

May 25, 2023

VIA ELECTRONIC MAIL & FEDERAL EXPRESS

City of Somerville Zoning Board of Appeals
c/o Sarah Lewis, Director of Planning, Preservation & Zoning and
Raisa Saniat, Planner
Mayor's Office of Strategic Planning & Community Development
93 Highland Avenue, City Hall Third Floor
Somerville, MA 02143
Email: slewis@somervillema.gov
rsaniat@somervillema.gov

RE: Extension of Hardship Variance
Case No. P&Z 22-056, dated August 17, 2022
120-132 Middlesex Avenue, Ward 1, Somerville, MA

Dear Director Lewis and Ms. Saniat:

On behalf of DWCH Assembly Row, LLC (the "Applicant"), successor-in-interest by assignment to Brickyard at Assembly LLC, we hereby request that the City of Somerville Zoning Board of Appeals ("ZBA") grant an extension of the Hardship Variance issued to the Applicant in Appeals Case No. P&Z 22-056, dated August 17, 2022 (the "Hardship Variance"), pursuant to Section 15.2.3.h of the City of Somerville Zoning Ordinance (the "SZO"), to extend the exercise period for the Hardship Variance from August 3, 2023 to February 3, 2024. This extension is being requested to provide the Applicant with additional time to complete the Master Plan Special Permit Amendment and Site Plan Approval processes associated with the proposed project (the "Project") identified in that certain Master Plan Special Permit in Case No. 2020-0003 issued by the Planning Board on April 30, 2021 (the "MPSP").

The Hardship Variance, a copy of which is attached hereto as Exhibit A, grants a variance from the requirements of Section 7.4.6.b of the SZO (previously 7.4.5.b of the SZO), which requires at least twenty-five percent (25%) of a Development Site to be provided in one or more Civic Spaces (such terms as defined in the SZO).¹ As indicated above, the Applicant has received the MPSP for the Project, and additionally, the Applicant has been diligently pursuing

¹ We note that the ZBA previously issued a hardship variance from such Civic Space requirements for the Project by a decision dated November 25, 2020 (Appeals Case No. MP 2020-0003), which was extended by the ZBA by a decision dated November 17, 2021 (P&Z 21-146) (as so extended, the "Original Decision"). The Hardship Variance that is the subject of the present extension request was issued when extensions to the Original Decision were no longer possible under M.G.L. Chapter 40A, Section 10 and Section 15.3.h of the SZO.

DWCH Assembly Row, LLC
120-132 Middlesex Avenue
Request for Hardship Variance Extension

Page 2

the refinement of architectural design for the Project, including filing MPSP Amendment (P&Z 22-100) and Site Plan Approval (P&Z 22-087) applications.

Pursuant to Section 15.2.3.h.i of the SZO, a hardship variance is only valid for one (1) year from the date on which the decision of the ZBA is made on a hardship variance and not the date on which the decision regarding the same is filed with the City Clerk. The ZBA made its decision on the Hardship Variance at its hearing on August 3, 2022. In order to continue to have certainty in the design for the Project, including completion of the MPSP Amendment and Site Plan Approval processes, the Applicant requests that the ZBA extend the effective period of the Hardship Variance for six (6) months from August 3, 2023 to February 3, 2024.

Thank you for your time and consideration on this matter and please do not hesitate to contact me with any questions.

Sincerely,



Darren M. Baird
Attorney for the Applicant

DMB/ys
Enclosure

EXHIBIT A

HARDSHIP VARIANCE

[See attached].



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

Bk: 01584 Pg: 26 Cert#: 278392
Doc: DECIS 09/20/2022 02:52 PM



DECISION

PROPERTY ADDRESS: 120-132 Middlesex Avenue
CASE NUMBER: P&Z 22-056
OWNER: Grande Spaulding, LLC
OWNER ADDRESS: 27 Pleasant St,
North Reading, MA 01864
DECISION: Approved (Hardship Variance)
DECISION DATE: August 17, 2022

2022 AUG 17 P 2:17
CITY CLERK'S OFFICE
SOMERVILLE, MA

This decision summarizes the findings made by the Zoning Board of Appeals (the "Board") regarding the Hardship Variance submitted for 120-132 Middlesex Avenue.

LEGAL NOTICE

Current Owner
DWCH Assembly Row, LLC seeks relief from the Master Plan Standards that requires at least twenty-five (25%) percentage of a development site to be provided as a Civic Space in the Assembly Square Mixed-Use (ASMD) district, which requires a Hardship Variance.

