

ADMINISTRATIVE APPEAL

Pursuant to Somerville Zoning Ordinance §15.5.2 and M.G.L. Chapter 40A, §8

Filed with the Somerville Zoning Board of Appeals

March 16, 2026

Appellant: Thomas Higdon

Appellant Address: 23 Avon ST, Somerville, MA 02143

Subject Property: 24 Berkeley St, Somerville, MA 02143

Property Owner: 24 BERKELEY ST LLC

Building Permit No.: B25-001643 and B25-001644

1. Decision Being Appealed

This appeal challenges the determination of the Building Commissioner that the minimum building separation distance specified in the Somerville Zoning Ordinance for the Backyard Cottage building type (§3.1.12) is preempted by the Massachusetts State Building Code (780 CMR) with respect to fire separation distance.

This determination was communicated to the Appellant by Josh Manion of the Inspectional Services Department via email on March 13, 2026. A copy of that correspondence is attached as Exhibit A.

As a result of this determination, a building permit for the construction of a Backyard Cottage at 24 Berkeley St. was issued and construction has proceeded, including the pouring of a concrete foundation, without compliance with the 10-foot minimum building separation distance required by the Zoning Ordinance.

2. Factual Background

The Appellant is the owner and occupant of the property at 23 Avon St, which is directly adjacent to and shares a rear lot line with the subject property at 24 Berkeley St. Both properties are located in the Neighborhood Residence (NR) zoning district.

The Appellant's property includes an accessory building located approximately 2 feet from the rear lot line. The property owner at 24 Berkeley St. is constructing a Backyard Cottage pursuant to §3.1.12 of the Zoning Ordinance. The foundation of the Backyard Cottage, as constructed, is located approximately 7 feet from the Appellant's accessory building, resulting in a building separation distance of approximately 7 feet between the two structures.

The building permit plans for the Backyard Cottage identify a building separation distance of 10.1 feet, but this measurement is taken to the principal building on the subject property's own lot—not to the Appellant's accessory building on the abutting lot. The Inspectional Services Department has acknowledged this in its correspondence.

Prior to the pouring of the foundation, on the evening of Tuesday March 10, the Appellant notified the Inspectional Services Department of the apparent violation with photographic evidence and measurements, and separately notified, on the morning of Friday March 13, the property owner in writing (via text message) that the building separation requirement appeared to be violated. The foundation was poured after all parties had been notified of the issue on the afternoon of Friday, March 13. The owner of the property is 24 BERKELEY SOMERVILLE LLC, with agent and manager Paul Fombelle. The conversation was with Paul Fombelle. Screenshots of the text messages are attached as Exhibit C.

3. Grounds for Appeal

3a. The Zoning Ordinance unambiguously requires a 10-foot building separation distance from structures on abutting lots.

Section 3.1.12 of the Zoning Ordinance specifies a minimum Building Separation of 10 feet for the Backyard Cottage building type.

Section 2.4.3 (Building Placement – Standards & Measurements) defines how building separation is measured and explicitly provides:

“Any principal or accessory building must be separated from any other principal or accessory building on the same lot or on an abutting lot by the building separation distance specified for each building type.”

This language is unambiguous. The 10-foot building separation requirement applies to the Appellant's building, which is an accessory building on an abutting lot. The measured distance of approximately 7 feet does not comply.

3b. The Zoning Ordinance governs where it is more restrictive than other regulations.

The Building Commissioner's determination rests on the premise that the Massachusetts State Building Code (780 CMR) preempts the Zoning Ordinance with respect to building separation. This is incorrect as a matter of law and as a matter of the Ordinance's own provisions.

Section 1.1.8 of the Zoning Ordinance (Conflicting Provisions) provides:

“Where the provisions of this Ordinance impose a greater restriction than required by other ordinances, regulations, resolutions, rules, easements, covenants, or agreements, the provisions of this Ordinance apply.”

The State Building Code regulates fire separation distance as a construction standard—governing *how* buildings are constructed (e.g., fire-rated walls, materials, sprinkler systems). The Zoning Ordinance regulates building separation as a dimensional and placement standard—governing *where* buildings may be located on a lot. These are complementary, not conflicting, regulatory frameworks. Compliance with both is required.

