	<i>Present</i>	
Anne Brockelman	Vice Chair	<i>Present</i>	
Olivia Mobayed	Member	<i>Present</i>	
Ann Fullerton	Member	<i>Present</i>	
Zachary Zarembo	Member	<i>Present</i>	
Brian Cook	Alt. Member	<i>Absent</i>	
Sisia Daglian	Alt. Member	<i>Present</i>	

City staff present: Kit Luster (Planning, Preservation, & Zoning); Dan Bartman (Planning, Preservation, & Zoning Director); Matt Sarcione (Inspectional Services Department); David Shapiro (Law Department)

The meeting was called to order at 6:05pm and adjourned at 8:25pm.

*Member Brockelman sat as the Acting Clerk.*

**GENERAL BUSINESS: Meeting Minutes**

Following a motion by Vice Chair Brockelman, seconded by Member Zarembo, the Board voted unanimously (6-0) to approve the 3 December 2025, 17 December 2025, and 14 January 2026 meeting minutes.

**PUBLIC HEARING: 12 Linden Street (ZP25-000112)**

Following a motion by Vice Chair Brockelman, seconded by Member Zarembo, the Board voted unanimously (6-0) to continue this hearing to 18 February 2026, at request of the applicant.

**RESULT:**

**CONTINUED**

**PUBLIC HEARING: 17 Hudson Street (ZP25-000094)**

*(continued from 14 January 2026)*

The applicant team presented arguments against the issuance of Building Permits for a backyard cottage and lot split. He claimed the current Somerville Zoning Ordinance (SZO) definition for backyard cottages is ambiguous and violates State law, and that the lot split process lacks proper public review.

The applicant team stated that they do not believe a backyard cottage in a four-unit condominium development is an accessory structure. Staff clarified that there are accessory structures and accessory buildings; an accessory building is different from an accessory structure with regard to categories that have to be met. In other words, it has to be maintained under the same ownership of the principal building, and it has to be incidental and subordinate to the principal building.

The applicant team argued that this backyard cottage is clearly not incidental. Unless the City Council changes the SZO, backyard cottages that consist of a fourth unit, or a third unit, as part of a condominium development are not lawfully permitted by zoning. Secondly, the definition for a backyard cottage is very broad. It states that this may be one small dwelling unit with a small floor plate, but it does not give an overall dimension limit for the building, which creates a problem with violating Chapter 40A, because the definition is not precise. The applicant team stated that 'small' is an ambiguous term. The applicant team noted that the State Zoning Ordinance for accessory dwelling units has to be at least 900 s.f. The backyard cottage definition is deficient, and no Building Permits can be issued based on the definition, because it violates the provisions of Chapter 40A and is ambiguous.

The applicant team explained that they believe that the regulations enacted are invalid. The procedure set forth in the adoption of those rules violates the provisions of Chapter 40A. A lot split, per the SZO is a decision of this body. The body may designate someone to act for it, but not in the fashion where the process is shielded from the public and made private. The process is currently eliminating requirements for any development activity being reviewed. The applicant team stated that this cannot be done under the Special Permit provision, even with the authority given by the City Council.

The applicant team stated that they are a direct abutter to 17 Hudson Street. 17 Hudson Street is approximately 6,000 s.f. and when North America Development first purchased 17 Hudson Street, abutters viewed their website which showed a project for four units of condominiums. This information is still listed on their website. Abutters were not notified, but their attorney found out that there would actually be eight units on the lot, as it had been split. There was an existing house, garage, and 150 year old maple tree on this lot. The tree is sitting on the lot line, with much of its root system under the garage. The applicant team expressed concerns during demolition regarding the root system. The City put three tree protection conditions on the demolition permit, and the developer ignored all three. The applicant team asked about doubling the developer's stated expectation of four units as they do not believe that the City Council intended this outcome. The accessory unit is required to be accessory to and in the same ownership as the front lot. The applicant team is concerned with the potential loss of trees and gardens on their property based on the shadowing that the project would create on their property. There is also concern regarding runoff from the site onto their land. There also may not be space on the project lot for snow storage.

The applicant team continued by explaining that backyard cottages were clearly intended to be rented out by the person who owns the main structure. However, due to the huge profit that developers can make, they are outbidding everyone else. This will lead to a lack of rental properties outside of luxury condominiums in the City.

The attorney representing North America Development, owner of 17 Hudson Street, explained that this is a by-right project in the City of Somerville based on new zoning in 2019. Backyard cottages allow for additional housing in the inventory. In terms of the lot split being wrongfully approved, the Planning Director has the right to approve this. It is not only reviewed for frontage, but in its entirety. They stated that the affordable unit component of the project was done away with. In terms of the proposed structure not meeting the definition of a backyard cottage, the owner would argue that it does. They noted that they reached out to the applicant team's attorney but never heard back.

