



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:** Planning, Preservation, & Zoning (PPZ) Staff  
**SUBJECT:** 205 Beacon Street, P&Z 22-007  
**POSTED:** June 28, 2022

**RECOMMENDATION:** None

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

This memo summarizes the Hardship Variance request submitted for 205 Beacon Street, identifies any additional discretionary or administrative development review that is required by the Somerville Zoning Ordinance (SZO), and provides related analysis or feedback as necessary. The application was deemed complete on March 23, 2022, and is scheduled for a public hearing on July 13, 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**

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.

## **SUMMARY OF PROPOSAL**

Property owner, 717-719 Washington Street, LLC is currently constructing an eleven (11) unit, four (4) story Apartment Building at 205 Beacon Street. The project needs zoning relief from the minimum façade buildout requirement of 70%.

## **ADDITIONAL REVIEW NECESSARY**

205 Beacon Street is located in the Urban Residence zoning district in the Duck Village neighborhood represented by Ward 2 Councilor JT Scott. The ZBA is the review board for Hardship Variance requests. Conforming projects in the UR district are usually permitted by-right.

## **BACKGROUND**

The Applicant received a building permit for the construction of an eleven (11) unit, four (4) story Apartment Building in the Urban Residence (UR) zoning district on June 4, 2021, and began construction shortly thereafter. On January 24, 2022, the Applicant

submitted an updated plan set depicting ten (10) total units, rather than the previously approved eleven (11) units. Upon review, ISD Staff discovered that the building was not meeting the minimum façade buildout of 70% for the façade facing Ivaloo Street. At the time the zoning violation was identified, the foundation for the building had been poured and the building was framed to three (3) floors.

Construction continued from the time the zoning violation was identified and when the Applicant applied for a Hardship Variance. At the time the violation was identified, ISD told the Applicant that a Hardship Variance would be needed to rectify the violation but that they could proceed with construction at their own risk. At the time the Applicant applied for zoning relief, approximately 50% of the structure had been built. The Applicant now seeks zoning relief in the form of a Hardship Variance for the minimum façade buildout requirement of 70% for the façade facing Ivaloo St, as that is a requirement for the Apartment Building type in the UR district on a lot that abuts a Neighborhood Residential (NR) zoning district.

## **ANALYSIS**

The Applicant is required to provide an argument addressing the review criteria for the necessary requested Hardship Variance. The Applicant's arguments have been attached as an appendix to this memo. PPZ Staff have provided the following analysis related to the review criteria for the requested Hardship Variance:

Pursuant to Article 3.2.10.c of the SZO, the façade buildout for Apartment Buildings abutting a lot in the Neighborhood Residence (NR) zoning district must be at least 70% of the lot width. Apartment Buildings must also have a side setback of 20-feet, if the lot is abutting an NR zoning district. According to ISD, the building is not wide enough on Ivaloo Street, and the façade is deficient by approximately 10 feet. The SZO requires the façade to be at least 49.68 feet to meet the 70% minimum façade buildout requirement. The proposed plans show a façade length of 41 feet. The building is complying with the 20-foot side setback requirement for lots abutting NR districts. However, if the Applicant were to adhere to the minimum façade buildout requirements for the Ivaloo Street façade, the Apartment Building would come within 10 feet of the abutting property in the NR district, encroaching into the 20-foot side setback requirements.

For size context, the direct abutters on Ivaloo Street, located in the NR district is a 1.5 story cottage home, approximately 1,312 in total gross floor area (GFA). The Apartment Building currently being constructed is four (4) stories and approximately 16,000 in total GFA.

After analysis, Staff have determined that this lot is not sufficiently sized in terms of lot width along Ivaloo Street for the Apartment Building type. As this building would either have to violate the façade buildout requirement or side setback requirement to meet the dimensional standards for this Building type, the Apartment Building currently being constructed is not appropriate for the lot it is located on. However, the lot shape does

not create a hardship, as other building types allowed in the UR zoning district are able to be constructed by-right on this lot, while still meeting the dimensional requirements. For example, an Apartment House, would be able to be constructed in conformance with the building depth and width requirements of the SZO.

Generally, PPZ Staff does not provide analysis or recommendations concerning the existence of actual hardship, financial or otherwise, regarding the second Hardship Variance criterion.

Granting the requested hardship variance should not cause a substantial detriment to the public good or nullify or substantially derogate from the intent and purpose of the Urban Residence zoning district, copied here:

Intent

- To create, maintain, and enhance areas appropriate for multi-unit residential buildings.

Purpose

- To permit the development of multi-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 both large and small households in permitted building types.
- To permit increased residential density for apartment buildings meeting the definition of a Net Zero Ready Building or 100% affordable housing.

