



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

14 AUGUST 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>Absent</i>	
Ann Fullerton	Member	<i>Present</i>	
Zachary Zarembo	Member	<i>Present</i>	
Brian Cook	Alt. Member	<i>Absent</i>	
Sisia Daglian	Alt. Member	<i>Present</i>	

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

The meeting was called to order at 6:01pm and adjourned at 10:17pm.

Member Daglian sat as a voting member for this meeting. Member Fullerton sat as Acting Clerk.

GENERAL BUSINESS: Meeting Minutes

Following a motion by Acting Clerk Fullerton, seconded by Member Daglian, the Board voted unanimously (4-0) to approve the 31 July 2024 meeting minutes.

PUBLIC HEARING: 52 Elm Street (ZP24-000053)

(continued from 31 July 2024)

The applicant team explained that one of the owners has a stalker and is protective of her privacy. The current house configuration is not accessible to the disabled people who currently live in the house. The medical information in this case is private and difficult to share but important to why the proposal is needed. They stated that the half story variance is only requested for the elevator shaft and raising the pitch of the roof a bit, because the elevator can only go in one location on the site due to its configuration. They noted that the proposed addition on top of the old storefront, now a unit at #52, that most of the complaints have been heard about is by-right; if the variance were denied for the elevator, the owners could still build the front massing by-right. This was also stated at the Neighborhood Meeting in March. The rear abutter who would be most affected by the elevator shaft, has written testimony in support of the application.

The applicant team stated that, by-right, the owners are allowed a half story, or 2.5' from the finished floor to the top of the wall plate. Currently, there is a 1'8" setback from the existing building to the lot line and the elevator shaft is proposed in the existing footprint of the mudroom. There is approximately 20' from the lot line with 50 Elm Street to where the elevator shaft starts. The house setbacks will remain as they currently are. The team stated that one of the main concerns expressed during the last meeting was whether accessible accommodations could be made to the first or second floor. 52A Elm Street contains a bedroom, living area, kitchen, and bathroom. The bathroom is half a flight up, and the existing stairs are 2'8", which do not meet the width to be accessible. The bathroom is also not handicap accessible and not easily expandable. 52 Elm Street, the primary unit, is a flight up from grade, which is proposed to be addressed with the elevator. The bathroom for 52 Elm Street is equally not

dimensionally able to be reconfigured for accessibility. To make additional changes, the interior would likely need to be completely gutted, including potentially removing a living room or dining room.

The applicant team noted that the neighbors expressed concern regarding the roof lines and snow/ice coming off the house. The houses sit less than 5' apart and there is less space between the gutters. They stated that the plan was revised to remove all roof overhangs, gaining approximately 8" between the buildings. Snow guards and melt wire are being examined for the property as well to address these concerns. The team noted that to address shadow concerns, a shadow study was completed; it found that the only time any shade fell on 50 Elm was at 6:00pm on the summer solstice, close to sunset. There is some amount of shade that currently casts on 50A Elm, and this proposal will add to that somewhat for a few short hours.

The applicant team stated that the requirements for a Hardship Variance of a half story have been met. There were 43 letters of support submitted for this project. They stated that an analysis was submitted from a real estate broker stating that the variance, if granted, would not negatively impact the value of the abutter's property at 50 Elm, as those abutters had alleged at the last hearing. The applicant team noted that the accessible unit can only be on the third floor and the elevator can only be in the location shown, due to the shape and layout of the lot. They also stated that the elevator shaft and the roof line of the main building must increase from 2.5 to three stories for the elevator to function, and the front increase in massing is by-right and is not part of the variance.

Chair Fontano opened public testimony.

Jesse Alaimo (17 Mossland Street) – stated that every other surrounding house has completed major construction. The applicant has every right to do this to their house and it is a good project to help the family members.

Attorney Anne Vigorito (representing the abutters at 50 Elm Street) – noted that, as the architect stated, the first floor could be made accessible with a gut rehab. This is another alternative that could be explored. Regarding that desired relief may be granted without substantial detriment to the public good, and without nullifying or degrading from the intent or purpose of the ordinance, the owners at 50 Elm are directly affected by this project. The point made regarding the value of the property not being diminished was made by a real estate broker, which is not a real estate appraiser.

Todd Kaplan (44 Kidder Ave) – stated that he reached out to local disability rights advocates, and they feel strongly that, in order for Somerville to be a more welcoming City to persons with disabilities, the City needs to make it easier for people to modify their homes to allow for people of disabilities.

Ward 5 City Councilor Sait – stated that the proposal is to make this property wheelchair accessible and ADA compliant, to allow the owner's parents to move to the property and live as a family. She understands that, architecturally, this is the best way to install the proposed elevator. The architect has explained that the new height will not reduce sunlight or create shading on the neighbor's house. The project will allow the owners to keep offering 52A as a below market rental while creating housing accessibility in a public transit walkshed area. This is a great opportunity to increase housing density and accessible housing in transit areas.

