



City of Somerville

ZONING BOARD OF APPEALS

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

DECISION

PROPERTY ADDRESS: 21 Eastman Road
CASE NUMBER: P&Z 2021-121
OWNER: SGL Development/Adam Siegel
OWNER ADDRESS: 485 Massachusetts Ave., Suite 302, Cambridge, MA 02139
DECISION: Approved with Conditions (Steep Slope Special Permit)
Approved with Conditions (Hardship Variances)
DECISION DATE: February 2, 2022

This decision summarizes the findings made by the Zoning Board of Appeals (the "Board") regarding the development review application submitted for 21 Eastman Road.

LEGAL NOTICE

SGL Development seeks a steep slope special permit and variances that include: primary front setback, more than one building on a lot, building type, parking in frontage area, driveway in frontage area, habitable space depth, number of stories, ground story elevation, building width, side setback, upper story fenestration, story height. Neighborhood Residence (NR) zone.

RECORD OF PROCEEDINGS

On December 15, 2021, the Zoning Board of Appeals held a public hearing advertised in accordance with M.G.L. 40A and the Somerville Zoning Ordinance (SZO). Present and sitting at the public hearing were Board Members Chair Susan Fontano, Anne Brockelman, Ann Fullerton, and Alternate Katherine Garavaglia. The applicant team provided an extensive overview of the multiple iterations of the project, neighborhood engagement and current proposal. The Board took public comment and continued the public hearing to the January 19, 2022, meeting date.

On January 19, 2022, the Board resumed the public hearing. Present and sitting at the public hearing were Board Members Chair Susan Fontano, Anne Brockelman, Ann Fullerton, and Alternate Katherine Garavaglia. The applicant team reviewed the changes that had been made to the proposal since the previous hearing and illustrated how and the number of variance requests that they were able to eliminate from their proposal. The Board took public comment and continued the public hearing to the February 2, 2022, meeting date.

On February 2, 2022, the Board resumed the public hearing. Present and sitting at the public hearing were Board Members Chair Susan Fontano, Anne Brockelman, Ann Fullerton, and Alternate Katherine Garavaglia. The Applicant team briefly discuss minor modifications. The Board deliberated the variances and made findings.

SPECIAL PERMIT FINDINGS

In accordance with the Somerville Zoning Ordinance, the Board may approve or deny a special permit for development on a steep slope upon making findings considering, at least, each of the following:

1. *The comprehensive plan and existing policy plans and standards established by the City.*

The Board finds that proposal would provide two market-rate units which partially contributes toward achieving the following goal(s) from SomerVision 2040, the comprehensive master plan of the City of Somerville:

- Significantly increase housing stock to keep up with demand while pursuing the goals of increasing the proportion of affordable housing and housing stock diversity.

2. *The intent of the zoning district where the property is located.*

The Board finds that the intent of the NR zoning district is, in part, “[t]o conserve already established areas of detached and semi-detached residential buildings.” If a more conforming project is proposed with one conforming detached or semi-detached principal building on the lot, then such a proposal may help to meet the intent of the zoning district.

3. *Consistency of site disturbance with the intent and purpose of Section 10.10 Steep Slopes:*
 - a. *To minimize storm water runoff and soil erosion problems incurred by the grading of steep slopes.*
 - b. *To maintain the natural topography and drainage patterns of land.*
 - c. *To help protect real property at the base of a steep slope from damage caused by erosion, mudslides, rockslides, falling trees, and other harms.*

As with any construction project, there will be some degree of site disturbance. However, the Board finds that due to the choice to construct nearly 5,000 square feet of living area in addition to parking spaces, driveways, and stairs running downslope between the two proposed buildings, the proposed development project on 21 Eastman Road would result in more site disturbance than is typical for a one- or two- unit project.

Though there are some older and smaller retaining walls on site, the natural topography of the site will not be maintained due to the construction of the new building. The drainage patterns will also be altered due to the proposed retaining walls, construction of nearly 5,000 square feet of living area, and the construction of a staircase that runs between the two proposed buildings. Many trees were already removed from the site prior to the adoption of the Tree Ordinance as part of site preparation.

The site will further be disturbed through significant grading in order to create the conditions necessary to construct the proposed buildings.

4. Geo-technical, structural engineering, and arboreal best practices for successfully and safely stabilizing steep slopes.