To the extent that the Building Code’s fire separation distance permits a lesser distance than the Zoning Ordinance’s building separation requirement, the Zoning Ordinance is the more restrictive standard and governs pursuant to §1.1.8.

Furthermore, M.G.L. Chapter 40A does not provide for preemption of local zoning dimensional standards by the State Building Code. The Building Code and Zoning Ordinance operate in parallel, and a building permit must comply with both.

3c. The permit plans did not evaluate building separation to the abutting lot.

The building permit plans identify a building separation distance of 10.1 feet measured to the principal building on the same lot. The plans do not appear to evaluate the building separation distance to the Appellant’s accessory building on the abutting lot, despite the Ordinance’s explicit requirement to do so. The Zoning Compliance Certificate, if issued, was therefore based on an incomplete analysis of the applicable dimensional standards.

4. Relief Requested

The Appellant respectfully requests that the Zoning Board of Appeals:

- a. Reverse the Building Commissioner’s determination that the State Building Code preempts the Zoning Ordinance’s building separation requirement;
- b. Find that the Backyard Cottage at 24 Berkeley St. does not comply with the minimum building separation distance required by §3.1.12 as defined by §2.4.3 of the Zoning Ordinance;
- c. Order that construction of the Backyard Cottage be stayed pending compliance with the Zoning Ordinance; and
- d. Grant such other and further relief as the Board deems appropriate.

5. Exhibits

Exhibit A: Email correspondence with the Inspectional Services Department, including the Building Commissioner’s determination and the Appellant’s response.

Exhibit B: Photographs and measurements documenting the building separation distance between the Appellant’s accessory building and the Backyard Cottage foundation, with dates and timestamps.

Exhibit C: Text messages to the property owner and contractor notifying them of the zoning violation prior to the foundation pour.

Exhibit D: Relevant excerpts from the Somerville Zoning Ordinance (§1.1.8, §2.4.3, §3.1.12).

Respectfully submitted,

Thomas Higdon
23 Avon St.
Somerville, MA 02143

[REDACTED]
[REDACTED]

Date: 3-16-2026

EXHIBIT A



3/15/26, 2:13 PM Gmail - 24 Berkeley St. (B25-001643): possible zoning violation, ongoing construction at

Thomas Higdon [redacted]

24 Berkeley St. (B25-001643): possible zoning violation, ongoing construction at 4 messages

Thomas Higdon [redacted] Tue, Mar 10, 2026 at 11:08 PM To: ISD Emails <isd@somervillema.gov>

B25-001643 is for the construction of a backyard cottage at 24 Berkeley St. The plans for this permit specify a building separation of 10.1ft. In the zoning ordinance, the minimum building separation for a backyard cottage to another building in this district (NR) is 10ft, if I understand correctly (3.1.7 - Building Setbacks - E).

The contractor has built forms for a foundation. When measured parallel from the face of the exterior wall of my accessory building on the rear abutting lot at 23 Avon St, the inner wall of the forms are about 83 inches from my building. I believe this is less than the 10ft specified in the zoning ordinance, and would definitely be a violation, once built. Any eventual exterior wall would be even closer than 83 inches.

I've pictured my measurements. My tape measure is 3.5 inches, and shows 79.5 inches from the form to my outer wall, for a total of 83 inches.

Thomas Higdon [redacted] Tue, Mar 10, 2026 at 11:13 PM To: ISD Emails <isd@somervillema.gov>



measurements

20260310_222800.jpg
2494K



20260310_222752.jpg
1366K

Joshua Manion <jmanion@somervillema.gov> Fri, Mar 13, 2026 at 1:49 PM To:

[REDACTED]
Cc: ISD Zoning <isdzoning@somervillema.gov>, Peter D'Agostino <pdagostino@somervillema.gov>, Al Bargoot <abargoot@somervillema.gov>, Kelly Como <kcomo@somervillema.gov>

Good afternoon,

<https://mail.google.com/mail/u/0/?ik=3e67fbb7f8&view=pt&search=all&permthid=thread-a:r-7798800067578738261&simpl=msg-a:r5970807190493650268&simpl...> 1/3

3/15/26, 2:13 PM Gmail - 24 Berkeley St. (B25-001643): possible zoning violation, ongoing construction at

Thank you for bringing this to our attention - I reviewed the building permit documents and discussed this matter with our team, and have the following feedback:

The building separation distance of 10.1' noted in the plans appears to be identifying the distance between the Backyard Cottage and the Principal Building on the lot, not between the Backyard Cottage and the accessory structure at the rear of 23 Avon.