Jacob Becraft (48 Elm Street) – stated that he and surrounding neighbors support the desire of the applicants to increase the accessibility of their house. However, to utilize that as an excuse to expand so egregiously to the home, such as making a nine-bedroom penthouse sauna with multiple outdoor decks, speaks to the actual motivation, which is to get as large of a property as possible. The architect's explanation that the accessible unit could only be placed on the third floor is patently false. This is a decision being made to not complete a gut renovation on the first or second floors. Regarding the idea of expanding upwards from the front region of the house on Elm Street, which was allowed via a previous Special Permit, he was shocked to hear the ZBA will not address that a modification made to the existing Special Permit years ago does not allow the applicants the right to expand upward directly on Elm Street, as no other house in the area does. The Board should not buy the excuse that accessibility can only be completed by creating a nine-bedroom, 4,000 s.f, with roof and sauna mansion.

Derek DuPont (12 Craigie Street) – spoke in favor of the proposal. He commended the applicants for prioritizing a solution that preserves the 52A unit. There is an ongoing housing crisis in Somerville and eliminating any housing should not be on the table. There is a real human cost to taking away below market rate housing, which this unit currently is. It is a testament to the good character of the owners at 52 Elm that, when faced with the difficult decision of providing housing for the aging parents versus taking away their tenants' home, they chose to invest their time and money into a solution that would produce an accessibility-minded multi-unit building that will be available to future generations of Somerville residents.

Harriet Randvig (5 Lester Terrace) – stated that she is a lifelong professional and volunteer disability advocate. She consulted with a member of the Architectural Access Board in Massachusetts and every municipality is required to have policies and procedures to aid in accessibility, not just in public housing, but in all housing. She is in favor of the proposed variance, otherwise the owners' parents will likely be condemned to a nursing home.

Jeff Byrnes (26 Clyde Street, #2) – expressed unequivocal support for this proposal. The applicants are trying to maintain a below market rate home for a tenant in 52A and trying to provide an accessible and wonderful home for one of their aging parents, and eventually for themselves. The applicants are investing into the community through the project with this home.

Michael Rainey (Arlington, MA) – explained that he was forced to leave Somerville when his partner's mother became ill and had mobility problems. They wanted to move her in with them, and there was absolutely no place in Somerville that was accessible to do so. The comments that characterize the applicant's plans as some bourgeois luxury land grab are very ungenerous and demonstrate that the commenters do not actually know the applicants or their intentions. Unless there is a View Protection Law, residents do not have a right to view, light, or air. As shown by the applicant's team, these items are not truly impacted. The snow/ice issue can be mitigated for. If the variance is not granted, the harm to the applicants would be extensive. They have already put a lot of money into engineering and architecture. They would likely either have to complete a gut renovation or find another property to develop, both at additional extensive costs. Somerville needs to approve this proposal to demonstrate that it supports residents who are doing the right thing.

Frank Lee (5 Lester Terrace) – stated that he is in support of this proposal. He would like to see the affordable and accessible housing stock in Somerville increase. Granting this variance will increase the accessible housing in Somerville by one unit, at no cost to the City.

Tom Gilbert – expressed his support for this proposal. He does not understand why the neighbors are complaining. It is terrible to have to put loved ones in nursing homes and that could be what happens if the variance is not granted.

Matthew Muresan (50 Elm Street) – stated that his house is less than 5' from this property. He believes in accessibility, the option to age in place, and the right to modify one's home. He stated that a memo from the Planning, Preservation, and Zoning (PPZ) Staff said that whether the proposed structure causes a detriment to the public good is debatable. It states that one of the abutters, 50 Elm Street, will have their property overshadowed by the proposed structure. The overshadowing mentioned is not about light shadow, it deals with overshadowing through mass. The memo also states that these variances should do the minimum that would grant desirable relief. He explained that he is just asking to have the design modified, and no one has reached out to him. He thought a conversation would begin after speaking at the last meeting, but this did not occur. The measures modified for snow relief are appreciated, but the new designs show no reduction in the massing. He does not want to kill this project but does want to be spoken to about it.

Chair Fontano stated that the applicant team indicated that they had reached out to the owners at 50 Elm Street, but Mr. Muresan stated that no one has reached out to them directly. The applicant team stated that they reached out to the abutter's representation, Attorney Anne Vigorito. The attorney stated that she would speak to her clients and get back to the applicant team but never did.

Ben Gunther (St. James Ave) – stated that he thinks it is great that the applicants want to renovate their home to make it more accessible for their parents to age in place. The Planning, Preservation, and Zoning memo dated July 25th does a good job of outlining some of the deficiencies and concerns with the design as it relates to zoning issues. In particular, the building is less than 2' from the neighboring 50 Elm Street property line, and abutting property would be overshadowed by the proposed structure. The massing of the proposal is not consistent with the NR zoning district and there is a question whether making the third story accessible is necessary for reasonable use of the building. One thing he did not see mentioned is the fact that the proposed footprint will be larger than the existing, extending almost to the sidewalk near 52 Elm Street, where the front steps are now. This is one of the most egregious aspects of the design. He asked if this portion of the addition should be allowed by-right, as mentioned by the applicant team. Everyone, even those who express concerns about the project, would agree that improving accessibility is critical, but if this was the applicant's primary intent, the design would be significantly different. The second floor proposes a new porch, office, and primary bedroom with two large closets, leaving the existing inaccessible bathroom, as is. Given the square footage of the addition, it is unclear why this floor could not have been made accessible. According to the PPZ memo, the purpose of the renovation is to add a residential elevator to make the top story wheelchair accessible. However, also included on this floor is a new sauna and a large porch. These amenities seem to be prioritized over the concerns of the neighbors. He supports the applicant's stated goals but, given the accessibility deficiencies and how the building would affect the neighbors, it would be a shame for this project to move forward as currently designed.

