



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 (PPZ) Staff
SUBJECT: 16-20 Medford Street, ZP24-000090
POSTED: October 3, 2024

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

This memo summarizes the Administrative Appeal submitted for 16-20 Medford Street and provides analysis or feedback as necessary. The application was submitted on September 6, 2024, confirmed to be complete on September 9, 2024, and is scheduled for a public hearing on October 16, 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

Dmitry Vasilyev and Patrycja Missiuro seek an administrative appeal of the Building Official's issuance of a Building Permit, B24-000161, and the Building Official's subsequent denial of a Request for Enforcement to revoke that Building Permit.

SUMMARY OF PROPOSAL, GROUNDS FOR APPEAL

Dmitry Vasilyev and Patrycja Missiuro are abutters within 300 feet of the property at 16-20 Medford Street. Hereafter, both parties shall be referred to as the "Appellants." The property at 16-20 Medford Street, owned by Somerville Living, LLC, is the subject of the appeal.

The Appellants allege that the Building Permit for 16-20 Medford Street (B24-000161), to construct a new General Building with 50 residential units and commercial space in the MR4 zoning district, issued by the Inspectional Services Department (ISD) on July 15, 2024, was wrongly granted and should be revoked. The Appellants filed a Request for Enforcement with ISD on July 30, 2024, for the revocation of Building Permit B24-000161, which was denied by ISD on August 8, 2024. The Appellants are also seeking to appeal this denial, which, if overturned, would provide the same result of the revocation or suspension of the aforementioned Building Permit.

The Appellants contend that there are multiple reasons for which the Building Permit should be revoked. These allegations are fully described in the Appellants' Narrative (attached) and accompanying documents, and are summarized in the Analysis section of this Staff Memo.

As abutters within 300 feet of the property, the Appellants have standing to file this Administrative Appeal. The Appeal was filed within the required 30-day appeal period after the Building Permit was issued, as established in M.G.L. ch.40A, Section 15.

BACKGROUND

An Administrative Appeal is a petition to rectify a failure to act, denial of a permit, decision made, or enforcement action taken by the Building Official or Director of Planning, Preservation & Zoning in an administrative development review case when an alleged error or misinterpretation has been made in the enforcement or application of the provisions of this Ordinance. The Zoning Board of Appeals is the decision-making authority for all administrative appeals. A concurring vote of at least four members of the board is necessary to reverse the decision of the Building Official.

Subject Property and History

16-20 Medford Street is located in the Mid-Rise 4 (MR4) zoning district in the Boynton Yards neighborhood represented by Ward 2 Councilor J.T. Scott. The subject property presents one lot with a single structure that is currently under construction.

Zoning-compliant development in the MR4 zoning district is permitted by Site Plan Approval; the Planning Board is the decision-making authority for all non-variance discretionary or administrative permits required for the MR4 zoning district. The Planning Board's Rules of Procedure and Policy classify land platting activities as minor (Minor Site Plan Approval), with the ability to be permitted through administrative review with the Director of Planning and Zoning serving as the decision-making authority.

Prior to applying for a Building Permit, Somerville Living LLC (hereafter "the Developer") applied for and received Site Plan Approval and Special Permits for Household Living (as a principal use) and Parking Relief (from the minimum parking requirements), and applied for and received minor Site Plan Approval to merge the two parcels at 16 and 20 Medford Street into a single parcel. No additional zoning relief or board review was determined necessary at that time. A building permit for a foundation (# B23-001657) was previously approved for the project. That permit was issued on April 18, 2024.

A summary timeline for the development project has been provided below:

May 18, 2022	Somerville Living LLC (hereafter "the Developer") completes applications for Site Plan Approval and a Special Permit for Household Living (both under permit # P&Z 21-057) for 16-20 Medford St.
June 16, 2022	Planning Board opens the public hearing for the aforementioned Site Plan Approval and Special Permit applications.
August 18, 2022	Planning Board approves the Site Plan Approval application for 16-20 Medford St.
September 8, 2022	Planning Board approves the Special Permit for Household Living application for 16-20 Medford St.