The Board finds that significant geotechnical, structural engineering, and arboreal techniques will be needed in order to mitigate the impacts of the site disturbances. In addition to the large retaining wall at the rear of the property, the proposed buildings themselves will partly function as their own retaining walls, eliminating the need for additional large retaining walls to be built on the property.

The existing reports (including geotechnical, stormwater/drainage, erosion control, recon retaining wall calculations) were generated in 2018 and 2019, and do not reference the currently proposed buildings or site design.

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 NR district;
2. Literal enforcement of the provision of this Ordinance for the NR district would involve substantial hardship, financial or otherwise, to the petitioner due to said special circumstances; and
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.

Relief from having dwelling units being stacked vertically (SZO §3.1.8.e.i):

The Board finds that the lot is uniquely shaped and its topography is steeply sloped which is unusual in Somerville. Literal enforcement of the provision of this Ordinance for the NR district would cause literal financial hardship to the applicant. A proposal that strictly follow the provisions of the Ordinance would result in a building that is higher than the current proposal, which would be detrimental to the public good. If the property were built taller, it would create further shadowing on neighbors which would be a public detriment. Moving the building downward following the topography of the land was a result of a request from the ZBA to re-design the project in a way that was for the betterment of the neighborhood.

Relief from the maximum number of stories (SZO §3.1.8.c):

The Board finds that the topography and shape of the land is such that in order to build the building into the hill, it requires more stories than would normally be

allowed. Constructing the building flatter would require much more fill to be brought to the site and more retaining walls which would be a substantial hardship to the applicant and detrimental to the neighborhood. Moving the building downward along with the topography of the site was the result of the ZBA request that the applicant re-design the project in this way for the betterment of the neighborhood.

Relief from maximum story height (SZO §3.1.8.c):

The Board finds that literal enforcement of this provision would create substantial hardship. Constructing the building into the hill was a design change made at the request of the Board in order to keep the height of the building lower for the neighborhood. This provides a better solution for the neighborhood by reducing the shadowing of neighboring properties.

Relief from maximum building width (SZO §3.1.8.c):

The Board finds that in order to mitigate shadowing effects on the neighbors, the applicant needed to construct the building with units side-by-side (instead of vertically stacked) and into the shape of the hill. The approach was taken in order to reduce the visibility of the building from the surrounding neighborhood and thereby mitigate the visual impacts on neighboring properties. The Board finds that no substantial detriment is created for the public and that literal enforcement of this provision of the SZO would create substantial hardship to the applicant and abutters.

Relief from minimum ground story elevation (SZO §3.1.8.c):

The Board finds that allowing for a lower entryway for both units is related to the need to construct the building into the topography of the site does not create a substantial detriment to the public. The literal enforcement of this provision of the SZO would create problems for the applicant in terms of steps into the building. The lowering of the entryway of the building units was done at the Board's request.

Relief from parking within the minimum parking setback (SZO §3.1.8.b):

The Board finds that literal enforcement of this provision of the SZO would cause cars to be parked outside and with minimal room for maneuvering. As the building has been designed to be built into the slope of the land and as the neighbors have requested that cars be housed in garage units, this approach was the manner in which to accommodate this request. The Board finds that granting this variance causes no detriment to the public.

Relief from habitable space depth (SZO §2.4.5.b.vi.a):

The Board finds that allowing for this variance causes no detriment to the public. The design places the main living story below grade for each of the two units. This strategy was pursued due to the topography of the site and in response to the Board's request to construct the building into the hillside order to mitigate impacts to the neighborhood.

DECISION

Following public testimony, review of the submitted plans, and discussion of the statutorily required considerations, Acting Clerk Garavaglia moved to approve the **SPECIAL PERMIT** to develop on a steep slope. Member Brockelman seconded. The Board voted **4-0** to approve the permit, subject to the following conditions:

Prior to Building Permit

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

Prior to Certificate of Occupancy

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

Following public testimony, review of the submitted plans, and discussion of the statutorily required considerations, Acting Clerk Garavaglia moved to approve the **HARDSHIP VARIANCES** with the conditions included in the Staff Memo. Member Brockelman seconded. The Board voted **4-0** to approve the permit, subject to the following conditions:

Prior to Building Permit

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

Prior to Certificate of Occupancy

2. A copy of the Recorded Decision stamped by the Middlesex South Registry of Deeds shall submitted for the public record.
3. Physical copies of all submittal materials as permitted by the Review Boards shall 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*
Anne Brockelman
Ann Fullerton
Katherine Garavaglia, *Alternate*



Sarah Lewis, Director of Planning, Preservation, and 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 _____