That being said, the Building Commissioner had determined that the building separation provision in the zoning ordinance was preempted by the Building Code, in which building separation distance is regulated by minimum fire separation distance. I will need to defer to the building inspectors on the specifics of those requirements, but my understanding is that this development proposal complies with the relevant Building/Fire Code requirements. Otherwise, the situs of the proposed Backyard Cottage complies with the relevant setback requirements, which call for a minimum rear setback of 3'.

Please feel free to reach out should you have any further questions on this.

Thanks,

Josh Manion
Sr. Zoning Review Planner
Inspectional Services

City of Somerville Public Records Notice

Please be advised that the Massachusetts Attorney General has determined that email is a public record unless the content of the email falls within one of the stated exemptions under the Massachusetts Public Records Laws.

From: Kelly Como <kcomo@somervillema.gov>
Sent: Wednesday, March 11, 2026 7:06 AM
To: ISD Zoning <isdzoning@somervillema.gov>

Cc: Peter D'Agostino <pdagostino@somervillema.gov>; Al Bargoot <abargoot@somervillema.gov> **Subject:** FW: 24 Berkeley St. (B25-001643): possible zoning violation, ongoing construction at

Thank you

Kelly Como

City of Somerville

Inspectional Services Division

Inspectional Services Liaison

[1 Franey Road](#)

[Somerville, MA 02145](#)

617-625-6600 ext 5606

617-666-2624 Fax

From: Thomas Higdon [REDACTED]
Sent: Tuesday, March 10, 2026 11:13 PM
To: ISD Emails <isd@somervillema.gov>
Subject: Re: [24 Berkeley St. \(B25-001643\)](#): possible zoning violation, ongoing construction

at

<https://mail.google.com/mail/u/0/?ik=3e67fbb7f8&view=pt&search=all&permthid=thread-a:r-7798800067578738261&simpl=msg-a:r5970807190493650268&simpl...> 2/3

3/15/26, 2:13 PM Gmail - 24 Berkeley St. (B25-001643): possible zoning violation, ongoing construction at **This**

email is from an external source. Use caution responding to it, opening

attachments or clicking links.

attached are my measurements

[Quoted text hidden]

City of Somerville Public Records Notice

Please be advised that the Massachusetts Attorney General has determined that

email is a public record unless the content of the email falls within one of the stated exemptions under the Massachusetts Public Records Laws.

Thomas Higdon [REDACTED] Fri, Mar 13, 2026 at 3:29 PM To: Joshua Manion <jmanion@somervillema.gov>
Cc: ISD Zoning <isdzoning@somervillema.gov>, Peter D'Agostino <pdagostino@somervillema.gov>, Al Bargoot <abargoot@somervillema.gov>, Kelly Como <kcomo@somervillema.gov>

Hello,

Thanks for your response.

According to 1.1.8b of the Zoning Ordinance: "Where the provisions of this Ordinance impose a greater restriction than required by other ordinances, regulations, resolutions, rules, easements, covenants, or agreements, the provisions of this Ordinance apply."

Therefore, because the zoning ordinance imposes a greater restriction than the building code here, it would override it.

To be more precise on the zoning ordinance language, the Somerville Zoning Ordinance 2.4.3.b.i states: Any principal or accessory building must be separated from any other principal or accessory building on the same lot or on an abutting lot by the building separation distance specified for each building type.

So the "Building Separation" is meant to include distance from structures on abutting lots, not just ones on the same lot.

If I understand correctly, the under-construction backyard cottage must conform to the Building Separation in the zoning ordinance for Backyard Cottages (3.1.12), which specifies a Building Separation of 10ft.

So I think if the backyard cottage does not have a separation of 10ft from the accessory building on my abutting lot, then it violates the zoning ordinance.

The building separation between the under-construction forms and the accessory building on my lot is 7ft, not 10ft. Therefore I think it would violate the zoning ordinance. And since this the zoning ordinance is more strict than the building/fire code, as you mentioned, it would override it.

[Quoted text hidden]

EXHIBIT B

Photographs taken Tuesday Mar 10, 2026. Measurements from the foundation forms prior to the concrete pour.

