



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:** 120-132 Middlesex Avenue, P&Z 23-059  
**POSTED:** July 12, 2023

**RECOMMENDATION:** Approve with Conditions

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 request for an extension of the duration of the validity of a Hardship Variance previously granted for 120-132 Middlesex Avenue and provides related analysis or feedback as necessary. The application was deemed complete on June 14, 2023, and is scheduled for a public hearing on July 19, 2023. 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**

DWCH Assembly Row, LLC seeks to extend the validity of a previously approved Hardship Variance (P&Z 22-056) in the Assembly Square Mixed-Use (ASMD) district.

## **SUMMARY OF PROPOSAL**

DWCH Assembly Row, LLC is requesting a 6-month extension to the validity of a previously granted Hardship Variance (P&Z 22-056). Granting this extension would extend the validity of the permit from August 17, 2023 to February 17, 2024.

## **BACKGROUND**

On November 18, 2020, the Zoning Board of Appeals granted a Hardship Variance for the subject property from SZO Article 7.4.6.b.i., which requires that 25% of the development site of a Master Plan be dedicated to Civic Space. The Hardship Variance was granted with a two (2)-year expiration period, atypical to other hardship variances permitted under the Somerville Zoning Ordinance and M.G.L. Ch.40A, Section 10, which expire after one (1) year.

On November 3, 2021, property owner DWCH Assembly Row, LLC came before the Zoning Board of Appeals to determine the validity of the previously approved Hardship Variance. At that point the Zoning Board of Appeals granted a six (6)-month extension to the Hardship Variance, changing the expiration date from November 18, 2021 to May 18, 2022.

On August 3, 2022, the Applicant requested a subsequent Hardship Variance from the required Civic Space as dictated by the Master Plan Standards from the Zoning Board of Appeals, as the previous approval could not be extended again. The Hardship Variance is effective from August 17, 2022 to August 17, 2023.

The Applicant is requesting an extension to the Hardship Variance approved on August 3, 2022. This will provide the Applicant with additional time to complete the Master Plan Special Permit major amendment and Site Plan Approval process associated with the previously approved Master Plan Special Permit (MP#2020-0003).

## **ANALYSIS**

PPZ Staff believes the literal enforcement of the Somerville Zoning Ordinance, Article 7.4.6.b.i., would result in the creation of a Civic Space in a location where the City cannot support its use, adjacent to a busy highway. Staff has strong concerns regarding Civic Spaces being located within proximity to heavily trafficked highways and the potential long-term public health impacts associated with exposure to airborne ultrafine particulates. A thoughtful Civic Space in the Assembly Square Mixed-Use (ASMD) zoning district should be located further into the heart of the district in response to the positive (the Orange Line Station) and negative (the highway) pressures of the neighborhood context and providing a space that current and future residents can use to the fullest extent without air quality concerns.

The Applicant has volunteered to provide a payment-in-lieu of the required Civic Space. By utilizing the entire parcel for building development, the project allows for the creation of a building barrier between the district and the highway to help block the fine particulate pollution. The proposal would create funds for a high-quality Civic Space to be constructed elsewhere in the district – creating a balance between social, environmental, and economic benefits. This highly desirable outcome would support the intent and purpose of the Assembly Square Mixed-Use (ASMD) zoning district to address the lack of usable and high-quality Civic Spaces.

Upon analysis of the material submitted by the Applicant, PPZ Staff does not believe that the granting of the requested extension of the Hardship Variance would cause a substantial detriment to the public good or nullify or substantially derogate from the intent and purpose of the Assembly Square Mixed-Use (ASMD) district.

## **CONSIDERATIONS & FINDINGS**

Upon written request by an Applicant, the Zoning Board of Appeals may, in its discretion, extend the time period that a Hardship Variance remains valid for up to six (6) months. The Somerville Zoning Ordinance does not require any findings to be made.

**PERMIT CONDITIONS**

Should the Board approve the requested extension of the duration of the validity of the previously approved Hardship Variance (P&Z 22-056), Planning, Preservation & Zoning Staff recommends the following conditions:

**Validity**

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

**Public Record**

2. A digital 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.