



City of Somerville

ZONING BOARD OF APPEALS

City Hall 3rd Floor, 93 Highland Avenue, Somerville MA 02143

TO: Zoning Board of Appeals
FROM: Planning, Preservation, & Zoning Staff
SUBJECT: 483 Broadway, PZ23-000053
POSTED: April 11, 2024

RECOMMENDATION: Approve (Extension for Hardship Variance)

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

This memo summarizes the request for an extension of the duration of the validity of a Hardship Variance previously granted for 483 Broadway (P&Z 23-016). The application was deemed complete on February 28, 2024, and is scheduled for a public hearing on April 17, 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

Tavis Babbitt seeks to extend the validity of a previously-issued Hardship Variance for minimum number of stories (P&Z 23-016) in the Mid-Rise 4 (MR-4) zoning district for a period of six (6) months.

SUMMARY OF PROPOSAL

Tavis Babbitt is requesting a six (6) month extension to the validity of a previously granted Hardship Variance (P&Z 23-016) that provided relief from the required minimum number of stories to be constructed in the MR4 zoning district. The extension is necessary in order for the Applicant to complete the Site Plan Approval (SPA) process that is also required for development on this MR4 site. Once Site Plan Approval is granted, the Applicant will be able to act on and exercise their Hardship Variance.

BACKGROUND

Tavis Babbitt is requesting an extension to a Hardship Variance granted on May 3, 2023. The property is located in the MR4 zoning district on the Somerville side of the property. The MR4 zoning district requires that a minimum of three (3) stories be constructed and a maximum of four (4) stories. The Applicant sought a Hardship Variance to build only two (2) stories on the Somerville portion of the property so that the building visually matched the two-story build limit on the Medford side of the property.

A copy of this Hardship Variance Decision is included as an addendum to this staff memo.

ANALYSIS

The Applicant requests the hardship Variance extension for several reasons.

Critically, the subject property is located both in the Cities of Somerville and Medford, and the Applicant required zoning relief from both municipalities.

In addition, the Somerville portion of this property is located in the MR4 zoning district. Development in this district requires Site Plan Approval (SPA) from the Planning Board. The SPA process has proven to be particularly lengthy for the Applicant as they have undergone numerous design iterations and City department reviews, neighborhood meetings, and advisory board reviews in order to comply with Somerville's zoning ordinance. Upon the most recent review by the Inspectional Services Division (ISD) when submitting their application for Site Plan Approval (SPA), ISD identified the need for further zoning relief or redesign. This has further pushed back the Applicant's development timeline.

Staff support the Applicant's request for a permit extension. This is a unique case where the permitting requires additional time due to the lot being split between Somerville and Medford (and zoning relief was subsequently needed from both cities).

CONSIDERATIONS & FINDINGS

In order to extend the duration of validity, the Zoning Board of Appeals is required by the Somerville Zoning Ordinance to make a finding that a demonstrated hardship has prevented utilization of the rights authorized by the Hardship Variance.

PERMIT CONDITIONS

Should the Board approve the requested extension of the duration of the validity of the Hardship Variance, Planning, Preservation & Zoning Staff recommends the following conditions:

Permit Extension 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.



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City Hall 3rd Floor, 93 Highland Avenue, Somerville MA 02143

DECISION

PROPERTY ADDRESS: 483 Broadway
CASE NUMBER: P&Z 23-016
APPLICANT: Tavis Babbitt
APPLICANT ADDRESS: 85 McGuerty Rd., Eastham, MA 02642
DECISION: Approved (renewal of Variances)
DECISION DATE: May 3, 2023

This decision summarizes the findings made by the Zoning Board of Appeals (ZBA) regarding the development review application submitted for 483 Broadway.

LEGAL NOTICE

Tavis Babbitt seeks re-approval of previously granted, and now expired, hardship variances for story height and the minimum number of stories in the Mid-Rise 4 (MR4) zoning district (P&Z 2021-012).

RECORD OF PROCEEDINGS

On May 3, 2023 the ZBA held a public hearing advertised in accordance with M.G.L. 40A and the Somerville Zoning Ordinance (SZO). Present and sitting at the public hearing were Board Members Susan Fontano, Katherine Garavaglia, Ann Fullerton, Brian Cook, and Sisia Daglian. Zachary Zaremba and Anne Brockelman were absent. The Applicant provided an overview regarding the delays in executing on the Hardship Variances originally approved on December 15, 2021.

