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September 6, 2024

Orsola Susan Fontano, Chair
Zoning Board of Appeals
Kimberly Wells, City Clerk
City Hall - 93 Highland Avenue
Somerville, Massachusetts 02143

VIA HAND AND ELECTRONIC DELIVERY

Re: Appeal of the ISD permit B24-000161 (16-20 Medford Street) and of
Failure to act for Request for Enforcement 16-20 Medford Street (B24-000161)
Premises: 16-20 Medford Street
Permit(s): B24-000161

Dear Chair Fontano and Members of the Zoning Board of Appeals:

Pursuant to Somerville Zoning Ordinance (SZO) Section 15.5.2 and G. L. c. 40A, §§ 8 and 15, enclosed please find the appeal of the Inspectional Services Department's (ISD) decision to issue a building permit and subsequent denial of Request for Enforcement under G. L. c. 40A, § 7 in connection to the development (Project) of 16-20 Medford Street (Premises) which is carried out by DiBiase Companies (Developers), a.k.a DiBiase Homes a.k.a. Somerville Living LLC aka 10 Bedford St. LLC.

For the reasons set forth below, we (Applicant/Appellants) respectfully ask the Board to determine that the proposed Project is in violation of the SZO, and the building permit was issued in error. We request that the permit issued to the Developer be withdrawn.

Please feel free to contact us if you have any comments or questions.

Respectfully,

Dmitry M Vasilyev *Patrycja V Missiuro*

Dmitry Vasilyev and Patrycja Missiuro, owners of the abutting 16 South Street property.

Cc: Nicholas Antanavica, Director ISD, ISD Zoning,
Hon. JT Scott, Alderman Ward 2

Notice of Administrative Appeal

Premises: 16-20 Medford Street, Somerville, Massachusetts 02143

Appellant/Applicant: Dmitry Vasilyev and Patrycja Missiuro

Date: September 6, 2024

Background

The Appellants/Applicants own 16 South Street, a 3-family building that is within 300 ft of the Development property.

Prior to the Building Permit in question, the Developer obtained the following relevant permits:

- Approval of the Residential Use category (which requires Special Permit in MR4 zone),
- Parking relief
- Foundation permit B23-001657

On July 19, 2024, Appellant/Applicant obtained permit plans for the 16-20 Medford construction, access to which was denied by the ISD prior, due to the status of the permit being not yet issued.

On July 30, 2024, Appellant/Applicant Dmitry Vasilyev and Patrycja Missiuro (the “Appellants”), filed a request with the City of Somerville Inspectional Services Division (ISD) for the revocation of the building permit B24-000161 (the “Building Permit”) issued to DiBiase Homes a/k/a Somerville Living LLC (the “Developers”), for 16-20 Medford Street, Somerville Massachusetts (the “Premises”). A copy of the said request is attached hereto.

In their Request for Enforcement to ISD on July 30, 2024, Appellants sought a revocation of the Building Permit, on the following grounds:

- A. The proposed building violates 12 ft minimum curb setbacks on all 4 frontages,
- B. The proposed building violates 10 ft minimum Rear Setback
- C. The proposed building violates GFA requirements, needs adjustment,
- D. The proposed location of the transformer violates SZO.

On August 12, 2024, a letter denying the Appellants' request was received by Appellants from the Inspectional Services Division. The response from ISD denying Appellants' Request for Enforcement is attached hereto.

The Appellants hereby seek a timely Administrative Appeal of the issued permit pursuant to SZO Section 15.5.2 and G. L. c. 40A §§ 8 and 15.

At the present time, the Developers continue with their project.

Arguments.

The ISD letter denying Appellants' request attempts to dismiss the Appeal on procedural grounds and states that Site Plan approval was carried as part of prior to the Building Permit issued as part of the Special Permit process. However, Special Permits were not sought for alleviation of the zoning issues that we present here. In addition, these issues cannot be remedied via special permits.

Appellants' arguments in favor of revoking the Permit are laid out in the July 30, 2024 Request for Enforcement to ISD and the ISD's response, and will be re-iterated here.

