



City of Somerville
ZONING BOARD OF APPEALS
City Hall 3rd Floor, 93 Highland Avenue, Somerville MA 02143

31 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>Absent</i>	
Zachary Zaremba	Member	<i>Present</i>	
Brian Cook	Alt. Member	<i>Present</i>	
Sisia Daglian	Alt. Member	<i>Present</i>	

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

The meeting was called to order at 6:09pm and adjourned at 11:35pm.

Members Cook and Daglian sat as a voting members for this meeting.

GENERAL BUSINESS: Meeting Minutes

Following a motion by Vice Chair Brockelman, seconded by Member Zaremba, the Board voted unanimously (5-0) to approve the meeting minutes of 17 July 2024.

PUBLIC HEARING: 20 Fiske Ave (ZP24-000003)

(continued from 17 July 2024)

The applicant team explained that the revised plan shows a 26' dormer, leading to one that is 56% of the total ridge length, with a 5.5' setback to the front. The dimensions could be improved upon a bit, but relief is still being requested from the maximum 3' of non-window walls. Approximately 10' of dormer on the back of the property has been eliminated in the revised plan.

Chair Fontano opened public testimony.

Aaron Weber (32 Summit Avenue) – expressed support for this proposal. When the 2019 Zoning Ordinance was adopted, it was regarded as Version 1.0 which might need changes in the future. This is not the first dormer-related zoning variance that he is aware of. It is clear that the dormer rules do not match the reality on the ground. This is exactly the sort of thing that the Zoning Board of Appeals should apply discretion to, in order to enable people to make greater use of their homes.

The Board discussed that it appears it is not possible for the applicant to directly comply with the ordinance, based on the architectural layout of the existing house. This proposal does resemble a dormer, which the Board is looking to preserve.

Ward 5 Councilor Sait – spoke in favor of the proposal. She stated that she does not see any negative impacts to the neighborhood from this proposal.

Chair Fontano closed public testimony at this time.

The Board discussed the criteria for the hardship variance.

Following a motion by Vice Chair Brockelman, seconded by Member Zaremba, the Board voted unanimously (5-0) in the case of 20 Fiske Ave (ZP24-000003) to approve the first Hardship Variance, for relief that the dormer width be over 50% of the total eave length of the roof, with the requested amount being 56%.

The special criteria discussed:

- The first criterion is that special circumstances exist relating to the soil condition, shape, or topography of the parcel of land, or the unusual character of the existing structure. The unusual character of the existing structure is that it only has one bedroom. The existing building has a tight layout.
- The second criterion is that literal enforcement of the provision of this Ordinance for the district where the subject land or structure is located would involve substantial hardship, financial or otherwise. The internal workings of the architectural plan, including the placement of the existing stairs, which are being rebuilt, the chimney, and the slope of the roof, make it difficult to create a viable second bedroom without exceeding the 50%.
- The final criterion is that desirable relief could be granted without causing substantial detriment to the public good. With the proposal, the structure will still read as a two-story house with a dormer on top. This will allow the reading of the massing to stay consistent with the fabric of this zoning area.

Following a motion by Vice Chair Brockelman, seconded by Member Daglian, the Board voted unanimously (5-0) in the case of 20 Fiske Ave (ZP24-000003) to approve the second Hardship Variance, for the non-compliant width of the proposed dormer, where shed dormers are required to be no more than 36" wider than the non-window wall. The same three criteria apply to this variance.

RESULT:

APPROVED

PUBLIC HEARING: 10 Bedford Street (ZP24-000033)

(continued from 17 July 2024)

Member Zaremba recused himself from this item.

The abutters reviewed the claim that the proposed building is not allowed by the Zoning Ordinance.

The abutter's attorney explained that the purpose of zoning is density control. To bend the bylaws in favor of the developer is not just a manipulation of the zoning, but somewhat of a perversion, especially given that these lots were joined for the sole purpose of trying to shoehorn the rear setback.

Chair Fontano noted that public testimony on this item was previously left open.

The defendant's team explained that, if the Board decides to change how the Inspectional Services Department (ISD) has consistently interpreted and applied the plain language of the Somerville Zoning Ordinance, it runs the risk of creating nonconformities throughout the City of Somerville. As this Zoning Ordinance has not yet been in effect for more than six years, none of the buildings that have been constructed under it would benefit from grandfathering. Thus, the Board would end up hearing quite a few more of these appeals. This is a proposed six-unit residential condominium project, including an affordable unit. Homeownership units that are affordable are extremely rare. The developer worked with ISD over several months to determine the appropriate application of the Zoning Ordinance to this property to make sure that it was in conformance before moving forward with such a significant project. The Board should not allow the petitioners to derail the construction of badly needed housing,

particularly affordable ownership opportunities, in the midst of the housing crisis. As a corner lot, the property owner is allowed to designate the primary front setback. In this case, they have designated Bedford Street, which has an 88' lot length line. South Street becomes the secondary front, and the remainder can either be all sides, or sides and a rear.

Warren Atkinson (7 Bedford Street) – expressed concern regarding safety issues with the larger project. Some of the workers were out in the rain without what seemed to be the proper safety equipment.