Granting the requested hardship variance should not substantially degrade from the broader intent of the Somerville Zoning Ordinance, including, but not limited to, the following:

- To preserve and enhance the existing character of Somerville's traditional housing and respect existing built form and development patterns.
- To encourage contemporary architectural design for new construction that compliments the established character of existing building.

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.

## **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 Urban Residence 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, 717-719 Washington Street, LLC.
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.

#### **PERMIT CONDITIONS**

Should the Board approve one or more of the requested Hardship Variances, PPZ Staff recommends the following conditions:

##### Permit Validity

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

##### Public Record

- 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.
- 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.

# **Law Office of Nicholas A. Gomes, P.C.**

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February 23, 2022

Sent via Online Portal and Email [planning@somervillema.gov](mailto:planning@somervillema.gov)

City of Somerville Zoning Board of Appeals  
Somerville City Hall  
93 Highland Avenue  
Somerville, MA 02143

**Re: Application for Hardship Variance pursuant to Somerville Zoning Ordinance 15.3  
205 Beacon Street, Parcel 45/D/17, Urban Residence Zoning District**

Dear Members of the Somerville Zoning Board of Appeals:

Please be advised this office represents 717-719 Washington LLC, the owner of 205 Beacon Street and holder of a permit for the construction of an 11-unit multi-family dwelling. The development review application for the 205 Beacon Street project received a Zoning Compliance Certificate (#CZC20-000030) on February 18, 2021. The building is currently under construction pursuant to a valid building permit issued June 4, 2021. The building footprint and framing is already constructed pursuant to the approved development plan, and the project is approximately 50% complete with the major components of excavation, foundation, and framing completed with the roof installation to be finished within two weeks.

My client was recently informed by the City that the building as constructed pursuant to the approved development review plan is in violation of the City's zoning ordinances for the façade build out minimum requirement of 70%. *See* Somerville Zoning Ordinance Excerpt of 3.2.10. After careful review of the application and timeline, I am of the opinion that my client has a valid and approved project and permit which would allow him to construct the approved development plan as a matter of law. My client designed the building in good faith based on his conversation with the City Planner and interpretation of the ordinance relative to the façade requirement. With 205 Beacon Street being a corner lot Ivaloo Street is a secondary front yard and subject to a lesser minimum façade requirement. The language of the ordinance is confusing and ripe for misinterpretation between the minimum site length at 70% and 80%. At issue when applied to 205 Beacon Street, is the fact that the 70.98' site length on Ivaloo Street at 70% requires the façade to be 49.68' when the approved building façade was 40'. Thus, we seek a 10' hardship variance on the minimum façade length requirement.

The City's retroactive application of the zoning ordinance on an already approved plan would result in unjust and inequitable harm to my client who followed the City's development review and approval process. Nonetheless, my client seeks a good-faith collaborative approach with the Board to reach a reasonable solution to the problem presented in the recent finding of a zoning discrepancy while reserving its rights to any legal remedies available. To avoid such a detriment for my client, and without waiving any rights held by my client in the approved plan and permit, I respectfully request the Zoning

Board of Appeals grant my client a hardship variance so the construction of the building can be completed in accordance to the originally approved plan. An approval of the variance will satisfy the letter of the zoning ordinance, remove any discrepancy that may exist with the original approved plan, and allow my client to proceed with the original proposal. This is a reasonable solution and I request the Board consider this correspondence in support of the variance request in addition to all enclosures.

The Somerville Zoning Board of Appeals has the authority to issue my client a hardship variance to allow for the construction of 205 Beacon Street as originally proposed because the circumstances and the physical layout of this particular property presents itself as a hardship and the weighing of all factors results in the approval of the variance being in the best interests of the City, my client, and the greater Somerville community. *See* G.L. c. 40A § 10, *see also* Somerville Zoning Ordinance 15.3. The Zoning Board of Appeals may grant a hardship variance upon a finding of the following:

i. a). 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 zoning district in which the land or structure is located;

b). 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 due to said special circumstances; and

c). 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 a specific district in this Ordinance or the Ordinance in general.

ii. When considering a revision to a previously approved development review application that required a Hardship Variance, the review board shall limit their review to the proposed changes to the previously approved application.

*See* Somerville Zoning Ordinance 15.3(e).

