



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

OCTOBER 12, 2022 MEETING MINUTES

This meeting was conducted via remote participation on GoToWebinar.

NAME	TITLE	STATUS	ARRIVED
Susan Fontano	Chair	<i>Present</i>	
Katherine Garavaglia	Clerk	<i>Present</i>	
Anne Brockelman	Member	<i>Present</i>	
Ann Fullerton	Member	<i>Present</i>	

City staff present: Charlotte Leis (Planning, Preservation, & Zoning), Emily Hutchings (Planning, Preservation, & Zoning)

The meeting was called to order at 6:02pm and adjourned at 8:05pm.

GENERAL BUSINESS: Meeting Minutes

Following a motion by Clerk Garavaglia, seconded by Member Brockelman, the Board voted unanimously (4-0) to approve the 18 May 2022, 13 July 2022, 3 August 2022, and 21 September 2022 meeting minutes.

PUBLIC HEARING: 10 Oak Street (P&Z 21-132)
(continued from 21 September 2022)

The applicant team gave a summary of the discussion at the last meeting and noted that if the extension is approved, the applicant team will work expeditiously as possible to move forward.

Chair Fontano noted that the Board received photos of the property from the applicant; the photos showed that the applicant team has cleaned up the property since the last meeting. The applicant team explained how the owner became the owner of the property and said that they cleaned up the property as soon as they were notified of the problem at the last hearing and promised to keep the property clean until the completion of the project. The Board stated that they had another property before them in July with the same applicant team and the same complaints; they believe they reprimanded the applicant for the same unneighborly behavior when they were asking for the same type of relief. The Board asked Staff whether they could impose a condition to the extension that states specifically how the property is to be maintained. The contractors that have been hired for this job stated that it will be their responsibility to keep the property maintained, safe, and clean from now on. The Board and contractors discussed the contract that is in place and the estimated time for the project completion.

Staff noted that if the Board granted the extension, the applicant team would still have to come back to the Board for a revision to the Special Permit since the original Special Permit was a modification to the original building, whereas the applicant is now seeking to complete new construction. The Board could also add a condition requiring that the property be maintained throughout construction and another condition on the revision if the Board chooses to grant that. The Board confirmed that if they impose a condition on the extension of the Special Permit, it would be in place as long as the Special Permit is valid. The Board asked if the construction contract has been executed; the contractors confirmed that the contract has been executed and they have already started work such as cleaning the property. The Board and Staff discussed requiring the applicant team to provide photos of the site monthly or quarterly to ensure that the site has been maintained. Staff noted that it would be more

appropriate to have the photos submitted to the Inspectional Services Department (ISD), as it would be ISD's role to enforce the permit.

The Board and contractors discussed the construction timeline. The applicant team asked if they could start construction while waiting on a revision decision, since they have to come back to the Board a separate time for the revision. Staff confirmed that work cannot start until an amendment is approved. They discussed the timeline and process of the next steps if the extension is approved.

The Board stated that while the contractors are taking ownership of the property's maintenance, it is ultimately the responsibility of the applicant, and the applicant has repeatedly shown that they have not been present on their properties. The Board is concerned that what is being shown may not actually get built and that the applicant is not trustworthy. The Board and applicant team discussed the number of projects this applicant team has purchased out of foreclosure, built to completion, and currently has in Somerville. The Board asked the applicant team why it takes someone to police them to keep their properties in an acceptable condition; the team stated that they were unaware of the disarray of their properties. The Board noted that this was a topic of discussion at the July meeting, so they were aware of the conditions of the site.

Staff informed the Board that since this project was approved under the old zoning ordinance, the ZBA would have the same jurisdiction as they did under that ordinance which included purview over the design if the Board desired.

The Board and architect discussed how the old contractor built a foundation without informing anyone and that the foundation has been since rebuilt. The old foundation was at least 4' outside of the 10 Oak Street property and the new foundation is 1' within the property line, so it is no longer encroaching on the neighboring property.

The Board stated that if the extension is approved, the applicant must present exactly what is currently built onsite and plans for what will be built with zero variation when they return to the Board to seek approval for a revision to the Special Permit. If the Board grants a revision to the Special Permit, the applicant team cannot make any changes between getting the revision approval and what is constructed. The Board would like to be as strict as possible on this.