Erin Troy (2 Bedford Street) – stated that the defendant's team mentioned the one affordable unit that will be for sale, and how rare those are. This is interesting, considering the original plans for 16-20 Bedford Street included multiple affordable units for sale, including one 3-bedroom, until those plans were scrapped and changed by the developer when they realized they would not be able to make as much profit with owned units. They then switched them to rentals. This Board should not take into consideration any precedent that they may be setting. It is okay to set a new precedent, when the Board is in the right. If this causes problems, it is because the code was wrong or unclear in the first place, and the City should fix it.

Olivia Hussey (49 College Ave) – stated that it is disingenuous to frame what seems like a good faith interpretation of the Zoning laws as preventing affordable housing from being built, when historically lobbyists have gotten around a lot of requirements for affordable housing. The abutter's argument seems in good faith and well researched.

Chair Fontano closed public testimony at this time.

The Board and the ISD Building Official discussed the lot line issue and how the determination was made. There was discussion regarding the definition of a flag lot.

It was noted that the Board needed to decide on this item this evening, unless the appellant agreed to an extension. For an Administrative Appeal to be approved, a 4/5 majority is needed, or all four voting Board members in this case. An appeal could be approved on any of the grounds discussed.

Board members explained that they respectfully disagreed with ISD's interpretation that the lot line behind 16 South Street is a side lot line, and instead felt that it was a rear lot line. Staff explained that the motion could be to approve the Administrative Appeal solely on the grounds that the determination of side and rear lot lines was incorrect.

Following a motion by Vice Chair Brockelman, seconded by Member Daglian, the Board voted (2-2) in the matter of 10 Bedford Street (ZP24-000033) to approve the Administrative Appeal based on the sole determination of the ISD response that the lot line bordering the rear of 16 South Street is a side lot line to 10 Bedford Street.

RESULT:

NOT APPROVED

Member Zaremba retook his seat.

Following a motion Vice Chair Brockelman, seconded by Member Daglian, the Board voted unanimously (5-0) to recess until 8:07pm.

The Board reconvened at 8:10pm.

PUBLIC HEARING: 52 Elm Street (ZP24-000053)

Vice Chair Brockelman recused herself from this item. Member Cook sat as Acting Clerk.

The applicant team explained that this is a two residential unit structure in the NR Zone and within a 1/4-mile transit area. The owners live in 52 Elm Street and have owned it for approximately 19 years. 52A is a former storefront. This is a corner lot, so there are only two abutters. The impetus for this project is for the applicants to expand the structure to allow their parents to age in place, and to allow themselves to do the same when the time comes. These changes include adding an elevator for accessibility purposes. This is the hardship driving the variance request. This proposal necessitates increasing the structure from 2.5 stories to 3 stories, which triggers a variance for the number of stories by one half story. All other non-conforming dimensional measurements are either improved or unchanged, and there is no existing nonconformity that is exacerbated or made worse in any way. Being a corner parallelogram with the structure taking up most of the lot, there is no way to make this space accessible without the small half story variance proposed. The building will be otherwise fully dimensionally compliant or improved. The variance does not cause any detriment to the public good. It meets the purpose of the NR district to allow contextual modifications to existing residential buildings and to create dwelling units for larger households. This also meets the purposes of the SomerVision 2040 Plan by creating an accessible unit through retrofitting existing housing stock and by removing fossil fuel usage, increasing native plants, supporting pollinators, increasing urban density, and lowering the carbon footprint. It also meets the plan by fighting displacement. The applicants have responded to the UDC's comments by making massing and design changes. 19 letters of support, including three from Councilors of this area have been received.

Chair Fontano opened public testimony.

Attorney Anne Vigorito (representing the owners of 50 Elm Street) – noted that there are many people who did not receive notice of this meeting and would like to speak. The request is to continue this to a September meeting. The accessible unit is going to be for a family member and will never go on the market for sale or for rent. Also, there are other ways to create an accessible unit. This proposal will shadow her client's property.

Ron Newman (18 Day Street) – enthusiastically supported this application. He stated that this is exactly the kind of thing Somerville would want, for people to be able to move their relatives in and create more handicapped accessibility, which will remain long after the current owners move out.

Bhupesh Patel (7 Cedar Street) – stated that he supports this project as it is for the existing residents and will create handicapped accessibility. There may be massing issues in terms of some of the neighbors to work out.

Councilor-At-Large Burnley Jr. – gave his support for this project. This is the type of project Somerville wants to see.

Ward 5 Councilor Sait – spoke in support of this project. Making this property ADA compliant and wheelchair accessible will allow one pair of the owner's parents to move to the property and live as a family. This variance will increase the height of the house in order to accommodate the elevator shaft, but she does not see that as an issue. The constituents reached out months ago to their neighbors to answer questions and address any concerns. This project will increase housing accessibility in a public transit walkshed area.

Emily Wingate (20 Mossland Street) – stated that the owners of this property help to strengthen the community. The proposed change in height for the elevation does not bother her, as the reason is to increase accessibility and to allow the owners to stay in the neighborhood.