Jackie Noack (12 Craigie Street) – stated that she has been renting in Somerville for 15 years and, in that short time, has seen people forced out of their living spaces due to exorbitant rent increases. In a five-block radius of her street, including Elm Street, there are numerous multifamily homes that have been gut renovated and turned into single family units, furthering the inability for people to be able to find a place in the City as a renter. The owners at 52 Elm Street are seeking to make the home that they own into a wheelchair accessible space for their disabled family members while keeping their downstairs apartment affordable and available to tenants. This approach ensures a community-minded and inclusive future for Somerville, and she asked that the Board vote in favor of the request.

Helena Zec (1188 Broadway) – stated that she supports making homes accessible but opposes this variance for three main reasons. First, it is undeniable that the proposed structure would completely overshadow one of the neighboring units, in terms of mass. This would certainly decrease the quality of life for those neighbors and degrade the value of their property. Secondly, the size and footprint of the proposed increase is not sustainable. If the proposal is approved and a neighbor's property is overshadowed, that neighbor would be greatly incentivized to renovate their property to increase their footprint and thus eclipse their neighbor. Finally, the scope of the project seems misaligned with the justifications for the Hardship Variance. It seems very reasonable, as the applicant's architect pointed out, to renovate the first and second floors to make the property more accessible. She does not agree with the argument that this renovation will make home more affordable, as it would then include five bedrooms, two offices, three bathrooms, and a sauna.

Tony Kopa (221 Willow) – stated that he supports Somerville being a place for all ages and abilities, but in looking closely at these plans, the proposal struck him as an unusual way to achieve the goals. He has an 81-year-old father and is helping him navigate mobility issues as well, but adding an elevator has never come up in discussions of ways to help him age in place. He does not believe that the many of thousands of senior citizens across Somerville have elevators in their homes either. The proponents are asking for a zoning variance based on hardship and it is hard to understand the hardship of a family owning a large home, and having the means to add an elevator, a sauna, and hundreds of additional square feet. There are other options available to a family with the financial means to supersize their home. There are other renovations that can be made to this home without requiring a variance. It is hard to understand how this particular design is the only path to accessibility. It is only fair and reasonable for the owners of 52 Elm to make any changes to their home that comply with zoning.

Elliot B (Linden Ave) – stated that he knows the applicants through volunteering for local community groups. He cannot overstate how big of a loss it would be to the local community if this family was forced out of their home for accessibility reasons. He noted that the plans for the new design look almost exactly like the home he currently

lives in, less than a block away. The applicants provide a below market rental unit and provide food from a community garden to neighbors. It is a bad faith accusation to say that the applicants are supersizing their home or building a penthouse. A sauna is actually a medical device for people with different types of musculature issues, but this is not a fair thing to be bringing up in the public forum. Design decisions that do not fall under the variance should not be part of this discussion. It is up to the homeowner what someone wants to do with their home.

Joel Paul (12 Moreland St) – stated that most of the complaints have been about a part of the design that is allowed by-right. The proposal is to add a half a floor on the house to allow someone's parents to age in place and be cared for. The street level renderings do not look out of place for the neighborhood. He asked that the Board approve this variance.

Jennifer Civitella (9 Bolton St) – stated that she is a member of the disability community, and her heart is breaking for what the applicants have had to go through in terms of sharing their personal information. Anyone who questions how their accessibility should be set up should be ashamed. It is beyond unacceptable to have neighbors, and the community treat someone different and act as though they are not entitled to nice things. The proposed 2.5' will not dramatically impact the neighborhood. She asked that the Board approve the request.

Cristen Muresan (50 Elm Street) – stated that everybody agrees that nobody needs to hear the details of anyone's disability. She is not asking anyone to quantify that and is hugely empathetic to this need. She does not want any personal details to have to be shared. Unfortunately, she did not get that choice because, after the last meeting, the applicant took to social media and posted many personal details, including the name of a local business, making Ms. Muresan's home identifiable to people and she felt extremely intimidated. She did not want this information splashed all over the internet and was shocked. She thought she was participating in a public process where the Board would make a decision with the applicant, and that neighbors would provide their honest perspectives from various points of view. She did not foresee being targeted. She noted that the proposed third story includes the frontage being spoken of being by-right. The applicant can go to 2.5 stories, but not up to three. She does not understand why the elevator needs to take the entire massing forward. She noted that nobody is saying the applicants need to get rid of the apartment. She fully supports them having the affordable housing apartment. She believes there are other ways to modify the first and second floors to have an elevator and make more accessible rooms. She hopes there is another way where personal details do not have to be splashed around the internet and people do not have to feel intimidated or scared in their own homes.

Jeremy Mendelson (East Somerville) – stated that he knows the applicants through community networks and volunteer groups. The applicants have done so much for the community, and it would be a loss to have them not there. It feels as though there must be some other motive by those against this, because the idea that the proposal will overshadow the view of surrounding properties seems disingenuous.

