

February 5, 2024

VIA ELECTRONIC SUBMISSION

City of Somerville Zoning Board of Appeals
c/o Sarah Lewis, Director of Planning, Preservation & Zoning and
Raisa Saniat, Planner
Mayor's Office of Strategic Planning & Community Development
93 Highland Avenue, City Hall Third Floor
Somerville, MA 02143
Email: slewis@somervillema.gov
rsaniat@somervillema.gov

**Re: Variance Application
DWCH Assembly Row, LLC
120-132 Middlesex Avenue, Ward 1, Somerville, MA**

Dear Director Lewis and Ms. Saniat:

On behalf of DWCH Assembly Row, LLC (the "Applicant"), successor-in-interest by assignment to Brickyard at Assembly LLC ("Original Applicant"), we hereby request that the City of Somerville (the "City") Zoning Board of Appeals ("ZBA") grant a Hardship Variance pursuant to Section 15.2.3 of the Somerville Zoning Ordinance ("SZO") from Section 7.4.6.b (formerly Section 7.4.5.b) of the SZO¹. The requested variance will allow for the redevelopment of a proposed 1.03 acre development site in the Assembly Square Mixed-Use District ("ASMD") for a mixed-use commercial office, research/development and laboratory and ground floor retail space building at 120-132 Middlesex Avenue in Somerville (the "Property"). Relief is sought for the Project (defined below) civic space requirement. The term "Project" as used herein refers to the proposed project identified in that certain Master Plan Special Permit in Case No. 2020-0003 issued by the Planning Board on April 30, 2021, as may be amended from time to time (the "MPSP").

Reference is made to that certain Hardship Variance, which granted a variance to Original Applicant pursuant to Section 15.2.3 of the SZO from Section 7.4.5.b of the SZO in Appeals Case No. MP 2020-0003, dated November 25, 2020, and recorded with the Middlesex South Registry District of the Land Court (the "Registry District") as Document No. 1866385, as extended by that certain Extension to Hardship Variance granted to the Applicant in Appeals Case No. P&Z 21-146, dated November 17, 2021 and recorded with the Registry District as Document No. 1911150 (as so extended, the "Original Decision"). The Original Decision stated, among other things, that it was valid for two (2) years, thereby making the variance valid until November 18, 2022. Pursuant to M.G.L. Ch 40A, Section 10, and Section 15.3.h.i. of the SZO, a hardship variance is

¹ At least twenty-five percent (25%) of a development site, excluding thoroughfares, must be provided as one or more civic spaces.

only valid for a year subject to extensions of up to six (6) months. The Applicant filed for and received an extension of the Hardship Variance prior to its expiration on November 18, 2021, which extended the Hardship Variance's effectiveness to May 18, 2022. The Original Decision expired on May 18, 2022, and it could not be extended further, despite the terms of the Original Decision. Therefore, the Applicant filed for and received a new Hardship Variance pursuant to Section 15.2.3 of the SZO from Section 7.4.5.b of the SZO, which the ZBA granted to the Applicant in Appeals Case No. P&Z 22-056, in a decision dated August 17, 2022 and recorded with the Registry District as Document No. 1923455. The Applicant subsequently filed for and received an extension of the new Hardship Variance prior to its expiration on August 17, 2023, in Appeals Case No. P&Z 23-056, in a decision dated August 2, 2023 and recorded with the Registry District as Document No. 1943384, which extended said new Hardship Variance's effectiveness to February 17, 2024 (the new Hardship Variance, as so extended, the "Second Decision"). The Second Decision expires on February 17, 2024, and it cannot be extended further.

Accordingly, we hereby submit the enclosed application on behalf of the Applicant for a new Hardship Variance pursuant to Section 15.2.3 of the SZO from Section 7.4.6.b of the SZO. Following the issuance of the Original Decision, the Applicant acquired the Property from the Original Applicant on December 31, 2021. While assessing and refining the design of the Project, the Applicant applied for Site Plan Approval and filed for an Amendment to the MPSP in 2022, which initiated a 12–18-month process that is still underway. Within this timeframe, the Applicant applied for and was granted the Second Decision in 2023, once it was no longer possible to extend the Original Decision. Issuance of a new Hardship Variance will provide the Applicant with additional time to complete the pending permitting processes associated with the Project.