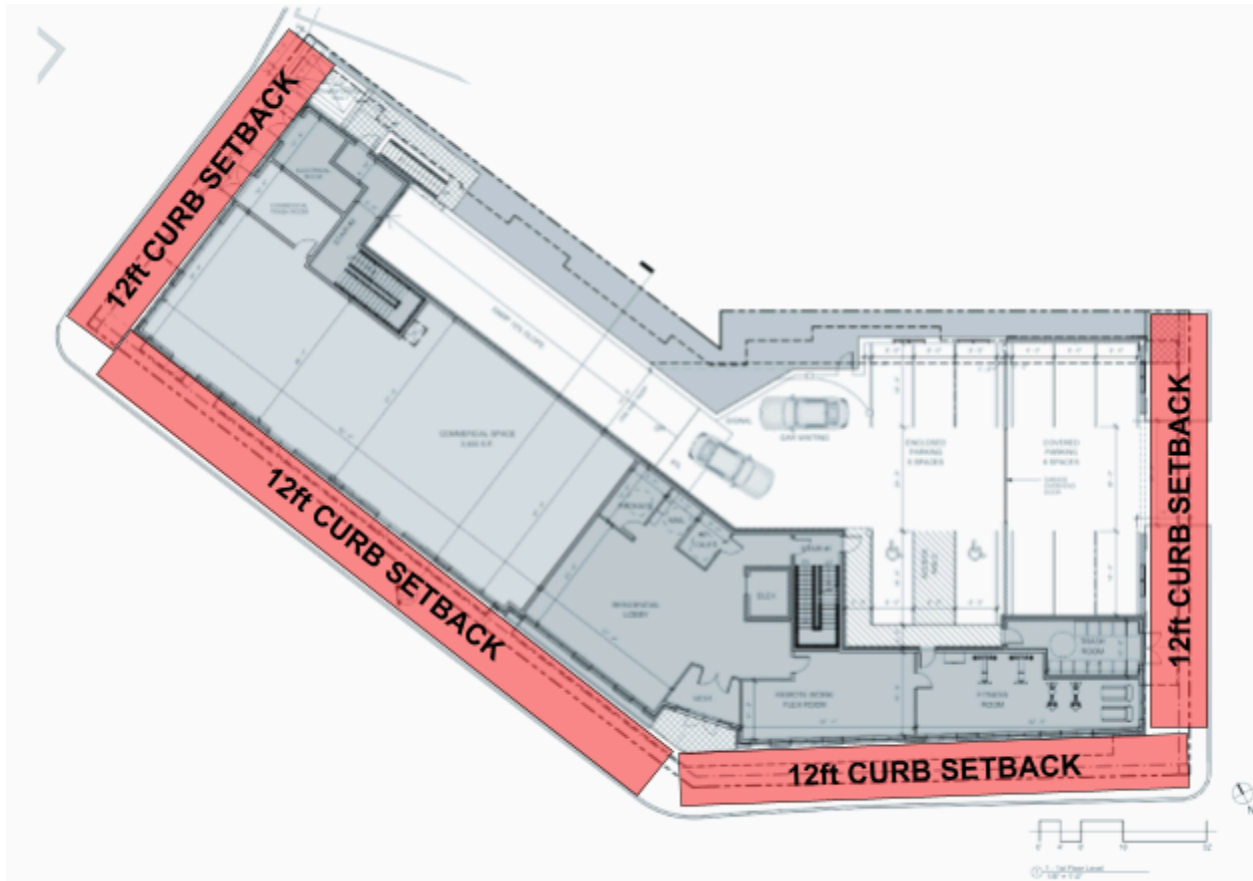
Argument #1. The Development violates Curb Setbacks on all four street frontages.