Courtney Pollack (14 Linden St) – spoke in support of this variance request. This is a variance request for a half story in height on the roof. Approval of the Hardship Variance is necessary for an elevator to function and for the homeowners to remain in Somerville. The homeowners have revised their plans multiple times to address several important concerns from neighbors and provided a strong justification for their design including feasibility, cost, and structural soundness of their house. Everyone shares a responsibility to meet the needs of everyone else in the community. There is a lot to gain by approving this Hardship Variance which far outweighs the additional half story in height. The renovations would improve zoning and compliance of the property. The green score of the property would improve. The ice and snow situation for the abutting property and adding additional roof mitigation would improve. It would not impact shade or property values. It would increase accessible housing and density by allowing the 52A unit and would work against displacement.

Tori Antonino (65 Boston St) – spoke in favor of the variance. Aging in place is very important and has been part of the SomerVision process. She asked that the Board approve the request.

Jeff Brown (46 Elm St) – stated that no one has come to his home to speak about this but would be willing to do so. He is not in favor of this variance. There seems to be a lot of emotional pieces at play here, and Somerville should

not be shamed into a decision. It is very clear that everyone is supportive of disability accessibility. He pointed out six different families that he personally knew within a hundred yards of his home that have aged in place. Somerville is doing a good job of making living available to the elderly. There is an assumption being made that, because rent is expensive, this project will somehow alleviate that. Homeowners also are paying a lot per month and paying City taxes. As the architect pointed out, there is an option for a gut renovation of this property which must be less expensive than the proposed four-story elevator. He is excited for the applicants to explore a new plan.

Peter Kim-Santos (18 Joseph St) – stated that he cannot think of a more obvious case for granting a Hardship Variance than modifying a house to become accessible for aging parents. The applicants have put in so much effort to alleviate neighbor concerns, and it is unfortunate that so many of them are tearing through the applicant's lives and treating them so terribly. He asked that the Board grant this variance.

Ellen McPherson – stated that she is not in favor of this proposal. The commingling of all the issues regarding disabilities and below market rent is a way to mask the fact that creating this large-scale renovation on this property that requires a variance is also a way to monetize the property which is in a very desirable neighborhood. There is more to this story, and she disapproves of this plan. The proposal is not a fit for the scale. There are alternatives to provide for the parents that should be considered.

Meredith Porter (104 Josephine Ave) – stated that the applicants are good people, and he would like for them to stay in the City. This is the matter of accessibility. Regarding the matter of a Hardship Variance, there is an unusual character of the structure that makes it difficult to modify. There have been casual references to gut renovation, but that is a big deal. There is a tremendous financial hardship to the applicants by denying this. The proposal will not cause substantial detriment to the public good. The proposal will not derogate the purposes of the neighborhood. The applicant's motive is not to monetize the property. There have been references to a nine-bedroom penthouse with sauna; this is nonsense. The proposal includes a small sauna for certain reasons. Some of the remarks that people are casually tossing around, indicating that it is so simple for someone to gut rehab their house are very irritating.

Michele Hansen (26 Warren Ave) – stated that it is very important for people to be able to age in place. She asked the Board to support the variance.

Chair Fontano closed the public testimony portion at this time.

The applicant team reviewed the standards for a variance in the NR District.

The Board asked about the proposed footprint extending over the existing entry walkway. Staff explained that ISD's interpretation is that this project does not worsen any nonconformity, because it does not worsen any existing setbacks. The house presently comes up to within approximately 2' of the lot line on that side and approximately 1' of the front lot line. The proposed structure maintains those same setbacks. The Board expressed confusion of this interpretation as the proposal does bump the massing out over the top of the entry walkway that does not currently have any footprint.

The Board discussed the third criteria for the variance. The massing does seem to be a significant change. The purview of the variance is simply for the additional half story. The elevator is at the rear of the building, and the half story has been applied to the entire building. It is unclear if the entire third floor half story addition is required for this project. At least 50% of the community had expressed concern with this proposal. This is impacting the neighbors. However, it was noted that sacrifices will need to be made by either the owners or the abutters regarding this project.

The applicant team stated that the design works to maintain the context of the neighborhood as much as possible. Nearby buildings have a primary ridge line. Additionally, they also noted that there is a need for circulation to the

front of the building and the elevation and the door to the elevator are driving the design. If the Board's opinion is that a stepped roof is more consistent with the neighborhood, this can be further examined.

The Board stated that there is enough of a change in the new massing for the relationship of the context to be significantly altered from the existing context. There is an attic area that could be used to make the third floor accessible without adding an additional half story. The applicant team agreed to review the concerns expressed in the context of the plans.

Following a motion by Acting Clerk Fullerton, seconded by Member Daglian, the Board voted unanimously (4-0) to continue 52 Elm Street (ZP24-000053) to 18 September 2024, at request of the applicant.

RESULT:

CONTINUED

Following a motion by Acting Clerk Fullerton, seconded by Member Daglian, the Board voted unanimously (4-0), to recess the meeting for six minutes and return at 8:00pm.

Following a motion by Acting Clerk Fullerton, seconded by Member Daglian, the Board voted unanimously (4-0) to reconvene the meeting at 8:02pm.

