



City of Somerville
ZONING BOARD OF APPEALS
City Hall 3rd Floor, 93 Highland Avenue, Somerville MA 02143

MAY 4, 2022 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>Absent</i> | |
| Anne Brockelman | Member | <i>Present</i> | |
| Ann Fullerton | Member | <i>Present</i> | |
| Katherine Garavaglia | Alternate | <i>Present</i> | |

City staff present: Charlotte Leis (Planning, Preservation, & Zoning); Sarah Lewis (Director of Planning, Preservation, & Zoning); Emily Hutchings (Planning, Preservation, & Zoning)

The meeting was called to order at 6:01pm and adjourned at 7:37pm.

Chair Fontano noted that Member Garavaglia would be Acting-Clerk for the evening.

OTHER BUSINESS: Board Elections

Chair Fontano asked if any Board members wished to nominate someone to be Chair. Member Brockelman nominated Susan Fontano to be Chair of the Zoning Board of Appeals. Chair Fontano asked if there were any other nominations for Chair; there were not.

Following a motion by Acting-Clerk Garavaglia, seconded by Member Fullerton, the Board voted unanimously (4-0) to elect Susan Fontano as Chair of the Zoning Board of Appeals for the remainder of 2022.

Chair Fontano asked if any Board members wished to nominate someone to be Clerk. Staff indicated that they had received an email from Clerk Safdie prior to the meeting expressing his interest in continuing to be Clerk. Chair Fontano nominated Josh Safdie as Clerk of the Zoning Board of Appeals.

Following a motion by Acting-Clerk Garavaglia, seconded by Member Brockelman, the Board voted unanimously (4-0) to elect Josh Safdie as Clerk of the Zoning Board of Appeals for the remainder of 2022.

PUBLIC HEARING: 292 Beacon Street (P&Z 22-047)

The applicant's attorney presented on their behalf. The attorney explained that the applicant was before the Board in 2018 for Phase 2 of the project, in which the decision was appealed by an abutter. That was resolved in July 2020 during the height of Covid; which was a setback for the applicant as he had to make changes to the condominium. The applicant is now ready to acquire Building Permits and begin building Phase 2 of the project, therefore he is seeking a 6-month extension of the approved Hardship Variance. The attorney noted that the approved Special Permit does not expire until June 2023.

Chair Fontano confirmed the dates and that a 6-month extension would result in the Hardship Variance expiring on December 15, 2022, rather than June 15, 2022.

Chair Fontano opened public comment.

Sophia Maniaci (81 Sacramento St) – asked who exactly who will be building on the property. The attorney stated that the applicant has phasing rights and will be transferring those rights to Capital Equity Partners LLC, but he is unsure if they will be the ones who will build or not. Ms. Maniaci asked if the applicant will be selling the property to Capital Equity Partners. The attorney replied that the applicant will not be selling as the property is owned by the condominium and he has development rights.

Staff affirmed that the public comment portion of the public hearing is not intended to be an open discussion between members of the public and the applicant team. Also, ownership of the property is not a point of consideration in determining an extension of a Hardship Variance.

Chair Fontano asked Ms. Maniaci what her concern is regarding the builder. Ms. Maniaci stated that she had previously hired the applicant to build on her property and he is an inept builder which resulted in her having to hire another builder altogether. She declared that she is concerned for this property. The attorney avowed that the applicant will not have any involvement in building project.

Chair Fontano closed public comment.

The Board and attorney discussed that the applicant requested a 1-year extension, but the Board can only grant 6-month extensions and how Covid has been hard for the building industry. They also spoke about how the applicant submitted plans to the Planning, Preservation, and Zoning Division in which the changes were deemed de minimis and there are no additional changes to the condo that the Board should be aware of. Director Lewis gave a brief overview of the de minimis changes.

Following a motion by Acting-Clerk Garavaglia, seconded by Member Brockelman, the Board voted unanimously (4-0) to approve the 6-month extension to the Hardship Variance through December 15, 2022.

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| RESULT: | APPROVED |
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PUBLIC HEARING: 263 Washington Street (P&Z 22-044)

The architect presented on behalf of the tenant who is moving into a restaurant into the ground floor of the building. The tenant is requesting to waive condition 22 of the Special Permit, as they made an agreement to move into the building after they were told there were no zoning issues. The tenant planned to open at the end of April 2022 but was told in March 2022 that the project requires ZBA approval. The space is nearly done with construction, so they are hoping to waive the condition considering they were unaware of it until a month ago.

The Board and Staff discussed why the tenant is requesting the revision as opposed to the landlord, how the landlord has been involved in all conversations and is aware of what is happening, if the condition would be specific to this tenant or be a change to the overall Special Permit, how the tenant has a 10-year lease, and that this is to help keep the restaurant on track to open. They also spoke about how this common condition is used to understand the parking requirements of commercial uses and how the Board is not in favor of striking the condition completely.

