



City of Somerville

# PLANNING BOARD

City Hall 3<sup>rd</sup> Floor, 93 Highland Avenue, Somerville MA 02143

**TO:** Planning Board  
**FROM:** OSPCD Staff  
**SUBJECT:** 620 Broadway, P&Z 21-145  
**POSTED:** November 8, 2023

**RECOMMENDATION:** No change

This memo is supplemental to the PPZ Staff Memo dated March 10, May 26, and July 13, 2023.

This Staff Memo provides supplemental information about the Hardship Variance previously granted for the property (P&Z 21-140) as it relates to the application for Site Plan Approval currently before the Planning Board. It also provides additional comments on the project's proposed sustainability measures, in response to the information submitted on July 13, 2023.

## BACKGROUND

This application for Site Plan Approval and a Special Permit (SPA/SP) for Cannabis Retail Sales was reviewed by the Planning Board on April 6, May 4, June 1, and July 20, 2023. At previous meetings, additional information was requested related to the loading plan and sustainability elements. The Applicant has subsequently collaborated with Mobility Staff to develop an acceptable concept plan for loading and pavement markings, and also provided supplemental information about sustainability measures. These materials were submitted for the Planning Board's consideration prior to the July 20, 2023, Planning Board meeting.

The Applicant was issued a hardship variance in 2021 to permit the building to be one (1) story, rather than the minimum three (3) stories required in the Commercial Core 5 (CC-5) zoning district. That variance was extended in 2022, with the expiration date of June 15, 2023. At the July 20, 2023, Planning Board meeting, Staff reviewed that the variance appeared to have expired, and that, while the Applicant had applied for a second extension to the variance prior to its expiration date, variances are only permitted one (1) six-month extension under M.G.L. Ch. 40A, §10 Variances, and under SZO Ch. 15 Administration. Staff further reviewed that a legal determination was necessary to determine the validity of the variance, or the Applicant would need to apply for a new variance. The Planning Board continued the case.

The Applicant subsequently filed a request with the Inspectional Services Department on July 25, 2023, for a determination that (1) the Variance P&Z 21-140 has been exercised and/or equitably tolled, and is in full force and effect, and (2) that the ZBA has the authority to grant a further extension of the variance.

The Building Official issued a formal interpretation regarding the aforementioned request, stating that (1) a second extension of a variance is not permitted, (2) the variance has not been exercised, and (3) that ISD cannot determine whether a variance has been equitably tolled, and such a determination is within the authority of the Zoning Board of Appeals (ZBA).

Following the receipt of the Building Official's interpretation, the Applicant submitted to the ZBA (1) an administrative appeal of determination that the variance has not been exercised, and (2) a request for a determination that the variance is equitably tolled. The ZBA held a public hearing to review these applications on November 1, 2023, and approved the administrative appeal, overturning the Building Official's determination and establishing that the dimensional Variance 21-140 has been exercised. The Applicant subsequently requested to withdraw without prejudice their request for a determination that the variance is equitably tolled, and the ZBA approved the request.

## **ANALYSIS**

### **Zoning Relief**

At the Planning Board meeting on July 20, 2023, board members voiced concern that, without knowing whether Variance P&Z 21-140 was valid and in full force and effect, neither PPZ Staff nor the Planning Board could confirm whether the project was compliant with zoning. The ZBA's approval of the aforementioned administrative appeal (P&Z 23-055) establishes that Variance P&Z 21-140 has been exercised and is in full force and effect without the need for another time extension. No additional zoning relief is required for the proposed development; with the variance in full force and effect, the project is fully compliant with the Somerville Zoning Ordinance. The Applicant only needs to complete the Site Plan Approval and Special Permit process to apply for a Building Permit. It is PPZ Staff's opinion that the Planning Board is able to act on the Site Plan Approval and Special Permit application (P&Z 21-145) for at this time.

### **Sustainability**

The Applicant submitted a supplemental memo to the Planning Board on July 13, 2023, the substance of which was not previously discussed in a Staff Memo. In the memo to the Planning Board, the Applicant described sustainability requirements that had been included in proposed conditions of approval. The memo then states that the Applicant is committed to the installation and operation of rooftop solar equipment as part of the project and would consent to a related condition as part of the Site Plan Approval. PPZ Staff has proposed language for such a condition, and also note that the submitted memo and preliminary proposal for rooftop solar attached to the Applicant's memo (Tab A) would be incorporated into any decision as part of the Application.

The Applicant's memo to the Planning Board also states that they are committed to the installation and operation of an all-electric HVAC system for the project, and that the project will be compliant with all applicable building and energy codes, as well as with Article 10 of the Somerville Zoning Ordinance. PPZ Staff notes that the Applicant will be required to demonstrate compliance with the Specialized Energy Code.

**PERMIT CONDITIONS**

Should the Board approve the Site Plan Approval for the one (1)-story Commercial Building, PPZ Staff recommends the following condition be included, in addition to previously recommended conditions described in the staff memos dated March 10, May 26, and July 13, 2023:

- Prior to the issuance of a Certificate of Occupancy, Botanica, LLC or their agent shall confirm the installation and operation of a roof-mounted solar PV system, as voluntarily proposed in their Site Plan Approval application.

PPZ Staff does not propose any changes to the previously recommended conditions of approval for the requested Special Permit.