

Administrative Appeal

Somerville Zoning Board of Appeals

Appellant: Thomas Higdon

May 20, 2026

Facts

- At 23 Avon St, there is a 1.5-story barn located approximately 1.6 feet from the rear lot line.
 - This is a pre-existing building that was there when the Appellant purchased the property and appears in historical records (1900 Sanborn Map).
 - It is used for vehicular parking, a workshop, storage, and as a home gym.
- The property owner at 24 Berkeley St. – the rear abutter – is constructing a Backyard Cottage pursuant to §3.1.12 of the Zoning Ordinance.
- The wall of the under-construction Backyard Cottage, as measured parallel from the northerly edge of the 23 Avon St. rear building, is located approximately 6.5 feet from the Appellant's building.

Barn
building



Barn
building



Barn building
and rear fence











ZONING DIMENSIONAL TABLE - DISTRICT: NR BACKYARD COTTAGE		ALLOWED REQUIRED	EXISTING	PROPOSED	COMPLIANCE
A	LOT WIDTH (min)	---	---	---	---
	No Driveway Access	32 ft	N/A	N/A	N/A
	Side or Rear Driveway Access	32 ft	N/A	N/A	N/A
	Front Driveway Access	34 ft	80 ft	50 ft	CONFORMS
B	LOT COVERAGE (max)	60 %	64 %	62.5 %	EXISTING NON-CONFORM
C	GREEN SCORE (min)	---	---	---	---
	Minimum	0.35	---	0.405	CONFORMS
	Ideal	0.40	---	---	CONFORMS
D	PRIMARY FRONT SETBACK (min/max)	60 ft	---	78.5 ft	CONFORMS
E	SECONDARY FRONT SETBACK (min/max)	10 ft	---	N/A	N/A
F	SIDE SETBACK (min)	3 ft	---	5 ft	CONFORMS
G	REAR SETBACK (min)	3 ft	---	5 ft	CONFORMS
	No Alley	3 ft	---	N/A	N/A
H	BUILDING SEPARATION (min)	10 ft	---	10.1 ft	CONFORMS
I	BUILDING WIDTH (max)	24 ft	---	24 ft	CONFORMS
J	BUILDING DEPTH (max)	32 ft	---	24 ft	CONFORMS
K	FLOOR PLATE (max)	676 sf	---	676 sf	CONFORMS
L	STORY HEIGHT (max)	12 ft	---	9.1 ft	CONFORMS
M	NUMBER OF STORIES (max)	1.5	---	1.5	CONFORMS
N	ROOF TYPE	Flat, Gable	---	Gable	CONFORMS
O	GROUND STORY FENESTRATION (min/max)	---	---	---	CONFORMS
	Residential Use	15% / 50%	---	21 %	CONFORMS
	Vehicular Parking	0% / 50%	---	N/A	N/A
P	UPPER STORY FENESTRATION (min/max)	15% / 50%	---	19 %	CONFORMS
Q	DWELLING UNITS (max)	1	---	1	CONFORMS

7'-0"
B. COT. SIDE SETBACK

3'-0"
B. COT. SIDE

5'-0"
REAR SETBACK

12'-0"
AREAWAY 4" ABOVE GRADE (INCLUDED IN LOT COVERAGE) SEE SHEET A-100 FOR DETAIL.

