

This is an appeal of the issuance of certificates of occupancy by the building official for the project at 118-124 College Ave, Somerville, MA 02144 . The building permit was issued after ZBA approval on April 18, 2018 in Case #ZBA 2017-88.

The City of Somerville has rules and procedures for a property owner to follow for those properties that require action by the zoning and/or planning board. The desired outcome is the issuance of a certificate of occupancy and for residences, an increase in the city's housing stock. This includes the owner's responsibility to provide the city with accurate building plans reflecting the terms of the zoning/planning board, to re-submit plans if the design is changed, and to comply with directives from Inspectional Services.

In the case of 118-124 College Ave, these terms have not been followed, to wit:

- a. There are readily-visible external discrepancies between what was built and the approved plans. The city has repeatedly been informed in writing of these throughout the course of the project.
- b. As far as we have been able to determine, there have been no de minimis determinations regarding discrepancies between what was built and the approved plans.
- c. The "as-built" plans (dated 5/15/23, stamped by the architect) submitted are inaccurate, and the "as-built" floor plans for two units are completely blank, making it impossible to check compliance and square footage.
- d. As far as we have been able to determine, and despite repeated complaints to Inspectional Services throughout the course of the project, the property owner never posted the notice required by Condition 6 of the ZBA decision, rarely posted building permits, and their personnel reportedly removed Stop Work Order notices posted by Inspectional Services in connection with a Stop Work Order issued as a result of differences between what was being built and the approved plans, .

Concerns regarding these discrepancies and an application for certificates of occupancy which was under review were discussed with the building inspector, and reassurance was given that these would be considered. (Note that these issues had also been raised repeatedly in writing throughout the course of the project.) Several weeks later, on June 28, 2023, e-mail was sent to city staff (and hardcopies were delivered the following day) requesting that certificates of occupancy not be issued until these issues were addressed.

Despite these reassurances and the fact that none of the discrepancies were addressed, certificates of occupancy was still issued on July 7, 2023.

A tremendous amount of time and energy was spent by city staff, boards and neighbors to work out the differences between what is permitted, the desires of the owner and the needs of the neighborhood. The resulting plan represented some amount of agreement and compromise among all the parties and was negotiated in good faith. Still, the owner did not comply with the agreement, as evidenced by the information above and additional information that will be presented, and still, certificates of occupancy were issued, despite the fact that the City was notified in writing well before the issuance of the certificates of occupancy about these deficiencies.

Here are some specific examples of the failure of the owner to comply with the agreement and failure to comply with the approved building plans:

a. Exterior

- The roof of the dormer to the right of the third floor walkway in the center of the building was built flat instead of the peaked roof of the approved design, likely increasing the internal floor space beyond.
- In many cases, the configuration of the windows throughout the house doesn't match that of the submitted plans. For example, the configuration of the windows and doors at the third floor walkway and at

the second floor level to the left, as well as in other places, is different than what was submitted, likely increasing the internal floor space, beyond what was approved. In at least one case, the window configuration in the elevation conflicts with the window configuration in the “as-built” plan. The approved plan does not show any basement windows, in contrast to the actual structure.

The asymmetries in the window patterns are out of compliance with the “as-built” plans and are unattractive.

—The rear entrance on the right as viewed from the rear has been built with two doors, while the approved plan shows one door.

—The “as-built” plan indicates shingles on the top two floors of the rear of the building and Hardie Plank at the first floor level. The actual structure has been finished with Hardie Plank at all levels.

Details of these and other differences are included in Addendum A below.

#### b. Interior

Despite careful investigation and serious concerns expressed by neighbors in the planning process about the internal square footage of the project and possible violation of the FAR limit, the “as-built” floor plan for the second and third floors of the front units at 118 College Ave is entirely blank, with no square footage information provided. In some other cases, square footage has increased relative to what was approved. There may be other significant interior differences as well.

#### c. Landscaping

Landscaping appears to be even less than what was approved. Neighbors had objected that even that was meager and of poor quality.

All of these issues should be considered carefully by the ZBA.

Ideally, the certificate of occupancy should be revoked until such time as the issues raised above are addressed to the satisfaction of both the ZBA and Inspectional Services. This may not be feasible. Alternatively, in order to [let the owner know that he can’t get away with this] the

owner should be required to fix unsightly window asymmetries, to improve the quality of the landscaping, and to make a contribution to the Affordable Housing Trust Fund as compensation for the deficiencies that cannot practically be corrected. Such a contribution might be voluntary as a goodwill gesture on the owner's part if necessary.

