



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

16 OCTOBER 2024 MEETING MINUTES

This meeting was conducted via remote participation on Zoom.

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

City staff present: Andrew Graminski (Planning, Preservation, & Zoning); Steven Cary (Planning, Preservation, & Zoning); Madison Anthony (Planning, Preservation, & Zoning); Emily Hutchings (Planning, Preservation, & Zoning); and Nicholas Antanavica (Director of Inspectional Services Department)

The meeting was called to order at 6:04pm and adjourned at 8:51pm.

Member Cook sat as a voting member.

GENERAL BUSINESS: Meeting Minutes

Following a motion by Vice Chair Brockelman, seconded by Member Fullerton, the Board voted unanimously (4-0) to approve the 4 September 2024 meeting minutes, as presented.

Following a motion by Vice Chair Brockelman, seconded by Member Fullerton, the Board voted unanimously (4-0) to approve the 18 September 2024 meeting minutes, as presented.

PUBLIC HEARING: 44 Josephine Avenue, Apt 2 (ZP24-000086)

Member Fullerton recused herself from this case.

Following a motion by Vice Chair Brockelman, seconded by Member Cook, the Board voted unanimously (3-0) to continue the hearing for 44 Josephine Avenue to 6 November 2024.

RESULT:

CONTINUED

PUBLIC HEARING: 241 Willow Avenue (ZP24-000079)

Member Fullerton recused herself from this case.

Following a motion Vice Chair Brockelman, seconded by Member Cook, the Board voted unanimously (3-0) to continue the hearing for 241 Willow Avenue to 6 November 2024.

RESULT:

CONTINUED

PUBLIC HEARING: 9-15 Taylor Street (ZP24-000015)

Member Fullerton retook her seat.

The applicant team explained that the proposal is for relief for ten parking spaces for a 34-unit project. 20 spaces are being provided on the site, with an additional four on-street spaces. The normal requirement would be for 34 spaces. 15 bicycle parking spaces are also proposed to be provided.

Chair Fontano opened public testimony. There was none at this time, but Chair Fontano left the public comment period open.

The Board asked if there are Urban Design Commission (UDC) recommendations needed for this project. Staff stated that there was no UDC requirement for this case. This is the only non-compliance issue for this project.

The Board noted that there are two conditions regarding a Mobility Management Plan (MMP) contained in the Staff Memo. Staff explained that this would be completed on Mobility/ISD's end.

The applicant explained that a traffic engineer completed traffic counts on surrounding streets. A Traffic Impact Study (TIS) and MMP were also completed for this project. The traffic engineer found that there was minimal to no impacts on traffic given the amount of parking relief requested. The traffic for the parking lot has to conform to strict standards for the dimensional regulations in Somerville and all the spots adhere to those regulations. Originally, four bicycle parking spots were proposed at the property, but this was increased to 15 based on Staff comments, and a third of those are long term, covered parking spaces. There is a bus stop at the end of the street and a T station within a 15 minute walk. There are no houses on the other side of Taylor Street and the close-by apartments have parking underground. There was no pushback on the proposed parking during Neighborhood Meetings.

Chair Fontano closed the public comment period.

Following a motion by Vice Chair Brockelman, seconded by Member Cook, in the matter of 9-15 Taylor Street (ZP24-000015), the Board voted unanimously (4-0) to approve the Special Permit for relief from the minimum parking requirements in the Urban Residence (UR) zoning district with the conditions outlined in the 10 October 2024 Staff Memo.

RESULT:

APPROVED

PUBLIC HEARING: 2 Village Terrace (ZP24-000056)

The applicant team explained that there is an existing chicken coop located in an easement that was received from the development of 35 Dane Street. During the development's process, the applicant's land was contaminated by hazardous waste that was dumped on it. The chicken coop was previously in the applicant's backyard area. A specific area was designed for the chickens to be placed on the Dane Street property outside of the contaminated area. ISD has stated that the coop is located on an abutting parcel. The applicant team stated that this is a hardship case for them due to the contamination that occurred on their property.

Chair Fontano opened public testimony.