July 20, 2023	Planning Board approves a Major Amendment (P&Z 23-011) to the existing Site Plan Approval and Special Permit, and approves Special Permit (P&Z 23-012) for Parking Relief.
November 1, 2023	Director of Planning and Zoning, on behalf of the Planning Board (per the Planning Board's Rules of Procedure and Policy) approves the lot merger (land plat) for 16-20 Medford St via Minor Site Plan Approval.
April 18, 2024	Building Permit #B23-001657 for a foundation only at 16-20 Medford Street is issued following approval by ISD and other related Staff.
July 15, 2024	Building Permit #B24-000161 for 16-20 Medford Street is issued following approval by ISD and other related Staff.
July 30, 2024	The Appellants file a Request for Enforcement with ISD for the revocation of Building Permit #B24-000161.
August 8, 2024	ISD denies the Request for Enforcement and issues an accompanying response (attached).
September 6, 2024	The Appellants file an Administrative Appeal application for 16-20 Medford Street, appealing the issuance of Building Permit B24-000161 and the denial of the aforementioned Request for Enforcement.

Documents List

The documents provided to the ZBA for review include the following:

- Administrative Appeal Narrative
- Building Permit # B24-000161 (photograph)
- Approved permit set drawings for 16-20 Medford Street (B24-000161).
- Request for Enforcement (dated July 30, 2024)
- Response to and Denial of Request for Enforcement from ISD (hereafter "ISD's Response"), provided on August 8, 2024.

ANALYSIS

In the submitted Narrative, the Appellants contend that the development at 16-20 Medford Street, currently in receipt of a Building Permit and under construction, is not compliant with the Somerville Zoning Ordinance in multiple respects. The Narrative lists and describes the perceived zoning violations. This memo addresses each of these arguments briefly, but then directs the ZBA to the attached Narrative and ISD's Response for details of the arguments and responses from ISD. This memo only addresses arguments that are included in the Narrative. Claims include the following:

1. The proposed development is not compliant with the **building setback** requirements from the curb ("the Development violates Curb Setbacks on all four street frontages"), and that **building components encroach into the required setbacks**. The Appellants' argument is on pages 2-3 of the attached Narrative

and listed as Argument #1. ISD's subsequent counterargument can be seen on page 2 of ISD's Response. The Appellants provide an additional response to ISD's counterargument on pages 5-8 of their Narrative.¹

2. The proposed development is not compliant with **rear setback** requirements. The Appellants' argument is on pages 8-9 of the attached Narrative and listed as Argument #2. ISD's subsequent counterargument can be seen on page 2 of ISD's response.
3. The stated **gross floor area (GFA) is incorrect**, and that the GFA should be recalculated, and the number of dwelling units subsequently adjusted. The Appellant's maintain violations to argument's #1 and #2 would cause recalculations of the GFA, however are willing to withdraw their points regarding calculation of the staircases and bicycle parking as minor. The Appellants' argument is on page 10 of the attached Narrative and listed as Argument #3. ISD's subsequent counterargument is on page 2 of ISD's response.
4. "Argument #4" has been withdrawn, as the Appellants having found ISD's response satisfactory.
5. The **lot coverage has been miscalculated**, as it should count permeable areas underneath building structures in its calculation. The Appellants' argument is on page 11 of the attached Narrative and listed as Argument #5. This argument is new and was not previously submitted to ISD with the initial Request for Enforcement; therefore, ISD has not provided a counterargument. ISD has been made aware of this argument.

The ZBA should vote to either (1) deny the Administrative Appeal and uphold the Building Official's decision to issue a Building Permit (B24-000161) for a General Building at 16-20 Medford Street, or (2) approve the Administrative Appeal and overturn the Building Official's decision to issue the Building Permit for the building at 16-20 Medford Street and the Building Official's decision to deny the Request for Enforcement. The effect of the latter would be to rescind or suspend the Building Permit for 16-20 Medford Street.

CONSIDERATIONS & FINDINGS

M.G.L. ch.40A, Section 15 states that, when making its decision, the Zoning Board of Appeals (ZBA) should clearly set forth the reason for its decision and of its official actions. Whether the ZBA votes to uphold or overturn the Building Official's decision to issue a Building Permit for the subject property, **the ZBA should clearly state its reasoning within any motion**. If the ZBA votes to overturn the Building Official's

¹ Please note that the additional response to ISD's counterargument includes arguments about insufficient space for tree planting and additional practical concerns. Concerns about sufficient space for tree planting and thriving is not related to whether or not ISD made a procedural error regarding whether the building encroaches into the front setbacks.

decision, **clear findings should be made related to any (hypothetical) procedural or interpretation-related errors.**

When considering the facts of the case and the Application, the ZBA should consider whether errors have been made by the granting authority (the Building Official) and whether there is sufficient evidence to approve the Administrative Appeal and overturn the Building Official's decision.