The applicant team noted that construction was started, at risk, two days after the developer's attorney reached out. They stated that they will be going to the Land Court to sue the owners of 17 Hudson Street for trespassing and wrongful intention for infliction of distress.

The developer's team stated that the term 'backyard cottage' sounds like a quaint structure, but the structure as proposed is compliant with all of the zoning parameters. The allowable lot width is a minimum of 34' and this project has 36'. Lot coverage is limited to 60% and the project is below that. In terms of setbacks, there must be 60' from the front and 3' from the sides. This project is 63' from the front, and 3'4" on one side, 8'8" on the other, and 3.5' from the rear. The developer's team stated that the size of a backyard cottage is limited by the SZO and can be 24' wide and 32' deep, with a maximum footprint of 576 s.f. The proposal is 24' wide and 19.5' deep, with a

footprint of 468 s.f. The story height is limited to 12', and the number of stories is limited to 1.5 with a flat or gable roof. The project is compliant with these items. One stipulation of the SZO is that a half roof has to intersect the side walls at a height of 4' for backyard cottages, and this proposal is also compliant with that.

The developer's attorney noted that her client is free to proceed at risk and decided to do so.

The Board noted that it has heard about trees and damage to a fence and a statute, but this is not in the purview of the Board for this evening.

Chair Fontano opened public testimony.

Susan Fendell (39 Simpson Avenue) – stated that the Board is well within its purview to consider the procedural methods that were used by the developer. It can also consider the intention of the Council in passing zoning laws regarding the ability to build this type of structure as-of-right. There are environmental factors that should be considered. Prior to any further construction, there could be consideration as to the intent of the Council and an opportunity for the Council to weigh in.

Jane Bestor (45 Ibbetson Street) – stated that nothing should be allowed going forward on any lot splits before the City Council has a chance to review the situation. It is unconscionable that Staff has been delegated to review what can hardly be considered a minor plan change to a site. A previous single-family dwelling proposed for the undivided lot after the prior structure was torn down at 17 Hudson Street was subject to review by the Somerville Historic Preservation Commission, and rejected by a 3-2 vote, notwithstanding the support of the neighbors. The accumulation of lot splits decided by Staff will change the character of neighborhoods without allowing for due process and undermine the distribution of land uses established in the SomerVision plan. There are many dimensions of environmental review that need to be considered with every lot split.

Mary Cassesso (member of the Somerville Affordable Housing Trust Fund and resident of 2 Bigelow Street) – stated that a project like this does not contribute to affordable housing in any way but adds many high-end units. The Council should have a chance to weigh in on this. In most communities, accessory dwelling units are intended to provide affordability on existing lots, not luxury housing.

Meredith Porter (104 Josephine Ave) – stated that he sees two major problems. One is with the word 'accessory'. His understanding was that backyard cottages were truly an accessory type of unit. The SZO clearly states that a backyard cottage is an accessory building type. There is no definition for 'accessory buildings' per se in the SZO, but there is a definition of accessory structure, and it seems entirely logical that the same interpretation should follow. Secondly, lot splits are being granted with no notice to anyone, not even to abutters. This is the way that the SZO is currently written. These lot split decisions are often not being recorded in the planning and zoning database. Developers are taking lots and splitting them into narrow pieces in order to pack buildings in. The approval of lot splits is definitely flawed and should be taken into account.

Joe Lynch (10 Henderson Street) – expressed concern regarding the current zoning code. If it is, indeed, in contra to Chapter 40A, the City faces a plethora of lawsuits. The attorney for the developer called attention to the fact that there are probably about three dozen of these already happening in the City. On behalf of the appellant, he asked that the Board not let the developer go any further. The Board has a right to put a stop work order on everything, or revoke the Building Permits, in order to get this settled before other neighbors get upset, hire an attorney, and everyone ends up in Land Court.

Bill Shelton (65 Boston Street) – stated that he does not understand how the Board can make a decision on this without revisiting the legislative intent of this ordinance. His recollection is that the central purpose of this ordinance was to support affordable housing. That is not what is being proposed on this lot.

Public testimony was left open at this time.

The Director of Planning, Preservation, & Zoning (PPZ) deferred all legal questions to the City attorney and compliance questions to the Inspectional Services Department (ISD) representative.