Director Lewis explained that while the building itself is complete, the landlord never closed out the Certificate of Occupancy for the building. Therefore, when the Inspectional Services Department (ISD) approved the build-out for the restaurant, they realized that the building Certificate of Occupancy was never closed out, which means that this condition applies to this tenant.

Chair Fontano opened public comment. No one indicated that they wished to speak. Chair Fontano closed public comment.

The Board, Staff, and applicant team discussed how the building is currently being occupied without a Certificate of Occupancy (CO), how the restaurant's move increases the number of seats by 30, the plans provided to ISD versus the built condition, the parking requirements, if a temporary CO was issued for the residential units in the building, and how the build-out got this far in the process without anyone catching the requirement for approval considering the due diligence that goes into negotiating commercial leases.

The Board requested that Inspectional Services (ISD) Staff attend ZBA meetings moving forward when there are cases like this one before the Board.

The Board and Staff discussed that the applicant team would have required a Use Special Permit and probably additional parking relief should they have sought approval from the Board if they had known they were supposed to, looking into if the building has a permanent or temporary CO as giving approval to the tenant for a building that is illegally occupied is a risk to the applicant and the Board, that condition 22 is probably obsolete moving forward given the new zoning ordinance, and that only permitted uses would be allowed to seek variances.

The Board stated that they would be in favor of removing the condition entirely if the landlord applied; but since the tenant applied, they feel that the condition should be waived for this tenant only. Staff recommended adding a condition that limits approval to this applicant and then approving the application, as well as recommended condition language. The Board wanted to ensure that the approval was limited to this specific restaurant or ownership team even if they rebrand, not the use in general.

Following a motion by Acting-Clerk Garavaglia, seconded by Member Brockelman, the Board voted unanimously (4-0) to approve the request of a one-time waiver of condition 22 for the applicant and any entities that share a common ownership and subject to the conditions in the Staff Memo.

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| RESULT: |
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PUBLIC HEARING: 26 Clyde St #2 (P&Z 22-010)

(continued from 20 April 2022)

Chair Fontano started by noting that part of the approval for a Hardship Variance is a three-step finding. She also noted that on the proposed plans, specifically "A-202", there are no measurements or numbers related to certain architectural features. Chair Fontano stated that there are two drawings with the same title, but with different information, and for which no measurements or numerical details are present. The applicant team pointed out where the measurements are located and acknowledged the small print.

The applicant team presented the proposed plans and how the plans include the information that was previously requested by the Board. The applicant team stated that the plans show the requested relief, the existing conditions, and what the conforming state would look like per the zoning ordinance.

The Board expressed their frustration with how the plans were presented, how the architect they hired should have done a better job on their plans, and how the applicant team have compiled all the information that the Board requested so they can review the findings for the Hardship Variance.

Staff reviewed how the Board will need to 1) review the facts of the case and the findings being made, and 2) the Board will need to identify the specific relief being granted.

The Board discussed that the dormer appears substantially larger than what is allowed by-right per the zoning ordinance, literal enforcement would cause substantial hardship to the applicant, approval would not be detrimental to the district in which the house is located, and in fact the neighbors would appreciate not having larger windows to see more into their home. Staff noted that a self-created hardship cannot be considered as the basis of a hardship variance. The Board acknowledged that the applicants inherited this issue and the need for the variance was only discovered when they applied for a Building Permit.

The Board and applicant team discussed how the applicants have a temporary Certificate of Occupancy (CO) and have extended the expiration date several times due to the ZBA schedule, that ordering and installing windows would take several weeks due to the current supply chain issues, and Staff confirmed that they believe ISD would work with the applicants on continuing to extend their CO as long as they provide proof of purchase for the windows and show that they are addressing the issue should the Board deny the variance. They continued the discussion with the amount of relief the applicant team needs – 9ft per the applicant team versus 5ft per ISD and how Staff will follow up with ISD to request that they explain exactly how they calculated the 5ft and how they interpret the relevant section of the zoning ordinance.

The Board reviewed their findings: 1) it is larger than a typical dormer which is the unusual topography/characteristic that the Board is considering for this property; 2) correcting the situation is clearly going to cost the owners, who inherited this situation, a significant amount of money; and 3) the neighbors would probably appreciate not having more glazing.

Chair Fontano opened public comment. No one indicated that they wished to speak. Chair Fontano closed public comment.

The Board requested a condition regarding the specific amount of relief: the condition should state that the existing window condition is approved, and no reduction in the amount of window glazing would be permitted.

Following a motion by Acting-Clerk Garavaglia, seconded by Member Brockelman, the Board voted unanimously (4-0) to approve the Hardship Variance requested by the applicants, with the relief and the condition as discussed this evening.

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| RESULT: |
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Staff noted that the Planning, Preservation, & Zoning Division is working on updating the submittal requirements that establish what is needed for complete applications. They will provide a packet for the Board to review in the coming weeks.

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