9'-0"
4'-0" WIDTH
PROPOSED BACKYARD COTTAGE
FOUNDATION PERMIT #B25-001844
BUILDING PERMIT #B25-001843

25'-0" DEPTH

ENTRY CANOPY

5'-0"
SIDE SETB





LEGEND

Search



Choose a measurement mode



Direct Distance

27.28 ft

Horizontal Distance

27.27 ft

Vertical Distance

0.32 ft

Legend

Regulatory Layers

Parcel - Zoning Districts

Overlay Districts

Transit Areas

Pedestrian Streets

Local Historic Districts

National Register Historic Properties

Residential Parking Permit Restriction

Planning Layers



BUFFER



PRINT



ADDRESS MAPPING



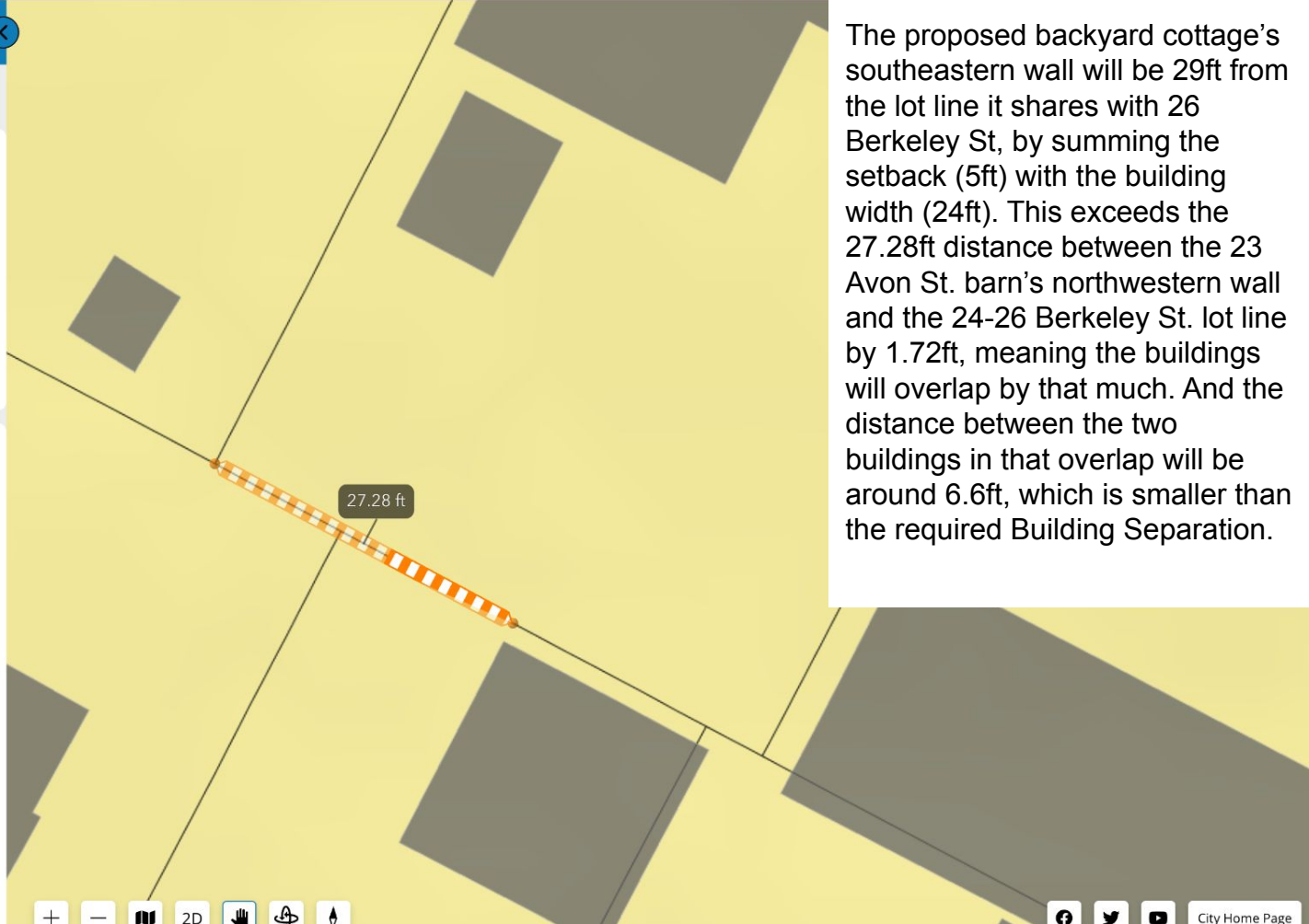
LAND USE LOOKUP



DISTRICT SUMMARY



PARCEL SUMMARY



The proposed backyard cottage's southeastern wall will be 29ft from the lot line it shares with 26 Berkeley St, by summing the setback (5ft) with the building width (24ft). This exceeds the 27.28ft distance between the 23 Avon St. barn's northwestern wall and the 24-26 Berkeley St. lot line by 1.72ft, meaning the buildings will overlap by that much. And the distance between the two buildings in that overlap will be around 6.6ft, which is smaller than the required Building Separation.