Max Meinhold (23 Elm Street #207) – expressed support for the proposed variance. The proposal does not change any of the setbacks and it does not change the perception of the building from the street. It is more common in this section of Elm Street to have exceptions to City zoning than things that comply. Anything that can be done to fight the issues of displacement, particularly displacement of accessible units, is very important. As this appears to be in alignment with the goals of the City, this variance seems to be in keeping with the intent of the NR Zone.

Jeff Byrnes (26 Clyde Street #2) – expressed his support for the proposed project. The owners are trying to do a great thing in making the property more accessible. When the time comes for this to be someone else's home, it will still contain accessibility.

Former-Councilor William White – stated that this will not truly impact anyone surrounding the property. This will help improve the accessible housing stock in the City.

Ward 2 Councilor Scott – expressed his support for the project.

Todd Kaplan (44 Kidder Avenue) – stated that this project should be approved because it embodies the direction the City should go in. Not allowing this to go forward sends a very strong signal to people that are trying to make their properties accessible to persons that need it.

Cristen Muresan (50 Elm Street) - explained that she and her husband are in a very uncomfortable position to object to the renovation, as they do want the owners to be able to complete a renovation. However, the plans pose significant risk to property damage, and personal injury. While they understand the owners' desire to make the home more accessible, it is believed this could be done on a lower floor without the need for the elevator and the raise in stories. There is an existing ice and snow problem off the roof, as the two houses stand less than 5' apart. If this were to be approved, there would be a significantly higher velocity of ice and snow coming off the roof, directly over her front entry, causing possible property damage or personal injury. It is important to consider how this would affect her property value, homeowners' insurance, and if it could injure anyone on the property. The proposed elevation almost completely obstructs her house, causing it to lose light, lose visibility, and change the neighborhood drastically.

Matthew Muresan (50 Elm Street) – explained that he and his wife empathize with the owners and making their home accessible to aging parents. When they moved into the home, they accepted the nature of 52 Elm Street's existing one story, non-conforming apartment, and that the houses were less than 5' apart. The proposal will move 52 Elm Street forward to the sidewalk and up three stories, effectively adding an imposing wall towering over their porch, entry, and front walkway, the primary means of entering the home. He stated that they will no longer be able to see along Elm Street, north of Cedar. As the house would be growing up, the change would block the sun, and their view of the sky. After consulting with a real estate professional, it was confirmed that their house will be devalued by the expansion. He explained that they are in favor of adding affordable housing to the market and allowing people to age in place, but they fail to see how this approach of expanding 52 Elm while devaluing their home is required to achieve these goals.

Fred Berman (25 Cherry Street) – stated that, notwithstanding the concerns just articulated, the importance of promoting accessibility and preventing displacement are noble aims, and he would like to support the efforts that are being made to do that.

Jesse Moeller (42 Elm Street) – stated that he supports the variance request.

David Fecteau (48 Elm Street) – stated that his only concern is that all of the goals, including the proposed accessibility, could be achieved if modifications were made to the first and/or second floor, as was noted in the Staff Memo.

Jeff Brown (46 Elm Street) – stated that he has not heard from the owners about this project at all. This makes him concerned. The pictures seem to show that this proposal will dwarf all homes in this area. Many homeowners in this area have invested heavily in their homes. He is dissatisfied and unhappy that he cannot trust what the neighbors are proposing. He does not support this project.

Paige Tsai (49 Elm Street) – stated that she is supportive of increasing accessibility of housing and intergenerational living but is sympathetic to the abutters concerns and echoed that there may be other ways to accommodate

these goals on the first and/or second floors. Also, the applicant team stated that no existing non-conformity will be exacerbated by these plans, but she noted that the current setback is less than a foot from the street, and she worried that adding a couple of extra stories will create a very minimal setback, which could contribute to a crowded feeling on the sidewalks.

Robin Becraft (48 Elm Street) – echoed the comments opposing this project, on the basis that the aging in place goal can be achieved without raising the height of the building. The plans do not show the view of the Muresan’s house, as this proposal will dwarf their home and leave it in shadows. Additionally, her husband had submitted a letter opposing the project, but it was not accepted as it was submitted past the deadline. Her husband emailed the Zoning Board and was informed that the notification letter for this hearing was sent to the Boston address of the developer of their property, even though they have lived here for almost three years. She would like for him to be able to speak to this item at a later date, or for his letter to be considered.

There was no additional public comment at this time, but Chair Fontano allowed public testimony to remain open for now.

Some Board members agreed with the concerns mentioned by abutters. It was noted that this is a unique part of Somerville that feels denser than other areas of the City. There is a very busy intersection in this area that may impact property values more than the proposal. The criteria outlined by the applicant for the Hardship Variance seems sound. There was a question as to having the family members move into the first-floor rental unit instead of adding onto the upper floors.

