



City of Somerville

ZONING BOARD OF APPEALS

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

DECISION

PROPERTY ADDRESS: 255 Powder House Boulevard
CASE NUMBER: CZC21-000032
OWNER: Jonathan and Kathleen Evans
OWNER ADDRESS: 255 Powder House Blvd
DECISION: Approved with Conditions (Hardship Variances)
DECISION DATE: April 28, 2021

This decision summarizes the findings made by the Zoning Board of Appeals regarding the development review application submitted for 255 Powder House Blvd.

LEGAL NOTICE

Applicants Jonathan and Kathleen Evans propose to construct a fence within the frontage area with a nonconforming height and opacity, which requires two Hardship Variances.

RECORD OF PROCEEDINGS

On April 28, 2021 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 Susan Fontano, Josh Safdie, Anne Brockelman, and Katherine Garavaglia. The Applicant provided an overview of their proposal and their argument for each of the require criteria for granting a Hardship Variance.

HARDSHIP VARIANCE FINDINGS

In accordance with M.G.L. 40A and the Somerville Zoning Ordinance, the Zoning Board of Appeals may grant a hardship variance only upon finding all of the following for each hardship variance:

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 district;*

The Board finds that special circumstances exist relating to the shape of the parcel that does not generally affect parcels in the Neighborhood Residence district. The parcel is a triangular corner lot with two of the three sides fronting on relatively high-traffic streets. The triangular shape of the lot results in a majority of the lot area being within the frontage area.

- 2. *Literal enforcement of the provision of this Ordinance for the NR district would involve substantial hardship, financial or otherwise, to the petitioners, Jonathan and Kathleen Evans, due to said special circumstances; and*

The Board finds that literal enforcement of the Ordinance would involve substantial hardship to the petitioners due to the shape of the parcel. Fences within the frontage area are permitted to be a maximum of four (4) feet in height and fifty percent (50%) opaque. Due to this, the Applicant is unable to install a fence that adequately protects their property from potential littering or trespassers and provides a private outdoor area on their property.

- 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 or the Ordinance in general.*

The Board finds that installing a six (6) foot tall fence of more than fifty percent (50%) opacity as proposed by the Applicant will not cause a substantial detriment to the public good or nullify or substantially derogate from the intent and purpose of the district or Ordinance in general. The proposed fence will not reduce visibility for vehicles approaching the intersection.

DECISION

Following public testimony, review of the submitted plans, and discussion of the statutorily required considerations, Mr. Safdie moved to approve both requested Hardship Variances with the conditions included in the staff memo. Ms. Garavaglia seconded. The Board voted **4-0** to approve the permit, subject to the following conditions:

Perpetual

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

Prior to Certificate of Zoning Compliance

- 2. A copy of the Recorded Decision stamped by the Middlesex South Registry of Deeds must submitted for the public record.
- 3. Physical copies of all submittal materials as permitted by the Review Boards must be submitted for the public record in accordance with the document format standards of the ISD/PB/ZBA Submittal Requirements.

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chair*
 Josh Safdie
 Anne Brockelman
 Katherine Garavaglia, *Alternate*



 Sarah Lewis
 Director of Planning & Zoning

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.

Signed _____ City Clerk Date _____