RECORD OF PROCEEDINGS

On August 3, 2022, the Zoning Board of Appeals held a public hearing advertised in accordance with M.G.L. 40A and the Somerville Zoning Ordinance. Present and sitting at the public hearing were Board Members Chair Susan Fontano, Acting Clerk Katherine Garavaglia, Anne Brockelman, and Ann Fullerton. The Applicant presented their argument to the Board and explained that the Hardship Variance for a Civic Space that was previously approved has expired. Chair Susan Fontano discussed with the Board members that at the time of the original Hardship Variance application on November 18, 2020, both City Staff and the Applicant gave an extensive presentation on the fine particulate pollution as a result of the proximity to the highway to the required Civic Space. Public testimony was taken in support of the approval of the Hardship Variance application from an abutter. Member Fullerton confirmed that the Applicant is seeking the same Hardship Variance that was previously approved on November 18, 2020.

PLANS & DOCUMENTS

Application plans, documents, and supporting materials submitted and reviewed are identified below.

Document	Pages	Prepared By	Date	Revision Date
Narrative Letter	13	Goulston & Storrs	April 14, 2022	N/A

A TRUE COPY ATTEST:

kmwzls
CITY CLERK

132 Middlesex Ave 278392 - Lot A3
120 Middlesex Ave 278393 - Lot A4

THE COPY OF
A TRUE COPY ATT
W. J. B. W.
CITY OF BIRM

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 Assembly Square Mixed Use (ASMD) zoning district in which the land or structure is located.*

The Board finds that special circumstances exist relating to the shape and location of the subject lot in contrast to other land located in the ASMD zoning district.

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, DWCH Assembly Row, LLC, due to said special circumstances.*

The Board finds that literal enforcement of the twenty five percent (25%) Civic Space requirement would create a hardship to the petitioner in causing development consistent with the intent and purpose of the ASMD zoning district unfeasible.

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 Assembly Square Mixed Use (ASMD) zoning district in this Ordinance or the Ordinance in general.*

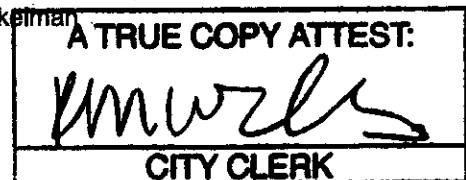
The Board finds that the specific relief authorized by the Hardship Variance would not cause a substantial detriment to the public good. The Board also finds that the relief granted would not nullify or substantially derogate from the intent and purpose of the ASMD district including, but not limited to, permit the development of commercial high-rise buildings, and provide quality commercial spaces or the broader intent of the Somerville Zoning Ordinance including, but not limited to, increase commercial tax base in support of the fiscal health of the City increase accessibility to diverse employment opportunities within Somerville, and equitably balance the regulation of real property with the interests of the community as a whole.

DECISION

Following public testimony, review of the submitted plans, and discussion of the statutorily required considerations, DWCH Assembly Row, LLC moved to approve the Hardship Variance to relief from the Master Plan Standards that requires at least twenty-five (25%) percentage of a development site to be provided as a Civic Space. Member Ann Fullerton seconded. The Board voted **4-0** to approve the permit.

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chair*
Anne Brockelman




ATRIPOPOWATTEBES
CITY OF BERN
MAY 19 1964

Ann Fullerton
Katherine Garavaglia, *Alternate*



Sarah Lewis, Director of Planning, Preservation, & Zoning
Office of Strategic Planning & Community Development

A TRUE COPY ATTEST:

CITY CLERK

CITY CLERK
I *[Signature]*
A TRUE COPY ATTEST

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 August 12, 2022 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.

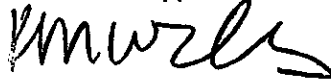
FOR SPECIAL PERMIT(S) WITHIN

☐ 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

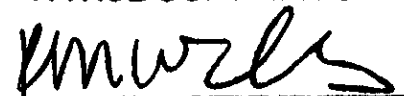
☐ there have been no appeals filed in the Office of the City Clerk, or
☐ there has been an appeal filed.

Signed



City Clerk

Date

9/15/2022**A TRUE COPY ATTEST:****CITY CLERK**

①

Doc 01923455

Southern Middlesex Land Court
Registry District

RECEIVED FOR REGISTRATION

On: Sep 20, 2022 at 02:52P

Document Fee 105.00

Receipt Total: \$210.00

NOTED ON: CERT 278392 BK 01584 Pg 26
ALSO NOTED ON: 278393-1584-26

Gaulston
d
Storrs
P.C.

A TRUE COPY ATTEST
CITY CLERK
Wm. J. Smith
CITY CLERK