Frederick Hirsch (2 Village Terrace #4) – stated that he sees young families visiting the chickens. They are a resource for the whole neighborhood.

Oliver Turner (speaking on behalf of the owners of 35 Dane Street) – stated that the land on which is coop is located is subject to an easement for Village Terrace. The owners of 35 Dane Street learned that the coop should not be located where it is when the City was contacted to deal with persistent rat problems. The City and private pest control companies have determined that the rat problem is an issue as part of the coop. There are three relevant matters: the rules of Urban Agriculture Ordinance, the rules for accessory structures, and the Board of Public Health regulations. All of these presuppose that the ownership and responsibility of the chicken coop should be for one of the dwellings on the lot, but this coop is not located on its owners' lot. The land is owned by 35 Dane Street and 2 Village Terrace only benefits from an easement. While chicken coops are allowed for purposes for which backyards are commonly used, chicken coops are not commonly found in backyards that the owners do not live in. In a City where zoning is decided by private easement, everything needs to be subject to the zoning laws and the chicken coop, unfortunately, should be subject to that as well. The accessory dwelling structures rules state that these structures should be built 3' away from any lot line which unfortunately it is not in this case. The Urban Agriculture Ordinance, the rules for accessory structures, and the Board of Public Health regulations were all carefully written to balance the interests of 2 Village Terrace who want to keep chickens and the neighbors at 35 Dane Street who are being negatively impacted. Allowing a variance would harm 35 Dane Street for the benefit of 2 Village Terrace. The right balance would be for the owners to have a chicken coop on their land 3' away from other lot lines per the ordinances and the Staff Memo.

Cassia Silvia (34 Dane Street) – stated that her grandchildren appreciate the chickens. She appreciates having them there and did not know there were any issues with them.

There was no additional public comment at this time, but Chair Fontano left the public comment period open.

The Board asked how many chickens and coops there are. The applicant team stated that there are three chickens in one coop. The coop is rat-proofed and has cameras to confirm this. The City has stated that the coop is not the cause of the rats, but instead train tracks are being used for the rats to access nearby trash cans.

The Board asked about moving the coop from the property line. The applicant team explained that the soil could not be excavated deeply enough after the contamination on their land. The chicken coop was thus placed in the only area that is not on top of the nearby CULTEC systems, allowing the contaminated soil to be removed and replaced. For the chickens to be located anywhere else, they would have to be completed elevated from the ground.

The Board asked about the size of the easement parcel. The applicant team stated that this is approximately 19'4" x 22'8" and directly abuts the railroad tracks. Chicken wire was placed underground and covered with cement to make sure that rats cannot enter the coop.

The Board asked if the rat problem has increased as of late. The applicant team stated that a neighbor at 41 Dane Street had trashcans that were completely eaten through. The rats then traveled from there to the railroad tracks. Once the trashcans were replaced, the issue was reduced, though there are still rats around the area.

The Board noted that the rat problem is not a zoning problem and thus not before the Board. The violations reported by ISD should be focused on. It was asked if it was made clear to all parties that the easement would be used for this chicken coop. The applicant team stated that the remediation and soil placed on the easement was installed by the owner of 35 Dane Street. This area was built for chickens by the developer. All of the other soil is contaminated. The Board stated that there is no language in the easement documents that suggests this. The applicant team stated that it was negotiated that this land could be used for anything that they would have otherwise had in their backyard, including chickens. The chickens were on their property prior to anyone moving into the development at 35 Dane Street. The current chickens were moved into the coop in 2020.

The Board asked if the applicant team, when presented with the code violations, communicated with ISD regarding how adjustments could be made to the location or orientation of the coop to try to address the deficiencies. The

applicant team stated that they reached out five times but did not hear back. The lot line issue seems complicated enough to be confusing.

Chair Fontano again asked for public comment.

