



City of Somerville

# **ZONING BOARD OF APPEALS**

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

**TO:** Zoning Board of Appeals  
**FROM:** Planning, Preservation, & Zoning (PPZ) Staff  
**SUBJECT:** 120-132 Middlesex Ave, ZP24-000005  
**POSTED:** March 15, 2024

**RECOMMENDATION:** None

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

This memo summarizes the Hardship Variance request(s) submitted for 120-132 Middlesex Ave, identifies any additional discretionary or administrative development review that is required by the Somerville Zoning Ordinance, and provides related analysis or feedback as necessary. The application was deemed complete on February 28, 2024 and is scheduled for a public hearing on March 20, 2024. 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**

DWCH Assembly Row, LLC seeks relief from the Master Plan Standards that requires at least twenty-five (25%) percentage of a development site to be provided as a Civic Space in the Assembly Square Mixed-Use (ASMD) district, which requires a Hardship Variance.

## **SUMMARY OF PROPOSAL**

DWCH Assembly Row, LLC, successor of Brickyard at Assembly, LLC, is requesting relief from the Master Plan Standards that requires at least twenty-five (25%) percentage of a development site to be provided as a Civic Space in order to allow the applicant to complete the Site Plan Approval process associated with the Master Plan Special Permit (MP#2020-0003).

## **BACKGROUND**

On November 18, 2020, the Zoning Board of Appeals granted a Hardship Variance for the subject property from SZO Article 7.4.6.b.i., which requires that 25% of the development site of a Master Plan be dedicated to Civic Space. The Hardship Variance was granted with a two (2)-year expiration period, atypical to other hardship variances permitted under the Somerville Zoning Ordinance and M.G.L. Ch.40A, Section 10, which expire after one (1) year.

On November 3, 2021, property owner DWCH Assembly Row, LLC came before the Zoning Board of Appeals to determine the validity of the previously approved Hardship Variance. At that point the Zoning Board of Appeals granted a six (6)-month extension to the Hardship Variance, changing the expiration date from November 18, 2021 to May 18, 2022.

On August 3, 2022, the Applicant requested a subsequent Hardship Variance from the required Civic Space as dictated by the Master Plan Standards from the Zoning Board of Appeals, as the previous approval could not be extended again. The Hardship Variance is effective from August 17, 2022 to August 17, 2023. On July 19, 2023, the Applicant requested a six (6)-month extension to the Hardship Variance, which extended the validity of the permit from August 17, 2023 to February 17, 2024.

## **ANALYSIS**

PPZ Staff previously supported this relief because Staff believed the literal enforcement of the Somerville Zoning Ordinance, Article 7.4.6.b.i., would result in the creation of a Civic Space in a location where the City cannot support its use, adjacent to a busy highway. PPZ Staff still has concerns regarding Civic Spaces being located within proximity to heavily trafficked highways and the potential long-term public health impacts associated with exposure to airborne ultrafine particulates.

Public Space and Urban Forestry (PSUF) Staff believes the design and construction of a Civic Space at this location no longer constitutes a hardship as recent developments in Assembly Square has shifted that belief. Staff believes a Civic Space would be an asset to the development and contribute significantly to the public realm of Assembly Square. The inclusion of a Civic Space would further integrate this proposal into the innovative public realm of the Middlesex Corridor that neighboring properties are pursuing. The following are recent developments that has shaped PSUF Staff's position on this request:

- The adjacent development proposal at 20-23 Cummings, in its early development and process, will include a high-quality set of Civic Spaces that connect the pedestrian entry at Mystic Ave and Fellsway from the Ten Hills Neighborhood into Assembly. A Civic Space proposed at 120 Middlesex Avenue would create another node on the string of high-quality parks and public spaces along Cummings Street that welcome pedestrians and bicycles into the Assembly Square Neighborhood.
- The project located at 74 Middlesex Avenue has successfully been permitted to include a Civic Space along Middlesex Avenue and is considered an asset.
- The project located at 5 Middlesex Avenue, in its early development and process, will include a Civic Space along Middlesex Avenue that are considered an asset.

PSUF Staff supports development proposals that are able to manage the Master Plan process to design and construct new Civic Spaces to contribute towards the City's SomerVision 2040 Comprehensive Plan goals of 105 acres of new open space by 2040, can provide ecosystem services in the sub-area including tree planting strategies to

increase tree canopy, combat localized air pollution with design strategies that promote climate change resiliency, and to contribute towards biodiversity in the neighborhood closest to the Mystic River.