City of Somerville | Zoning Atlas

LEGEND

SEARCH

Choose a measurement mode

MEASURE

Direct Distance	Horizontal Distance
1.60 ft	1.60 ft
Vertical Distance	
0.05 ft	

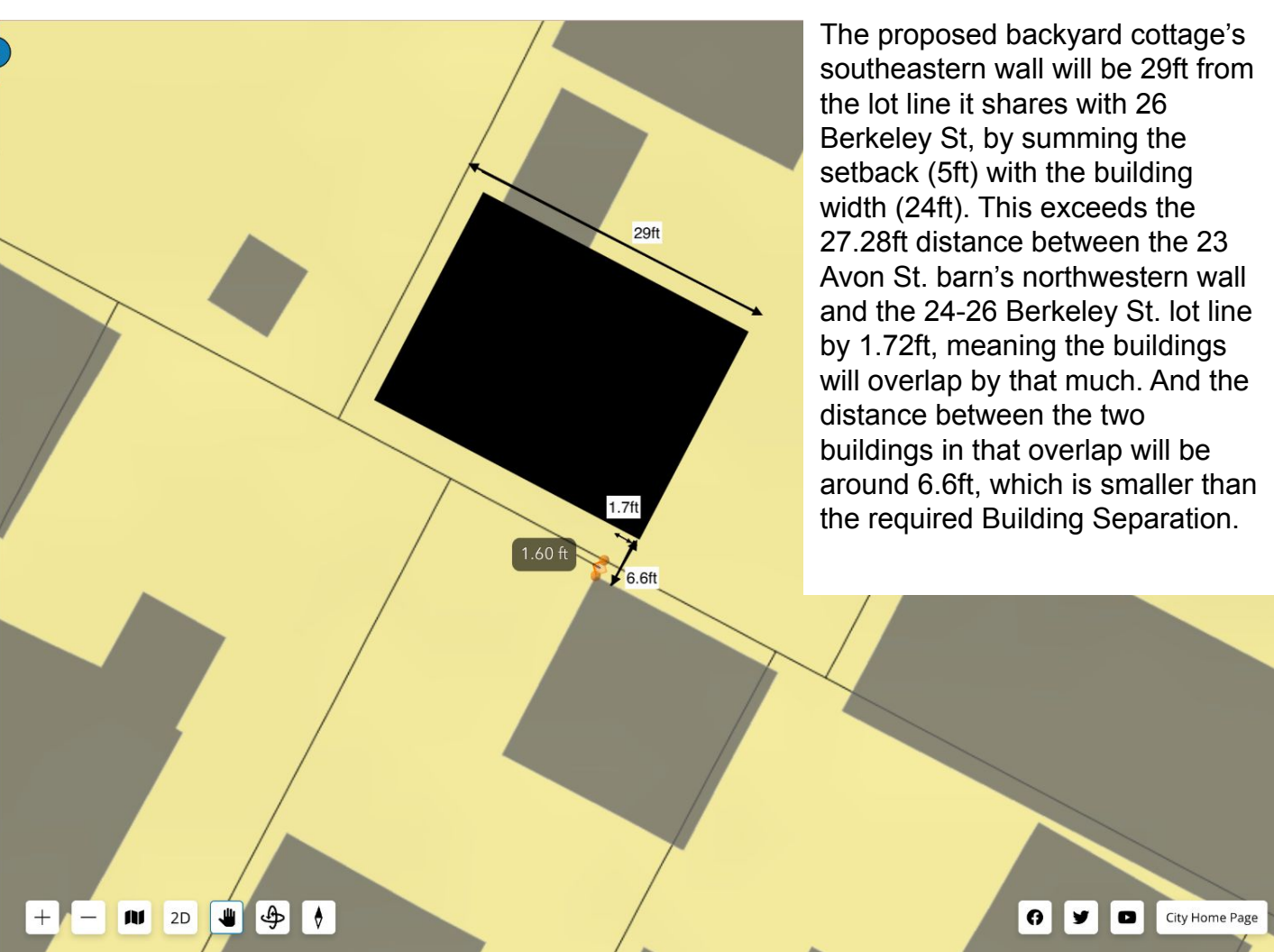
Legend

Regulatory Layers

- Parcel - Zoning Districts
- Overlay Districts
- Transit Areas
- Pedestrian Streets
- Local Historic Districts
- National Register Historic Properties
- Residential Parking Permit Restriction

Planning Layers

- City Limit



The proposed backyard cottage's southeastern wall will be 29ft from the lot line it shares with 26 Berkeley St, by summing the setback (5ft) with the building width (24ft). This exceeds the 27.28ft distance between the 23 Avon St. barn's northwestern wall and the 24-26 Berkeley St. lot line by 1.72ft, meaning the buildings will overlap by that much. And the distance between the two buildings in that overlap will be around 6.6ft, which is smaller than the required Building Separation.





Appellant's position

- The barn at 23 Avon St. is regulated by the SZO as an **accessory building of the Backyard Cottage type**, not an accessory structure.
- It therefore receives the Building Separation treatment in the ordinance from other principal and accessory buildings.
- The 6.5ft distance from the barn to the new backyard cottage at 24 Berkeley violates the Building Separation distance, because 6.5 ft is less than the 10ft minimum.

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

Accessory building vs Accessory structure

From ISD:

“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.”

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

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.

Accessory structure

p. Outbuilding

A free-standing, fully-enclosed structure used for accessory vehicle parking, a home occupation, or as ancillary space for residential principal use including, but not limited to, a playroom for children. The following standards apply:

- i. Outbuildings must be set back at least twenty (20) feet from any front lot line.
- ii. Where an improved alley is available, vehicular access to the outbuilding must take place from the alley.
- iii. An outbuilding may be up to twelve (12) feet in height.
- iv. An outbuilding must be set back a minimum of three (3) feet from any side or rear lot line unless constructed of fireproof materials.