Anne Dietterich (35 Dane Street) – stated that it is unfortunate that an experience happened with the previous building developer however this does not have bearing on the current living experience for those at 35 Dane Street. The residents note that this is an exclusive easement granted, but still part of the 35 Dane Street lot. The lot lines should be within 2 Village Terrace. The residents have been negatively impacted by the chickens. There are rat convenience paths that run into the coop and the cameras may not be working. The coop was built in a way that impacts her property as one of the gates is within the 35 Dane Street property and could be a liability. It should not be the resident's responsibility to remediate hazardous waste dumped by a previous developer. The zoning laws should be upheld.

Nadia Zakaria (35 Dane Street) – echoed the concerns raised by others. This is a zoning issue. The coop should not be on this easement and should be placed away from the property lines. The residents did not receive anything in writing stipulating any of the remediation items when they purchased their properties. The coop should be moved.

The Board stated that, while there was not an explicit agreement for a coop to be on the easement, there was an implicit one based on the developer preparing this specific zone for the use. Regardless of if it conformed to zoning, it appears this was part of the original agreement. The easement language indicates it as perpetual, that it runs with 2 Village Terrace, and that it is appurtenant to 2 Village Terrace. It also conveys responsibility of the easement to 2 Village Terrace. This was recorded with the Middlesex Registry of Deeds. The language suggests that 2 Village Terrace controls the easement. This is why they were notified of the code violations. It seems unclear as to if the lot lines for 2 Village Terrace are extended around the easement, and what constitutes positioning of the coop on the easement that ameliorates the code violation.

Staff explained that the memo addresses the violation that ISD noted, which includes the location of the coop. The easement does not constitute a changing of the property lines. The location of the coop relative to the lot lines creates the violation. It is not located on the lot of the person responsible for the coop. It is unclear if the intention of a past developer has bearing on the zoning ordinance which dictates that the coop must be located on the lot of the person responsible. An easement does not change the definition of the lot lines for 2 Village Terrace and 35 Dane Street.

The Board asked if other backyard uses, such as a swing set or garden, could be placed on this property. There was a question as to which uses are covered under the zoning ordinance and which are not. Staff stated that agriculture uses must be on the property of the person responsible for it, per the zoning ordinance. The easement language is strong on this use, and this may be a legal question as to whether the language or the zoning ordinance takes precedence. No one from the Legal Department was expected this evening.

The Director of ISD stated that he has not had any direct conversations with the owners of 2 Village Terrace. However, the resolutions for the violation were included in a letter to them. A strongly worded easement does not make zoning go away. An easement cannot be used to extend property lines or setbacks. The coop should be moved to a compliant area, or relief should be requested from the Board. There is nowhere on the easement that would be acceptable for placement of the coop in terms of the side setback.

The Board asked when the coop was built. The applicant team stated that this coop was built in the summer 2020. The current chickens were purchased in August 2020 and the coop was in place at this location at that time. The coop moved from their backyard to the location only in response to issues with the developer dumping chemicals. The Board stated that this is, unfortunately, irrelevant to this discussion.

The Board asked if coops are allowed in easements at all. Staff explained that the ordinance is written that the owner of the coop should be responsible for the ownership of the lot it is located on. The Board stated that a violation exists and ISD was not wrong in citing it. The hardship of the contamination is a different issue.

The applicant team stated that this is a hardship issue. There are questions regarding interpretation of the lot lines, but the coop was placed there due to the remediation required. The Board suggested that the applicant could seek relief through a hardship appeal instead, however the lot line may still be in question. Staff stated that Hardship Variances usually deal with leniency from dimensional requirements for a structure on a property. There does not seem to be a Hardship Variance route that would permit the existing location of the coop.

Chair Fontano again asked for public comment.

Frederick Hirsch (2 Village Terrace #4) – stated that the residents of 35 Dane Street never contacted the residents of 2 Village Terrace to find out the history of the property or degradation.

Chair Fontano closed the public comment period.

The applicant team stated that it would be helpful to understand if there can be time to consider remediation on other portions of their property. There was an original 14-day timeframe given for the violation. Staff stated that they could set up meetings to consider potential resolutions with the applicant team.

Vice Chair Brockelman made a motion to approve the Administrative Appeal, seconded by Member Cook, in the matter of 2 Village Terrace (ZP24-000056), the Board voted unanimously (0-4) against the motion, therefore denying the Administrative Appeal.

