



City of Somerville

# ZONING BOARD OF APPEALS

City Hall 3<sup>rd</sup> Floor, 93 Highland Avenue, Somerville MA 02143

**TO:** Zoning Board of Appeals  
**FROM:** Planning, Preservation, & Zoning (PPZ) Staff  
**SUBJECT:** 92r Orchard Street, ZP24-000078, ZP25-000041, ZP25-000042  
**POSTED:** April 10, 2026

**RECOMMENDATION:** None

Staff memos are used to communicate background information, analysis, responses to public comments, review of statutory requirements and other information from PPZ staff to the Review Board members.

This memo summarizes the three (3) Hardship Variance requests submitted for 92r Orchard 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 applications were deemed complete on March 23, 2026, and are scheduled for a public hearing on April 15, 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(S)

Bennie Ber, d/b/a NehKooDah seeks relief from SZO Section 10.2.2.d, regarding the number of cars permitted per carport, which requires a Hardship Variance.

Bennie Ber, d/b/a NehKooDah seeks relief from SZO Section SZO 10.2.2.d.iii , carport height limitations, which requires a Hardship Variance.

Bennie Ber, d/b/a NehKooDah seeks relief from SZO Section 14.1.7.b.ii, regarding further reducing nonconforming landscape and permeable area, which requires a Hardship Variance.

## SUMMARY OF PROPOSAL

Applicant Bennie Ber is proposing to construct a suspended car canopy on the rear of the property. The proposed carport would require three Hardship Variances for (1) the number of cars, (2) the height, and (3) for further reducing nonconforming landscape and permeable area of the lot. The relief needed from each of the relevant SZO sections is described below.

Relief from SZO Section SZO 2.4.3.d.v is required placement of the heat pump, which is proposed as 9 inches from the side lot line. Under carports are limited to occupancy by

two cars. Here, the applicant is proposing a carport that is intended to be occupied by four cars.

Relief from SZO Section 10.2.2.d.ii is required for the height of the proposed car port. Under this section of the SZO, the maximum permitted height of a car port is 12'. Here, the applicant is requesting relief to allow a suspended car port structure that measures 18' in height.

Relief from SZO Section 14.1.7.b.ii is required for further reducing the nonconforming landscape and permeable area and increasing the lot size. Under Section 3.1.8.c., the maximum permitted lot coverage is 60%. Lot coverage is calculated by dividing the total footprint area of all structures and impervious surface on the lot by the total area to get a percentage. The existing lot coverage is 67.8%, which is already non-conforming. The applicant is proposing to increase this nonconformity by increasing the lot coverage to 70.7%.

## **BACKGROUND**

92r Orchard Street is located in the Neighborhood Residential (NR) zoning district in the Davis Square neighborhood represented by Ward 6 Councilor Lance Davis. Following the Board's decision regarding the three (3) Hardship Variances, the proposal will be by-right. The Zoning Board of Appeals is the decision-making authority for all (non-variance) discretionary or administrative permits required for the NR zoning district.

## **ANALYSIS**

The applicant is requesting relief for the construction of a carport that will require three (3) Hardship Variances. The carport requires three (3) Hardship Variances for relief from:

1. SZO Section SZO 10.2.2.d regarding the number of cars permitted in the car port. A maximum of two cars are permitted and the applicant is proposing a carport that will accommodate four cars.
2. SZO Section 10.2.2.d.ii regarding the height of the carport. The maximum permitted height is 12' and the applicant is proposing a height of 18'.
3. SZO Section 14.1.7.b.ii regarding increasing a pre-existing landscape and permeable area non-conformity. Section 3.1.8.c., the maximum permitted lot coverage is 60%. The existing lot coverage is 67.8% and the applicant is proposing to increase this nonconformity by increasing the lot coverage to 70.7%.

PPZ Staff does not believe special circumstances exist relating to the soil conditions, shape, or topography of a parcel of land or the unusual character of the subject property and the existing structure regarding the first Hardship Variance criterion. In the narrative, the applicant states that the this particular placement of the heat pump is necessary due to the limited space available on the lot and the fact that this placement

is able to accommodate the longer line required to reach the third floor, as this heat pump is specifically intended to be utilized by the third story unit.

Generally, PPZ Staff does not provide analysis or recommendations concerning the existence of actual hardship, financial or otherwise, regarding the second Hardship Variance criterion. The Applicant provides an argument for the second criterion in their Narrative.

