



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

4 OCTOBER 2023 MEETING MINUTES

This meeting was conducted via remote participation on Zoom.

NAME	TITLE	STATUS	ARRIVED
Susan Fontano	Chair	<i>Present</i>	
Anne Brockelman	Vice-Chair	<i>Present</i>	
Katherine Garavaglia	Clerk	<i>Present</i>	
Ann Fullerton	Member	<i>Present</i>	
Zachary Zaremba	Member	<i>Present</i>	
Brian Cook	Alt. Member	<i>Present</i>	
Sisia Daglian	Alt. Member	<i>Present</i>	

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

The meeting was called to order at 6:01pm and adjourned at 7:40pm.

GENERAL BUSINESS: Meeting Minutes

It was noted that the alternates would vote on the meeting minute approval.

Following a motion by Clerk Garavaglia, seconded by Vice Chair Brockelman, the Board voted unanimously (7-0) to approve the 2 August 2023, 16 August 2023, and 6 September 2023 meeting minutes as presented.

PUBLIC HEARING: 118 College Ave (ZP23-000032)

Clerk Garavaglia opened the case.

The applicant expressed concern regarding the proposed project and why they are pursuing an Administrative Appeal, explaining that 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. These terms have not been followed for this project. There are readily visible external discrepancies between what was built and the approved plan, and the City has repeatedly been informed in writing of these throughout the course of the project. The as-built plans, dated 15 May and stamped by the architect, are inaccurate, and the as-built floor plans for two units are completely blank. The property owner never posted the notice required by condition #6 of the ZBA decision. Despite information submitted that discrepancies had not been addressed, Certificates of Occupancy were issued on 7 July. The applicant reviewed the external discrepancies with the Board.

The Board discussed considering the most serious potential discrepancy, regarding floor area ratio (FAR) first. The plans from the architect seem to be poor quality, and there was a question as to how the FAR was determined. A civil engineer could be used to measure the perimeter of the building, to determine this exact calculation.

Staff stated that representation from ISD is not present in this meeting. ISD did note that, after review of the plan, there was not a discrepancy in FAR. It is unclear how this determination was made. The original ISD approval refers to Planning Staff instead of the Planning Board reviewing the conditioned items, and it appears these were met.

The Board discussed that the submitted as-built plan does not seem to match what was actually built. This could lead to differences in FAR. The as-built plans also do not match the as-built elevations and the actual elevations. There is not confidence in the architect that stamped the as-built plans, which is the same person who stamped the proposed plans.

Staff explained that, as part of an Administrative Appeal, it is solely the responsibility of the appellant to make the argument and defend it. The developer of the project has been notified, but it not required to attend or make any sort of defense. The Board should make a determination based on what was presented as part of the application. The Board can request that ISD provide a representative for a future meeting.

The Board discussed that the Staff Memo mentions that ISD made its approval even though they observed differences between the approved plans and the submitted as-built plans.

Staff noted that in September/October 2020, there was a determination that there were changes to the under-construction elevations and floor plans and it was noted that a plan revision was required. There appears to only be an incomplete application on file for this item. Thus, no determination was made by the Planning Director as to if the changes were de minimis or not. The Board needs to determine whether the Building Official made a procedural error in issuing the Certificate of Occupancy. Approval of the Administrative Appeal would effectively withdraw the Certificate of Occupancy. One remedy for this could be for the original applicant to go through the plan review process.

The Board discussed that the units on this property are currently occupied.

Chair Fontano opened public testimony.

Kimberly Warsett (118 Morrison Ave) – agreed that no one should be above the law and allowing this to move forward without revoking the Certificate of Occupancy could set a precedent.

Todd Kaplan (44 Kidder Ave) – allowing this Certificate of Occupancy to stand, allows this developer to undermine the integrity of the Board’s decisions. ISD Staff clearly stated that they did not have a clear understanding of what the alterations were, clearly knew that alterations had happened, and knew that no complete submission had been made to get an approval for alterations of the design. He urged the Board to uphold the appeal.

Michele Hansen (26 Warren Ave) – it seems clear that the City Inspector’s job was not done correctly in this case. She requested that the Board withdraw the Certificate of Occupancy.

Alan Moore (23 Cherry St) – expressed concern regarding changes made to this project without approval. He agreed with withdrawing the Certificate of Occupancy.

Aliza Arzt (104 Josephine Ave) – noted that she is married to the person who filed this Administrative Appeal. She urged the Board to revoke the Certificate of Occupancy and consider other actions to address these concerns.

Steve Huff (52 Elm St) – stated that, when he comes before the Board at a future date, he will have to abide by certain rules, and he believes others should have to do the same.

James McGinnis (26 Bow St) – stated that the changes to this building clearly changed the FAR. There appears to be an issue with handing plans to ISD and them being reviewed. The as-built plans do not seem to correspond to reality and what was actually built is different from the plans. He looks forward to the developer having to submit correct plans and urged the Board to revoke the Certificate of Occupancy.

Ann Camera (53 Hansen St) – expressed appreciation for how this meeting was run. The developer needs to do what it should before occupancy is allowed and the City needs to hold the developer accountable to this.

Chair Fontano did not yet close public testimony.

The Board discussed if it would like to hear from a representative of ISD.

The applicant pointed out another exterior discrepancy. He noted that the existing landscaping is also less than what was promised. He expressed concern with additional people moving into the property before the next meeting if the Board decides to continue this item.

The Board determined that it did not wish to continue this item, in order to hear from a representative of ISD at a future meeting. The Board discussed its reasoning for approving the Administrative Appeal. These include that there were changes made between plans. Also, there is a possibility that the plans were not reviewed, or that a review was not documented correctly. This is a procedural error. A hallway appears to be missing on the building, as it currently stands. There is a change in slope in the interior, which would result in changes to the FAR.

Following a motion by Clerk Garavaglia, seconded by Member Brockelman, the Board voted unanimously (5-0) to approve the appellant's request to appeal and to revoke the Certificate of Occupancy for 118 College Ave.

RESULT:

APPROVED

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.