



City of Somerville

# ZONING BOARD OF APPEALS

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

## JUNE 23, 2021 MEETING MINUTES

This meeting was conducted via remote participation on GoToWebinar.

NAME	TITLE	STATUS	ARRIVED
Susan Fontano	Chair	<i>Present</i>	
Josh Safdie	Clerk	<i>Present</i>	
Anne Brockelman	Member	<i>Present</i>	
Elaine Severino	Member	<i>Present</i>	
Katherine Garavaglia	Alternate	<i>Present</i>	

City staff present: Charlotte Leis (Planning & Zoning), Rebecca Cooper (Planning & Zoning), Cortney Kirk (Public Space & Urban Forestry), Luisa Oliveira (Director of Public Space & Urban Forestry), George Proakis (Executive Director of OSPCD), Tom Galligani (Director of Economic Development)

The meeting was called to order at 6:05pm and adjourned at 9:25pm.

### OTHER BUSINESS: Clerk Election

Following a nomination by Chair Fontano, seconded by Member Brockelman, the Board voted unanimously (5-0) to elect Josh Safdie to the position of Clerk of the Zoning Board of Appeals.

### GENERAL BUSINESS: Meeting Minutes Approval

Following a motion by Clerk Safdie, seconded by Member Severino, the Board voted unanimously (5-0) to approve the meeting minutes from March 31, 2021 and April 28, 2021.

### ADDED AGENDA ITEM: Public Space and Urban Forestry Presentation

PSUF Director Luisa Oliveira gave a presentation on the goals of civic spaces and public spaces in Somerville.

The Board and Director Oliveira discussed the ownership of land for privately owned public spaces (POPs), the concern around the lack of maintenance, and the general process to plan and approve a civic space.

### PUBLIC HEARING: 515 Somerville Ave

Philip Cahalin, attorney, spoke on behalf of Claudia Murrow. Ms. Murrow appealed the building permit for the hotel at 515 Somerville Ave. The hotel received variances in 2018. Then in 2019, they applied for revisions, which the Board also approved. Ms. Murrow appealed the 2019 decision. After that appeal, the developer applied for

building permits, which the Inspectional Services Department issued. Ms. Murrow then appealed the building permits to the ZBA in 2019. Ms. Murrow did not agree to the Land Court's decision to allow the development team to annul and withdraw the 2019 revision application.

Mr. Cahalin explained Ms. Murrow's central issues with the process including that the plans that were approved for the building permit were different from the 2018 decision, whether a new variance is required, and whether legislature requires *de novo* review for the changes to the footprint of the building. Mr. Cahalin stated that the project, as designed, does not qualify for a variance or special permit, and therefore the building is illegal.

Executive Director Proakis stated that staff is supportive of the building, the design of the building came from feedback from neighbors, and the project has general support from the community. He spoke about the previous variances and how the development team went through the process to obtain them legitimately. Executive Director Proakis also stated that the project, as built, is a mixture of the 2018 approval and two *de minimis* changes. He noted that it is not unusual to approval *de minimis* changes after the building permit is issued. The key question is whether the changes were *de minimis* or more substantive. Staff does not believe the changes were more substantive than *de minimis*.

Mr. Cahalin's memo claimed that moving a building wall automatically requires a *de novo* change. He cited the *Lussier v. Zoning Board of Appeals of Peabody* and *DiGiovanni v. Board of Appeals of Rockport* cases as reference. Case law references the general fact that when plans are referenced in a decision, they are part of decision. Executive Director Proakis noted that the City of Somerville's decisions very specifically authorize *de minimis* approvals, even when hardship variances are granted; there is no automatic determination that when a wall is moved a new hardship variance is required.

David Zucker, the developer's attorney, echoed what Executive Director Proakis said. There is no automatic *de novo* review of any change whatsoever. The cases cited in Cahalin's memo include very different facts and involve changes in the design of the portion of the plan that required hardship variance relief; here variances related to height, number of stories, and the number of parking spaces; all have remained exactly the same since the decision. There is no *de novo* review just because hardship variances were granted. All of the changes were submitted for *de minimis* approval and were approved by the Planning Director in accordance with the Zoning Ordinance in effect at the time. The building designed at the conceptual phase and approved in 2018 is substantially the same as the building that was submitted as part of the construction document plans. Mr. Zucker showed the comparative drawings from their memo.

Mr. Cahalin stated that on floors 2-5, the changes were not insignificant and were relevant to the decision of the height/stories, particularly on the Laurel Street side of the building. The changes in the building were directly relevant to the variances granted.

Mr. Zucker noted that everything was built pursuant to the building permit and was entirely and well within the setbacks on all sides. Case law does not support that any change whatsoever to this project would require the need for a new variance.

The Board and Staff discussed what was being asked of the Board this evening; to determine if the changes that received *de minimis* approval by the Planning Director were in fact *de minimis* or substantive. Executive Director Proakis explained that our local ordinance explicitly allows for *de minimis* changes, even for variances, and case law leans towards local ordinances to decide what can or cannot be done regarding these matters.