PUBLIC HEARING: 89 College Ave (ZP24-000065)

(continued from 31 July 2024)

City Solicitor Shapiro stated that he issued an opinion on July 9th that the Dover Amendment likely protects the proposed use as a homeless shelter, as there is a nexus between it and the Church's mission, and there is a collaboration between the two entities. The Board's legal responsibility is to rule on the determination regarding the Dover Amendment.

The appellant team gave a presentation regarding the Dover Amendment and how it relates to this case.

The appellant team stated that when they initially questioned whether a homeless shelter is a permitted use of a church under the Somerville Zoning Ordinance (SZO), City officials, the Somerville Homeless Coalition (SHC), and the church stressed that this use is by-right. More recently, counsel for the SHC stated that the only issue for this Board is whether a homeless shelter is a religious use. They felt that this statement is misleading and inaccurate. They noted that in 1990, in the Needham Pastoral Counseling Center case, a mental health clinic that provided pastoral counseling, proposed to remodel 864 s.f. of space in a church building for a psychological counseling center with a spiritual component. The question before the Supreme Judicial Court was whether the proposed use was for a religious purpose within the meaning of the Dover Amendment. The team stated that Supreme Judicial Court concluded that what the counseling center planned to offer resembled a mental health clinic more than a religious activity. They continued their argument by noting that the Supreme Judicial Court stated that what 'religious purposes' means is a question of law for a court, not for the City, not for the Inspectional Services Department (ISD), and not even for this Zoning Board of Appeals. The proposed use of First Church by the SHC is similar to the counseling center in the Needham case. The court went on to state that the focus should be the use rather than the sponsoring religious organization. The team stated that when focusing on the use of the space in this case, it reinforces the conclusion that a religious purpose is not the dominant element, and zoning laws are concerned with use. Like the counseling center in the Needham case, the proposed homeless shelter is not the primary focus of the First Church and is not designed primarily for the parishioners of that church. They also stated that at the very least, the city should have known that a religious purpose under the Dover Amendment is a matter for a court to decide. On that basis, the city should have denied the permit and required the SHC to go through the customary process of obtaining a variance. The appellant team felt that the City was negligent, and requested that the Board halt construction until such time that the SHC goes through the correct and proper permitting process or

gets a decision from an appropriate Massachusetts Court of Law that this homeless shelter is for a religious purpose under the Dover Amendment.

The appellant team continued by stating that it is clear to them that the Dover Amendment leaves significant room for interpretation. While it might seem right to allow a church to circumvent zoning, because housing the homeless is within its religious mission, and is important to Somerville, they asked that the Board think seriously about whether this sets a precedent. They also asked what might happen if a right-wing church moves to Somerville and wants the same variances granted to open something like a gay conversion therapy camp, a white supremacy retreat center, or even a gun range. These are things that could be allowed without any neighborhood input, simply because these facilities could be argued to support a religious mission. The team noted that the appellants are not saying that the SHC should not build a shelter, but it must fit within the framework that the zoning code has established.

The appellant team also stated that the potential impact of this proposed shelter at First Church on this neighborhood would be an order of magnitude greater than any of the projects so carefully considered by the Board previous to this item. They stated that they have witnessed the negative impact of the current Chapel Street shelter on the Davis Square area. The constant presence of unhoused people in the Davis Square area has become untenable, deteriorating public safety, creating trash which worsens the rodent problem, and public consumption of drugs. Rather than alleviating the burden on the neighborhood, they are worried and believe it is logical that expanding the amount of homeless people in the area will exacerbate the current problem. They encouraged the Board to use the utmost scrutiny in evaluating proposed shelter, particularly in light of the failed SHC Chapel Street shelter and First Church's historic inability to maintain their church property. The team asked the Board not to allow the neighborhood to be negatively affected by this risky, rushed, and ill-conceived endeavor. They also asked if there is any limit as to what a church can do if the Dover Amendment is used to override existing zoning laws. They stated that this project cannot be completed by-right, as the Dover Amendment has not been found to apply to this circumstance. The Dover Amendment is not self-executing and requires a factual and legal determination of whether it applies. They said that in the last meeting, the City Solicitor admitted that there was no precedent for the Dover Amendment being used to overrule zoning regulations for a homeless shelter being housed in a church building. Until a full and factual legal analysis and determination is made, the team stated that it is fair and prudent for the Board to grant this appeal. They asked the Board to consider what the quickest path is to a functioning shelter. They noted that if the Board denies this appeal, the decision will likely be appealed to the Land Court, where there is currently a two-year backlog, suggesting that the project will be delayed at least two years or more, and noted that the quickest path to a working shelter is to grant this appeal and allow for the normal zoning variance process, including engagement with the abutters, to occur.