Measurement from the edge of the forms to my accessory building (grey siding on the right) are approximately 83 inches. 79.5 inches + 3.5 inch tape measure = 83 inches.



Measurement from the edge of the forms to the fence shows 58 inches.



EXHIBIT C

Screenshots taken Sunday March 15 of conversation with Paul Fombelle, manager and resident agent of 24 BERKELEY SOMERVILLE, LLC, occurring Friday March 13 from 9:37am to 9:48am.

2:14

73



Fombelle



Friday • 9:37 AM

RCS chat with Fombelle

Hey, I noticed at the construction site at 24 Berkeley that the foundation forms are up for the cottage. I think where they are currently placed, the wall for the cottage won't meet the minimum 10ft distance to my garage under the zoning ordinance. You want to verify this before pouring any concrete.

We had it measured 3x

By professionals

All approved and reviewed by city

You measured on site?

2:14 [📷] [📶] [🔋] [🔊] [🔇]

[📶] [🔋] [73]



Fombelle



By professionals

All approved and reviewed by city

You measured on site?

Yes - by a surveyor

Which has crazy strict over site

City has inspected and approved multiple times already

I measured with my tape measure, and the distance from my garage to the edge of the form is 84 inches.

Please stay off the construction site.

You can't go over there

I was able to measure it without entering the site.



9:48 AM [🔒]

EXHIBIT D

1.1.8 Conflicting Provisions

- a. a.
This Ordinance does not abrogate, annul, or otherwise interfere with any easement, covenant, or other private agreements.
- b. b.
Where the provisions of this Ordinance impose a greater restriction than required by other ordinances, regulations, resolutions, rules, easements, covenants, or agreements, the provisions of this Ordinance apply.
- c. c.
All development activity must comply with relevant Federal and State law and regulations. Where the provisions of this Ordinance imposes a greater restriction than required by Federal or State law, the provisions of this Ordinance apply unless otherwise prohibited by law.

2.4.3 Building Placement

- a. b.
Building Separation
 - i. i.
Any principal or accessory building must be separated from any other principal or accessory building on the same lot or on an abutting lot by the building separation distance specified for each building type.

