



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 (PPZ) Staff
SUBJECT: 118 College Ave, ZP23-000032
POSTED: September 28, 2023

RECOMMENDATION: No recommendation

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

This memo summarizes the administrative appeal submitted for 118 College Ave and provides analysis or feedback as necessary. The application was submitted on August 3, 2023, confirmed to be complete on August 10, 2023, and is scheduled for a public hearing on October 4, 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

Havurat Shalom Community Seminary, Inc., c/o Meredith Porter, seeks an administrative appeal of the Building Official's issuance of a Certificate of Occupancy, CO23-000082.

SUMMARY OF PROPOSAL, GROUNDS FOR APPEAL

Havurat Shalom Community Seminary, Inc. is an abutter to the property at 118 College Avenue. Meredith Porter is their authorized agent representing the Seminary. Hereafter, both parties shall be referred to as the "Appellant." The property at 118 (118-124) College Avenue, owned by LaCourt Realty, LLC, is the subject of the appeal.

The Appellant alleges that the Certificate of Occupancy for 118 College Avenue, CO23-000082, issued by the Inspectional Services Department (ISD) on July 7, 2023, was wrongly granted and should be revoked. The Appellant contends that there are multiple reasons for which the Certificate of Occupancy should be denied. These allegations are fully described in the Appellant's Narrative (attached) and are summarized in the Analysis section of this Staff Memo.

As an abutter to the property, the Appellant has standing to file this Administrative Appeal. The Appeal was filed within the required 30-day appeal period after the Certificate of Occupancy was issued, as established in M.G.L. ch.40A, Section 15.

BACKGROUND

An Administrative Appeal is a petition to rectify a failure to act, denial of a permit, decision made, or enforcement action taken by the Building Official or Director of Planning, Preservation & Zoning in an administrative development review case when an alleged error or misinterpretation has been made in the enforcement or application of the provisions of this Ordinance. The Zoning Board of Appeals is the decision-making authority for all administrative appeals. A concurring vote of four members of the board is necessary to reverse the decision of the Building Official.

Subject Property and History

118 College Avenue is located in the Neighborhood Residence (NR) zoning district in the Davis Square neighborhood represented by Ward 6 Councilor Lance Davis. The subject property presents one structure that is comprised of two formerly independent residential structures that are now connected.

Under the previous zoning, the ZBA issued a Special Permit with Site Plan Review (SPSR), case #ZBA 2017-88, filed May 2, 2018, to increase the number of dwelling units from four (4) to seven (7), including one (1) affordable unit, to extend existing non-conformities, and allow parking on a separate lot and provide a shared driveway access to parking. At the time of approval under the previous zoning, the subject property was located in the RB zoning district. Current zoning is not applicable to this project or application.

Briefly, a general activity timeline for the project at 118 College Avenue, including building permits and related inspections, formal violation notices, and stop work orders, is as follows:

August 6, 2017	LaCourt Realty submitted a Special Permit with Site Plan Review (SPSR) application
Sept. 2017-April 2018	ZBA hearings scheduled and occurs for application review
April 18, 2018	ZBA renders decision of Conditional Approval for SPSR.
May 2, 2018	ZBA decision filed with City Clerk.
May 22, 2018	20-day appeal period of ZBA decision ends at close-of-business.
October 2, 2018	ISD issued a Building Permit for the subject property to add the three (3) additional units to the building and complete renovations.
July 9, 2020	Stop Work Order (SWO) was issued following an ISD Inspector who discovered multiple violations, including construction that does not conform to the approved plan.
July 15, 2020	Official Violation Notice issued by ISD pertaining to the SWO and violations including that noted above.
July 28, 2020	Property owner (Mouhab Rizkallah, for LaCourt Realty) files an appeal with the Building Code Appeals Board (BCAB), which

