



City of Somerville  
**ZONING BOARD OF APPEALS**  
City Hall 3<sup>rd</sup> Floor, 93 Highland Avenue, Somerville MA 02143

**17 JULY 2024 MEETING MINUTES**

This meeting was conducted via remote participation on Zoom.

NAME	TITLE	STATUS	ARRIVED
Susan Fontano	Chair	<i>Present</i>	
Anne Brockelman	Vice-Chair	<i>Present</i>	
Ann Fullerton	Member	<i>Present</i>	
Zachary Zaremba	Member	<i>Absent</i>	
Brian Cook	Alt. Member	<i>Present</i>	
Sisia Daglian	Alt. Member	<i>Present</i>	

City staff present: Emily Hutchings (Planning, Preservation, & Zoning); Andrew Graminski (Planning, Preservation, & Zoning)

The meeting was called to order at 6:00pm and adjourned at 8:24pm.

*Member Cook and Member Daglian both sat as a voting members for this meeting.*

**GENERAL BUSINESS: Meeting Minutes**

Following a motion Vice Chair Brockelman, seconded by Member Fullerton, the Board voted unanimously (5-0) to approve the 5 June 2024 meeting minutes.

**PUBLIC HEARING: 20 Fiske Ave (ZP24-000003)**

*(continued from 5 June 2024)*

Following a motion by Vice Chair Brockelman, seconded by Member Fullerton, the Board voted unanimously (5-0) to continue this case to 31 July 2024, at request of the applicant.

**RESULT:**

**CONTINUED**

**PUBLIC HEARING: 2-3 Union Square (ZP24-000009)**

*(continued from 15 May 2024)*

The applicant team stated that a request for a withdrawal without prejudice was submitted.

Following a motion Vice Chair Brockelman, seconded by Member Fullerton, the Board voted unanimously (5-0) to accept the request to withdraw without prejudice for 2-3 Union Square (ZP24-000009).

**RESULT:**

**WITHDRAWN WITHOUT PREJUDICE**

**PUBLIC HEARING: 35 McGrath Hwy (ZP24-000040)**

The applicant team explained that the proposal is to renovate the industrial site and build a nine-story, approximately 135,000 s.f. lab building. This variance will allow the applicant to revitalize this currently underutilized parcel with an appropriate building that meets the intent of the ordinance with the minimum relief necessary. Regarding the relief sought from the curb setback, this site is required to be 18' back from the curb. There is not any sidewalk or buffering between the property line and the curb. No changes are proposed to the design that was previously approved. The applicant is seeking relief to build the building, with an 8' setback from the curb. Redesigning the project to comply with the 18' requirement would be a hardship, as it would necessitate the entire redesign of the base floor and rippling redesigns up the façade of the building, which may require a visit back to the Urban Design Commission and possible additional variances.

Chair Fontano opened public testimony. Seeing no public testimony, Chair Fontano closed public testimony at this time.

The Board asked the applicant team to elaborate on the hardship for this request. The applicant team explained that the currently Zoning Ordinance requires an 18' setback. The current plan sticks passed it in two locations. If the plan needs to be redesigned to push it back behind this line, the bike room will need to be changed and the ground level will need to be reengineered. This would affect the design of the façade moving up the building. This leads to a financial hardship and the necessity of potential additional variances beyond those originally sought. The proposal is in harmony with the code and matches the intent and purpose of it. The Board stated that it is unclear why the upper floors cannot conform to the Zoning Ordinance. The applicant team explained that this setback does not apply to anything but the ground level.

Staff explained that it is their prerogative to find that the applicant's arguments are consistent with the previous criteria that the Board found was met regarding the previous front setback argument, with the relation to the irregular lot shape and takings of property from adjacent neighbors.

The Board discussed the three points for the criteria.

Staff stated that criteria #1 is that there are special circumstances exist relating to the soil condition, shape, or topography of the parcel of land, or the unusual character of an existing structure, but not affecting generally the HR zoning district in which the land or structure is located. For each of the requested hardship variances, the Board previously found that there were special circumstances related to the shape of the lot, due to a strange triangular piece that was taken through eminent domain from the front portion of the lot. The Board added that the lot line and the curb line are the same, and therefore no public property provides buffer for the curb setback.

The second criteria is that literal enforcement of the provision of the ordinance for the district where the subject land or structure is located would involve substantial hardship, financial or otherwise, to the petitioner/appellant, 35 McGrath Highway Realty Trust, due to said special circumstance. For each of the hardship variances, the Board finds that, due to the shape of the lot, a literal enforcement of the Zoning Code results in a triangular building with a very narrow path to get to the public right of way. The Board stated that this was not applicable in this case. What is applicable is that it would create a ripple effect in the structural system which would be a time and financial hardship to the applicant.

The final criteria is that desirable relief could be granted without causing substantial detriment to the public good, and without nullifying or substantially degrading from the intent and purpose of the HR district in the ordinance, or the ordinance in general. The Board found in its previous decision that designing the building to follow code would result in the building looking out of place. Therefore, the Board finds that not only would granting the variance not cause harm, but it is desirable to grant the variance due to the design outcome. The Board discussed that this is not particularly applicable, but considering the Board approved the massing presented and the applicant team has remained aligned with that original proposal there is no reason for the Board to consider a negative impact on the public good.