Chair Fontano invited members of the public to speak, if they have not done so already at the last meeting.

Michelle Hewitt (7 Holts Ave) – agreed with her neighbors about the property. She stated that even if the property is cleaned up, the proposed structure is too big for the site, and it should conform to the current laws and codes. She has no faith in this developer.

Jennifer Hilario (9 Bolton St) – stated that her faith has not been restored in the developer. She drove by their other property in the city, and it is also in disarray. If there was a way to log how many calls and complaints that have been made to the city about this property in the last several years, it would be intense. It is not fair to the abutting neighbors that they would have to live against this mess. Ms. Hilario stated that she is concerned that this developer is going to flip this property to another contractor, maybe even this one, and with interest rates going up, we are going to be in a continuous loop where the contractor or new owner will not be able to fulfill the promises made and will default on the loan and the property will go into foreclosure again. Given the history of the developer, they should not be given the benefit of the doubt, and they should be required to start over with the new zoning laws.

Elaine Koury (101 Beacon St) – appreciated the ZBA taking the condition of the property so seriously but wanted to make sure they paid attention to the fact that they are turning this property into a 3-family. She stated that two of the units would have entrances on the side that face the neighbor but should have entrances that are on the front of the building. They would be creating a sidewalk in between two properties that are extremely close.

Bill Cavellini (33 Oak St) – wanted to add his voice to the neighbors that complained about the condition of the property and the water that sat stagnant for years. The sidewalk has never been shoveled. As long as any of the current parties are still involved, his household cannot support this development. He also noted that the entrances to the building, being so close to the neighbors, would not be allowed under the new zoning. Mr. Cavellini stated that he is opposed to this project and the developers should have to follow the new zoning that was passed by the city.

Jen Booth (14 Oak St) – had a problem with the building being built on their lot line and would appreciate if the ZBA made the applicant adhere to the new zoning laws that the city agreed to. Ms. Booth felt as though they would be forced into litigation should this application be approved. She stated that no owners have been in contact with them and they would have to seek out legal counsel, insurance protection, and home insurance protection to protect against a property that the ZBA allowed which would put the onus on them and the other direct abutters.

Ward 2 Councilor JT Scott – stated that conversations about zoning relief are not just about what someone wants to do with their house, but also how it impacts the neighbors and the neighborhood. The new owner has not had conversations with neighbors about how this will impact them and there are zero constituents in support of this extension. Mr. Scott stated that everyone wants to see something on this property, and he would be happy to facilitate a process that results in a design that is responsive to the current zoning and current conditions. He felt that putting the onus back on the neighbors, who have been struggling to get basic enforcement from the Inspectional Services Department for years, is not a realistic approach. He appreciated the fact that the ZBA tries to be accommodating, but he does not support an extension. He offered to work with the owner, neighbors, and city to find a way forward.

The Board noted that if they do not grant the extension, the property may get worse for a while before it gets better; they asked Councilor Scott and the members of the public if they found that appropriate and acceptable for the neighborhood. Mr. Scott stated that the current poor conditions are unsatisfactory and based on the timelines discussed, construction wouldn't happen before the winter. He felt that there is a strong desire to get the site right and if the current ownership is unwilling to get a design that the neighborhood is in support of, that process can happen over the winter. There is no benefit to the neighborhood for an approval this evening. The Board stated that the neighborhood needs to be aware that the current ownership may sell the property if the extension is not approved; the neighborhood would have to be prepared for a project that is indefinitely incomplete. They also noted that based off the neighborhood feedback, they have no confidence in the applicant team or current design, and they are willing to wait for something better even if that takes a year.

The architect stated that if this building needs to be in compliance with the new zoning requirements, then they would need at least one variance to build anything on the lot. Otherwise, the lot is unbuildable.

The Board discussed the possibility of requiring additional information from the team such as contractor information, the maintenance plan, and budget that could shed more light on this team, should they approve the extension request. The contractor stated that by being present this evening, it shows how dedicated they are and will be throughout the entirety of the project. They also noted that they have a snow removal subcontractor that is solely responsible for his properties, and he can guarantee that the property will be maintained.