	states that the SWO disallows them from making the building weathertight.
September 3, 2020	BCAB hearing takes place, BCAB upholds the Stop Work Order.
September 2020	Director of Planning & Zoning confirms that the changes to the subject property/development requires a Plan Revision.
October 2020	Incomplete Plan Revision materials were submitted to PPZ. Application was not established to be complete, and no Determination was issued.
Oct.-Dec. 2020	Work allowed by ISD only to make corrections to non-compliant aspects of the project. No other work permitted. Stop Work Order is re-posted.
September 2022	ISD reviews work completed with the property owner; property owner reviews corrections made. SWO is lifted for full scope of work to continue.
July 7, 2023	Certificate of Occupancy is issued.
August 3, 2023	Administrative Appeal of Certificate of Occupancy is submitted.

Documents List

The documents provided to the ZBA for review include the following:

- Administrative Appeal Narrative
- ZBA Decision (Case # ZBA 2017-88) for 118-124 College Ave
- Approved Elevations for ZBA 2017-88 (shows previously existing and approved)
- Approved Floor Plans for ZBA 2017-88
- As-Built Site Plan for 118 College Ave
- As-Built Floor Plans for 118 College Ave

ANALYSIS

In the submitted Narrative, the Appellant contends that that the development at 118 College Ave was not constructed to the approved plans, that no Plan Revision applications were ever processed to address discrepancies in the elevations and floor plans, that As-Built plans submitted following construction are not sufficient to determine compliance, and that a Certificate of Occupancy was issued without addressing such discrepancies. The Narrative lists and describes perceived discrepancies related to the interior of the building, landscaping and exterior elevations. The Appellant has not provided visual evidence of these discrepancies.

The Appellant's Narrative also describes repeated complaints to ISD related to the project's construction by members of the public, argues that the property owner has not complied with Condition 6 of the SPSR Conditional Approval (ZBA 2017-88) and that the property owner rarely posted building permits, and argues that the property owner or their agent inappropriately removed a Stop Work Order posted by ISD.

For any Administrative Appeal to the Zoning Board of Appeals (ZBA), the Applicant/Appellant carries the burden of proof to demonstrate why the ZBA should reverse the determination or order of the Building Official. To ensure clarity regarding the subject property's history related to this Application, PPZ Staff have provided additional documents beyond what was submitted by the Applicant, including the original SPSR Decision (ZBA 2017-88), approved plans and elevations submitted under ZBA 2017-88, and As-Built plans and elevations submitted as part of the property owner's application for a Certificate of Occupancy.

PPZ Staff have reviewed the approved plans for original SPSR decision (ZBA 2017-88) and compared them with the submitted As-Built Plans, and confirm that changes have been made to the elevations and floor plans. However, ISD Staff have determined that no changes to the Floor-Area-Ratio (FAR), unit count, or bedroom count were made. Email records were found from September 2020, confirming the need for a Plan Revision. However, no application was ever found to be complete, and no Determination from the Director of Planning & Zoning was ever issued.

The ZBA should vote to either (1) deny the Administrative Appeal and uphold the Building Official's decision to issue a Certificate of Occupancy for the dwelling units at 118 College Ave, or (2) approve the Administrative Appeal and overturn the Building Official's decision to issue the Certificate of Occupancy for the dwelling units at 118 College Ave. The effect of the latter would be to rescind the Certificate of Occupancy for 118 College Ave.

CONSIDERATIONS & FINDINGS

M.G.L. ch.40A, Section 15 states that, when making its decision, the Zoning Board of Appeals (ZBA) should clearly set forth the reason for its decision and of its official actions. Whether the ZBA votes to uphold or overturn the Building Official's decision to issue a Certificate of Occupancy for the subject property, the ZBA should clearly state its reasoning within any motion.

When considering the facts of the case and the Application, the ZBA should consider whether procedural errors have been made by the granting authority (the Building Official) and whether there is sufficient evidence to approve the Administrative Appeal and overturn the Building Official's decision.