Accessory structure

Section 2.3.1.a establishes three exclusive categories: "This Ordinance regulates structures as either principal buildings, accessory buildings, or accessory structures." The rear building at 23 Avon Street is not a principal building. It must therefore be classified as either an accessory building or an accessory structure. **The choice between these classifications is not a matter of preference but of fit against the standards that define each category.**

Against the §3.1.12 Backyard Cottage accessory building type, the barn satisfies every dimensional standard that defines the type's character: floor plate (within the 576 sf maximum), stories (within 1.5), story height (within 12 ft), roof type (gable permitted), dwelling units (within the maximum of 1), and use (among these, vehicular parking, one of the four enumerated "typical" uses for the type). It conforms to the type's primary front setback (60 ft minimum, with the barn at ~70 ft) and to the type's building separation requirement from the principal building on the lot (10 ft minimum, with the barn at more than 10 ft from the principal residence). It is nonconforming as to side and rear setbacks (3 ft minimum) — placement standards that Article 14 (Nonconformance) protects.

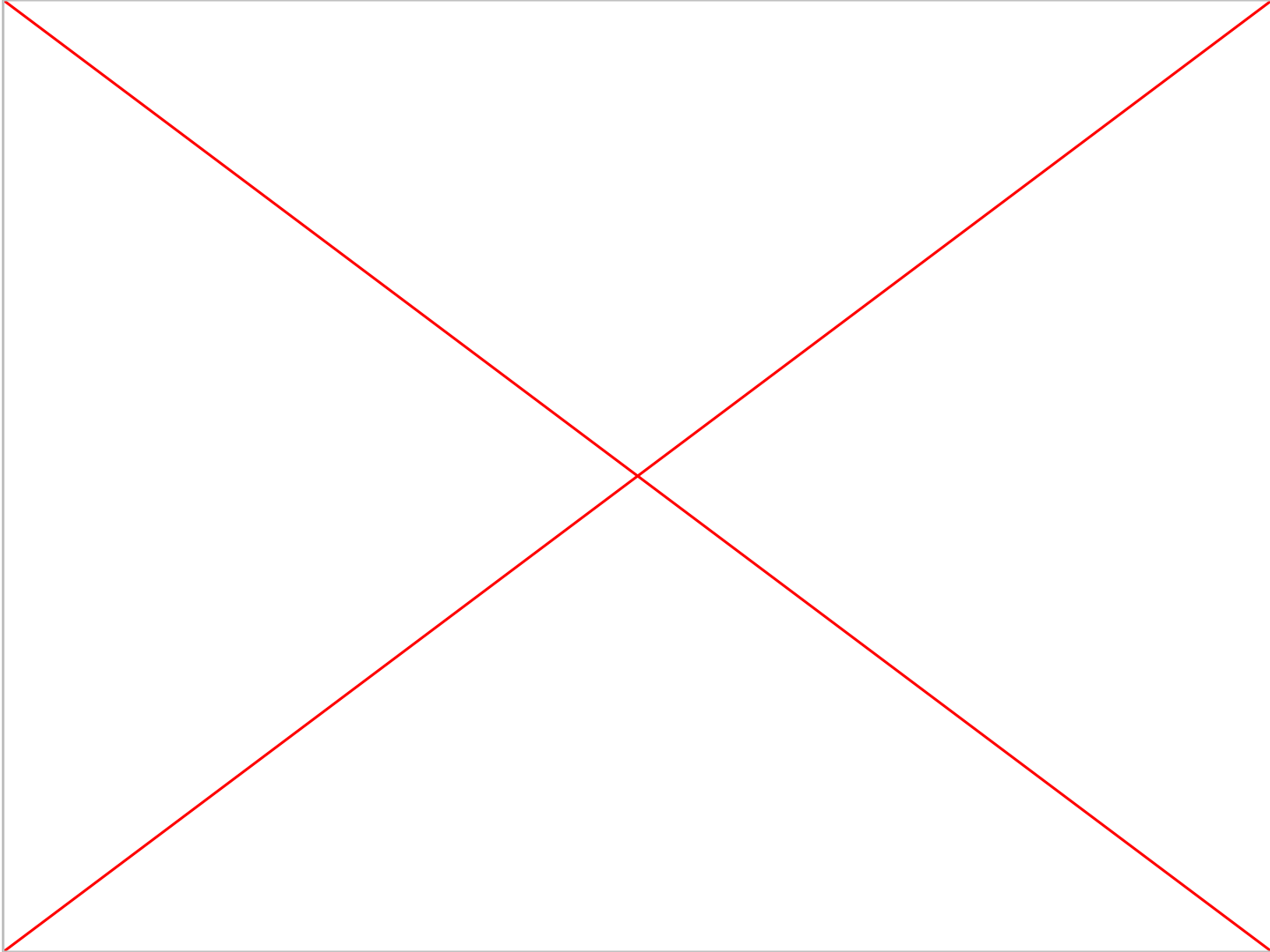
Accessory structure

Against the §10.2.2.p Outbuilding accessory structure category, the barn fails the category's defining dimensional standards. The Outbuilding category caps height at 12 ft (§10.2.2.p.iii); the barn is 17 ft.