As discussed below, the Applicant proposes to construct a single new building of up to approximately 596,000 square feet of gross floor area ("SF") of commercial office, research/development and laboratory uses (office/R&D/lab), approximately 9,500 square feet of ground floor retail space and below-grade structured vehicle parking (the "Project"). As shown on the Site Plans (**Exhibit B**), due to the unusual location of the Property along the edges of I-93, the I-93 off-ramp and Route 28 and its unique trapezoidal shape, the Project cannot comply with Section 7.4.6.b of the SZO as cited above in order to provide at least twenty-five percent (25%) of the development site at the Property as one or more civic spaces. We note that the Planning Board previously granted the MPSP pursuant to Article 15.2.2. of the SZO, which is a prerequisite to Development Review for buildings over 50,000 square feet of gross floor area (see Section 7.4.4.b of the SZO entitled "Master Planned Development") in satisfaction of Condition No. 1 of the Original Decision.

The Applicant provides the following materials in support of this request:

1. Development Review Property Owner Authorization Form and Campaign Contribution Disclosure and Certification Form (Exhibit A);
2. Site and Locus Plans detailing the Property and Proposed Improvements (11x17 copies) (Exhibit B);
3. Deeds for the Property (Exhibit C);

4. Land Title Survey (Exhibit D); and
3. Copies of two checks, each in the amount of \$250.00, which have been delivered by overnight delivery to Ms. Saniat (Application and Advertising Fees) (Exhibit E).

I. The Project and Relief Requested.

A. The Project and the Property.

The Property is an approximately one-acre (approximately 44,992 square feet) underutilized urban lot at the gateway to the ASMD. The Property is bounded by Middlesex Avenue to the east, the I-93 off-ramp to the west and Cummings Street to the south. The Property previously contained a two-story office building of approximately 11,600 SF, a two-story religious use building of approximately 15,842 SF, and a surface parking area accommodating up to approximately 42 parking spaces. In its current condition, the Property is vacant, with all structures having been demolished. Please see site plans detailing the Property at **Exhibit B**. The Project proposes the construction of a new building and much-needed public realm improvements.

The Property is located within the ASMD, which is among a handful of “Special Districts” covered by Article 7 of the SZO. Section 7.4 of the SZO is specific to the ASMD and defines regulations under which development in the ASMD is controlled and permitted. Generally, where the provisions of Section 7.4 conflict with those found elsewhere in the SZO, the provisions of Section 7.4 apply, with some noted exceptions. The Project requires a Master Plan Special Permit as a prerequisite to the Development Review of the development site, because it proposes a building over 50,000 SF.

As depicted in the provided site plans, the Project as proposed by the Applicant includes the revitalization and transformation of the Property with a pedestrian oriented, mixed-use development that proposes one (1) building containing up to approximately 596,000 SF of office, research and development (R&D) and lab uses (office/R&D/lab), approximately 9,500 SF of retail uses, and below-grade structured parking spaces. Recognizing the unique opportunity to further enhance the ASMD through the transformation of the development site, the proposed building will be designed to accommodate cutting-edge labs, modern offices, innovative startups and creative enterprise uses that address current investor and market demand in proximity to emerging and existing life science clusters in Somerville and Cambridge. With smart growth in mind, the Project hopes to be a catalyst to activate and unite the residential and commercial uses to the north of Middlesex Avenue with the residential and commercial uses to the south of Middlesex Avenue. The Project also hopes to diminish the visual impact of the elevated roadway and highway ramps from the ASMD by providing a visual barrier between the elevated roadway and the Project. However, the Project’s ability to provide appropriate and usable Civic Space on the Property is severely hampered by its location adjacent to the I-93 highway, the I-93 off-ramp and Route 28, with their accompanying noise, air and other pollution contributors.