Chair Fontano opened public testimony.

No one indicated that they wished to speak.

Chair Fontano closed public testimony.

Following a motion by Clerk Safdie, seconded by Member Severino, the Board voted unanimously (5-0) to deny the administrative appeal of ISD's 2019 decision to issue building permits.

The Board noted that it is practical and fitting that Planning and Zoning review any changes to determine whether or not they are de minimis. While sometimes the decision is incorrect, in this case the decision was correct, and the changes in this case were de minimis.

**RESULT:**

**DENIED**

### **PUBLIC HEARING: 31 Tufts Street**

Adam Dash started the presentation for the applicant team. The team is seeking site plan approval for a pocket park; which is part of a 100% affordable development that is a permitted by-right. The applicant team has followed the recommendations of the Urban Design Commission for the park.

The applicant team's architect, Debra Myers, went over the details of the proposed park; including the location, the maintenance plan, design details, and the landscaping plan.

Mr. Dash confirmed that the park will be maintained, owned, and insured by the developer and not by the City. He noted that the building next door is 100% affordable, but the park will be open to public. The park will meet the intent of the UR district and creates much needed gathering and open space. He also noted that it will replace an empty parking lot and the plan is supported by the neighborhood and the Ward Councilor.

The Board and the applicant team discussed the possible uses of the park, the displaced vehicles that currently park in the lot, the private amenity space for the building, legal ownership of the park, and ways to make the park more accessible to all users.

Director of Economic Development Tom Galligani confirmed that his team has been working with the developer on a Land Development Agreement to ensure that the park will remain open to the public, while being owned and maintained by E3 Development.

The Board discussed proposed condition language: "The applicant will work with planning staff to make reasonable efforts to incorporate accessible design elements into the project consistent with the requirements of the US Access Board's Public Right-of-Way Accessibility Guidelines."

Chair Fontano opened public testimony.

David Last (next door neighbor on Tufts Street) – brought up community concerns regarding parking, even though the park was strongly needed and desired. The parking on Tufts Street was suspended due to the Green Line Extension project. Mr. Last's support of the project was based on the understanding from City Staff that parking will be restored on Tufts Street to accommodate the neighborhood.

Sam LaTronica (abutter on Glen Street) – is a representative of Somerville Community Corporation and strongly supported the park which will be accessible to their residents at 163 Glen Street. He also showed his support for the additional affordable housing in the neighborhood and appreciated the developer's response to accessibility.

Senior Planner Rebecca Cooper spoke with City Councilor McLaughlin who could not attend because of a budget meeting. Councilor McLaughlin wrote a statement of support for the park project that was read into the record, on behalf of the neighborhood, as well as his own behalf.

Chair Fontano closed public testimony.

Staff confirmed that the condition that the Board decided on this evening will be included in the decision.

Staff confirmed that a condition cannot require the City to do anything in regards to any case, for example reestablishing parking on Tufts Street. However, the Mobility Department has an ongoing effort to study parking issues in this area.

Staff gave a brief overview of what procedural steps the Board must go through to vote on the project.

Following a motion by Clerk Safdie, seconded by Member Severino, the Board voted unanimously (5-0) to approve the application for Site Plan Approval with the conditions included in the Staff Memo and the additional condition read into the record this evening.

<b>RESULT:</b>	<b>APPROVED WITH CONDITONS</b>
----------------	--------------------------------

The Board voted 5-0 to take a recess at 8:12pm. The Board reconvened at 8:19pm.

### **PUBLIC HEARING: 27 Loring Street**

Architect Sam Kachmar presented for the applicant team. The applicant is seeking two hardship variances because they want to maintain as much green space as possible for the Convoy family and an expansion on the ground floor would make that harder. A first and second floor expansion would have a larger impact on the neighbors, would not help reduce the flooding in the neighborhood which has been a constant problem for years, and it would be significantly less expensive to do a 3<sup>rd</sup> floor addition.

Chair Fontano opened public testimony.

Nikhilesh Gorukanti (30 Granite Street) – supported the hardship variances since this would give them more livable space and allow them to expand their family in a safe home.

Chair Fontano closed public testimony.

Staff noted that there are three letters of support in the file, but they were not yet forwarded to the Board.

The Board and the applicant team discussed the details of the house, the massing compared to the other houses in the neighborhood, the conditions to prove that the hardship variance criteria have been met, the front engaged porch, and whether the house is a cottage or a detached house. They also spoke about overall height and story height restrictions of both cottages and detached houses.

Staff noted that comparing the house/lot to abutting houses/lots is not appropriate when determining whether or not to approve a hardship variance for any case.

The Board and Staff tried to come up with alternative options for the applicant team. The applicant team requested a continuance.

Following a motion by Clerk Safdie, seconded by Member Severino, the Board voted unanimously (5-0) to continue the case to July 14, 2021.

**RESULT:****CONTINUED**

*NOTICE: These minutes constitute a summary of the votes and key discussions at this meeting. To review a full recording, please contact the Planning & Zoning Division at [planning@somervillema.gov](mailto:planning@somervillema.gov).*