The Accessory Structures section (§10.2.2) contemplates at most single-story structures, with height limits between 8-12ft. The barn is a 1.5 story building, not within a framework that the Accessory Structure category addresses.

The barn should **not** be classified as a “non-conforming Outbuilding”. In the case of the Outbuilding type, the non-dimensional specifications are so general that without them, the type becomes meaningless. If a building exceeds the Outbuilding’s height cap, then it can’t be termed an Outbuilding.

Standard	Outbuilding (§10.2.2.p)	Backyard Cottage (§3.1.12)	23 Avon Barn
CHARACTER STANDARDS			
Height	≤12 ft (implied ≤1 story) ❌	≤12 ft/story; ≤1.5 stories ✓	17 ft total, 1.5 stories
Floor plate (max)	None specified	≤576 sf ✓	~300 sf (City GIS)
Roof type	None specified	Flat or Gable ✓	Gable
Dwelling units (max)	None specified	≤1 ✓	0
Use	Vehicle parking, home occupation, ancillary residential	"Typically dwelling, home occupation, playhouse, or vehicular parking" ✓	Workshop, gym, storage, vehicular parking
Free-standing, fully enclosed	Required ✓	Implicit ✓	Yes
PLACEMENT STANDARDS			
Primary front setback (min)	≥20 ft ✓	≥60 ft ✓	~70 ft
Side setback (min)	≥3 ft ❌	≥3 ft ❌	<3 ft (Article 14 protects)
Rear setback (min)	≥3 ft ❌	≥3 ft ❌	<3 ft (Article 14 protects)
Building separation from principal	None specified	≥10 ft ✓	>10 ft
RESULT	Fails character standards (height, stories) — outside the category	Meets all character standards; nonconforming only on placement (Article 14)	Properly classified as Backyard Cottage accessory building type



Accessory structure

Accessory structures are not defined explicitly in the ordinance. Therefore we must depend on the the list of accessory structure types defined in §10.2.2 – **a closed list**. There is no language describing other types of accessory structures, or a more general category of accessory structure outside of the permitted ones in that list. These are the only permitted types of accessory structures; therefore, **any pre-existing building that does not fit in this set is not an accessory structure**. The definition of accessory building – “A building or structure designed, used, or occupied in relation to the principal use(s) of a given lot.” is much more general, and clearly admits the barn at 23 Avon St.

Faced with two potential classifications under §2.3.1.a, the barn **fits the defining standards of one (Backyard Cottage) and exceeds the defining boundaries of the other (Outbuilding)**. Both classifications would carry the same placement nonconformities, protected equally by Article 14. **The classification that fits is Backyard Cottage building type accessory building.**

Accessory building vs Accessory structure

3.1.12 Backyard Cottage

*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.*

The rear building at 23 Avon St. is a small floor plate, detached, accessory building used for vehicular parking, among other uses. This is included as one of the “typical” uses for Backyard Cottages as defined in the SZO.

Accessory structure

“Accessory structures are generally outbuildings, garages, things that are – you wouldn’t consider to be a habitable space or to be used for a dwelling unit.” – Statement of Josh Manion, Inspectional Services Department, 17 Hudson Street Hearing (ZP25-000094), Somerville Zoning Board of Appeals, February 4, 2026, at 1:08:04.

The accessory building at 23 Avon is, in fact, used for habitable space. In addition to use for vehicle storage, and as a workshop space, it is used as a home gym on the second floor, with drywall, residential vinyl windows and molded baseboards.

Therefore, according to ISD’s own interpretation of the SZO, the barn at 23 Avon would **not** be classified as an accessory structure. It must therefore be classified as an accessory building.