RESULT:

DENIED

Following a motion by Vice Chair Brockelman, seconded by Member Cook, the Board voted unanimously (4-0) to recess until 7:35pm.

The meeting resumed at 7:37pm.

PUBLIC HEARING: 16-20 Medford Street (ZP24-000090)

The appellant team stated that the first issue for the proposed Building Permit is that the curb setback is over by 6'. There is a 12' requirement in this zone. There should not be an encroachment, as this area is meant for trees. The team stated that the second violation is to the rear setback by 10'. The zoning ordinance does not require rear setbacks to the attributable to rear lot lines. There is a required 10' setback to the rear lot line. The building should be sized appropriately to abide by the zoning laws. They stated that another issue is that a mushroom building seems to be proposed to circumvent the allowable lot coverage. The project should be required to comply with the 90% maximum lot coverage allowed by the zoning ordinance. The team noted that there is also a concern with the traffic along Bedford Street from the proposed project. They stated that the appeal made on this Building permit was timely. There is no issue with the foundation itself, but there will be an impact to the neighborhood from the proposed building. The building needs to be sized appropriately.

Staff noted that policy matters cannot be considered by the Board in this case.

The defendant team, on behalf of Somerville Living, LLC, explained that the appeal in this case is too late. The project at 16-20 Medford Street underwent a lengthy review process. The project was first vetted with the neighborhood in 2021. After a public hearing process, the project received both a Special Permit and a Major Site Plan Approval. Neither of those decisions were appealed when they were issued in 2022, including by the

petitioners. When some changes were made to the project, two Neighborhood Meetings were held again. They stated that after going through an extensive and duly noticed public hearing process, once again no appeals were filed to either the amendment to the Special Permit or the amendment to the project's Site Plan Approval. After that, a Demolition Permit was issued, with a Demolition Permit notice required to be sent to the neighbors, including the petitioners. Before the Demolition Permit was issued, there was a pre-construction meeting which the petitioners attended in 2023. The team stated that in April 2024, the first Building Permit was issued, referred to as the foundation permit. The foundation permit is dependent on the zoning relief that was previously granted, including the setbacks. No appeals were filed from the foundation permit that was issued. When the second Building Permit was issued in July, which authorized the remaining parts of the development including the vertical building, the petitioners filed their request for enforcement. They stated that this was not styled as an appeal of the Building Permit; it was styled as a request for enforcement. Massachusetts law is clear that the Board does not have jurisdiction to hear that appeal. ISD agreed that the appeal was too late.

The defendant team stated that when the City issued a Special Permit, they were finding that all of the zoning dimensional criteria were met. If they were not met, the applicant would have been required to get a variance. The petitioner's opportunity to appeal and claim that the project did not comply with zoning was when the first Special Permit was issued. They stated that to the extent that changes were made to the project that altered any of the criteria the petitioners have raised, the amendment to the Special Permit would have been the attempt to appeal. They noted that in order to get a Site plan Approval, the process went through a public hearing which the petitioners attended and participated in. The opportunity to appeal on these issues long expired. There is a short window for an appeal because when a developer goes through the extensive public hearing and outreach process for a Special Permit and Site Plan Review, the issues raised by the petitioners this evening could have been addressed. The team stated that these issues were not raised in Site Plan Review or during the Special Permit hearings. It is simply too late to raise these issues. The very last opportunity to raise these issues would have been when the foundation permit was issued. They noted that when appeals are filed this late, it has real consequences, including significant increases in costs and delays.