The minimum "Curb Setback" of 12 ft, per SZO, extends vertically just as any other setback:

2.4.3 Building Placement

- *a. Building Setbacks*
 - *i. All principal and accessory buildings must be located at or behind any required minimum curb, front, side, or rear setback except as indicated in §2.4.3.d. Setback Encroachments.*

Please note that no building components (including Bay Windows) can encroach on the Curb Setback, per SZO. The corresponding setbacks for 16-20 Medford Street are depicted below:

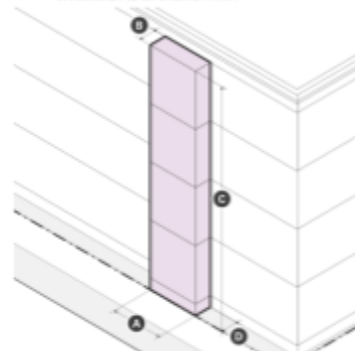


Please note that there are a lot of building components (decks, bay windows), especially on the Warren Street and Bedford Street sides, encroaching onto Curb Setback according to permit plans. All these building components should be re-designed to not encroach on the Curb Setback.

In particular, the Bay Windows are not allowed to encroach on the Curb Setback.

j. Bay Window

- i. A bay window is an assembly of windows projecting from a building to provide additional habitable space, increased light, multi-directional views, and articulation to an exterior wall.



Dimensions		
A	Width (max)	16 ft
B	Projection (max)	3 ft
C	Height (max)	Height of Building in Stories
D	Setback Encroachment (max)	-
	Front	3 ft
	Side	0 ft
	Rear	0 ft

ii. Standards

- a). Bay windows, including box and bow windows, must include at least three (3) windows for each story of the bay window.
- b). The cumulative width of multiple bays may reach up to 80% maximum (80%) of the width of

No Curb setback encroachment allowed

ISD Response to Argument #1.

The intent of the curb setback is to furnish a space for a sidewalk in the frontage of a building. Curb setbacks are necessarily treated as front setbacks for the purposes of reviewing building encroachment of building components. Per SZO §4.2.10.j.D, bay windows may encroach into a front setback by a maximum of 3 ft in an Mid-Rise 4 (MR4) district. Per SZO §4.2.10.k.B, balconies may encroach into a front setback by a maximum of 6 ft in an MR4 district.

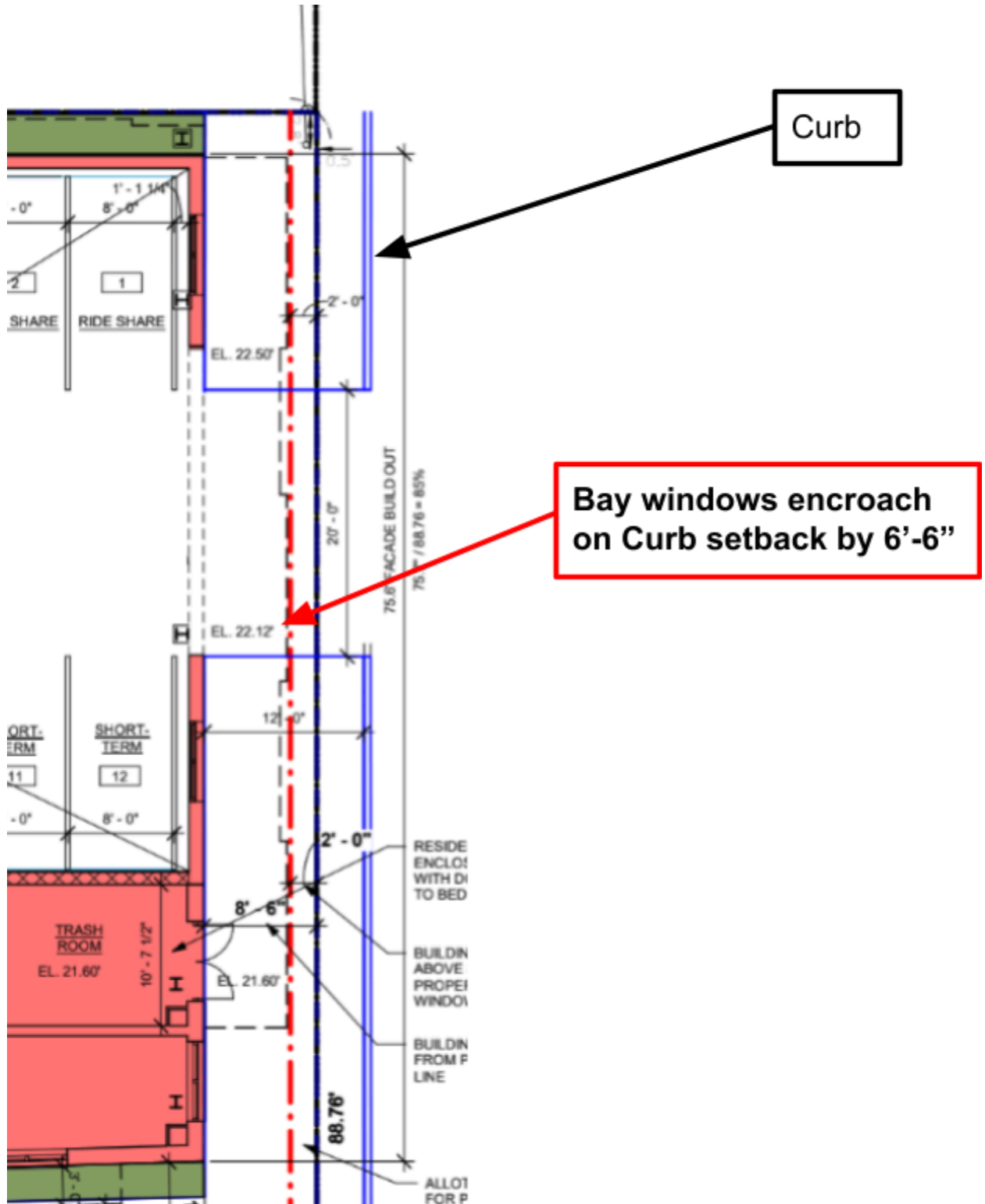
We find the ISD response unsatisfactory, for the following reasons:

1. SZO treats curb setbacks as a distinct from front setbacks type, because these types of setbacks have different points of reference: curb setbacks are attributable to curbs whereas front setbacks are attributable to lot lines. Their purposes are different partly due to a unique requirement of curb setbacks to accommodate trees on sidewalks (see SZO §13.2.6 c).

Therefore, the treatment of curb setback as front setbacks directly violates SZO §2.4.3. a) i):

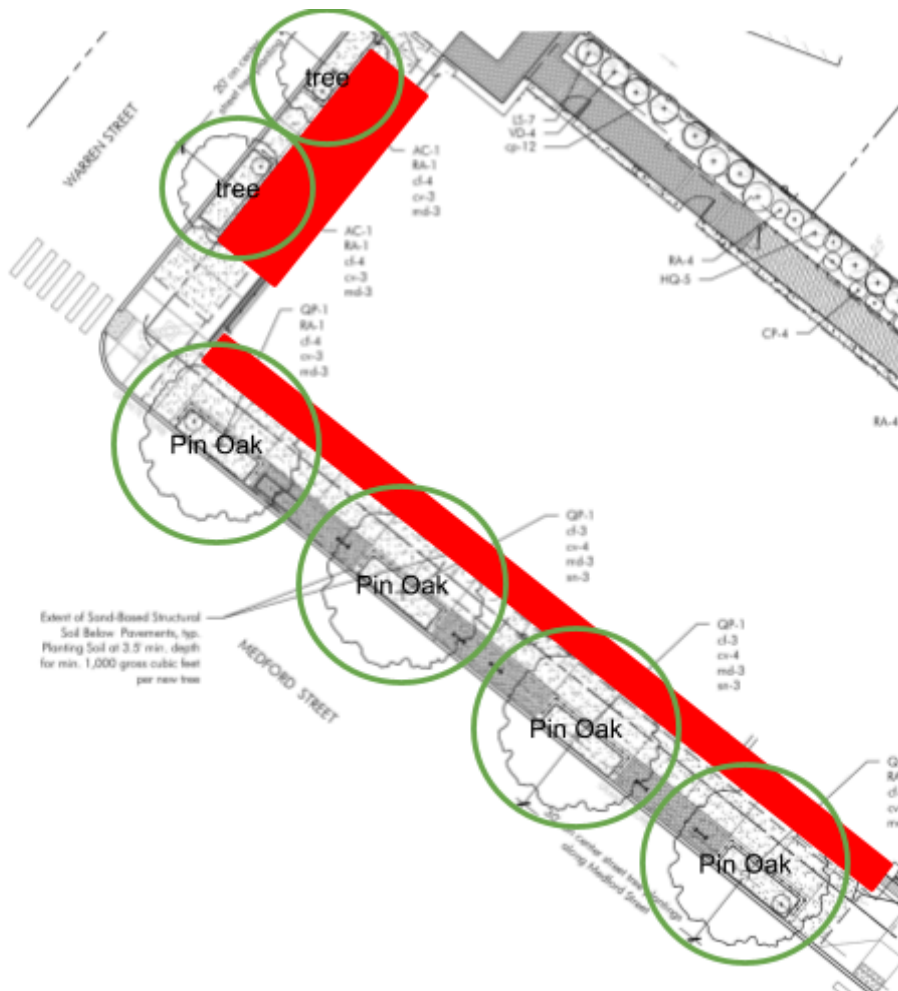
All principal and accessory buildings must be located at or behind any required minimum curb, front, side, or rear setback except as indicated in §2.4.3.d. Setback Encroachments.