HARDSHIP VARIANCE FINDINGS

In accordance with M.G.L. 40A and the SZO, the ZBA may grant a hardship variance only upon finding all of the following for each hardship variance:

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 MR4 district;*

The Board finds that special circumstances exist due to the fact that the boundary line separating Somerville from the City of Medford runs through the front of the lot.

2. *Literal enforcement of the provision of this Ordinance for the NR district would involve substantial hardship, financial or otherwise, to the petitioner due to said special circumstances; and*

The Board finds that literal enforcement of the Ordinance would involve substantial hardship to the petitioner due to the city boundary line running through the front of the lot. In addition, the Board found that the fact that the City of Medford will only allow a maximum of two stories on the existing building to which the proposed Somerville-side addition will be attached, was a further hardship given that the SZO requires a minimum of three stories in the MR4 zone.

- 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 NR district or the Ordinance in general.*

The Board finds allowing for a lower ground story height (11'2" where 14' is required) and the construction of two stories (in a zone where a minimum of three stories is required) will not cause a substantial detriment to the public good or nullify or substantially derogate from the intent and purpose of the district or Ordinance in general.

DECISION

Following a motion by Clerk Garavaglia, seconded by Member Fullerton, the Board voted unanimously (5-0) to approve the variance for story height and minimum number of stories with the conditions and findings as noted in the Staff Memo and discussed.

Perpetual

1. This Decision must be recorded with the Middlesex County Registry of Deeds.

Prior to Certificate of Zoning Compliance

2. A copy of the Recorded Decision stamped by the Middlesex South Registry of Deeds must submitted for the public record.
3. Physical copies of all submittal materials as permitted by the Review Boards must be submitted for the public record in accordance with the document format standards of the ISD/PB/ZBA Submittal Requirements.

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chair*
Brian Cook
Ann Fullerton
Katherine Garavaglia
Sisa Daglian (Alt.)



Sarah Lewis
Director of Planning & Zoning

CLERK'S CERTIFICATE

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 15.5.3.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on _____ in the Office of the City Clerk, and twenty days have elapsed, and

FOR VARIANCE(S) WITHIN

_____ **there have been no appeals filed in the Office of the City Clerk, or**
_____ **any appeals that were filed have been finally dismissed or denied.**

FOR SPECIAL PERMIT(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

FOR SITE PLAN APPROVAL(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

Signed _____ City Clerk Date _____

BLATMAN, BOBROWSKI, HAVERTY & SILVERSTEIN, LLC
ATTORNEYS AT LAW

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JONATHAN M. SILVERSTEIN
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November 14, 2023

Zoning Board of Appeals
Somerville City Hall, 3rd Floor
93 Highland Avenue
Somerville, MA 02143

RE: 483 Broadway – Request for Extension of Hardship Variance (P and Z 2023-16)
Minimum Number of Stories

Dear Members of the Zoning Board of Appeals:

I represent the 266 Broadway Realty Trust, John G. Wood, Trustee (“Trust”), which is the owner of property located at 483 Broadway (“Property”). Please accept this correspondence in support of the Trust’s request that the Board approve a six-month extension of the variance issued on May 3, 2023 from the minimum number of stories requirement set forth in the Zoning Ordinance (P and Z 2023-16).

The reason for this extension request is that, subsequent to issuance of the variance on May 3, 2023, as it was preparing to submit an application for site plan approval to the Planning Board, the Trust was informed that an additional hardship variance is required from the 12-foot sidewalk requirement set forth in Section 4.16.a.i of the Zoning Ordinance, and that it may not apply for site plan approval from the Planning Board until it has received the new variance. The Trust has applied for this additional hardship variance and requests a six-month extension of the May 3, 2023 variances, so that the variances will have similar expiration dates, and the Trust will have time to obtain the remaining required approvals and commence construction.

Thank you for your attention to this matter. Please do not hesitate to contact me if I can provide any further information in connection with this request.

Very truly yours,


Jonathan M. Silverstein

cc: Client