The Board asked which section of Chapter 40A the abutter's attorney is raising issue to. The attorney's narrative includes Section 7, which makes the most sense. The Board noted that the requirements for a backyard cottage are 1.5 stories, but the cross-section of the proposed building clearly shows three levels of living. There is an elevated foundation to allow for the three levels. ISD explained that the SZO lays out how to count stories. The ground story counts as a story. The ground story is the level of living of the structure that has a finished floor above the grade. This is labeled as first floor on the cross section. Habitable space located under a pitched roof is considered to be a half-story, as long as it meets certain requirements. One of which is that the roof rafters must intersect the exterior walls at a height of not more than 4' above the finished floor of the top story. Also, the ceiling height cannot be more than 12'. For basements, Section 2 talks about when a basement counts as a story. It states that, if the finished floor of the first floor is 5' or more above the average ground level of a lot, the basement counts as a story. The Board noted that this measurement appears to be approximately 4'.

The Board stated that it seems backyard cottages are not technically called accessory dwelling units (ADUs), because the State limits ADUs to 900 s.f., and states that they must be under the same ownership as the principal building. If this backyard cottage is proposed to become a condo and be sold as a separate property, it is unclear how this will be regulated. Also, it is unclear how this will be considered a split lot if, per Massachusetts regulations when two adjoining lots are owned in common ownership, they become automatically merged, and North American Development is developing both of the lots in question.

ISD explained that State law is specific in allowing a protected use ADU including certain requirements. Backyard cottages could potentially be built as a State protected use ADU. These two items, backyard cottages and ADUs, are separate items. The Board noted that the backyard cottage portion of the ordinance has no requirement that it be under the ownership of the principal dwelling unit. The Board stated that this seems to leave question as to if the ordinance is being interpreted correctly. Section 3.1.1.2. contains language about this being an accessory building type. It is unclear if allowing one to condo and sell an accessory unit is the right application of the rules.

ISD explained that per lot merger doctrine, in order for lots to be considered combined for zoning purposes, they need to meet some minimum zoning standards. Simply owning two lots next to each other does not automatically merge them.

The Director of PPZ explained that there was a specific reason not to call a backyard cottage an accessory dwelling unit, because the intention was not to tie it to ownership or family relations of any tenant or unit in the principal building. This has led to terminology confusion in the SZO with State law. The intention to correct this is part of the 5-Year Zoning Review Project. The passage of the State's new ADU law codified the term in State law and caused confusion. Somerville has always been more permissive than other communities, which typically only allow backyard cottages if owned in similar ownership as one of the units on the front of the property, or by a family member. As a community, Somerville decided it did not want to require that association and this was not included in the SZO at that time.

The Board asked about the total maximum square footage of what is being proposed. The developer's team stated that the maximum footprint is 576 s.f. This is allowed for the first floor, basement, and second floor, leading to a total of 1,728 s.f. The SZO does not stipulate a maximum total square footage for a backyard cottage. The proposed square footage of the backyard cottage is 1,398 s.f. The Board stated that the SZO dimensional table allows for a 576 s.f. max footprint, with 1.5 stories allowed. This totals 864 s.f. It is unclear if the basement does not count. ISD stated that the maximum is a 576 s.f. floor plate, which is a specifically defined term, as the total gross floor area of a single story of a building. In principle there could be 576 s.f. on one floor, with 1.5 stories. The footprint could go up or down if the basement does not count as a story. In this case, the basement does not count as a story.

The Board stated that, while the backyard cottage submitted does meet the regulations, it does not seem to be in keeping with the intentions of the scale of past backyard cottages.

The developer's team explained that the owner initially proposed a backyard cottage on both Lot A and Lot B. There were some issues regarding a tree on an adjacent property, and so the backyard cottage on the right-hand Lot B was removed. Currently, there is a primary structure and a backyard cottage proposed on Lot A, and a primary structure on Lot B. This totals three structures. The garage on the lot has been demolished.