Accessory building vs Accessory structure

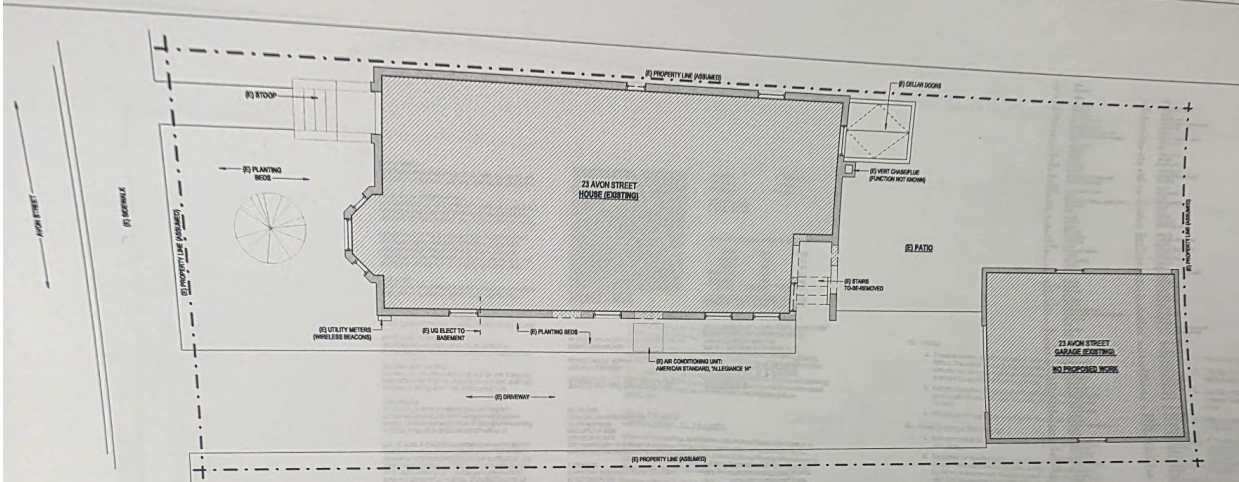
“Per permitting records (B17-001896), the outbuilding located at the rear of 23 Avon is identified as a garage and is therefore classified as an accessory structure, not a Backyard Cottage accessory building type.”

B17-001896 is a permit from 2017 to renovate the first level of the principal residential building on the lot. The rear building at 23 Avon is only referred to as a garage incidentally as it was included peripherally in the architectural drawings, by the architect of the previous owner.

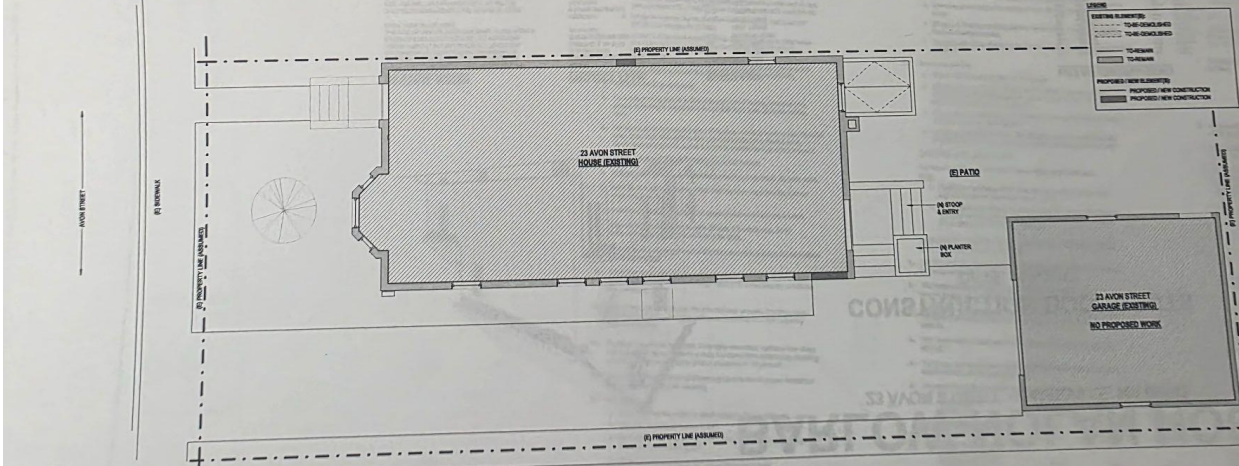
The permit is from before the current zoning code regime was in force in 2019 – before “accessory structures” and “accessory buildings” were defined – and has no bearing on how the current building should be regulated in the current zoning code.

Even if it were – “garage” is not defined in the SZO. If we here define a garage as an enclosed building used for vehicular storage, then it’s in fact a defined typical use of an accessory building, as it’s defined in the current SZO – “3.1.12 Backyard Cottage - 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.”

In the SZO, 8.3.5(j) even refers to “the installation of accessory buildings such as garages” – contemplating an accessory building that is in fact a garage.