The attorney for the Somerville Homeless Coalition stated that the presentation so far has been inaccurate on the law. Feeding and sheltering the homeless is a recognized religious practice. It is not appropriate for the government, the Zoning Board in this case, or the neighbors, who are asking the government to intervene on their behalf, to pick apart a church's belief system. This is a massive intrusion on the right to freely exercise religion. Regarding the "financial gain" issue brought up by the appellant's attorney, they stated that all of the organizations involved in this case are nonprofits. The rent being paid is outside the scope of the religious purposes test; it is okay for a church to receive rent. It does not mean that the parishioners at First Church do not have a sincere belief that they, as part of their religious practice, should be sheltering the homeless. That is what distinguishes this case from the Needham pastoral case. They also noted that in that case, there was no religious mission to provide pastoral counseling on site. The pastoral counseling had a religious aspect to it, but the parishioners of that church did not feel that it was their religious duty to provide that service. They stated that in this case, it has been absolutely established that First Church has an honest and sincere religious belief that offering shelter to the homeless is a calling and spiritual duty. To pick that apart is inappropriate, and in poor taste. They also noted that courts do not make a determination regarding whether a use is within the Dover Amendment, in the first instance. The courts instead review the decision making of local boards, like this one. They noted that the idea that adding beds to the shelter is adding unhoused people to Somerville is wrong. It does not have a net impact on the number of unhoused people in the city. They argued that the statement being made that the current shelter has failed is also wrong. There is no evidence to suggest that it has failed. It is currently operating and located approximately

350' away from the new location. They stated that Courts have repeatedly said that the use does not have to be inherently religious in order to qualify under the religious use exemption. Items like garden sheds and parking lots have been permitted in contravention of local zoning under the religious use exemption. They stated that in this case, there is an inherently religious nature for the parishioners to shelter the homeless. It is not a religious exercise of the homeless; it is a religious exercise of the church, and for that reason it is exempt from local zoning under the Dover Amendment.

Chair Fontano opened public testimony.

Matt Lavalley (15 Powder House Terrace) – stated that he believes there is a precedent for this use in the neighborhood, as there is already a homeless shelter located there. Sheltering the unhoused is a fundamental function of a Christian church. He referred to Chapter 25 of the Gospel, according to Matthew, from which originate the seven works of Corporal Mercy, one of which is housing the homeless. He finds the opposition to providing shelter for his neighbors who are unhoused to be a reprehensible thing to do.

Jeff Byrnes (26 Clyde St #2) – spoke on behalf of himself and an organization he helped co-found, Somerville YIMBY (Yes, In My Backyard). The organization is very much in support of this effort to provide more support and help for unhoused neighbors. This proposal is very much in line with the goals and the tenets of a Christian church to provide for the homeless.

Christopher Ferry (263 Highland Ave) – expressed support for this proposal as part of the church's mission.

Mayhew Ferry (263 Highland Ave) - stated that this use is within the stated mission of the church. Their vision statement includes inclusive sanctuary. Churches do not have to be evangelical or advocating for people who are within the community that they serve to join their services, for them to be providing services to that community.

Peter Kim-Santos (18 Joseph St) – stated that everyone who is not a lawyer can see that housing the homeless is a valid expression of a religion, and so the Dover Amendment should clearly apply. However, since the appellants are concerned with making sure this is a valid religious use, and is not a bad faith attempt to be cruel to the homeless, their concerns should be alleviated if the church puts a Bible in its library and decorates a wall with a poster with Matthew 25:38. Regarding homelessness, states like West Virginia and Louisiana have significantly higher rates of poverty and drug addiction than Massachusetts, but these states have virtually no homelessness. Extensive research has shown that homelessness is a direct consequence of the housing crisis, a consequence of the City and State's refusal to build housing in deference to NIMBYs like these appellants. Please stop listening to them.

Katherine Anderson – (15 Powder House Terrace #3) – asked that the Board agree with the mass opinion that this proposal is well within religious rights and is incredibly important to the community's values, to the church's values, and to the City as a whole.

Brett Smith (22 Francesca Ave and part of First Church's leadership team) – explained that, before construction began under this permit, the first floor of First Church Somerville provided dining space for coffee hour every Sunday or to be rented for special occasions. It also provided office space for the church and provided childcare space. The reason the first floor has undergone such renovations is not because it had any code issues, instead the church decided that making it a shelter was a better following of its religious calling, and so acted accordingly. The appellants seem to suggest that if the shelter were to move elsewhere, the homeless clients would move with it, but he does not necessarily believe this is true. Some of these people are attached to the Davis Square neighborhood and are neighbors. He looks forward to finding ways to serve them better rather than trying to force them to move elsewhere.

City Councilor-at-Large Burnley Jr. – stated that the efforts of the church are entirely within the realm of a positive religious expression. As an elected official, he believes it is dangerous to fight on that frontier, when it is so clearly relevant to the establishment of the shelter. He expressed support for this effort.

Crystal Huff (52 Elm St) – stated that she wants the SHC to be successful and supports this proposal. Is someone had genuine concerns and wanted to engage, they would presumably not want to waste the resources of the SHC on expensive lawyer time.

Derek DuPont (Craigie St) – stated that Davis Square has become the de facto home to an increasing number of unhoused residents because the City and State have failed to incentivize the construction of new, affordable homes. He is shocked that anybody who lives in in this neighborhood would be opposed to a shelter expansion on those grounds alone but, as lawyers for the defendants have made clear, the First Church has a right through the Dover Amendment to feed and shelter unhoused residents, as part of their religious mission.

Fred Berman (Cherry St) - supported SHC's project and echoed the notion that receiving rental income does not overshadow the religious purpose of the church's decision to provide space to address homelessness. Everyone needs income to survive, including the church, but it chooses how to make its income.

