



City of Somerville

ZONING BOARD OF APPEALS

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

DECISION

PROPERTY ADDRESS: 24 Berkeley Street
CASE NUMBER: ZP26-000037
OWNER: 24 Berkeley Somerville LLC
OWNER ADDRESS: 24 Berkeley Street, Somerville, MA 02143
APPLICANT: Thomas Higdon
APPLICANT ADDRESS: 23 Avon Street, Somerville, MA 02143
DECISION: Denied (Administrative Appeal)
DATE OF VOTE: June 17, 2026
DECISION ISSUED: July 1, 2026

CITY CLERK'S OFFICE
SOMERVILLE, MA

2026 JUL - 1 A 11: 32

This decision summarizes the findings made by the Zoning Board of Appeals (the "Board") regarding the Administrative Appeal application submitted for 24 Berkeley Street.

LEGAL NOTICE

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

RECORD OF PROCEEDINGS

May 20th, 2026

On May 20th, 2026, the Zoning Board of Appeals held a public hearing advertised in accordance with M.G.L. 40A and the Somerville Zoning Ordinance. Present and sitting at the public hearing were Board Members Chair Susan Fontano, Vice-Chair Anne Brockelman, Ann Fullerton, Olivia Mobayed, Clerk Zachary Zaremba, and Alternate Sisia Daglian.

The Appellant, Thomas Higdon, gave a presentation summarizing his perceived grounds for appeal and evidence. Higdon claims his barn should be re-classified as a backyard cottage, contrary to the Inspectional Services Department's (ISD) current classification of the building which is listed as an accessory structure. Chair Fontano had questions about the relevance of the portion of the presentation about the classification of the structure on his property rather than the building on the subject property at 24 Berkeley St. The Appellant then presented his opinions and interpretation regarding the building code and the Somerville Zoning Ordinance standards.

Following no public comment, the property owners of 24 Berkeley St, Paul and Gina Fombelle, were then promoted to speak. The property owners noted that they worked with the Inspectional Services Department (ISD) for several months to make the project zoning complaint. The owners worked with Joshua Manion at ISD and went back in

forth to confirm they were in compliance with all zoning and building codes. Building permits were issued in December, and the full backyard cottage is almost completely constructed. Paul Fombelle stated the project has been inspected multiple times, and they have followed all policies and codes. The property owners at 24 Berkeley stated they did not have time to consult legal counsel or properly prepare for the meeting, and they would like to request this item be continued to the next meeting. Board members then asked for clarification on dimensions and several documents presented by the Appellant. Board member Brockleman noted there was little overlap between the structure on 23 Avon and backyard cottage on 24 Berkeley.

Staff noted that the presentation by the Appellant was not provided to the Board or staff prior to the meeting, and ISD was unable to attend the meeting to speak to the presentation. Board member Mobayed questioned whether the accessory structure at 23 Avon could be reclassified by ISD to a backyard cottage. This was noted as a question regarding zoning compliance that would need to be redirected to ISD. Several Board members stated they would not be prepared to vote on the matter without further explanation from ISD about the classification of buildings, how they are classified, the history of the property's previous building permits, and zoning codes at the time the structure at 23 Avon was classified. The Board determined they would like to continue the item so their questions directed to ISD could be answered prior to voting.

The Appellant, Thomas Higdon, expressed concern regarding the time frame this item would be heard within and the legal specifications of the process. Staff noted they would have to get back to the Board with the answers to these specific questions. There was discussion amongst staff and the Board on which date the item could be continued and June 17, 2026, was chosen as the preferred date. The Appellant then stated he would prefer the item not be continued. Chair Fontano informed Mr. Higdon that Board members are not prepared to vote given the current information they have on the case. The Appellant then agreed to have the item continued to June 17, 2026. Clerk Zac Zarembo made a motion for the item to be continued to the June 17th meeting, seconded by Alternate Sisila Daglian.

The Board voted 5-0 to continue the item to June 17th.

