



City of Somerville

ZONING BOARD OF APPEALS

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

TO: Zoning Board of Appeals
FROM: Planning, Preservation, & Zoning Staff
SUBJECT: 10 Oak Street, P&Z 21-132
POSTED: September 2, 2022

RECOMMENDATION: None

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

This memo summarizes the Special Permit extension application submitted for 10 Oak Street, identifies any additional discretionary or administrative development review that is required by the Somerville Zoning Ordinance, and provides related analysis or feedback as necessary. The application was deemed complete on August 12, 2022, and is scheduled for a public hearing on September 7, 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

Fidelis Bridge Loan Venture V REO LLC seeks an extension to a previously issued Special Permit (ZBA 2018-10) in the Urban Residential (UR) District.

SUMMARY OF PROPOSAL

Fidelis Bridge Loan Venture V REO LLC is seeking an extension to a previously issued Special Permit (ZBA 2018-10), issued under previous zoning to expand an existing structure and convert it from two (2) to three (3) units. The existing structure has since been demolished in its entirety, in violation of Condition 1 of the original Decision, and a new foundation was built. Inspectional Services issued a stop-work order in May 2019 for the violation and construction has not resumed since.

This Application is to extend the Special Permit, allowing the development to be built according to the plans approved as part of the original Decision. Massachusetts General Laws, Chapter 40A, Section 6, states in relevant part that unless construction under a special permit has, "continued through to completion as continuously and expeditiously as is reasonable," then construction must comply with any subsequently adopted amendment of the ordinance. Because construction has been delayed since 2019, in order for construction to now be allowed to continue under the previously approved Special Permit not subject to current zoning, the ZBA must determine whether the Applicant has demonstrated reasonable cause for the delay in construction, by extending the Special Permit.

BACKGROUND

10 Oak Street is located in the 0.25mi Transit Area in the Urban Residential (UR) zoning district in the Union Square neighborhood represented by Ward 2 Councilor J.T. Scott. At the time the original application was approved, the property was zoned RC residence district.

The original application, which was submitted under prior zoning, requested a Special Permit to upwardly extend the non-conforming right side yard setback, add more than 25% of the existing gross floor area, and receive parking relief in the expansion of an existing two-family residence to a three-family residence in the (then) RC zoning district. The Zoning Board of Appeals (ZBA) voted to approve the original Special Permit in May 2018, and the decision was filed with the City Clerk's Office on May 30, 2018. The SZO in place at the time the original application was submitted and approved establishes the ZBA as the decision-making authority for all discretionary permits required for development in the RC zoning district. An extension of a Special Permit issued at that time, or a remedy to a violation of a condition of a such a Special Permit, requires approval from the ZBA.

The Historic Preservation Commission (HCP) reviewed the property under the Demolition Review Ordinance. In 2018 the HCP determined that the structure was not "historically significant" and released the property from any further HCP review.

In 2019, the property came under new ownership and the existing building was demolished and a new foundation was built. The demolition of the existing building violated Condition 1 of the original approval, and a stop-work order was issued and the owner was told they had to return to the ZBA for remedy and approval. The owner returned to the ZBA in March 2020, and the ZBA reviewed the application during hearings on March 11, 2020, and May 6, 2020. At the May 6th meeting, the Applicant requested to withdraw the application without prejudice, and the ZBA approved the request.

The property is now, again, under new ownership, and the current owner has submitted an application to extend the ZBA's original Decision (ZBA 2018-10) and allow the structure to be constructed as previously approved.

ANALYSIS

By beginning construction, the previous owner exercised the right to build under the approved Special Permit. However, by demolishing the building and constructing a new foundation, the owner exceeded the scope of the permit and violated of Condition 1 of the original Decision. Because construction was begun, the Special Permit has not lapsed. However, since ISD issued the stop-work order in 2019, the project has not moved forward, and the Somerville Zoning Ordinance has since undergone a major amendment that impacts the site.

Massachusetts General Laws, Chapter 40A, Section 6, states in relevant part that unless construction under a special permit has both (a) “commenced within a period of no more than 12 months after the issuance of the permit”, and (b) has “continued through to completion as continuously and expeditiously as is reasonable,” then construction must comply with any subsequently adopted amendment of the ordinance. Because construction has been delayed since 2019, the Inspectional Services Department is unable to make a determination that work has been performed as continuously and expeditiously as is reasonable. The Applicant has requested the Zoning Board of Appeals (ZBA) to extend the Special Permit, which requires a finding that construction has continued as continuously and expeditiously as is reasonable.

If the ZBA finds that construction has continued as continuously and expeditiously as is reasonable, and approves the extension to the Special Permit, the Applicant will then be able to apply for an amendment to the Special Permit to remedy the violation of Condition 1 of the original decision. If the ZBA approves such an amendment, the Applicant will be able to continue with the project according to the approved plans. If the ZBA does not find that construction has continued as continuously and expeditiously as reasonable, and on that ground denies the extension of the Special Permit, the Applicant must comply with the current Somerville Zoning Ordinance as it applies to the property. Staff would like to note that, due to the dimensions of the lot (specifically the lot depth), under the existing Urban Residence (UR) zoning requirements, the lot is not buildable.

As previously noted, since construction began and a stop-work order was issued, the property has come under new ownership; the Narrative provided by the Applicant’s Agent (Atty. Adam Dash) states that the current owner/Applicant took title to the property in foreclosure and was not involved in the prior process. Since purchasing the property, the Applicant and their Agent have been in communication with the Inspectional Services Department (ISD) and Planning, Preservation and Zoning (PPZ) Division, and applied for the extension following the process as determined by ISD.