Mike Libby (Executive Director of SHC) – stated that the existing shelter has not failed. It has been operating for nearly 38 years and is operating well. The reason for moving is to increase accessibility for those who otherwise cannot access the existing shelter due to mobility issues, to provide more beds in the future to serve more people, and to have a more reliable facility in which to work.

Tori Antonino (65 Boston St) – this is the worst case of NIMBY-ism seen tonight. The appellants simply do not want homeless people being housed in their backyard. This should be considered a religious value.

Reverend Jenn Macy (First Church) – stated that it was shared by the appellant's attorney that First Church will not be involved in the operations of the SHC shelter, which is inaccurate. Over the past year, she has watched the congregation pray and discern about how they might become more involved in the community and serve their neighbors experiencing homelessness. In addition to giving up a significant portion of the space, the church will also be sharing space with the SHC, including a kitchen and common space. Church staff have committed to being spiritual and emotional support for the staff and clients of SHC. Congregants have committed to providing food and clothing for shelter guests, in addition to having the opportunity to provide companionship care. First Church is giving up a significant portion of its space and taking on significant cost to make this a reality, because they believe it is their religious duty as an institution to provide radical sanctuary for neighbors.

Michael Chiu (17 Kidder Ave) – expressed support for the SHC and the need for expanding counseling for the homeless. He stated that he not against the shelter specifically but has sincere concerns about the operation of the shelter, its funding, its impact on the neighborhood, and whether there are any plans in place to mitigate those concerns. He has spoken to the SHC about these concerns but has not yet received any answers. He stated that he is offended by the preaching from those who are speaking in support of the shelter and the disparagement of those who are appealing, particularly given that they have made no effort to understand the appellant's concerns. It's possible for the appellants to be concerned and support the shelter at the same time. The question in front of the Board is not whether shelter space in the City should be expanded, as all seem to agree that is needed. The question is how, as a community, to determine where to place these shelters. Residents should encourage the City to remove zoning restrictions for shelters and allow them anywhere in the City, if this is an agreed point. Until then, the City should follow the zoning laws that are in place and force community engagement to discuss these projects, to mitigate concerns.

Seth Hurwitz – stated that he is disgusted by the appeal that has been brought to the Board and he hopes that the appeal is rejected so that the SHC is able to operate this shelter.

Meredith Porter (104 Josephine Ave) – stated that the appellants are misguided in their arguments. He asked the Board to deny this appeal as this is a religious use. He would like the community to get together and give support to the SHC to help house the unhoused people in this City.

Chair Fontano closed the public portion of the meeting.

City Solicitor Shapiro stated that there is no binding precedent on whether a homeless shelter is an accessory use to a church in Massachusetts, but multiple other states including Ohio, New York, New Jersey, Michigan, and Washington, DC, have considered homeless shelters an accessory use to a church.

The Board asked about the City Solicitor's opinion regarding the Needham case. City Solicitor Shapiro stated that he agrees with Attorney McCormick that in the Needham case there was not an argument or a presentation that there was a connection to the church's mission, nor was there an argument that there was collaboration between the church and the entity in question. This is how to distinguish that case from this one.

The Board asked about any conflict regarding the homeless shelter, as an accessory use, being a valid use under the Dover Amendment. City Solicitor Shapiro stated that the Dover protections extend to a variety of accessory uses that, while not inherently religious in nature, are components of a broader religious project which facilitate the functioning of that project. In this case, there is a necessary connection to the church's religious mission, which is where the protection comes from.

The Board discussed the criteria for a determination in this Administrative Appeal. It was noted that First Church's faith does outline supporting people in need in the community. The proposed shelter is in line with the church's belief system. The Dover Amendment seems to apply in this case. There was support expressed for those appellants who noted genuine concerns. It was noted that ISD completed due diligence in this case for eight months and the City Solicitor has provided input on the case.

The Board discussed the following findings:

- The homeless shelter use is a clear accessory use to the religious use and is therefore covered by the Dover Amendment.
- The homeless shelter is consistent with the church's core beliefs, including the stated mission statements.
- The church's faith includes specifically supporting those in need in the community.

Following a motion Acting Clerk Fullerton, seconded by Member Zaremba, the Board voted unanimously (0-4) against the motion to approve the Administrative Appeal in the case of 89 College Ave (ZP24-000065), based on the Board's discussion.

RESULT:

DENIED

PUBLIC HEARING: 181 Pearl Street (ZP24-000038)

The applicant team explained that they are seeking a Hardship Variance for proposed development at 181 Pearl Street for the primary façade buildout. This site would require at least one Hardship Variance to build any of the allowed building types in the MR3 zoning district. As the site is abutted by NR parcels, a 10' side setback is required for any building type allowed in the MR3 district. The adjacent sidewalks are relatively narrow. Compared to the 12' curb setback requirement, there are approximately 7' for each sidewalk width. The 10' side setback requirement and the 12' curb setback requirement leave the Pearl St setback with 30' 11.5", which is 67.3% of the primary front façade buildout, where 80% is required for any building type permitted in the MR3 district. The team stated that enforcement of this makes the parcel unbuildable under any permitted MR3 building type, which is a substantial financial hardship, and granting relief on the façade buildout does not cause detriment to the public good. It allows the proposed project to follow the requirements for the side setback and the curb setback, creating the intended space between the NR and MR3 parcels and the intended generous public realm.