June 17th, 2026

On June 17th, 2026, the Board resumed the public hearing. Adam Dash, representing Paul and Gina Fombelle of 24 Berkeley Somerville LLC, gave an overview of his client's position on the appeal. Dash explained this was an appeal of ISD's determination relating to two building permits issued on December 15 and 17, 2026 for the construction of a backyard cottage at 24 Berkeley St. Dash continued by noting that the appeal from March was appealing the Building Commissioner's determination that the minimum building separation between the backyard cottage and the garage at 23 Avon had been met according to building code. He continued that the narrative presented June 2, 2026, stated it was appealing the classification of Higdon's garage as an accessory structure, which was not within the parameters of the appeal. Dash stated

that issues about the misclassification of buildings on other properties, including Mr. Higdon's property at 23 Avon Street, are irrelevant and not before the Board tonight.

Dash claimed Mr. Higdon did not appeal the building permits within the 30-day timeline. Dash continued by claiming Mr. Higdon did not seek to reclassify his garage at 23 Avon as anything other than an outbuilding in the past, such that the current accessory structure outbuilding classification stands. He noted his clients relied on the approval from ISD and issuances of building permits to construct the backyard cottage. As far as the timeline is concerned, Dash alleged Mr. Higdon informed his clients he had pulled the drawings of the project in January and work continued on the project from January through March 2026. Dash further claimed that time the appeal was filed, March 10, 2026, was after the 30-day appeal period.

Dash stated the building at 23 Avon is designated as an accessory building, taxed as an accessory building, and meets the definition within the ordinance. Dash agreed that ISD's classification was correct and reiterated that Higdon, the Appellant, has not attempted to reclassify his garage. Dash stated no evidence has been presented by the Appellant showing that the construction of this backyard cottage would negate public interest in any way and that the Appellant is not aggrieved by this in any way. Dash continued by stating that revoking his client's backyard cottage building permits would cause huge harm to his clients by forcing them to remove a mostly constructed backyard cottage done under valid building permits due to an appeal filed about 3 months after the permit's issuance.

Following Dash's argument, the Appellant was then permitted to speak. He asked the Board if all members that were not in attendance at the last meeting, went through the proper avenues to be prepared for this meeting, The Board confirmed all members were provided materials and their signed affidavits. Board members Anne Fulerton and Brian Cook stated they were not in attendance at the May 20, 2026, meeting but were prepared and submitted the proper paperwork, including signed affidavits.

There were then questions from the Board to the City of Somerville's Legal representative, David Shapiro, on how long the Appellant would be permitted to present. Shapiro said the Appellant should be given the same amount of time that the property owner had to present, but it is at the Board's discretion to request he not be repetitive. Chair Fontano informed the Appellant that they were provided with all of his materials including his presentation from the May meeting and opened the meeting for him to speak.

The Appellant, Thomas Higdon, began presenting a rebuttal argument to previous claims made by Attorney Adam Dash. Higdon stated he disagrees with Mr. Dash and ISD's classification of the building on his property and that the assessors' records indicate there is no outbuilding at 23 Avon, but a garage with livable space above. He stated there was no avenue for him to reclassify his garage and that the reclassification should have been done before the permits were granted for the backyard cottage at 24 Berkeley. Higdon claimed ZBA should reclassify his garage according to their

interpretation of the ordinance. He claims the building separation requirements being contemplated by this appeal are in the public interest as proper separation protect light, air, and neighborhood character for abutters and the public. He claimed construction continued at 24 Berkeley after the appeal was filed and claimed most of the money spent was after they were notified of the appeal. The Appellant claimed he did meet the 30-day timeline requirement because the documents provided by the building department did not show the Appellant's alleged 'violation.' He stated ISD's written refusal on March 13, 2026, started the 30-day clock and claimed he was timely.