CONSIDERATIONS & FINDINGS

For the original decision (ZBA 2018-10), the Zoning Board of Appeals (ZBA) made findings on each of the following considerations. For this application for an extension, the ZBA is required by the Somerville Zoning Ordinance to deliberate each of the following considerations at the public hearing. The Board must discuss and draw conclusions for each consideration, but may make additional findings beyond this minimum statutory requirement.

Special Permit Considerations (as established by the Somerville Zoning Ordinance at the time of the original Decision on May 16, 2018):

1. *Information supplied.* Complies with the information requirements of Section 5.1.2;

2. *Compliance with standards.* Complies with such criteria or standards as may be set forth in this Ordinance which refer to the granting of the requested special permit
3. *Consistency with purposes.* Is consistent with: (1) the general purposes of this Ordinance as set forth in Article 1, and (2) the purposes, provisions, and specific objectives applicable to the requested special permit which may be set forth elsewhere in this Ordinance, such as, but not limited to, those purposes at the beginning of the various Articles; and
4. *Site and area compatibility.* Is designed in a manner that is compatible with the existing natural features of the site and is compatible with the characteristics of the built and unbuilt surrounding area, including land uses
5. *Housing Impact.* Will not create adverse impacts on the stock of existing affordable housing.
6. *SomerVision Plan.* Complies with the applicable goals, policies and actions of the SomerVision plan, including the following, as appropriate: Preserve and enhance the character of Somerville's neighborhoods, Transform key opportunity areas, Preserve and expand an integrated, balanced mix of safe, affordable and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups; and make Somerville a regional employment center with a mix of diverse and high-quality jobs.

Findings as required under M.G.L. ch. 41A, Section 6

1. Construction has continued through to completion as continuously and expeditiously as is reasonable.

Information relative to the required considerations is provided below:

Special Permit

1. Information supplied.

Staff believes that the information provided by the Applicant complies with the requirements of the SZO, given that the Applicant is only seeking to extend the validity of the Special Permit, which would allow the Applicant to seek an Amendment and remedy to the violation of Condition 1 of the original decision and allow the construction of the previously approved residential building.

2. Compliance with standards.

The ZBA previously found that the original Application, as conditioned, complied with the standards set for in the SZO that refer to the granting of the requested special permits. The Applicant is seeking an extension to the Special Permit, which would allow the Applicant to seek an Amendment and remedy to the violation of Condition 1 of the original decision for the construction of the previously approved residential building, consistent with the standards set by the SZO at the time of the original Decision.

3. *Consistency with purposes.*

The ZBA previously found that the original Application, as conditioned, was consistent with the general purposes of the Ordinance and with the previous (RC) zoning district. An extension to the Special Permit would allow the Applicant to seek an Amendment and remedy to the violation of Condition 1 of the original Decision for the construction of the previously approved residential building, consistent with the purposes of the Ordinance and the previous zoning.

4. *Site and area compatibility.*

The ZBA previously found that the original Application, as conditioned, presented a project that is designed in a manner compatible with the characteristics of the built and unbuilt surrounding area, including land uses. The Decision noted the surrounding area presents a mix of residential housing forms and density, and that the proposed structure would be compatible with the surrounding area and would result in significant visual improvement to the property and streetscape. As the Applicant has stated their goal to construct the building in compliance with the originally approved plans, Staff believes the proposal remains compatible with the site and surrounding area.

5. *Housing impact.*

The ZBA previously found that the original Application would not create adverse impacts on the stock of existing affordable housing. The original house did not contain any affordable units, and the proposed development would not have provided any affordable housing units or payments. As the Applicant has stated their goal to construct the building in compliance with the originally approved plans, Staff believes there are no adverse impacts on the stock of existing affordable housing.

6. *SomerVision Plan.*

The ZBA previously found that the original Application was compliant with applicable goals, policies, and actions of the SomerVision Plan, including the following:

- Preserve and enhance the character of Somerville's neighborhoods;
- Transform key opportunity areas;
- Preserve and expand an integrated, balanced mix of safe, affordable, and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups; and
- Make Somerville a regional employment center with a mix of diverse and high-quality jobs.

The ZBA found that the proposal would upgrade an existing property in need of rehabilitation and would add a dwelling unit to the City's housing stock. As the Applicant is proposing to construct the building in compliance with the originally approved plans, Staff believes there are no changes to the previous finding, and that the Application remains compliant with applicable goals, policies, and actions of the SomerVision Plan.

Special Permit Extension Findings, under M.G.L. ch. 41A, Section 6

1. *Construction has continued as continuously and expeditiously as reasonable.*

The ZBA must find whether the Applicant has made efforts to continue construction of the project as expeditiously as possible. The ZBA may consider the history of the case and the arguments set forth by the applicant, along with other relevant information that may demonstrate efforts to continue construction as expeditiously as reasonable.

PERMIT CONDITIONS

Should the Board approve the required extension to Special Permit ZBA 2018-10, Planning, Preservation & Zoning Staff recommends the following conditions, in addition to retaining the previous conditions of approval:

Perpetual

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

Prior to Building Permit

2. The Applicant must return to the Zoning Board of Appeals for an Amendment to the Special Permit to remedy the violation of Condition 1 of the original Decision.
3. Physical copies of all development review submittal materials, as permitted by the Planning Board, must be submitted to the Planning, Preservation & Zoning Division for the public record