2. Conflating curb and front setbacks would make the designation of curb setbacks in the SZO completely superfluous. Ordinance should be read to give each requirement meaning.
3. Notwithstanding (1) above, if such setback encroachments were allowed, on Bedford and Warren Street sides, the curb setback encroachments are greater than 3ft allowed for bay windows, which would violate SZO anyway. Here is the Bedford Street side, and the Bay Windows here encroach the Curb Setback by 6 ft 6". Similar issues are for Warren Street side:



4. In light of intended accommodation of sidewalk trees, a 12-foot setback is a bare minimum even for accommodation of small trees, see <https://greenstreetsarlington.org/frequently-asked-questions/>

In fact, current Developers' landscape design depicted on page L2.1 already shows interference between tree canopies (green) and building components (red):

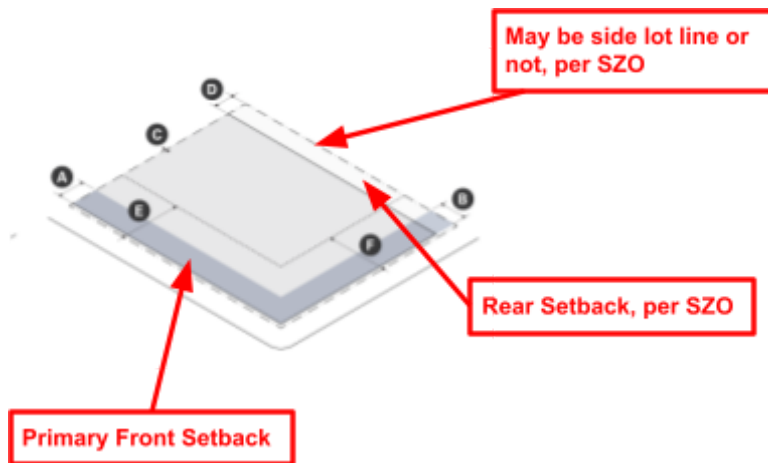


Note that the actual tree sizes above are severely under-estimated, and interferences actually are significantly more severe. The trees along Medford Street are specified as “Pin Oak”, which is classified as “large tree”, with normal heights 70-90 ft, and radius of 26-46ft spread ([https://en.wikipedia.org/wiki/Quercus palustris](https://en.wikipedia.org/wiki/Quercus_palustris)). These trees do not fit this space at all. But even smaller trees cannot be accommodated by the provided 6 feet clearance from the building if the curb setback would allow encroachments as ISD suggests (see tree size chart here: <https://arbordayblog.org/treeplanting/need-know-planting-right-tree-right-place/>). SZO reasonably mandates no encroachments for curb setbacks exactly for this reason.