1 SITE PLAN - EXIST-DEM0
A0.2 1/4" = 1'-0"



1 SITE PLAN - PROPOSED
A0.2 1/4" = 1'-0"

LEGEND

(Hatched)	EXISTING (AS SHOWN)
(Dashed)	TO BE DEMOLISHED
(Stippled)	TO BE CONSIDERED
(Solid)	TO REMAIN
(Diagonal Lines)	PROPOSED - NEW ELEMENTS
(Cross-hatched)	PROPOSED - NEW CONSTRUCTION
(Vertical Lines)	PROPOSED - NEW CONSTRUCTION

HOLDING
GROUP
ARCHITECTS, LLC

23 AVON STREET
SOMERVILLE, MA 02143

BARLOW-NOLAN HOUSE
23 AVON STREET
SOMERVILLE, MA 02143

PROJECT # 1648
CONSTRUCTION DOCUMENTS
DATE: 10/20/2017

SITE PLAN

A0.2

CAROLINE NOLAN & BENJAMIN BARLOW

23 AVON STREET
GARAGE (EXISTING)
NO PROPOSED WORK

The drawing shows a rectangular area filled with diagonal hatching, representing an existing garage. The text is centered within this area. To the right of the hatched area, there is a dashed line with a cross at its end, and a vertical label '(E) FRONT' is positioned above it. The entire drawing is on a light-colored background with some faint lines and markings.

Accessory structure

“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.”

Classification of a structure under §2.3.1.a is determined by application of the SZO's textual criteria to the structure's actual physical and use characteristics — not by the filing of permits. The appellant is not required to file new permits to establish what the structure already is under the ordinance, nor to trigger conformance with the SZO Building Separation requirements in §2.4.3.b

The statement presupposes that the building is an “outbuilding” accessory structure type, which it is not, due to the lack of fit for that structure in §10.2.2

Accessory structure

21 Francesca Avenue (P&Z 23-001) — May 17, 2023

In this Administrative Appeal, the Applicant is challenging the Building Official's classification of the carriage barn sited at the rear of 21 Francesca Avenue as an Outbuilding which is an Accessory Structure building type. Instead, the Applicant contends that the structure is an existing Backyard Cottage building type with some non-conforming features and dimensions. An Accessory Building building type and an Accessory *Structure* building type are two different classifications in the SZO.

- Same legal question: Outbuilding accessory structure or Backyard Cottage accessory building type
- Same SZO framework (§2.3.1.a, §3.1.12, §10.2.2.p)
- Same ISD position: rear-yard structure classified as Outbuilding accessory structure
- Same dimensional issue of the barn exceeding the height limit of the defined Outbuilding in §10.2.2.p
- **Outcome: Board upheld the appeal, overturning ISD 5-0, classifying it as a Backyard Cottage**

"...the character of the building more closely resembling an accessory building; the character of the building, as a whole, does not sufficiently match the definition of an accessory structure; the building dimensions are more appropriate to an accessory building (Backyard Cottage)"

— Motion adopted unanimously by Somerville ZBA, 17 May 2023

Accessory structure

21 Francesca Avenue (P&Z 23-001) — May 17, 2023

Any existing building might present some non-conformities for the building type for which it is currently classified. The Building Official (ISD) must classify any building, including non-conforming ones, to the closest applicable Building Type category that applies to the on-the-ground conditions.

– Planning, Preservation & Zoning Staff
21 Francesca Ave. Staff Memo
April 27, 2023

PPZ made no recommendation in the Francesca memo

Accessory structure

21 Francesca Avenue (P&Z 23-001) — May 17, 2023

Dimension	Required	Existing
Side Setback (left)	3.0'	1' 10"
Rear Setback	3.0'	1' 8"
10-foot Building Separation (from carriage barn to garage on 17-19 Francesca)	10.0'	7' 1"
Maximum Building Width	24.0'	42' 5"
Maximum Floor Plate	576 sf	975 sf
Roof Type	Gable or Flat	Hip (this is not a "gable" roof as stated in the Applicant's zoning chart) there is a small dormer with a gable roof – this does not count toward the roof type. The main roof is a Hip roof which is not a form that is permitted.

Accessory structure

21 Francesca Avenue (P&Z 23-001) — May 17, 2023

Standard	21 Francesca Carriage House	23 Avon Barn
CHARACTER STANDARDS		
Height	28.2ft ✓	17 ft ✓
Floor plate (max)	975sf ✗	~300 sf ✓
Roof type	Hip ✗	Gable ✓
Dwelling units (max)	0 ✓	0 ✓
Use	Not in active use	Workshop, gym, storage, vehicular parking ✓
Free-standing, fully enclosed	Yes ✓	Yes ✓
PLACEMENT STANDARDS		
Side/rear setback (min)	<3 ft ✗	<3 ft ✗
Building separation from principal	7.1ft ✗	>10 ft ✓
RESULT	ZBA classified as Backyard Cottage on May 17, 2023	Correctly classified as a Backyard Cottage



Measure Area



Search

Search Sales

Search Results

Layers

Measure Tools

Tools:

Units:

0.00

Select a tool to measure distance, area, or get location coordinates.