The applicant team explained that there is not yet a formal shadow study. This was not deemed necessary, as this property sits north of the two abutters, with the sun rising on the southeast side, casting shadows onto Mossland Street and Elm Street. The two units on this property are nested within each other. The stairs at 52A are currently 26” wide, would require significant renovation, and this would not truly provide multi-generational living. The applicant team spoke with neighbors regarding weather and the differences in height between the buildings and discussed mitigation options along that side of the building.

The Board noted that the goal of making the upper unit accessible is laudable. This could be done without extending the elevator to the third floor. Some concern regarding massing of the proposed building was mentioned. These goals could be achieved without a variance, especially when considering the concerns of abutters.

Chair Fontano agreed to leave the public portion of this meeting open while continuing this hearing at the request of the applicant. The deadline for written testimony will be noon on 9 August 2024.

Following a motion by Acting Clerk Cook, seconded by Member Zaremba, the Board voted unanimously (4-0) to continue 10 Bedford Street (ZP24-000033) to 14 August 2024, at request of the applicant.

RESULT:

CONTINUED

Vice Chair Brockelman retook her seat.

Following a motion by Member Cook, seconded by Member Daglian, the Board voted unanimously (5-0) to recess until 9:30pm.

The Board reconvened at 9:30pm.

PUBLIC HEARING: 89 College Ave (ZP24-000065)

The applicant team requested a continuance to the next meeting, due to the lateness of the hour and illness. The Board noted that there were approximately 103 participants currently in the meeting who were likely waiting to hear this case and potentially comment on it. There was agreement that this item should be heard this evening.

Chair Fontano opened public testimony.

The appealing parties explained that they are appealing the Building Permit issued by ISD on 13 June 2024.

Clair Pagnano (11 Francesca Avenue) – stated that she is extremely disappointed that the City fast tracked a permit approval for 89 College Ave., intentionally disregarding the established zoning process that is in place for any similar type of project. By bypassing the usual steps of properly examining the zoning codes and avoiding input from abutters, the City has effectively silenced voices. This is a dangerous precedent. While a homeless shelter is a laudable project, she asked what would happen if another project, not so desirable to the citizens, was pushed through because a different City administration thought it was important. It is clear there was no real consideration as to the actual legal basis on which this quickie permit was issued. First Church of Somerville waived the Dover Amendment in front of City officials. The City administration wanted a quick solution to a problem, and so it happened. No actual legal or factual findings were made in support of the issuance of this permit. The City, like many cities, has a clear challenge addressing homelessness, but the City does not want to deal with it directly. Instead, using municipal funds, it has funded the Homeless Coalition to deal with this issue. The City cannot be impartial in this situation. Any permit issued by the City must receive higher scrutiny and should not be given deference given the collusion between the City, the Homeless Coalition, and First Church on this matter.

Al Ball (Francesca Avenue) – stated that he is not against the idea of providing a shelter at First Church, but he is against the way this is being done. He was greatly offended at the Church's Neighborhood Meeting on 10 July, during which concerned neighbors such as himself were called out, suggesting that they would be culpable for the misfortune, suffering, or death of an unhoused person. He was also shocked that a City Councilor later publicly called out their own constituents in an inflammatory post on social media. Supporters of implementing the shelter, as proposed by the Somerville Homeless Coalition, seem to be advocating that the ends should justify the means, regardless of the law. This is not how democracy works. To ignore these laws and regulations, particularly for religious beliefs, is counter to the principles which the Commonwealth and the country were founded on. Regarding the First Church, as of 30 July, there are seven open Building Permits that were issued five years or more ago. He brought this to the attention of the Church at the 10 July meeting, and they remain unresolved today. This is strong evidence that the Church lacks the competency to manage their own building as it is, and certainly not an overnight residence for 26 people. Mirroring this decline was the slow failure of the Somerville Homeless Coalition shelter at Chapel Street. This shelter was conceived from a process of neighborhood engagement many years ago, but unfortunately it appears that Somerville Homeless Coalition, under the direction of Mike Libby, was equally unable to effectively maintain the shelter. Now these two entities, both having a track record of failure in managing their endeavors, have teamed up to create a new, larger shelter at First Church Somerville. The First Church hopes to hand off their property management burden to a third party, which has promised to renovate the space, and the Somerville Homeless Coalition has found a willing sock puppet to skirt adherence to zoning laws wrongly relying on the Dover Amendment, which, at best, is extremely vague regarding the issue at hand. This matter merits adjudication by a court. In conclusion, the 26-bed shelter, as currently planned, will certainly fail. As neither the First Church nor the Somerville Homeless Coalition has demonstrated the basic competency to sufficiently run such an endeavor. This failure will adversely affect the immediate neighborhood and Davis Square in general. He encouraged the Board to appeal the zoning allowance as issued, so that everyone can engage in an open process which conforms to and respects the existing zoning regulations as well as other applicable building regulations.

