



City of Somerville

ZONING BOARD OF APPEALS

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

TO: Zoning Board of Appeals
FROM: Planning, Preservation, and Zoning (PPZ) Staff
SUBJECT: 24 Berkeley Street, ZP26-000037
POSTED: May 18, 2026

RECOMMENDATION: Deny (Uphold ISD's Decision)

Staff memos are used to communicate background information, analysis, responses to public comments, review of statutory requirements and other information from Planning, Preservation, & Zoning (PPZ) Staff to the Review Board members.

This memo summarizes the Administrative Appeal submitted for 24 Berkeley Street, identifies any additional discretionary or administrative development review that is required by the Somerville Zoning Ordinance, and provides related analysis or feedback as necessary. The application was deemed complete on May 4, 2026, and is scheduled for a public hearing on May 20, 2026. Any Staff-recommended findings, conditions, and decisions in this memo are based on the information available to date prior to any public comment at the scheduled public hearing.

LEGAL NOTICE

Thomas Higdon seeks an Administrative Appeal of the Building Official's issuance of Building Permits B25-001643 and B25-001644.

SUMMARY OF PROPOSAL, GROUNDS FOR APPEAL

Thomas Higdon is an abutter within 300 feet of the property at 24 Berkeley Street. Hereafter, the party shall be referred to as the "Appellant." The property at 24 Berkeley Street, owned by 24 Berkeley Somerville LLC., is the subject of the appeal.

The Appellant alleges that the Building Permits for 24 Berkeley Street (B25-001643 and B25-001644), to construct a backyard cottage in the NR zoning district, issued by the Inspectional Services Department (ISD) on December 15, 2025 (B25-001643) and December 17, 2025 (B25-001644), were wrongly granted and should be revoked.

The Appellant alleges that the Inspectional Services Department (ISD) should not have approved the building permits on the basis of the following claims:

1. The Zoning Ordinance unambiguously requires a 10-foot building separation distance from structures on abutting lots. SZO 3.1.12.
2. The Zoning Ordinance governs where it is more restrictive than other regulations.
3. The permit plans did not evaluate building separation to the abutting lot.

These allegations are fully described in the Appellants' Narrative (attached) and accompanying documents and are summarized in the Analysis section of this Staff Memo. As abutters within 300 feet of the property, the Appellants have standing to file this Administrative Appeal.

Permitting Timeline:

12/15/25 – B25-001643 Build up permit issued

12/17/25 – B25-001644 Foundation permit issued

3/3/26 – Foundation passes footings inspection

3/10/26 – Abutter emailed ISD alleging violation

3/12/26 – Foundation passes inspection

3/13/26 – ISD responded via email that it was not in violation

3/18/26 – Foundation passes waterproofing inspection

3/25/26 – Appeal filed with the ZBA

BACKGROUND

24 Berkeley Street is located in the Neighborhood Residential (NR) zoning district in the Spring Hill neighborhood represented by Ward 3 Councilor Ben Ewen-Campen. An Administrative Appeal is a petition to rectify a failure to act, denial of a permit, decision made, or enforcement action taken by the Building Official or Director of Planning, Preservation, & Zoning in an administrative development review case when an alleged error or misinterpretation has been made in the enforcement or application of provisions of this Ordinance. The Zoning Board of Appeals is the decision-making authority for all administrative appeals. A concurring vote of at least four members of the board is necessary to reverse the decision of the Building Official.

ANALYSIS

In the submitted Narrative, the Appellant contends that the development at 24 Berkeley Street, currently in receipt of a Building Permit and under construction, is not compliant with the Somerville Zoning Ordinance. The Narrative lists and describes the perceived zoning violations. This memo addresses each of these arguments briefly, then directs the ZBA to the attachments for details. This memo only addresses arguments that are included in the Narrative. The subject of the appeal is separation between the backyard cottage at 24 Berkeley Street and the structure at the rear of 23 Avon Street.

The Appellant contends the following for grounds for appeal in their narrative:

1. *The Zoning Ordinance unambiguously requires a 10-foot building separation distance from structures on abutting lots. SZO 3.1.12.*
2. *The Zoning Ordinance governs where it is more restrictive than other regulations.*
3. *The permit plans did not evaluate building separation to the abutting lot.*

These claims are not applicable to the validity of the Building Permits issued, and the Board need not address each claim individually due to the following:

The 10ft separation in SZO 3.1.12 is not applicable to accessory structures, which include, but are not limited to, structures such as garages, chicken coops, pergolas, gazebos, and pools.

According to the Somerville Zoning Ordinance, buildings are regulated as principal buildings, accessory buildings, or accessory structures (SZO 2.3.1.a). The Backyard Cottage is the only building classified by the Ordinance as an 'Accessory Building' and is regulated by SZO 3.1.12. Outbuildings, such as garages, are classified as 'Accessory Structures', and are regulated by SZO 10.2.

Per permitting records (B17-001896), the outbuilding located at the rear of 23 Avon is identified as a garage and is therefore classified as an accessory structure, not a Backyard Cottage accessory building type. As per SZO 2.4.3.b.i, building separation is applicable to principal buildings and accessory buildings - accessory structures are excluded from the text of this section, therefore building separation is not applicable to accessory structures regulated by SZO 10.2.

The appellant would need to file building permits to convert their existing outbuilding into a backyard cottage, which would then need to comply with all minimum setback requirements to trigger building separation distance on 24 Berkeley St.

CONSIDERATIONS & FINDINGS

For this Administrative Appeal petition, the ZBA must vote to either (1) deny the Administrative Appeal and uphold the Building Official's decision to issue Building Permits B25-001643 and B25-001644 at 24 Berkeley Street, or (2) approve the Administrative Appeal and overturn the Building Official's decision to issue the Building Permits for 24 Berkeley Street. The effect of the latter would be to rescind or suspend the Building Permits at 24 Berkeley Street.

When considering the facts of the case, the ZBA should consider whether errors have been made by the granting authority (the Building Official) and whether there is sufficient evidence to approve the Administrative Appeal and overturn the Building Official's decision.

M.G.L. ch.40A, Section 15 states that the ZBA must clearly state its reasoning within any motion to either uphold ISD's decision or overturn ISD's decision and must clearly

set forth the reason for its decision and for its official actions. Lastly, if the ZBA votes to overturn the Building Official's decision, clear findings must be made related to any procedural or interpretation-related errors identified by the ZBA.

When considering the facts of the case and the Application, the ZBA should consider whether errors have been made by the granting authority (the Building Official) and whether there is sufficient evidence to approve the Administrative Appeal and overturn the Building Official's decision.