To measure distance, click at the start location to begin measuring. Continue to click at each location along your measure line to add distances to your total measured distance. Double click in the map to stop measuring.

To measure area, click at a location to begin measuring. Continue to click at each corner of your measure polygon to calculate the total area. Double click in the map to stop measuring.

To get coordinates of a location, simply click in the map with the location tool activated.

Abutters

Print

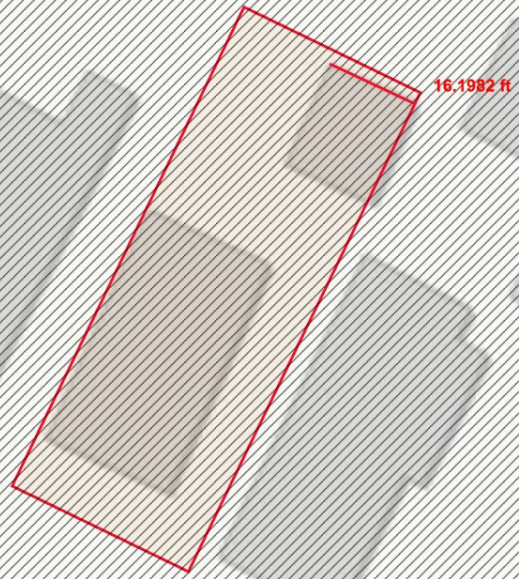


AVON





Measure Distance



AVON ST

Search

Search Sales

Search Results

Layers

Measure Tools

Tools:

Units:

16.1982 ft

Select a tool to measure distance, area, or get location coordinates.

To measure distance, click at the start location to begin measuring. Continue to click at each location along your measure line to add distances to your total measured distance. Double click in the map to stop measuring.

To measure area, click at a location to begin measuring. Continue to click at each corner of your measure polygon to calculate the total area. Double click in the map to stop measuring.

To get coordinates of a location, simply click in the map with the location tool activated.



Measure Distance

Search

Search Sales

Search Results

Layers

Measure Tools

Tools:

Units: Feet

18.7175 ft

Select a tool to measure distance, area, or get location coordinates.

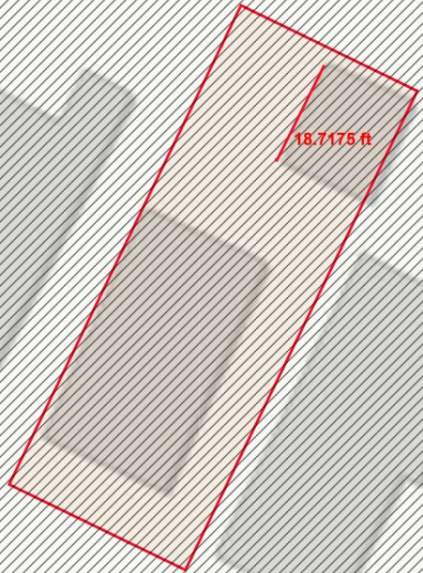
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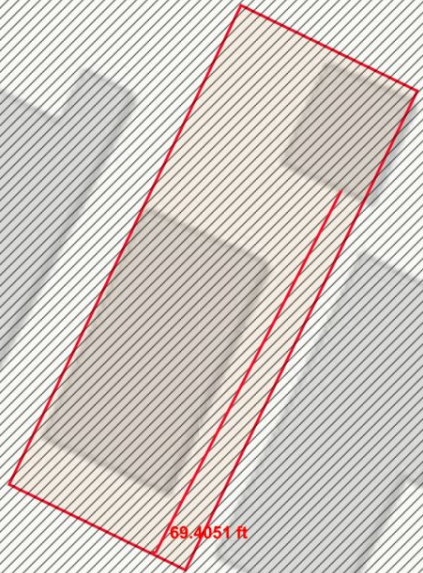
Abutters

Print





Measure Distance



69.4051 ft



Search

Search Sales

Search Results

Layers

Measure Tools

Tools:

Units:

69.4051 ft

Select a tool to measure distance, area, or get location coordinates.

To measure distance, click at the start location to begin measuring. Continue to click at each location along your measure line to add distances to your total measured distance. Double click in the map to stop measuring.

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Abutters
Print





Building code preemption of the Zoning Ordinance

- “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.”

The building code does **not** preempt the Somerville Zoning Ordinance.

Building code preemption of the Zoning Ordinance

- **3a. The Zoning Ordinance unambiguously requires a 10-foot building separation distance from buildings 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.”*

Building code preemption of the Zoning Ordinance

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.

Building code preemption of the Zoning Ordinance

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.

FIN