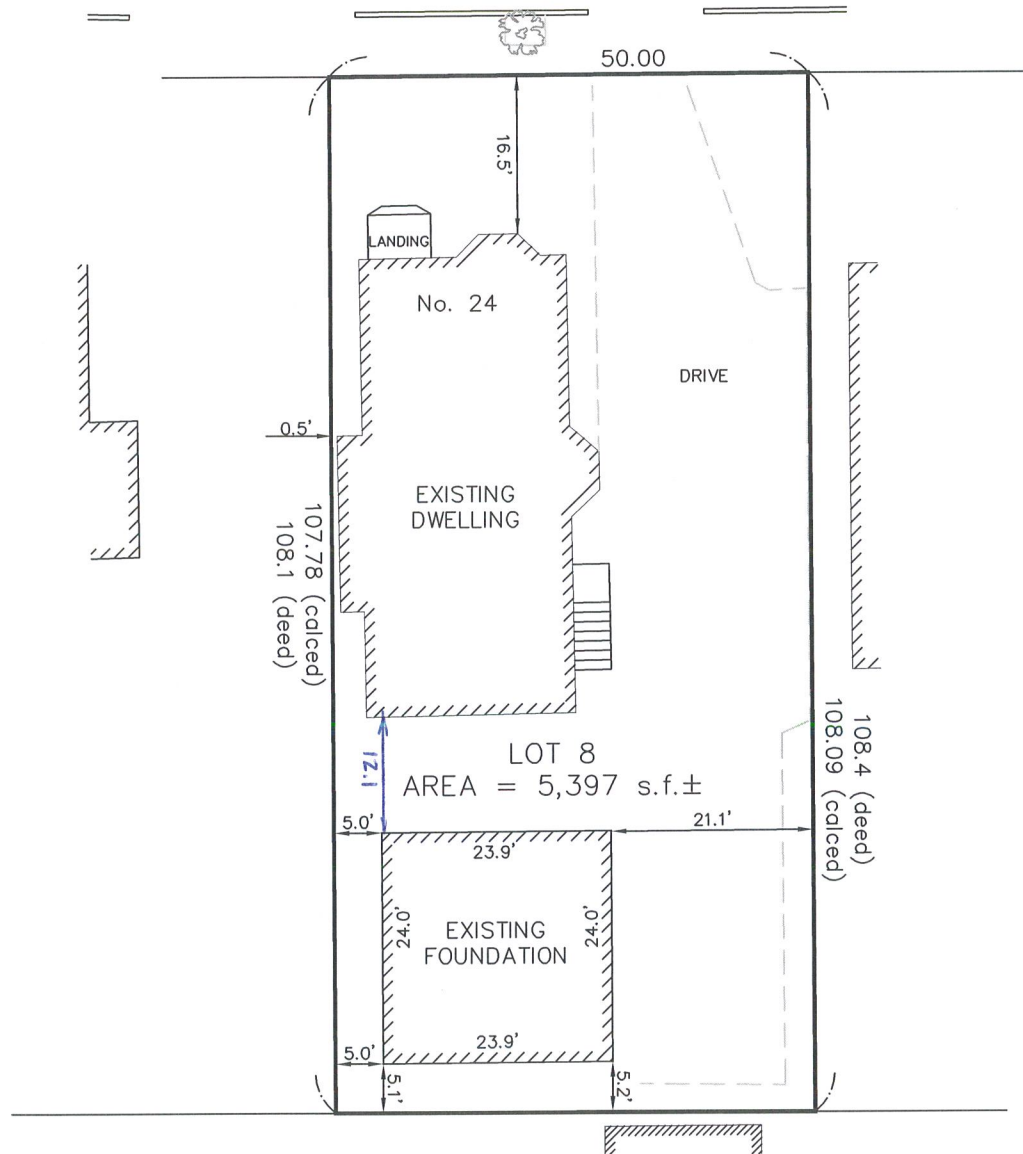
3.1.12 Backyard Cottage

b. Building Placement

Building Setbacks	
A Primary Front <u>Setback</u> (min/max)	60 ft
B Secondary Front Setback (min/max)	10 ft
C Side Setback (min)	3 ft
E Rear Setback (min)	3 ft
Alley	3 or 20 ft
No alley	3 ft
E <u>Building Separation</u> (min)	10 ft



BERKELEY STREET



CURRENT OWNER: 24 BERKELEY SOMERVILLE LLC
 TITLE REFERENCE: BK 83971 PG 215
 PLAN REFERENCE: BK 1238 PG END

THIS PLAN WAS PREPARED WITHOUT A FULL TITLE EXAMINATION AND IS NOT A CERTIFICATION TO THE TITLE OF THE LANDS SHOWN. THE OWNERSHIP OF ABUTTING PROPERTIES IS ACCORDING TO ASSESSORS RECORDS. THIS PLAN MAY OR MAY NOT SHOW ALL ENCUMBRANCES WHETHER EXPRESSED, IMPLIED OR PRESCRIPTIVE.

SURVEYOR'S CERTIFICATION:

TO: 24 BERKELEY SOMERVILLE LLC

I CERTIFY THAT THIS PLAN AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE GENERALLY ACCEPTABLE PRACTICES OF LAND SURVEYORS IN THE COMMONWEALTH OF MASSACHUSETTS FOR A PLAN AND SURVEY OF THIS TYPE. THIS CERTIFICATION IS MADE ONLY TO THE ABOVE NAMED INDIVIDUAL(S) AND IS NULL AND VOID UPON ANY FURTHER CONVEYANCE OF THIS PLAN.

THE FIELD WORK WAS COMPLETED ON: APRIL 28, 2025
 DATE OF PLAN: MAY 5, 2025
 DATE OF PLAN: MARCH 26, 2026 (FND AS-BUILT)

RICHARD J. MEDE, JR. P.L.S.

03/26/2026

DATE:



AS-BUILT PLOT PLAN
 24 BERKELEY STREET
 SOMERVILLE, MA.
 (MIDDLESEX COUNTY)

PREPARED BY:

MEDFORD ENGINEERING & SURVEY
 ANGELO B. VENEZIANO ASSOCIATES
 15 HALL STREET, MEDFORD, MA 02155
 781-396-4466 fax: 781-396-8052

PREPARED FOR:
 FOMBELLE

DRAWN CAV	CHECKED RJM	FILE No. 22638
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