Following a motion Vice Chair Brockelman, seconded by Member Cook, the Board voted unanimously (5-0) to grant the Hardship Variance for zoning relief from the curb setback requirements, incorporating the three conditions and reasoning discussed, and the permit conditions outlined in the Staff Memo, for 35 McGrath Hwy (ZP24-0000040).

**RESULT:**

**APPROVED**

### **PUBLIC HEARING: 10 Bedford Street (ZP24-000033)**

The petitioners explained that the property in question (10 Bedford St) has historically been a parking lot and a garage. The petitioners are the closest abutters to this property. The petitioners completed a considerable renovation of their property in recent years, involving a substantial expense for the 16 South Street property owners (the petitioners). This work was done for the benefit of the petitioners and the overall neighborhood. The request involves an appeal of the ISD issuance of a building permit to develop 10 Bedford Street under Mass General Law, Chapter 48, Section 8. The developer of that property issued a memo on 12 July 2024, which the petitioner would like a chance to respond to. The petitioners have standing in this case as an immediate abutter, and they enjoy the statutory presumption of agreement. The burden is on the developer to show “credibly affirmative evidence” that petitioners are not aggrieved, which cannot be established, as the petitioners relied on the fact that the Somerville Zoning Ordinance would be enforced when they were renovating their property. The petitioners incurred a substantial expense of improving the façade for the benefit of the neighborhood. Moreover, the proposed development would block out essentially the entire side of the petitioners’ duly constructed windows, facing 10 Bedford Street. This development would render those windows substantially useless; it would ruin the views. It would block out all the light into the homes, and it would substantially devalue the property. The developer is proposing to construct a six-unit, four-story building, hard against all the setbacks. This is considered an apartment building under the Somerville Zoning Ordinance, in the UR Zone.

The petitioners explained that the current site at 10 Bedford Street has been demolished. The proposed building is nonconformant to the Somerville Zoning Ordinance. The façade of the abutting property, 16 South Street, will be completely obstructed by the proposed building. Renovations were completed at 16 South Street, as the owners believed the lot at 10 Bedford Street was unbuildable. The petitioners reached out to the developers in 2021 but never heard back regarding any plans. Suddenly, three years later, the petitioners received notification regarding the plans to develop the property. The proposed four-story building would be the only one in the area. The proposed building will be taller than the building at 16 South Street, obstruct light into the building, the newly constructed clock on the façade, and two parking spaces for the neighborhood. There are no trees or green space proposed in this development and the one tree around was taken down by the developer.

The petitioners explained that the lot at 10 Bedford Street has a width of 40’. The proposed building has a dimensional requirement of a minimum 55’ lot width. The building cannot be built on this lot as it lacks this required width. The requirement for the zoning in this district is one parking space per unit. The proposed building has six units, and so must provide six off-street parking spaces. It provides only four. The setback requirements are also not met. This lot is unbuildable as it lacks the width required, the proposed building would be detrimental to the neighborhood, the proposed building violates the Zoning Ordinance. The building permit for it should be revoked, the improper lot merger should be reversed, the developers should backfill the hole created on the site, give back two sidewalks, and the parking they are blocking.

The Commission asked how long the petitioners have lived next to 10 Bedford Street. The petitioners stated that they own this as a rental property. They would like to live in this area but find it unsafe. The work on the property at 16 South Street was completed between 2014-2016.

Staff explained that there is an Administrative Appeal in front of the Board currently. The Board can discuss if the building permit was issued erroneously, but not concerns with the neighborhood, parking, or other properties. A

letter was submitted by the property owner's attorney, which was sent to the Zoning Board. Although this was received after the deadline for public comments, this was due to a technical error from the City.

Chair Fontano opened public testimony.

Valerie Moore (Nutter McClennen & Fish LLP, representing 10 Bedford Street) – stated that the petitioners filed their request for enforcement and appeal of the building permit with the City on 5 April 2024, and a further appeal from the denial on 23 April 2024, but they did not, in fact, provide copies of that, or even share it with her clients, until 28 May 2024. This raised serious issues, because her clients had already commenced construction and work on the lot and closed on financing for the property in reliance on that building permit. Fortunately, this appeal is entirely without merit, as outlined in the letter submitted to the Board. With respect to the minimum lot width, the Zoning Ordinance is clear that a corner lot owner can designate a primary front lot line where the lot width is measured from, as was done here with respect to Bedford Street. The petitioners purport to appeal from a Minor Site Plan approval decision but they are too late in doing so. Nonetheless, the Board should reach the merits on that issue, and determine that the lot is, in fact, rectilinear in shape and comports with the Zoning Ordinance. With respect to parking, the petitioners themselves seem to agree that there is 40' of lot length along South Street, and they agree that residential permit parking is allowed on South Street. In fact, there is a resident parking sign a few feet in front of where the photo the petitioners showed cuts off. Accordingly, the property clearly complies with the Zoning Ordinance requirements for counting two parking spaces. Similarly, with respect to the setback requirement, her clients agree that the Building Inspector and the petitioners appear to have miscalculated the contextual setback at 4 Bedford Street. The intrusions of the bay window and the balconies in the setback are allowed under the Zoning Ordinance and do comply with the requirements for that. The petitioners also allege insufficient depth with respect to residential space, but they appear to have incorrectly read the building plans, as there is clearly habitable space of the minimum 20' in depth from both South Street and Bedford Street, as shown on the plans. Finally, the petitioners seem to simply not agree with how lot coverage is calculated in the Zoning Ordinance. She noted that the Board had a statutory deadline to render a decision on 1 August 2024. Accordingly, it is highly recommended that the Board deny this petition and uphold the determination of the Building Inspector.