Jane Becker (7 Francesca Avenue) - stated that, in addition to the disregard for the zoning laws, the City allowed for this Building Permit by avoiding the necessary requirements for this shelter. The City allowed for this project to be approved as an existing use, but it is far from an existing use. This was the social hall of the Church and now it will be a residence for 26 people. This is not a temporary shelter, as the City stated during the Building Permit

process, but one that will be open year-round. The change of use from a social hall to a residential place of living requires an upgrading of mechanical systems for fresh air, fire protection, accessibility, and energy conservation. The Church will now have multiple uses occurring at once which should require adequate fire separation between the Church and the residents below. The permit drawings provide no code review and no egress plans for the residents. ADA compliance is one of the reasons for the move from the Chapel Street shelter, but the plans do not identify adequate path of travel for residents to bathroom facilities. The plans do not show adequate doors nor required corridor widths. The plans also do not show adequate egress windows from the proposed sleeping spaces. Normally, identification of the window sizes is required prior to issuance of a permit as standard practice for any residential project in the City. By allowing for this to go through as a non-change of use, the City is putting the health and safety of the unhoused at risk, as well as the health and safety of the neighborhood. A shelter that will house 26 people every night should go through all the necessary channels that are required by other residential projects in the city.

John Amaral (90 College Ave) – stated that First Church is a scarce precious community resource which has an indenture filed at the Middlesex Registry, requiring it to be used solely as a church until 2045. He asked if there is an expectation that landlording will void First Church's nonprofit status. He asked if the City should encroach upon religious and social community resources instead, such as constructing a secular shelter for such use on a property it owns closer to Davis Square. As a First Church tenant, his group met for years in the basement, all now made unavailable by a clandestine rush to modify for profit. Others noted the tiny congregation's noncompliance managing its buildings, so landlording the operation of a shelter with a capacity of daily traffic equal to that of six houses or more, is an overreach, and an exploitation of the naivete of Church management. Independent management is not viable, as it would distance the owner from low-cost sale and development which could make way for an even bigger facility than is currently planned, thus adding insult and financial injury to the community while exacerbating the loss of a Church which should reasonably offer services typically provided by savvy congregations. The overarching public need is to withdraw a permit and preserve First Church as a social resource. He urged the Board to vacate the unjustly characterized emergency permit and favor a more appropriate secular City shelter location that the entire community can support.

Maren Chiu (17 Kidder Ave and landlord for 24 Francesca Ave) – stated that, whether the vaguely written Dover Amendment applies is questionable, but what is not questionable is that the Somerville Homeless Coalition and First Church planned this project in secret with no regard for their neighbors, and it was pushed through without any democratic process. If City officials are in favor of adding a shelter to the Church, why did they go against this belief and classify the Church as Urban Residential during the latest zoning overhaul? Somerville Zoning Code is meaningless if it is not followed consistently. The meeting that was hosted by the Somerville Homeless Coalition and First Church in mid-July, after the permits had been issued and construction had begun, was not an informational meeting. It was a virtue contest among people whose daily lives will not be impacted by the shelter. There was finger wagging, condescending comments, and accusations of neighbors wanting homeless people to die simply because they are asking to be included in the zoning process, and in First Church's mission of having transformative community engagement. Due to the extremely hostile nature of the last meeting, many of the neighbors are afraid to speak out in public, including at this meeting. This is shameful for a liberal and inclusive community. As a parent of a teenager and landlord to young children living on Francesca Ave., she is concerned about how sexual offenders will be handled at the shelter. She asked if neighbors be notified if a sex offender is staying at the shelter, as they would be if one rents an apartment here. She asked if the shelter will be able to make changes to policies, add more beds, extend hours, or add other services without any input or communication with the neighbors as they have already done.

Attorney Shawn McCormack (representing the Somerville Homeless Coalition) – stated that the Dover Amendment is State law. State law says that cities and towns cannot prohibit or regulate religious uses of land through zoning ordinances. All of the process complaints have nothing to do with the question before the Board, which is whether the Somerville Homeless Coalition, or the First Church, is entitled to a Building Permit under the Dover Amendment. That is the narrow legal issue to be considered. The religious use of the property is by the Church. The Church is fulfilling a religious mission by hosting a homeless shelter. The analysis is whether offering sanctuary to the homeless is a religious act of the Church. There is ample support in the record that this is true, including a

letter from First Church that describes their religious views. The idea that a homeless shelter is a religious use of land has come up across the country, and it is almost universally held that the two go hand in hand. Charity is at the root of the Christian religion. The idea that somehow being operated by a specialized nonprofit organization takes this out of the Dover Amendment is wrong on the law. There is plenty of case law in Massachusetts that speaks to how zoning regulates structures and uses. It does not concern itself with owners or operators. The use of the land as a homeless shelter in discharge of a religious organization's spiritual duty is an identical use, whether it is run directly by the Church, or if it is run by a specialized nonprofit with whom the Church has had a long standing relationship. Zoning does not regulate owners or operators. This is a sincerely held religious belief that is being effectuated. To try to regulate this is contrary to State law, and to the notion that there is a free exercise of religion which should not be infringed by local regulations.

Attorney Anne Vigorito (representing the applicants) – stated that her client's position on the Dover Amendment is that it is not a blanket for all churches and schools to do whatever they want. There are specific guidelines that must be followed. There is a lease agreement between the Somerville Homeless Coalition and the First Church. Thus, this is a for profit for the Church. This was stated this in the neighborhood meeting. They will not be giving homeless people free shelter or free food; they are paying for a lease agreement.