Upon analysis of the material submitted by the Applicant, PPZ Staff do not believe that the granting of the requested hardship variances would cause a substantial detriment to the public good or nullify or substantially derogate from the intent and purpose of the NR, copied here:

#### Intent

- To implement the objectives of the Comprehensive Plan of the City of Somerville.
- To conserve already established areas of detached and semi-detached residential buildings.

#### Purpose

- To permit the development of one-, two-, and three-unit detached and semi-detached residential buildings on individual lots.
- To permit contextual modifications to existing detached and semi-detached residential buildings.
- To permit the adaptive reuse of certain existing nonconforming buildings for arts & creative enterprise and retail uses compatible with residential areas.
- To create dwelling unit types, sizes, and bedroom counts ideal for larger households in houses, Semi-Attached Houses, Duplexes, and Triple Deckers.
- To create dwelling unit types, sizes, and bedroom counts ideal for smaller households in Cottages and Backyard Cottages.

Additionally, PPZ Staff believes that granting the requested hardship variances would support the broader intent of the Somerville Zoning Ordinance, including, but not limited to, the following:

- To provide distinct physical habitats at different scales, including the lot, block, and neighborhood, so that meaningful choices in living arrangement can be provided to residents with differing physical, social, and emotional needs.
- To provide a range of housing types, unit sizes, and price points to accommodate the diverse household sizes and life stages of Somerville residents at all income levels.
- To preserve and enhance the existing character of Somerville's traditional housing and respect existing built form and development patterns.

Massachusetts courts have stated that variances will naturally deviate from the intent and purpose of a zoning ordinance to some degree and that the discretionary approval of a variance is defensible if the deviation is not substantial or significant in comparison to the intent and purpose for the district in appraising the effect of the proposal on the

entire neighborhood, including future impacts and other development approved or denied in the general vicinity of the development site.

## **CONSIDERATIONS & FINDINGS**

In accordance with the Somerville Zoning Ordinance, the Zoning Board of Appeals may grant a Hardship Variance only upon deliberating and finding all of the following at the public hearing for each requested variance:

### Hardship Variance Considerations

1. Special circumstances exist relating to the soil conditions, shape, or topography of a parcel of land or the unusual character of an existing structure but not affecting generally the NR zoning district in which the land or structure is located;
2. Literal enforcement of the provision of this Ordinance for the district where the subject land or structure is located would involve substantial hardship, financial or otherwise, to the petitioner or appellant, Bennie Ber, d/b/a NehKooDah, due to said special circumstances; and
3. Desirable relief could be granted without causing substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the NR district in this Ordinance or the Ordinance in general.

## **PERMIT CONDITIONS (ZP24-000078)**

Should the Board approve the required Hardship Variance for the number of cars in the carport, PPZ Staff recommends the following conditions:

### Validity

1. This Decision must be recorded with the Middlesex South Registry of Deeds.
2. The relief granted in this decision is valid only for the currently proposed placement of four cars in the carport. Any increase in the non-conformity of the number of cars in the carport will require additional relief.

### Public Record

3. A digital copy of the recorded Decision stamped by the Middlesex South Registry of Deeds must be submitted to the Planning, Preservation, & Zoning Division for the public record.

## **PERMIT CONDITIONS (ZP25-000041)**

Should the Board approve the required Hardship Variance for carport height limitations, PPZ Staff recommends the following conditions:

### Validity

1. This Decision must be recorded with the Middlesex South Registry of Deeds.

2. The relief granted in this decision is valid only for the currently proposed carport height of 18'. Any increase in the non-conformity of the carport height will require additional relief.

Public Record

3. A digital copy of the recorded Decision stamped by the Middlesex South Registry of Deeds must be submitted to the Planning, Preservation, & Zoning Division for the public record.

**PERMIT CONDITIONS (ZP25-000042)**

Should the Board approve the required Hardship Variance to reduce the nonconforming landscape and permeable area, PPZ Staff recommends the following conditions:

Validity

1. This Decision must be recorded with the Middlesex South Registry of Deeds.
2. The relief granted in this decision is valid only for the currently proposed lot coverage increase to 70.7%. Any increase in the non-conformity of the lot coverage will require additional relief.

Public Record

3. A digital copy of the recorded Decision stamped by the Middlesex South Registry of Deeds must be submitted to the Planning, Preservation, & Zoning Division for the public record.