Notably, the City's review should be limited to the specific variance request for the façade requirement and not include comments that would otherwise detract from other zoning and building components approved in the original plan. *See* Somerville Zoning Ordinance 15.3(e)(ii). Under Review Criteria A, special circumstances exist as it relates to the sitting of this particular lot which does not generally affect the UR zoning district as a whole. 205 Beacon Street is a corner lot with frontage on both Beacon and Ivaloo Street. The property is 101' along Beacon Street and 71' along Ivaloo Street. The development is in the UR District while the neighboring property on Ivaloo is in the NR district. At present we are unable to meet the contradicting components of the zoning in regard to both frontage requirements and UR/NR setbacks. Zoning requires a setback of 20' along the side yard and 10' setback at the front yards on both Ivaloo and Beacon. The combination of side yard setback on the Ivaloo side and Beacon front yard setbacks limited the facade to 41' on Ivaloo Street. The building façade requirement abutting the NR district of 70% would require the building to encroach upon the side yard setback. It is the convergence of the setback requirement and the 70% façade requirement that is creating this issue. The plan was presented during the pre-purchase due diligence phase to a city planner, Melissa Woods, and the building façade on Ivaloo was not raised resulting in the issuance of our Zoning Compliance Certificate. 205 Beacon's unique position of straddling between two zoning districts creates this unique problem requiring a hardship variance to overcome. The problem presented of contradictory

zoning requirements unique to 205 Beacon is the sort of special circumstance the hardship variance was designed for.

Under Review Criteria B, literal enforcement of the zoning ordinance would involve a substantial hardship of time and money to such an egregious and unreasonable manner that the Board must allow a variance for the requested 10'. In this circumstance, the board is reviewing a substantially completed building that would require expensive and dangerous demolition that is unnecessary because the building as constructed in reality is reasonable and fits in the community regardless of the zoning ordinance. The proposed construction is a multi-million dollar project and my client would suffer substantial financial losses in the hundreds of thousands and potentially up to the millions of dollars. My client has substantially performed the construction project and the demolition of the building to meet the strict zoning requirements is untenable for any reasonable person to consider. No developer would want to be in the position of my client to rip down the progress of construction and start with a new layout. Notably, the project would not be financially feasible if my client was forced to design a building within the zoning requirements. On January 24, 2022, at the time the zoning discrepancy in the existing structure was noticed by the City, the project was framed to 3 floors with parking underneath, windows were delivered, the elevator deposit was paid; and approximately \$3.7 million had already been spent on the project. My client's construction and development loans continue to incur interest that will be unreasonably increased by delay in construction. The entire project will be jeopardized if the variance is not granted and could result in bank foreclosure.

Under Review Criteria C, the proposed relief of allowing the building to be constructed as originally designed with the façade calculation, will not cause substantial detriment to the public good or substantially derogate from the intent and purpose of the zoning district or ordinance. The 205 Beacon Street project stands for responsible growth of new residential units within the master planning goals of the City of Somerville. The owner and principal of my client, Thomas Piatt, works tirelessly on this project and looks forward to the day he and his wife can move into one of the completed apartments and manage the building. Adding a responsible owner-occupied apartment to Beacon Street will promote clean, healthy, and accessible housing options in the City. The building as constructed does not impede views on Beacon or Ivaloo Street in a detrimental manner. The proposed design of 205 Beacon Street as constructed looks aesthetically pleasing and fits with the smaller less dense buildings of the neighboring NR district. My client specifically addressed the scale of the buildings in the two zoning districts in its original design. Granting the proposed relief from the façade requirement will allow a generous landscape buffer and ease the impact of the two zoning districts meeting together. My client has already negotiated with Eversource to relocate the pad mounted transformer from the approved location in the side yard to an underground vault that will not be in the side yard setback. My client's additional steps to come to a reasonable solution to this zoning quandary is evidence of its good faith and the reasonableness of the owner moving forward as a community partner in the City.

My client's proposal meets the standard for a hardship variance based on the totality of the circumstances surrounding the property and the proposal. There are several factors coming together that require the City to approve the variance to avoid unjust and unexpected consequences of applying its zoning ordinance. The unique sitting of the lot, the inequity of literal enforcement, and the positive effect on the public good in allowing this project to continue leads to the conclusion that a variance is warranted and the City will be best served in approving the variance. Therefore, I respectfully request you grant a variance to the minimum site length based on the façade calculation to allow for a 10' reduction in the required Ivaloo Street site length from 49.7' to 40'. I further request a public hearing be held and an opportunity to present the merits of this application before you.

Thank you for your time, attention, and consideration of this request.

Sincerely,

/s/Nicholas A. Gomes  
Nicholas A. Gomes, Esq.

Enclosures:

Application for Hardship Variance

Zoning Ordinance Excerpt

Site plan showing building and setbacks (Criteria A)

Photos of site as currently exists focusing on neighbors on Ivaloo

Certificate of Zoning Compliance (02/18/2021)

Building Permit (06/04/2021)



