



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

1 NOVEMBER 2023 MEETING MINUTES

This meeting was conducted via remote participation on GoToWebinar.

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

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

The meeting was called to order at 6:06pm and adjourned at 7:19pm.

GENERAL BUSINESS: Meeting Minutes

Following a motion by Member Brockelman, seconded by Member Fullerton, the Board voted unanimously (5-0) to approve the 4 October 2023 meeting minutes, as presented.

PUBLIC HEARING: 620 Broadway (P&Z 23-055)

The applicant team explained that the purpose of the proposed variance is to move forward with the project. The actions taken by the applicant amount to an exercise of the variance. If the Board does not find an exercise, it should find that the applicant equitably tolled the variance by seeking the other necessary permits for this project to move forward. The courts seem to agree that a variance can be exercised by taking other actions, such as seeking the other necessary permits for the project to move forward. If the Board were to find the variance was equitably tolled, pending a Planning Board decision, it would need to determine a toll period. A condition that the Planning Board decision would be considered an exercise of the variance, could be determined by the ZBA.

Chair Fontano opened public testimony. No one indicated they wished to speak. Chair Fontano stated that the public testimony would remain open at this time.

The Board discussed in which sequence it should make its determinations. Staff explained that the Board should vote as to whether to approve the Administrative Appeal, meaning that the Hardship Variance has been exercised. Following that, the Board should determine if the Hardship Variance has been equitably tolled. The applicant is requesting that, if the Board determines the variance has been equitably tolled, a timeline be established for the time it is equitably tolled. The Board could consider a condition of approval that the Hardship Variance will be considered exercised once the Site Plan Approval and the Special Permit have been moved on by the Planning Board. If the Board decides that the variance has been exercised, the equitably tolling decision is unnecessary.

The Board discussed that there is insufficient information in the case law and statute suggesting that having a Building Permit is a necessary predicate to exercising the rights of a Hardship Variance. If the applicant has done

other things that are similar to what has occurred in other approved cases, it is unclear why the appeal should not be approved.

The applicant team stated that it is well into the Planning Board process at this time. The team is close to obtaining a Planning Board decision. The Planning Board is unsure if it has jurisdiction over the project, until the variance exercise and/or tolling issues are determined. Once the Special Permit is granted, there is a two-year limit to exercise the permit.

Staff explained that the Site Plan Approval for this applicant was subject to UDC review and did go through this process.

One Board Member stated that they are more likely to decline the Administrative Appeal but would consider the tolling period. A minimum extension period would likely be one year.

Staff explained that, if both decisions are denied by the Board, the applicant could continue with the Site Plan Approval and Special Permit process. The applicant would likely request a continuance while they apply for a new Hardship Variance. The ZBA would then approach the entire process again with the applicant. If the ZBA then approved that hypothetical variance, the applicant could then move forward with the Planning Board process. The applicant team explained that the Planning Board would not need to grant an extension. This may bring the applicant back to the beginning of the process.

The applicant team explained that the loss of time during this process came from there not being a definitive place to put the loading zone on the site. The applicant has been trying to work this out along with the City's planning for the neighborhood. The Planning Board wanted to have the Mobility Department work this out with the applicant.

The Board recessed from 6:58pm – 7:03pm.

Seeing no additional public testimony, Chair Fontano closed public testimony.

Staff explained that an Administrative Appeal requires a super majority of the Board to vote in the affirmative, or four Board members in this case.

Following a motion by Member Brockelman, seconded by Member Cook, the Board voted (4-1), with Member Daglian voting against, to approve the application for an Administrative Appeal for 620 Broadway (P&Z 23-055).

The Board finds that the applicant has exercised the variance, which are for dimensional requirements of the variance, through the actions to exercise a dimensional Hardship Variance; for example, in actively engaging the Site Plan Approval process with the Planning Board.

The applicant team requested to withdraw a determination of equitable tolling of the Hardship Variance in this case.

Following a motion by Member Brockelman, seconded by Member Cook, the Board voted unanimously (5-0) to approve the applicant's request to withdraw the request of determination as to whether the variance has or has not been equitably tolled.

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.