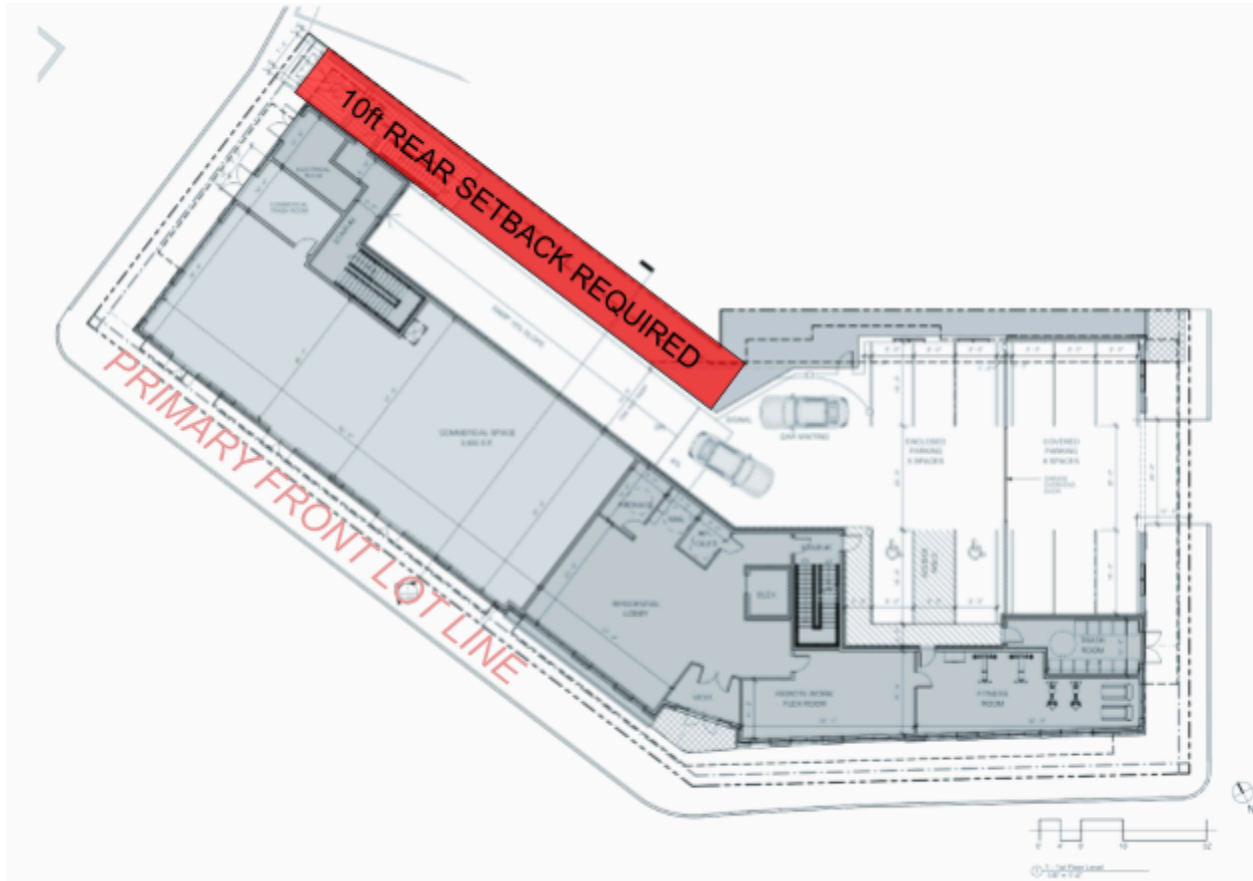
Note: per SZO §13.2.6. c) i), “Sidewalks must include large trees planted within the furnishing zone, except for alley sidewalks”, with “Large Tree” being defined as “A woody plant with an expected mature height of thirty (30) feet or more.”

