



City of Somerville

ZONING BOARD OF APPEALS

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

DECISION

2022 JUL 27 P 2:45

PROPERTY ADDRESS: 205 Beacon Street
CASE NUMBER: P&Z 22-007
OWNER: 717-719 Washington Street, LLC
OWNER ADDRESS: 34 Century Lane, Milton, MA 02186
DECISION: Approved with Conditions (Hardship Variance)
DECISION DATE: July 13, 2022

CITY CLERK'S OFFICE
SOMERVILLE, MA

This decision summarizes the findings made by the Zoning Board of Appeals (the "Board") regarding the development review application submitted for 205 Beacon Street.

LEGAL NOTICE

Property owner 717-719 Washington Street, LLC, is constructing a by-right 4-story Apartment Building in the UR zoning district and seeks relief from the minimum required façade buildout requirement for properties abutting an NR zoning district.

RECORD OF PROCEEDINGS

On July 13, 2022, the Zoning Board of Appeals (ZBA) 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, Acting Clerk Katherine Garavaglia (Alternate), Ann Fullerton, and Anne Brockelman. The Applicant team presented an overview of their requested Hardship Variance and explained why they believe their request satisfies the requirements for granting a Hardship Variance. During the presentation, the Applicant discussed the permitting process prior to their application to the ZBA for a Hardship Variance. The Applicant stated they initially received a Certificate of Zoning Compliance (CZC) from the Inspectional Services Department (ISD), and then a Building Permit. Sometime after receiving the Building Permit, the Applicant made changes to the number of units in the apartment building and provided updated plans to ISD. At this point, ISD flagged the project for not complying with the Somerville Zoning Ordinance by violating the façade buildout requirement for the façade facing Ivaloo Street, prompting the Applicant to apply for a Hardship Variance.

After the presentation by the Applicant, the Board ask for public comments: Ward 2 Councilor JT Scott asked about the approval process and why the Applicant is only now coming to the ZBA, and PPZ Staff summarized the process. No other members of the public spoke regarding the application.

The Board asked Staff and the Applicant how much of the structure was built when the zoning violation was first noted by ISD and how much of the project is currently complete. The Board also asked if, based on the zoning, similar situations could occur

on other lots. Staff clarified zoning and stated that there may be other lots within the UR zoning district, particularly with lots that abut NR districts, where an Apartment Building would not be permitted by right due to the dimensional requirements. However, the reason that the Applicant was before the Board at this point was because the Applicant had not noted the zoning violation as they applied for a Building Permit, and ISD did not discover the violation until after the Building Permit had been issued and an updated set of plans was submitted. The Board and the Applicant continued to discuss matters related to why the Applicant decided to move forward with construction after the violation was identified, the landscape plans, and if the neighbors in the abutting NR lot have made any opposition to the project. The Applicant stated they had not heard any concerns from abutters.

The Board agreed that the 20-foot side setback requirement is appropriate and should remain, as it acts as a buffer between the much larger Apartment Building and abutting Cottage home in the NR zoning district. The Board also expressed their frustration to the Applicant, stating they took a big risk by proceeding with construction with the knowledge that they would need to get a Hardship Variance to rectify the situation. The Board determined that they were comfortable with approving the requested Hardship Variance from the façade buildout requirement of 70% for lots that abut an NR zoning district.

HARDSHIP VARIANCE FINDINGS

In accordance with M.G.L. 40A and the Somerville Zoning Ordinance, the Board 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 Urban Residence zoning district in which the land or structure is located;*

The Board finds that special circumstances exist relating to the lot shape, specifically in the context of its location adjacent to a NR zoning district.

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, 717-719 Washington Street, LLC.*

The Board finds that due to the location of the lot adjacent to an NR zoning district lot, a literal enforcement of the provisions of Ordinance would cause substantial hardship to the petitioner.

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 Urban Residence district in this Ordinance or the Ordinance in general.

The Board finds that granting of the requested Hardship Variance from the façade buildout requirements for lots abutting NR zoning district can be granted without causing substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Urban Residence district in the Somerville Zoning Ordinance (SZO) or the SZO in general.

DECISION

Following public testimony, review of the submitted plans, and discussion of the statutorily required considerations, Acting Clerk Garavaglia moved to approve the Hardship Variance from the façade buildout requirement for properties abutting an NR zoning district. Brockelman 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 South Registry of Deeds.

Prior to Building Permit

2. A copy of the recorded Decision stamped by the Middlesex South Registry of Deeds must be submitted to the Planning, Preservation & Zoning Division for the public record.
3. One (1) physical copy of the original application materials and one (1) digital and (1) physical copy of all required application materials reflecting any physical changes required by the Board, if applicable, must be submitted to the Planning, Preservation & Zoning Division for the public record.

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chair*
Katherine Garavaglia, *Acting Clerk, Alternate*
Anne Brockelman
Ann Fullerton



Sarah Lewis, Director of Planning, Preservation, & Zoning
Office of Strategic Planning & Community Development

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 _____