Ward 3 Councilor Ewen-Campen – stated that he is extremely supportive of the Homeless Coalition's Building Permit and respectfully encouraged the Board to reject this appeal. He stated that, as a City Councilor in Ward 3, he has seen the Dover Amendment applied to at least two different projects. The claims that this was somehow unusual, or that a public process was avoided, in his perspective, is not true. There was nothing about this process that was unusual. While he believes Neighborhood Meetings can be very useful and he encourages the Homeless Coalition to continue holding Neighborhood Meetings to keep lines of communication open, this is completely unrelated to the appeal. If the appeal were to succeed, it would prevent the creation of a desperately needed homeless shelter, which would be a negative impact for the community.

Ward 5 Councilor Sait – spoke in support of the Somerville Homeless Coalition's Building Permit and respectfully encouraged the Board to reject the abutters' appeal of the Building Permit. As a member of the Public Health and Public Safety Committee, there is a huge need for this shelter. Providing a dedicated safe space should be a priority, as the current shelter is falling into disrepair. The new shelter would allow the Homeless Coalition to have ten additional beds to help meet the demand. She encouraged the Homeless Coalition to consider hosting a community meeting in order to answer questions and address abutter concerns.

Ward 2 Councilor Scott – stated that the City's only and most widely diverse available domestic violence shelter in the City also sits in this zoning area. It was grandfathered in before the zoning happened. The Dover Amendment allows for these types of projects. It would be a disservice to slow this project. He stated that he hopes the Board will see fit to allow this to proceed forward so that the City can continue serving its neighbors.

Catherine MacLean (1028 Broadway and member of First Church) – stated that the key issue in this case is the granting of the permit under the Dover Amendment, and she urged the Board to focus their consideration on that question. As a member of First Church, she spoke directly to the fact that this project is indeed central to the Church's mission as a religious organization. The Church engaged in a faithful, thoughtful, decision-making process to deepen the partnership with the Somerville Homeless Coalition through this project. There is a long history of partnership between churches and shelters, including on College Avenue, again reinforcing the appropriate use of the Dover Amendment. She hopes that the Board will see fit to allow the already granted permit to stand so that the Church can live into its faith and mission more fully by welcoming these clients of the Somerville Homeless Coalition into a safe and physically accessible shelter space in the Church.

Todd Kaplan (44 Kidder Ave) – stated that the key issue is whether this particular permit fits within the Dover Amendment exception, meaning that it is as by-right that this shelter be permitted. This is what the Inspectional Services Department determined. He agreed that this is a central mission of the Church and stated that he believes the Somerville Homeless Coalition will manage the shelter well.

Caroline Hoogland (29 Kidder Ave) – stated that the mission of housing the homeless is incredible, but the process by which this has unfolded is untrustworthy. She disagrees that the Dover Amendment can be used as a carte blanche to do whatever someone wants with disregard to local zoning law. The Somerville Homeless Coalition has done a very poor job engaging the direct community of neighbors who are abutting and adjacent to this building. The community can do better and owes it to each other to follow the democratic process to make decisions that are this important.

Brandon Lind (27 & 29 Kidder Ave) – stated that he believes this project should not move forward and should be revised. The process and proposed building are not compliant with zoning laws. The community was not engaged. The Dover Amendment does not exempt religious organizations from all local regulations, especially those concerning public health, safety, and welfare. A homeless shelter, primarily a residential facility, does not qualify under that Amendment. There are documented issues and concerns with how the Church and the other homeless shelter have been managed. The primary purpose of Dover is to cover religious and educational uses, and the proposed shelter is a service function which is not exempt under the Amendment.

Ron Newman (18 Day Street, #310) - encouraged the Board to reaffirm the Building Permit and deny the appeal. This is a shelter that already exists in the neighborhood, so the neighborhood has coexisted with a shelter for many years. The existing shelter is not compliant with the Americans with Disabilities Act, whereas the new one will be.

Ray Conte (18 Hall Ave) – stated that he sees this as a double loss for the community. The existing facility on Chapel Street has been used by the community for many uses. He asked why this Church is not planning to improve this facility, thus doing a charitable service to God and their mission of holiness. Instead, this proposal will eliminate a community room where people have congregated for the Church, and for other reasons, such as running a soup kitchen and food pantry, and instead rent this area out for profit. He suggested using the funds to renovate and improve the existing shelters.

Jill Currier (employee of the Somerville Office of Housing Stability and former employee of the Homeless Coalition) – stated that she is in favor of this shelter. The neighbors in Somerville are also these unhoused people, whether they are current residents of the shelter, or desperately in need of a bed. The new space will have accessibility components. Unhoused people are neighbors and abutters.

Olivia Hussey (49 College Ave) – stated that she is frustrated that people are questioning the quality of housing and using homelessness as an explicit religious endeavor. In terms of concerns about bringing people into the area. These people already live with us. They live in Davis Square. She would rather they be safe and sheltered than out of sight. She supports the use of this Church as a facility to help these people. The Dover Amendment is necessary to accommodate for people who will use bylaws to prevent charitable doings in their neighborhood.