Argument #2. The Development violates Rear Setback requirement

Regardless of the lot line designation, because it is located opposite of the Primary Front Lot Line (Medford St) of 16-20 Bedford Street, a REAR SETBACK is applicable to this lot line, by contextual drawing per SZO §4.2.8. b):



Here, the “Rear setback” (D) is depicted as the opposite of the “Primary front setback” (A). It is reasonable to assume that prescriptive drawing would mandate the rear setback to be located along the opposite side of the Primary Front Lot Line. Please note that the line with Rear Setback may or may not be a Rear Lot Line, which, per SZO, depends on the adjacent lot’s arrangement. The lot on the drawing may or may not have a rear lot line at all.



The required setback is depicted in RED on the figure above. As one can see, there are a lot of building components that encroach onto this setback. The Developers should reconfigure the building in order to not encroach onto this setback.

ISD Response to the Argument #2:

The lot lines of the Project abutting 7 Bedford St and 51 Warren St were determined to be side lot lines, not rear lot lines. Per SZO §2.1.1, a rear lot line is any lot line which is parallel to or within forty-five (45) degrees of being parallel to a front lot line, unless that lot line is a side lot line of an abutting lot. Both lot lines abutting 7 Bedford St and 51 Warren St are side lot lines of abutting lots. Rear setbacks would not be applicable to these lots, as rear setbacks are measured from rear lot lines.

We find the response of ISD unsatisfactory, for the reason that rear setback that is opposite to the Primary Front Lot Line should be enforced, regardless of the lot line designations, per the prescriptive drawing mentioned above.

Argument #3 The Developers should re-calculate Gross Floor Area

In light of the violations #1 and #2 above, the Developers should re-calculate Gross Floor Area and adjust the number of Dwelling Units accordingly to satisfy GFA/DU requirement.

In addition to that, Developer's GFA calculation should be adjusted for the following:

1. Developer's GFA calculation double-counts all staircases. The staircase area is located between levels, and it should be accounted only for one floor, not both.
2. Developer's GFA calculation includes bicycling parking area. However, GFA should exclude any Net Floor Area of any structured parking, per §2.4.5.c,vii a)

ISD Response to the Argument #3:

In light of the response to items 1 and 2 above, a recalculation of the gross floor area (GFA) of the project is not necessary.

Regarding the counting of staircases twice towards GFA, your request provides insufficient information. Even if the staircases were double counted, the impact of recalculating is irrelevant towards compliance of the project. The project utilized the density factor of 850 sf of GFA per dwelling unit under SZO §4.2.8.d. The project would have needed at least 42,500 sf of GFA to achieve the 50 dwelling units sought. The calculated GFA was more than 51,000 sf. Removing double counted staircases would not account for 8,500 sf.

Regarding bicycling parking included in GFA, although SZO §2.4.5.2.vii.a does state gross floor area excludes structured parking, the definition of structured parking is motor vehicle parking per SZO §2.1.1. Bicycles are not considered motor vehicles.

We found ISD response unsatisfactory for this Argument, in light of the valid setback violations above. We agree, however, that the additional corrections listed here are minor, and we are willing to withdraw these points. However, the setback violations will still require re-calculation of GFA.

Argument #4: [withdrawn] Transformer is not permitted in the frontage area.

We found the ISD response to this argument satisfactory, and we herewith withdraw it.

Argument #5 Lot coverage mis-calculates the areas under the impermeable building structures, and permeable pavers.

The maximum Lot Coverage that is allowed for the “general building” type in MR4 zone is 90%.

The Developer’s calculations claim lot coverage of the proposed development as 89.2%.