Dorinda Jaquith (6 Oak St) – directly abuts this property and has lived with this mess for years. She stated that the conditions for extending the Special Permit have been clearly laid out in the Staff Report and not one of them has been met. The neighbors are being asked to just let the developer do what they want, and they are not being taken into consideration. Ms. Jaquith met the owner in June when he told her he bought the property and was going to fix it up; he could have cleaned the property that day and he did not. She stated that this is not a good choice for the neighborhood; it is in violation of so many laws and standards in a neighborhood that is overrun with development. The property should comply with the new zoning. She would also like to know who is funding this development.

Ed Marakovitz (6 Oak St) – was dumbfounded that the ZBA would consider granting the extension just because they cut down some weeds because they are nowhere close to meeting the requirements of extending the Special Permit. They have no reason to believe that this owner or contractor will work with the neighbors to enhance the community.

Jen Booth (14 Oak St) – did not find solace in what has been said tonight, rather she felt threatened; do this or you get nothing. The effort that it is going to take to get this done is going to be more; the inflation, the impact to interest rates, the impact to what buyers need, and the costs in regards to upkeep and maintenance are all cause for concern. She appreciated the fact that the contractors are present, but the owner isn't even present to defend himself or what the contractor says they are going to do. Ms. Booth stated that if the owner doesn't want to build a house, then it should go back into foreclosure and if that happens then they are just proving everyone right that they were never intending to do it. She challenged the owner to do their due diligence and design a two-unit house, off the lot line, with minimal variances and present a new project to the ZBA.

Kate Byrne (33 Oak St) – stated that the impact on the neighborhood has been horrendous over the last three years and to ask the neighbors to trust the owner to do anything different than what they have been doing is untenable. She has called ISD multiple times to report to the conditions of the property. For the neighbors to have to look at this and deal with this for years is outrageous. She agreed with her neighbor that this feels like a threat; if you don't give us what we want, we won't do anything at all.

Chair Fontano closed public testimony.

The Board discussed that if they vote this evening, based on what they've heard, they do not feel that the applicant has met the expectations to approve the extension. The applicant team discussed if they would rather ask for a continuance, withdraw, or go forward with the vote. The applicant team requested a continuance so that the team could talk with ISD about options and alternatives.

The Board discussed if the result of the discussion with ISD and the owner does not result in substantial changes and provide a major "olive branch" to the abutters they recommend withdrawing the application. They continued the discussion by stating that this project has shown too much nonaction over too long of a time and continuing would be futile, as it would be a waste of the Board's time. The applicant team asked to withdraw without prejudice.

Following a motion by Clerk Garavaglia, seconded by Ms. Brockelman, the Board voted unanimously (4-0) to accept the applicant's request to withdraw without prejudice.

RESULT:

WITHDRAWN

OTHER BUSINESS: 34 North Street (Clarendon Hill) 40B (P&Z 22-137)

Staff gave an overview of the 40B procedure and how the ZBA is charged with reviewing and approving minor changes, as opposed to the Director of Planning, Preservation, & Zoning.

The applicant team gave an overview of the project as a whole and of the current revisions that are being requested. They reviewed the requests: 1) allowing 2.5" of surface relief instead of 4" inches; 2) reducing the number of parking spaces in building E from 59 to 55; and 3) moving the transformers associated with Building E to a slightly different location behind Building E.

The Board and applicant team discussed exactly how the surface relief will affect the size of the windows and window frames, if these changes are just for this phase or the entire project, the strict reading of the conditions

per Staff's recommendation, the type of parking spaces that will be affected, and why parking needs to be reduced.

Following a motion by Clerk Garavaglia, seconded by Ms. Brockelman, the Board voted unanimously (4-0) to determine that the changes proposed as part of this application are insubstantial.

RESULT:

INSUBSTANTIAL

NOTICE: These minutes constitute a summary of the votes and key discussions at this meeting. A recording of these proceedings can be accessed at any time by using the registration link at the top of the meeting agenda.