Brett Smith (member of First Church Somerville, 22 Francesca Ave) – stated that in 2022, the Church went through a visioning process which ultimately culminated on adopting the current vision statement. After all that happened, Somerville Homeless Coalition approached the Church about collaborating on a potential shelter project. After extensive deliberation, the congregation voted unanimously in favor of the project. This speaks very squarely to the Dover Amendment analysis. The only question the Board needs to decide tonight is whether this use is a religious use under the Dover Amendment. He stated that he hopes the Board finds that it does.

Chris Warren (47 Clarendon Ave) - expressed full support for the Somerville Homeless Coalition permit. He asked if there would be similar objections if the proposed project were a food pantry distribution center where volunteers picked up food and deliver it to Somerville families. He does not believe so. An ADA compliant shelter with greater capacity is a public good, and it directly would serve the needs of people in the neighborhood.

Meredith Smith (9 Summit St) – stated that it is her understanding is that the shelter is moving to First Church, because the owners of the Church where the shelter currently exists are not maintaining the building. The Somerville Homeless Coalition does not have a lease with them; they are a tenant at-will. This does seem to be an appropriate religious use under the Dover Amendment.

Dr. Sara Lennox (38 Ames St) – stated that the effects of homelessness on people are terrible. Being unhoused is a severe health risk. It causes an increased risk of disease, severity of disease, and a decrease in life expectancy. It has been shown in studies that the life expectancy of an unhoused person is 20 years shorter than the life expectancy of a similar housed person. Providing a shelter for people to be able to live a healthier life is an obligation. It is an obligation not only for the community, but as a religious obligation. Therefore, provision of a shelter to unhoused people is both a religious obligation, a core aspect of religious practice, and a major health advantage for the City as a whole.

Marcie Campbell (36 Francesca Ave) - asked the Board to grant an appeal and afford the neighborhood surrounding 89 College Ave the historically expected engagement prior to a change of use or the intention to develop an unpermitted use, according to the Zoning Ordinance. She asked the Board to focus on the zoning rules. Even considering the Dover Amendment, it is possible to both support the unhoused, and engage the neighborhood in conversation, where the result would be a shelter of which all can be proud. It is not unreasonable to ask to be a party to the conversation that adds 26 new residents to the neighborhood. This would be the expectation for an apartment building or a hotel. As she learns more about this development and the decline of the existing shelter, she wonders why it has declined if it was well managed. She has lost confidence in the Somerville Homeless Coalition. As a neighbor of First Church for 28 years, she has not experienced their vision statement of radical inclusion, authentic connection, or transformative community engagement, other than when Molly Baskette was pastor more than a decade ago. Neither organization has shown the capability of effectively managing a 26-bed homeless shelter in a residential neighborhood. They have both proven historically, poor property managers. There are City of Somerville elected officials that knew about this plan for months and chose not to engage their constituents as they have for every other development. She asked how abutters to a public building, the West Branch Library, had more influence on an expansion of an existing public use than the neighborhood surrounding 89 College Avenue on a non-provisional use. Earlier tonight, the Ward 5 Councilor came to support her constituent for a dormer and stated that they had no objection because there was no negative impact on the neighborhood. Councilor Burnley brought up the contributions the applicants for that dormer may have made to the City as a contributing factor to the ZBA's decision. She heard that some constituents are more important than others. She is currently unable to trust that any of the organizations involved have any consideration for the neighborhood in which the shelter will reside. She would like to see the neighborhood considered a true collaborator. She would like to understand how this shelter will work and integrate into the neighborhood. She would like to hear that the City, the Homeless Coalition, and First Church, are all willing to work with the neighbors to create an effective shelter that supports the unhoused and will work in the neighborhood.

Ward 6 Councilor Davis – stated that there are fair concerns that have been raised in terms of the communication and the timing of the communication. He is committed to working with the Homeless Coalition on fixing that. This is mainly a question of zoning and zoning rules. The question has been asked as to whether this is consistent with the new zoning that the community passed. While working on the new zoning, he was aware of the State law that prohibits zoning prohibiting religious and educational uses. The guiding principle, as a default assumption, was to make anything that is there now permitted under the new zoning, including the existing homeless shelter in the existing Church down the street. It was his intent that this use in a Church would be permitted under the zoning because of the Dover Amendment.

Manuel Zepeda (62 Chandler St) – expressed support for the shelter but also supports granting the Administrative Appeal. Based on the Zoning Ordinance, homeless shelters are not permitted at this location. The permit should be revoked until the proper processes are followed. None of the experts mentioned a precedent specifically for a homeless shelter being approved in Massachusetts under the Dover Amendment. He would like for there to be a community engagement process to find a way for this homeless shelter to happen, and the community to feel heard.