Chair Fontano opened public testimony.

Seth Hurwitz (12 Maple Ave) – expressed support for this proposed variance. This is a tough parcel to build on and it would be nice to have the ability to match the MR3 intentions on the site.

Chair Fontano closed the public portion of this meeting.

The Board discussed the criteria for the variance. Regarding special circumstances relating to the existing soil conditions, shape, and topography of the parcel or unusual character of existing structure, the unusual circumstances are that the size of the parcel is smaller than is typical in this district. Regarding criteria 2, not allowing the variance for the minimum façade buildout, this will be an unbuildable lot. For criteria 3, desirable relief without causing substantial detriment to the public good or nullifying the intent and purpose of the zoning ordinance, the Board agreed that the property is otherwise fitting the zoning ordinance.

Following a motion by Acting Chair Fullerton, seconded by Member Zarembo, the Board voted unanimously (4-0) in the case of 181 Pearl St (ZP24-000038), to approve the Hardship Variance based on the criteria discussed by the Board, including any special considerations outlined in the Staff Memo dated 9 August 2024.

RESULT:

APPROVED

PUBLIC HEARING: 126 Cross Street (ZP24-000057)

The applicant team requested an appeal regarding the fractional payment calculation of 126 Cross Street. They said that the data being used by the city should be revisited and revised, specifically the city's calculation determining an average market sales price for four-bedroom units, suggesting that the only two criteria to be considered as comparable market units are that they are located in Somerville and that they have the same number of bedrooms. This does not factor in many other considerations such as location, condition, size, square footage, parking, amenities, etc. Staff explained that filtering different fields into the calculation may be too time consuming. Comparable market rate units for the purposes of fractional calculations should be determined by a qualified real estate professional.

The applicant's real estate broker stated that when calculating the value of any property, he looks at the location, such as where in the city it is located, the street, the neighborhood, the surrounding areas, and comparable sales. One of the last things he uses in determining value would be the number of bedrooms. Before that, he would consider at square footage, and the location of the property. They reviewed the city's formula for making the determination and does not believe it makes sense as an expert in the field. They noted that the unit in question has less than 1,200 s.f. of living area and the lowest square footage for the comparables that the city used was just over 1,450 s.f., and the highest was over 2,200 s.f. of living area. The average square footage of the units that the city used as comparables was over 2,100 s.f. and the square footage for this unit is 1,179 s.f.

Chair Fontano opened public testimony.

Payton Corbett (27 Autumn St) – asked that the Board table this item. This property is walking distance to both the orange line and green line stations, as well as the community path. This might merit more investigation from the city, or those who advocate for affordable housing in the community.

Ward 4 City Councilor Clingan – stated that he would like to check with the Ward Councilor on this item and asked that it be continued.

Chair Fontano agreed to pause the public portion of this meeting at this time to hear from City Staff.

Staff explained that this calculation was already recalculated a second time after a request was made and changes were included. A lot of time has already been put into this calculation. The original calculation was made by the

Housing Division. An appeal was received as to how the calculation was done. ISD determined that the original calculation was done incorrectly and that the data sets were not what would be considered a comparable. The determination was that ISD was not the department to make comparables either. At that point, Staff contacted the City Assessor's Office, and that office provided comparable amounts and prices for properties for the date ranges required in the zoning ordinance. The Housing Department then completed a recalculation and issued it to the property owner. ISD determined that the issuance met the ordinance as it was written.

The applicant team stated that the only two criteria for the calculation mentioned in the city's memo were that the property was in Somerville, and it was a four-bedroom unit. It was further noted that filtering additional fields, for example, square footage, number of bathrooms, zip code, etc., may be inordinately time consuming for Staff.

The Board asked Staff to confirm that they reviewed square footage, bathrooms, a more specific zip code than the entire City of Somerville, etc. when coming up with the comparables. Staff stated that the City Assessor was the one that came up with the comparables using the specific date ranges as required in the zoning ordinance.

The Board reviewed the comparables given to the applicant team. The applicant team noted that the data seems to overestimate the floor area of this unit by approximately 200 s.f. The floor areas for the comparable properties that were used were 1,726 s.f., 1,456 s.f., 1,458 s.f., 1,784 s.f., and 2,562 s.f. Not one of them is the same size or smaller. They noted that the square footage is the most important factor in how a condominium is valued and there are other units in the city that have sold in 02145 that are closer in square footage. Staff stated that ISD believes the second calculation that was made is correct.

Chair Fontano reopened public testimony.

Ted Silva (206 Holland St) – stated that the value of a condominium cannot be determined without assessing the square footage. A 3,000 s.f. condo is not the same price as a 1,000 s.f. condo just because they both have four bedrooms.

Ward 4 City Councilor Clingan – again suggested tabling this to hear from the Ward Councilor and the Assessor's Office.

Tori Antonino (65 Boston St) – noted that there are many other items such as parking spots, backyards, rooftop access, access to public transit, etc., that could also be important in assessing value.

Chair Fontano stated that the public comment period will remain open while continuing this hearing at request of the applicant. The Board agreed to continue this hearing to hear additional information.

Following a motion by Acting Chair Fullerton, seconded by Member Daglian, the Board voted unanimously (4-0) to continue 126 Cross St (ZP24-000057) to 4 September 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