Adam Dash then rebutted by showing the City Accessors determination on their website listing the structure at 23 Avon St as a finished garage (FGR). He stated the original appeal that was filed in this case was for building separation, not the classification of the building at 23 Avon, so the reclassification is not relevant. Dash stated that contrary to the Appellant's claim, there are several applications and avenues through the City's website and ISD for a property owner to reclassify their building. He continued by stating with the City's form-based code, all buildings have to be classified, regardless of the knowledge of that classification. He stated there is no public harm or public interest in the building separation. Dash responded to a claim from the Appellant which stated most of the work on the project had been done after they had been notified on the appeal. Dash claimed this is false and that his clients had to address safety concerns before pausing construction, and the work the Appellant is referencing is on the main house at 24 Berkeley, which is irrelevant to the appeal.

Members of the Board asked for clarification on dimensional standards which were answered by Joshua Manion from ISD. Board members noted the structure at 23 Avon and the backyard cottage at 24 Berkeley are staggered, not blocking any windows, or causing a detriment to the Appellant's property. The Board discussed what documents Mr. Higdon was provided by ISD and clarification of these documents. The Board then asked Joshua Manion what was communicated to Mr. Higdon as a justification for the location of the backyard cottage at 24 Berkeley.

Joshua Manion responded by saying there was a brief conversation with Mr. Higdon where they discussed the separation issue between the two buildings. Manion noted they discussed that a specific regulatory requirement would be preempted by building code, which regulates fire and building code separation. Manion continued by saying his response to Mr. Higdon, after having the opportunity to go back and speak with the zoning reviewer who reviewed the permit, indicated that there did not appear to be any conflict with the building separation and no backyard cottage existed at 23 Avon based on the material review and what the City's GIS classification system has on file.

The Appellant then claimed he was missing documents that were not provided to him by ISD. Adam Dash said the only new plans submitted since January were the as-built foundation drawing, which is irrelevant to this. The Board asked for further clarification if the structure at 23 Avon could be hypothetically re-classified. Joshua Manion from ISD responded by saying that ISD does field a number of requests for interpretation about existing building's classification within the zoning ordinance. In general, when ISD fields

those requests, they look at the dimensional profile of the building, as well as its character and use. ISD conservatively determines granting an existing nonconforming property more entitlements or a higher intensity of use. No public comment was made and there were no further questions from the Board. The Chair then closed the public comment portion of the hearing.

Board members Anne Fullerton and Brian Cook were absent from the May 20, 2026, hearing but submitted an affidavit confirming review of the evidence to participate in the decision.

After reviewing the facts of the approved construction plans and hearing expert testimony from the Planning Division, Inspectional Services Department staff, and others throughout the course of the hearing, the Board found that the permitted backyard cottage meets the requirements of the Somerville Zoning Ordinance and is zoning compliant.

FINDINGS

The Board upholds the Building Official's issuance of Building Permits B25-001643 and B25-001644. The Board found ISD's determinations regarding the property to be correct and that the backyard cottage at 24 Berkeley is zoning compliant and meets all standards within the Somerville Zoning Ordinance and building code.

DECISION

Following public testimony, review of the submitted plans, and discussion of the statutorily required considerations, Brian Cook moved to deny the Administrative Appeal of the Building Official's issuance of Building Permits B25-001643 and B25-001644. Ann Fullerton seconded. The Board voted **5-0** on the motion. The motion carried and the Administrative Appeal was subsequently denied.

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chair*
Anne Brockelman, *Vice-Chair*
Ann Fullerton
Olivia Mobayed
Zachary Zarembo
Brian Cook, *Alternate*
Sisia Daglian, *Alternate*

CLERK'S CERTIFICATE

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 15.5.3.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on _____ in the Office of the City Clerk, and twenty days have elapsed, and

FOR VARIANCE(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ any appeals that were filed have been finally dismissed or denied.

FOR SPECIAL PERMIT(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

FOR SITE PLAN APPROVAL(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

FOR ADMINISTRATIVE APPEAL(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

Signed _____ City Clerk Date _____