Gail Strickler (50 Francesca Ave) – stated that she strongly supports the Somerville Homeless Coalition's mission of providing shelter to unhoused neighbors. However, she has serious concerns about the lack of democratic process and adherence to zoning regulations that have occurred. The proposal to establish a homeless shelter at First

Church Somerville did not follow the proper zoning rules. Homeless shelters are not permitted in Urban Residential zones, and, even in zones where they are allowed, they require a Special Permit process that includes community engagement and input, which was not done. The shelter's permit was pushed through quickly, and there was no information provided to the surrounding community until a few days prior to the start of construction. The lack of transparency and neighborhood input has left the community feeling disrespected and unheard, with no voice into what is happening in its own neighborhood. Some proponents of the proposed shelter believe the Dover Amendment negates the need for community involvement in this decision process, but she disagrees. She urged the Board to reconsider the application due to procedural oversights and misapplication of zoning laws. The community deserves a voice in decisions that affect everyone. This voice and proper protocols are essential to assuring fairness and accountability in the democratic society.

Max Meinhold (23 Elm St #207) – spoke in support of the work that the Somerville Homeless Coalition does and the goals of the Church. It does appear that churches are exempt from zoning laws for religious purposes. Thus, it does not appear that a zoning process is required here.

Lee Auspitz (17 Chapel St) – stated that the Dover Amendment specifically asks for a determination on parking, but this has been neglected. There should be a report on how the traffic, especially with the traffic island in the middle of College Avenue, will be handled. He has great respect and admiration for the management of the Homeless Coalition and believes they are capable of running a 26-bed facility. He cannot say the same about the self-righteous membership of the First Church. Love thy neighbor as thyself also includes the neighborhood, and they have been remiss in this.

Michael Chiu (17 Kidder Ave) – stated that he is a longtime supporter of the Homeless Coalition, a past member of the First Church, and a strong advocate for expanding services and facilities to support the unhoused, and anyone who might be struggling to live in Somerville. He has some frustrations regarding the process that SHC and the City followed. He has concerns regarding SHC's ability to operate, and whether they have the funds. He worries about the Church. The attendance is diminished. They struggle to maintain the building, and they have no community outreach. He worries about the loss of the community hall within the Church. Homelessness is a crisis in the City and the community should be concerned about it. Regarding whether this is a conforming use under the current zoning, it is not. The zoning explicitly does not allow this use, even under a Special Permit. This is the law. City Councilors can express their opinions and worries, but they are just that. They have already voted on the zoning, so while he appreciates their input, it is not valid because the law and the interpretation of the Dover Amendment are what matters. He supports the need for an expanded shelter and encourages the City to find an appropriate location and funding. This should be done, ideally, through authentic and radical connection with the community. This has taken a community of supporters and turned them against each other.

Ryan Black (West Somerville resident) – asked the Board to reject this appeal and vote in favor of the Church and Homeless Coalition.

Seth Hurwitz (12 Maple Ave) – asked the Board to reject this appeal so that the Homeless Coalition can provide support to those who need it.

Michele Hansen (26 Warren Ave) – stated that she finds it strange that, in a City that has approved thousands of luxury apartments, people are worried about 26 beds for homeless people. The only legitimate concern she heard expressed was the security of those who will live in this shelter. She urged the Board to move this forward so that these items can be considered.

Lee Kilpatrick (Director of Washington Street Arts Center) – stated that there are likely other issues than just the legal ones as to why people are not interested in having a homeless shelter in their neighborhood. However, he does not believe there will likely be disruptions or issues, as he resided next to a shelter for years.

The Board asked about the permit process for this type of item. ISD Staff explained that uses within an application are considered in terms of a potential Dover Amendment. The Law Department is then conferred with, and a

thorough review is held. There are no use variances in Somerville. Dover Amendment protected uses are required to follow dimensional guidelines.

The Board noted that it has not seen the plans for this project, as this is not under its purview. There was a question as to whether the plans are still subject to dimensional review, life safety, fire, egress, etc., items. It was asked if these reviews are separate from the Dover Amendment. ISD Staff stated that zoning has nothing to do with the Building Code. The Building Code is still required to be followed. There is no designation for a fast-track project through the City. It took approximately eight months for the Building Permit to be issued, which is a medium length time for projects in the City.

The Board noted that abutters can be impacted by changes to up-zoned parcels. There was a question as to where social services, such as a homeless shelter, are explicitly allowed in the City. Staff stated that following the most recent zoning amendments, homeless shelters are considered institutional housing, and are allowed by Special Permit in the UR, Mid-Rise, and the High-Rise districts.

The Board asked about a letter from the Law Department referencing no binding precedent for accessory use of homeless shelters and religious institutions. Law Department Staff stated that the Hume Lake case is the closest case in the State on this issue that could be found. There is no appellant authority in the State that exactly states that a homeless shelter is considered an accessory use to a church within the confines of a church. Other State law is cited when there is not this exact match.

Chair Fontano agreed to leave the public portion of this meeting open while continuing this hearing at request of the applicant. The deadline for written testimony on this item will be noon on 9 August 2024.

Following a motion by Vice Chair Brockelman, seconded by Member Cook, the Board voted unanimously (5-0) to continue 89 College Ave (ZP24-000065) to 14 August 2024.

RESULT:

CONTINUED

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