PPZ Staff notes the Applicant has volunteered to provide a payment-in-lieu of the required Civic Space. By utilizing the entire parcel for building development, the project allows for the creation of a building barrier between the district and the highway to help block the fine particulate pollution. The proposal would create funds for a high-quality Civic Space to be constructed elsewhere in the district – creating a balance between social, environmental, and economic benefits. This highly desirable outcome would support the intent and purpose of the Assembly Square Mixed-Use (ASMD) zoning district to address the lack of usable and high-quality Civic Spaces.

Upon analysis of the material submitted by the Applicant, PPZ Staff does not believe that the granting of the requested extension of the Hardship Variance would cause a substantial detriment to the public good or nullify or substantially derogate from the intent and purpose of the Assembly Square Mixed-Use (ASMD) district, copied here:

- To implement recommendations of SomerVision for transformational redevelopment.
- To implement the Assembly Square Plan (ASQ Plan).
- To redevelop underutilized areas within close walking distance to the Assembly Square T-station with mixed use, mid-rise and high-rise, transit-oriented development that will support the transformation of Assembly Square into an urban commerce center.
- To improve the Mystic River waterfront and create new civic space within the Assembly Square district.
- To improve utility infrastructure, thoroughfares, off-street pedestrian and bicycle paths, and physical connections to surrounding areas, including East Somerville, Ten Hills, and Sullivan Square.

#### Purpose

- To permit the development of multi-unit, mixed-use, and commercial mid-rise and high-rise buildings.
- To provide quality commercial spaces and permit small and medium-scale, neighborhood, community, and region-serving commercial uses.
- To permit larger buildings and increased residential density following the approval of a Master Plan Special Permit.

Additionally, PPZ Staff does believe that granting the requested Hardship Variance would support the broader intent of the Somerville Zoning Ordinance, including, but not limited to, the following:

- To ensure a variety of functional, well-designed civic and recreation spaces that complement the character of adjacent properties, contribute to a comprehensive open space network, and increase the livability of the city.

Massachusetts courts have stated that variances will naturally deviate from the intent and purpose of a zoning ordinance to some degree and that the discretionary approval of a variance is defensible if the deviation is not substantial or significant in comparison to the intent and purpose for the district in appraising the effect of the proposal on the entire neighborhood, including future impacts and other development approved or denied in the general vicinity of the development site.

### **ADDITIONAL REVIEW NECESSARY**

120-132 Middlesex Avenue is located in the Assembly Square Mixed-Use (ASMD) zoning district in the Assembly Square neighborhood represented by Ward 1 Councilor Matt McLaughlin.

Following this request, the Applicant will need to complete the Site Plan Approval process associated with the Master Plan Special Permit from the Planning Board.

### **CONSIDERATIONS & FINDINGS**

In accordance with the Somerville Zoning Ordinance, the Zoning Board of Appeals may grant a Hardship Variance only upon deliberating and finding all of the following at the public hearing for each requested variance:

#### **Hardship Variance Considerations**

1. Special circumstances exist relating to the soil conditions, shape, or topography of a parcel of land or the unusual character of an existing structure but not affecting generally the Assembly Square Mixed-Use (ASMD) zoning district in which the land or structure is located;
2. Literal enforcement of the provision of this Ordinance for the district where the subject land or structure is located would involve substantial hardship, financial or otherwise, to the petitioner or appellant, DWCH Assembly Row, LLC, due to said special circumstances; and
3. Desirable relief could be granted without causing substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Assembly Square Mixed-Use (ASMD) zoning district in this Ordinance or the Ordinance in general.

### **PERMIT CONDITIONS**

Should the Board approve the Hardship Variance request for relief from the Master Plan Standards that requires at least twenty-five (25%) percentage of a development site to be provided as a Civic Space, PPZ Staff recommends the following standard conditions for any Hardship Variance:

#### **Permit Validity**

- This Decision must be recorded with the Middlesex South Registry of Deeds.

Public Record

- A digital copy of the recorded Decision stamped by the Middlesex South Registry of Deeds must be submitted to the Planning, Preservation & Zoning Division for the public record.