Amelia Sorenson (7 Bedford Street, #1) – explained that she lives on Bedford Street and is concerned with the setback proposed along South Street from this development. The City plans to change the direction of South Street to a one-way street which will make it difficult to make a right-hand turn with any visibility coming from South Street without a meaningful setback on this property. This proposal will create an unsafe condition in the neighborhood.

Ming Tung (2 Bedford Street, Cambridge, MA) – stated that he was not notified when the lots in this area were merged, as he lives in Cambridge. This developer has been doing things in bad faith. This project has been upsetting the neighborhood and it is unclear if this is the right time to move forward. The clock built by the petitioners is a landmark for this area. This project deserves more scrutiny. South Street is the major street in this area, so the developer creating frontage along Bedford Street is laughable.

Matthew Lucker (16 South Street, #3) – stated that he lives in the building with the clock tower. He was unaware of any planned development on 10 Bedford Street until ground was broken. He found this very rude. With the removal of the fence on that site, his garage has been exposed for people to access it. A bike was thus stolen, likely thanks to lack of security.

Asad Khan (16 South Street) – stated that he lives on the first floor of this building and is concerned regarding the loss of sunlight to his building. It will also block off the main deck area that exists. This will lead to a reduction in quality of life. There are benefits that come from green space and traffic flow, which are not proposed as part of this plan.

Meredith Porter (104 Josephine Avenue) – stated that he feels compassion for those who live near the proposed development. It appears that the petitioners have attempted to obtain information over a long period of time,

which can be difficult. The appellants have also tried to work through the technicalities of the appeal. He would like the Board to take these items into consideration.

The Board made a list of items it would like to hear back from the Inspectional Services Department (ISD) on, including clarification on the rear setback and how that was determined, the bay window clearance over a sidewalk, and the side lot determination for 16 Bedford Street.

The Board noted that it would also like clarification on the lot merger, as it appears to have made this lot more nonconforming. It is very unfortunate that the City created a situation where the neighborhood was not notified that an administrative review was being done on the lot merger issue.

The Board noted that the lot in question was often mentioned as being unbuildable by the petitioner. While the lot may be non-conforming, it is not necessarily unbuildable. There is a question as to what could be built on this site, likely requiring relief to be granted. The architect for this project seemed to interpret the zoning in a way to max out the buildability. Clarification could be given from ISD.

Tanya Carriere (architect for 10 Bedford Street) – the developer is allowed to designate which side is the primary front. It has designated Bedford Street with an 88’ width as the primary, with the other street side as a secondary front.

Valerie Moore (Nutter McClennen & Fish LLP, representing 10 Bedford Street) – stated that there is a significant due process concern with not treating the property owner as a party to the appeal and allowing them to share their screen, share plans, and address the issues raised by the appellant in full. These types of due process concerns can lead to the Board’s decision being overturned by a court, if her client is not granted a full and fair opportunity to defend their property rights. With respect to the bay window, while it is a second story bay window, it does not extend over the public sidewalk. It is solely within the property lines of the property owner. Thus, the Zoning Ordinance can be interpreted such that it does not require the two stories of clearance underneath.

Taylor Harrington (construction company owner, representing 10 Bedford Street) – stated that any property owners concerned about the fence removal on the property can speak with him directly.

Brian McGrail (attorney representing 10 Bedford Street) – stated that his client relied upon the permit that was issued and started construction. His client has closed on a construction loan and is incurring some significant costs and expenses as time moves on. His client’s property rights are being affected. He noted that a reasonable request for the next hearing, assuming a continuance occurs, is that his client have the opportunity to share screens and present their case.

Chair Fontano closed public testimony at this time.

The Board noted that it would like clarification regarding a reading of the statute and the Zoning Ordinance, with respect to who are parties to an Administrative Appeal of the Building Official’s determination.

Following a motion Vice Chair Brockelman, seconded by Member Fullerton, the Board voted unanimously (5-0) to continue 10 Bedford Street (ZP24-000033) to 31 July 2024.

<b>RESULT:</b>
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<b>CONTINUED</b>
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*NOTICE: These minutes constitute a summary of the votes and key discussions at this meeting. To review a full recording, please contact the Planning, Preservation & Zoning Division at [zoningboard@somervillema.gov](mailto:zoningboard@somervillema.gov)*