The Project is planned to be a vibrant mixed-use development located at an important and visible nexus at the gateway to the ASMD and along the edges of I-93 and Route 28. The Applicant

proposes a sustainable building with active ground floor uses and an improved pedestrian streetscape that will catalyze the transformation of this section of Middlesex Avenue. It will be a new and welcoming part of the neighborhood that will help extend the City's efforts to connect Assembly Row to the adjacent communities. The Property's prominent location along I-93 provides an exceptional opportunity to create a landmark building with direct visual connections to and from the ASMD and the commercial uses and residential neighborhoods of Somerville west of I-93. The proposed building will be the first of a number of taller buildings in the Assembly Row Area visible when traveling by car from the north, and has been contextually shaped to complement the forms of the other buildings currently planned or already built in the Somerville skyline.

B. Relief Requested.

The Project seeks to obtain a new Hardship Variance pursuant to Section 15.2.3 of the SZO from Section 7.4.6.b of the SZO. Master Plan Standards of Section 7.4 of the SZO require that at least 25 percent (25%) of a Development Site must be provided in one or more Civic Spaces. Relief is sought for the Project civic space requirement, as the Project's ability to provide appropriate and usable Civic Space on the Property is severely hampered by its location adjacent to the I-93 highway, the I-93 off-ramp and Route 28 with their accompanying noise, air and other pollution contributors. Additionally, due to the Property's unique trapezoidal shape and contours it is extremely difficult to provide for on-site Civic Space along with sufficient lot area required for a viable Office/R&D/Lab Building with adequate floor plates. We note that in accordance with that certain Development Covenant between Original Applicant and City dated April 29, 2021, the Applicant (as successor-in-interest to Original Applicant) has agreed to make a one-time contribution to the Open Space Acquisition & Improvements Stabilization ("OASIS") to pay for the acquisition, construction and maintenance of Civic Space elsewhere in the City in order to ensure that the Project contributed to the creation of Civic Space in the City. The OASIS payment is premised on the Applicant having a variance from the Civic Space requirements on the Property.

II. Compliance with the Variance Standards.

Pursuant to Massachusetts General Laws, Chapter 40A, Section 15 and Section 15.2.3 of the SZO, the ZBA has the authority to hear this application where the Applicant seeks a variance from the SZO, showing that: (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 zoning district in which the land or structure is located; (2) literal enforcement of the provision of the SZO for the district where the subject land or structure is located would involve substantial hardship, financial or otherwise, to the petitioner or appellant 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 a specific district in the SZO or the SZO in general.

In the instant matter with regard to the Project, approval of the variance is proper due to the unique and special circumstances of the subject Property with regard to its shape and location, which does not affect generally the ASMD zoning district in which the land is located and in contrast to other properties throughout the general ASMD. Again, the Project's ability to provide appropriate and usable Civic Space on the Property is severely hampered by its location adjacent to the I-93 highway, the I-93 off-ramp and Route 28 with their accompanying noise, air and other pollution contributors. This location is not suitable for usable open and civic space. Therefore, the requested variance should be allowed by the ZBA. Additionally, due to the Property's unique trapezoidal shape and contours it is extremely difficult to provide for on-site Civic Space along with sufficient lot area required for a viable Office/R&D/Lab Building with adequate floor plates.

As detailed herein and evidenced further on the Site Plans, the requested variance is imperative for the Property in order to construct an allowed building type and to provide for adequate floorplates to serve future commercial office, research/development and laboratory use tenants. Affording at least 25 percent of the Property to one or more Civic Spaces would severely restrict this type of tenancy, provide for an oddly shaped floorplate with multiple angles, corners and open space areas not conducive to location on either the I-93/Route 28 side of the Property nor at the front of the Property on Middlesex Avenue. In essence, neither the required floor plates nor the required civic space would be appropriately sized or located on the Property. Given the large footprint required to accommodate an economically viable and efficient lab floorplate, and given existing lot constraints, the Applicant determined that the available open space on the Property with the Project is not suitable to support the civic space requirement on-site. Instead, the Project will focus on activating the public realm along Middlesex Avenue and will work with the City to create new civic space on a more suitable lot elsewhere in the City.