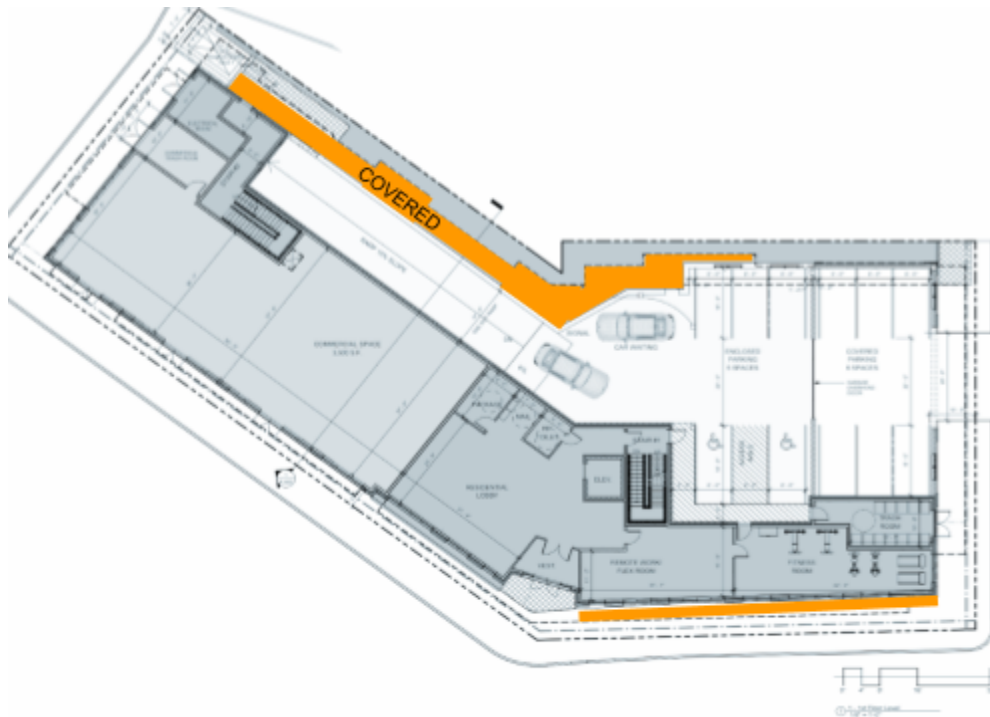
However, the calculation doesn’t count landscaped areas that are overhung by the building towards lot coverage. This is incorrect, because the structure above fully obstructs these areas from rainfall (as well as sunlight).

In other words, the proposed building resembles a mushroom where developers only count the “mushroom’s stem” towards lot coverage. That is not the intent of the lot coverage measure.

In addition, developers assume “permeable” pavers as having zero runoff coefficient and do not count them towards lot coverage. This is not appropriate. A zero runoff coefficient of

“permeable” pavers is a marketing gimmick and is factually incorrect. Especially during heavy rainfalls, the “permeable” pavers create more substantial runoff than landscaped areas. The state Stormwater Handbook specifically prohibits the use of permeable pavers as an infiltration device for storms greater than the 10-year storm for this very reason.

The approximate areas in question are marked in orange on the figure below:



Therefore, the actual lot coverage exceeds the maximum allowed by at least 1,000 sq. ft (95% instead of 90% max).

Additional notes

Developers obtained two special permits for the Property:

1. Approval of the Residential Use category (which requires Special Permit in MR4 zone),
2. Parking relief

The zoning issues described above (setbacks) cannot be addressed via Special Permits.

The Developers started foundation/framing work before obtaining the Building Permit, at their peril. There is no hardship that Developers can claim due to that. We could not perform zoning review prior to approval of the Permit B24-000161, because the final plans were unavailable.

Summary

For the reasons set forth in the above Arguments, we respectfully request that the Board, in accordance with SZO Section 15.5.2 and G. L. c. 40A §§ 8 and 15, will rule that the 16-20 Medford Street lot is in violation of SZO, and any building permit(s) including but not limited to B24-000161 should be revoked until the Developer performs necessary adjustments to the building design.

Thank you for your consideration and we look forward to appearing before the Board on this matter.

Very truly yours,

Dmitry M Vasilyev

Patrycja V Missiuro

Dmitry Vasilyev and Patrycja Missiuro.

Attachments:

1. Permit set drawings of the 16-20 Medford Street construction,
2. Applicants' request for Enforcement to ISD from July 30, 2024
3. Response of the Inspectional Service Division from August 12, 2024
4. Copy of the building permit ##B24-000161