The Board asked about which guidelines determine if a Site Plan Approval is minor or not. The Director of PPZ explained that the SZO contains sections for the ZBA and Planning Board, empowering each to establish rules for Minor Site Plan Approval. There is no language in Chapter 40A regarding how land is split, because State law has that in a different section. The City of Somerville was exempt as it filed a Home Rule Petition in the past. Both boards decided that lot splits, lot mergers, and lot line adjustments would be handled through Minor Site Plan Approval in early 2020. The ZBA was not asked to address land division in the prior SZO, but is the permit granting authority for the Neighborhood Residence (NR) and Urban Residence (UR) zoning districts. Thus, there was a need to establish a new power, similar to that of the Planning Board. There is a sentence at the very beginning of Article 2 of the SZO which states that any lot platted in the City must be compliant with one or more of the building types in the SZO. When someone seeks to divide their land, ISD checks to make sure that the platting is compliant with the dimensions of a lot for one of the building types permitted in that zoning district. As this is Site Plan Approval, there is no discretion for approving it. If it is compliant with the SZO, it gets an approval. Applicants have the right to pursue development activity to the extent that they wish, which can include splitting a lot and never building any buildings. The State Subdivision Control Act has a process called Approval Not Required (ANR). An ANR means that, if the lot meets the frontage requirements of 50', which could be smaller by a local zoning ordinance, and area requirements, then it must be approved. This process exists in every other community but Somerville, and so the City created a Site Plan Approval process. Chapter 40A does not regulate Site Plan Approval, otherwise known as Site Plan Review in other communities. If this plat was in front of the Board, it would be required to approve it and that does not mean that an applicant must tell the Board what they intend to build there. The purpose of the NR zoning district is to produce additional houses, triple-deckers, and backyard cottages, exactly as is being proposed.

The Board stated that there appears to be some wiggle room for backyard cottages, depending on how the dimensions come together. A lot split seems black and white. It either complies, or it does not. Owners are allowed to split at a certain minimum as long as this does not violate the minimum lot size. Thus, the Board may not need to review these, because Staff is compelled to approve them. It could be good to add public awareness regarding lot splits as a matter of transparency. The Director of PPZ explained that lot splits are filed with the City Clerk and so could be appealed. Staff's review only deals with what is being presented and not what could be done on the lot, as that would also have to comply with the NR zoning district requirements. Lot split information will be posted on the City website. There may be a public information campaign in the future.

The applicant team stated that, although the land plat exemption was granted, the old Board of Aldermen and the City Council passed an ordinance for Site Plan Review. They did not revoke that ordinance, and they did not repeal it. If someone intended to develop a lot, the City wanted to know what was being proposed because one would have the ability to construct more buildings than otherwise allowed if they had kept a 10,000 s.f. lot. This gave the Board the ability to massage things and listen to concerns. That ordinance is still in place. The applicant team stated that the City Council allowed for the Board to enact rules and regulations to deal with it, but the ordinance itself requires the development plan to be presented. Staff has removed the public notice process, which cannot be done. Chapter 40A applies once the City Council enacts zoning. They enacted the zoning for a lot split, including a number of requirements. This was never repealed. These requirements can only be amended by the City Council.

The Director of PPZ confirmed that the rules that were on the books prior to 2019 were completely repealed, and entirely new zoning was adopted on 12 December 2019.

The Board asked about the affordable housing requirements for the NR versus UR districts. The Director of PPZ explained that the SZO has changed since the version that was adopted in 2019. The 2019 version required Site Plan Approval for backyard cottages, and if there were more than three units on a lot, an affordable unit was required in the NR zoning district. This was repealed and backyard cottages were made by-right. Also, in passing the MBTA community strategy, the City allowed up to four units by-right on NR properties, with no affordable housing requirement. The Director of PPZ confirmed that backyard cottages are permitted by-right. There is no required accessory relationship to the principal building, or the tenants of the principal building. Its relationship is defined in Article 2 as accessory to the primary use of the lot, which is residential housing, and up to four units are permitted. The state passed their ADU law, which is likely on top of what the City Council has allowed in Somerville, and, in certain circumstances, people might be able to have a fifth unit.

The Board stated that, as the affordable requirement was repealed in the NR district, the lot split is irrelevant because it is in the NR district. The Director of PPZ agreed that any development in the NR zoning district does not have an affordable housing requirement. The UR zoning district still has an affordable housing requirement if a building with four or more units can be built. The Board noted that ADU is mentioned in the Staff Memo as being both affordable and accessory, which can be confusing.

Seeing no additional public comments at this time, Chair Fontano closed public testimony.

The applicant team stated that, regarding affordable housing, the Special Permit requirement, with regard to a land split, states that the total number of units being created before the split must be considered. Technically, in the NR district, seven units are being created for this project, which could require an affordable housing component. The problem is that the SZO was ambiguous as far as what happens in an NR district in terms of a lot split that contains more units put in than before.

The developer's attorney stated that her client has done nothing wrong and the Building Permit should be upheld.

Following a motion by Vice Chair Brockelman, seconded by Member Mobayed, the Board voted unanimously (6-0) to continue this case to 4 March 2026.

**RESULT:**

**CONTINUED**

*NOTICE: These minutes constitute a summary of the votes and key discussions at this meeting. A recording of these proceedings can be found online here: [Agendas, Minutes, & More.](#)*