However, the Project does propose new street trees and on-site open space to assist in introducing new open spaces, public realm improvements and pedestrian amenities that will continue the transformation of this historically and largely industrial district into a vibrant, 24/7 urban community. In this regard, in keeping with the City's vision to create a pedestrian and bicycle friendly urban environment, and in an effort to create vibrant street activity where none currently exists, the Applicant proposes to pull back the ground floor of the building by approximately ten (10) feet for a pedestrian walkway, including, in part, a covered arcade, to

improve walkability along the Project's Middlesex frontage and to create more space and flexibility for an inviting and active urban pedestrian zone.

The literal enforcement of this provision of the SZO on the Project would involve substantial hardship, financial or otherwise, to the Applicant due to said special circumstances and conditions, as detailed above. The granting of the variance request will not violate the purpose of the SZO. A literal enforcement of the provisions of the SZO would create substantial hardship, financial or otherwise, because the Applicant has the need to design the proposed building in a manner that is useable and marketable for future tenants and for uses that are Allowed under the SZO in the ASMD. Again, designing the building to comply with the required civic space allotment on site would result in inadequate floorplates for lab tenants and inadequate, unusable and unsafe civic space for building tenants and local residents. An irregularly shaped floorplate, versus the rectangular lab building proscribed by the SZO, may not appeal to potential lab tenants and would severely reduce the rentability of the Project and impact the Project's financial feasibility. Therefore, a strict interpretation of the SZO will create a substantial hardship by impacting the usefulness of the proposed building and Project.

Granting a hardship variance with regard to the provision of Civic Space on the Property would not derogate from the purpose of the SZO. In fact, the granting of a hardship variance will allow for the development of a meaningful commercial office and laboratory building on the Property, which is consistent with the purposes of the ASMD to create "the development of multi-unit, mixed-use, and commercial mid-rise and high-rise buildings", "quality commercial spaces" and "larger buildings . . . following the approval of a Master Plan Special Permit". Additionally, the Project is consistent with intent of the Assembly Square Plan and the SomerVision as indicated in the MPSP Decision, the Original Decision and the Second Decision. As a result, granting a hardship variance in this instance would not derogate or undermine the purpose of the SZO as it relates to the Property.

Finally, the desired relief can be granted without causing substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the SZO. Here, the existing condition at the Property is an underutilized urban lot at the gateway to the ASMD and Assembly Square. Prior to the demolition of structures, the condition of the Property was pre-existing nonconforming with regard to the SZO as it comprised an existing two-story office building of approximately 11,600 SF, a two-story religious use building of approximately 15,842 SF, and a surface parking area accommodating up to approximately 42 parking spaces. The Project will significantly enhance this condition and include substantial site, pedestrian and landscaping improvements. The Project's proposed uses are Allowed under the SZO and the proposed Project has been processed and reviewed with the community. As such, the Applicant submits that the requested relief is consistent with the character and concerns providing for the public good, as the Applicant has given special attention to the siting, scale, design, and scope of the new structure, open space and vehicular and pedestrian access and neighborhood safety.

For the reasons stated above, the Applicant respectfully requests that the ZBA grant the Variance from the SZO as requested.

We respectfully request that you docket and advertise this request for the next available public hearing dates of February 14, 2024 or March 6, 2024. Thank you for your time and consideration on this matter and please do not hesitate to contact me with any questions.

Sincerely,

/s/ Darren M. Baird

Darren M. Baird
Attorney for the Applicant

cc: Anthony Galluccio, Galluccio and Watson, LLP
Attorney for the Applicant

DMB/ys
Enclosures