



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:** OSPCD Staff  
**SUBJECT:** 26 Clyde Street #2, P&Z 22-038  
**POSTED:** April 12, 2022  
**RECOMMENDATION:** None

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

This memo summarizes the Hardship Variance request(s) submitted for 26 Clyde Street #2, 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 March 30, 2022, and is scheduled for a public hearing on April 20, 2022. 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**

Jeff Byrnes seeks relief from the required percentage of windows on the face width of a shed dormer in the Neighborhood Residence (NR) district, which requires a Hardship Variance.

## **SUMMARY OF PROPOSAL**

Applicant and property owners, Jeff and Leah Byrnes purchased the subject #2 dwelling unit without prior knowledge that construction of the property was noncompliant, resulting in multiple dimensional violations of the building's dormers. The applicant has taken action to correct two of three dimensional nonconformities but is applying for a Hardship Variance to face width standards of a dormer due to impacts of reconstruction.

## **ADDITIONAL REVIEW NECESSARY**

26 Clyde Street #2 is located in the Neighborhood Residence zoning district in the Magoun Square neighborhood represented by Ward 5 Councilor Beatriz Gomez Mouakad.

## **ANALYSIS**

The Detached House at 26 Clyde Street was constructed in accordance with the Building Permit. There were discrepancies between the plans submitted for the Certificate of Zoning Compliance and the Building Permit, which resulted in several errors in

construction for an originally by-right project. After purchasing the property post-construction and applying for a Certificate of Occupancy, the applicant was made aware of the compliance discrepancies by ISD. ISD issued a temporary CO contingent upon the applicant remedying all outstanding violations. The applicant is correcting two dimensional violations but argues that reconstruction of the shed dormer to comply with all dimensional standards would involve substantial hardship.

Pursuant to the Somerville Zoning Ordinance, Article 3.1.13.(I), the face width of a shed dormer is required to be no more than window(s) width + 36 inches. According to ISD (Inspectional Services Department), the existing shed dormer is deficient of approximately five (5) feet of the window space required. OSPCD Staff and ISD Staff advised the Applicant to provide drawings illustrating the exact amount of relief needed. The drawings provided do not clearly illustrate the exact amount of window space relief needed. Until the Board has a clear and detailed understanding of the extent of the Applicant's request, Staff believes it is not possible to grant the requested variance.

## **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 Neighborhood Residence (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, Jeff Byrnes, 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 Neighborhood Residence (NR) district in this Ordinance or the Ordinance in general.

OSPCD Staff believes there is an argument that special circumstances exist relating to the unusual character of this existing principal building that do not generally affect other similar newly constructed buildings in the Neighborhood Residence (NR) zoning district. In this applicant's specific circumstance, the building and its noncompliant dormer is an acquired preexisting condition and an unusual characteristic when compared to other new development. New construction is held to compliance with approved permits and construction documents through inspections during construction. In the circumstance of 26 Clyde Street, the discrepancies between construction results and the plans (Building Permit/Certificate of Zoning Compliance) were identified by ISD, but after the property

was acquired by the Applicant. These circumstances combine to create a highly unique and special circumstance atypical in the Neighborhood Residence district.

Generally, OSPCD Staff is unable to provide analysis or recommendations concerning the existence of actual hardship, financial or otherwise, in relation to the Applicant for the second review criteria for a Hardship Variance.

Upon analysis of the material submitted by the Applicant, OSPCD Staff do not believe that the granting of the requested hardship variance would cause a substantial detriment to the public good or nullify or substantially derogate from the intent and purpose of the Neighborhood Residence (NR) district, 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, OSPCD Staff believe that granting the requested hardship variances would support the broader intent of the Somerville Zoning Ordinance, including, but not limited to, the following:

- To equitably balance the regulation of real property with the interests of the community as a whole.
- 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 provide and protect housing that is affordable to households with low and moderate incomes.
- 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.

### **PERMIT CONDITIONS**

Should the Board approve the required Hardship Variance for the required percentage of windows on the face width of a shed dormer OSPCD Staff does not recommend any conditions at this time.