If these concerns are not addressed, it not only invalidates the time and effort put into generating the original agreement, it also deligitimizes the work of city staff and the Zoning board, and it sends a message to developers and property owners that they can do as they please regardless of whatever agreements have been reached.

Thank you for your careful consideration of this request.

#### Addendum A

Discrepancies reported as of June 28, 2023

(Includes notes in brackets regarding "as-built" plans dated 5/15/23, stamped by the architect, which were not available to us as of that date. We also hope to provide some visual aids to illustrate the differences.)

1. Regarding [a possible] increase in size, as you face the building from the opposite side of College Ave, the wall in the center on the second and third floors goes straight across from left to right, while the floor plans ... show that there should be an indentation on the left, so that there is an area of roof deck to the left of the laundry rooms on those floors. You can also see that indentation on the front elevation.

2. An even larger increase in size is obvious from this same vantage point as you look at the part of the building on the right, where the left wall goes straight in from front to back on both the second and third floors, and the roof on top of that portion is flat, instead of the original peaked dormer and peaked roof in the third floor area that are shown on the plans.

["As-built" floor plan for third floor of this front unit at 124 College Ave shows increased floor area and change of layout.]

3. There are also obvious differences in doors and windows and other features, such as flanges projecting upward from the roof on the right side of the building.

4. On the left portion of the front of the building (118 College Ave) on the second floor level, the central section has a pair of double-hung windows side-by-side. However, the approved elevation shows four windows. The approved floor plan appears to show a different placement of windows here.

["As-built" floor plan for second floor of this front unit at 118 College Ave portion is entirely blank, showing no features or square footage!]

5. On the left portion of the front of the building (118 College Ave) on the third floor level (the gable end), there is a pair of double-hung windows side-by-side. However, the approved elevation shows a single window. The approved floor plan appears to show a pair of windows here.

["As-built" floor plan for third floor of this front unit at 118 College Ave portion is entirely blank, showing no features or square footage!]

6. On the front portion of the left side of the building, the number, size and placement of windows differ from those shown on the approved elevations. The pattern is asymmetric. Though the applicant may consider this to be trivial, note that such asymmetry of windows is no small thing from a design perspective. Discussions over matters such as this have consumed many hours of discussion at ZBA and UDC meetings in the past.

["As-built" elevation does not show square window near front of left side of building. (This window was shown on approved plan, and is present.)

"As-built" elevation does not accurately depict windows on first floor level which are just behind the bay. Actual proportions are highly asymmetric.]

7. On the rear of the building in the leftmost portion as viewed from the rear (the rightmost portion relative to the street), there is a window on the first floor level which is not shown on the approved elevation. It is not placed in line with the windows on the second and third floor levels,

resulting in a pattern which is again asymmetric.

[“As-built” elevation does not show this window either.]

8. On the rear of the building in the middle portion at the first floor level, there is a window just to the left of the iron railing which is not shown on the approved elevation

9. On the rear of the building on the first level in the rightmost portion as viewed from the rear (the leftmost portion relative to the street), there are two doors in place of the single window which is shown on the approved elevation.

10. On the left [should say right] side of the building in the rear portion, there are windows on the first and second [should say second and third] levels of the approved elevations which are not present in the actual structure. This is probably a result of actions taken to address this concern cited in the Violation Notice dated [July 15, 2020](#):

-THE FOOTPRINT AND LOCATION OF THE STAIRWELL ADDITION NEEDS TO BE VERIFIED AND SHOWN ON AN AS-BUILT SITE PLAN, WHICH HAS NOT BEEN RECEIVED TO DATE.

[These windows are still shown on the “as-built” elevations.]

11. On the [right] side of the building in the front portion on the second floor level, the third window from the front is narrower than the other five windows, resulting in an asymmetric pattern.

[The “as-built” elevation does not depict the placement or dimensions correctly, though it does show that this window is asymmetric.]

12. On [right] side of the building at the basement level, there are windows which are not shown on the approved elevation.

[These windows are not shown on the “as-built” elevation either.]

### Notes regarding finishes

1. On rear, "as-built" elevation shows finish for second and third floors as shingles, but actual finish is Hardie Plank (same as the first floor). Approved plan called for shingles on all three floors of leftmost portion as viewed from the rear, but preserving some existing siding on lower levels of the rightmost portion.
2. On right side, "as-built" elevation shows finish for most of second and third floors as as shingles, but actual finish is Hardie Plank.
3. On left side, "as-built" elevation shows finish for most or all of second and third floors as as shingles, but actual finish is Hardie Plank.
4. On front, "as-built" elevation shows finish for most or all of second and third floors as as shingles, but actual finish is Hardie Plank.