The project architect explained that this project fronts on four streets: Bedford St., South St., Medford St., and Warren St. The primary front would be Medford St., as it is a pedestrian designated street. The lot line in question is between 51 Warren St. and the property at 16-20 Medford St. They stated that a rear lot line is defined as any lot line which is parallel to or within 45° of being parallel to a front lot line, unless that lot line is a side lot line of an abutting lot. In this case, 51 Warren St. fronts directly on Warren St., with its side yard facing 16-20 Medford St. Therefore, this is a side lot line of abutting lots so it cannot be rear lot line. These lot line designations have been the same since the process started in 2021. The project architect noted that the property of 16-20 Medford St. has 12' curved setbacks on all four street sides at the ground level. The ground floor is set by 12' or more on all four sides and has projecting permitted building components consisting of bays and balconies to give some undulation to the façade. These are all set well behind the property line, and none project over the property line. While the streetscape is widened at ground level, the projecting elements are set back at least 2' from the property line at all points on Warren St. They stated that the developer is proposing 12 new street trees and eleven additional trees in the rear, which were all sized by the landscape architect to fit within the streetscape. The developer worked closely with the City to select those trees. The lot coverage for the project was measured by the definition found in the ordinance and that lot coverage of a structure is measured from the outside of the exterior walls at the ground story including covered porches and other building components.

Chair Fontano opened public testimony.

Adam Friedman (18 South Street) – noted that he was an opponent of the appellant over the appellant's construction years ago. However, he stands with them in opposing the current situation and is willing to appeal this project all the way to the Land Court. There is a trend to maximize and build as many units as possible, but it is this Board's job to make sure they all conform to the law. There are substantive problems with how this project will fail the requirements and impact the neighborhood.

Susan Silverman – stated that the mushroom building will overhang her driveway and create water runoff issues. There will not be green space and trees as promised. It is impossible to see approaching traffic when trying to exit Bedford St. onto South St. She requested that signage be taken down from the chain-link fence on the corner of the property but has received no response.

There was no additional public comment at this time, but Chair Fontano left the public comment period open.

Staff explained that people can appeal anything they want to at any time. There are no specific requirements for this. There is a 20-day appeal period that is publicly noticed after the Board grants a Special Permit. This would be appealed to the Planning Board and then the Land Court. The appellant team stated that the Special Permit only outlined parking and so it was not appealed. No building plans were shared at that time, though they were requested. Staff stated that there were two Special Permits obtained, one for the residential component and the other for the parking relief. There was also a Major Amendment to the Site Plan Approval. The defendant team stated that a full set of plans needed to be filed for both the Special Permits. All issues raised by the appellants this evening were included on the plans that were public record as part of the proceedings.

One Board member noted that there may have been opportunities for the appellants to provide input throughout the Special Permit processes, versus opportunities to actually appeal. The appellants did not believe the parking or foundation were a problem until they were provided with plans for the full building.

Chair Fontano again asked for public comment.

Adam Friedman (18 South Street) – asked that the appellant be allowed to speak as freely as the developer team is being allowed to speak. There seem to be many times things were changed for this application along the way, including a major modification late in the game. Requiring the public to track a 3-4 year process like a hawk seems to be an unfair burden. There should be care taken to address the health, safety, and wellbeing of the public. The turn at Bedford St. and South St. is already very dangerous and a mushroom building will exacerbate this.

Chair Fontano closed the public comment period.

Staff noted that there are findings that will need to be made for any determination.

The Board asked the appellant team to make any additional comments at this time. The appellant team explained that they followed the process as best they knew. They followed ISD's statement that they could not appeal until the Building Permit stage. It was very difficult to bring this to appeal as laypeople.

Some of the Board expressed sympathy for the neighbors but noted that the zoning issues raised were not compelling. While it is inconvenient during a multi-phase permit to appeal and there may have been bad information given to the appellants, this appeal seems to come too late.

Vice Chair Brockelman made a motion to approve the Administrative Appeal, seconded by Member Fullerton, in the matter of 16-20 Medford Street (ZP24-000090) the Board voted unanimously (0-4) against the motion, therefore denying the Administrative Appeal of the Building Official's issuance of the Building Permit and the Building Official's subsequent denial of request for enforcement to revoke that Building Permit, with the findings established by the Zoning Board of Appeals referring to the Staff Memo dated 3 October 2024, referencing the ISD letter subject line "Request for Enforcement" dated 8 August 2024 which outlines the same items.

RESULT:	DENIED
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NOTICE: These minutes constitute a summary of the votes and key discussions at this meeting. To review a full recording, please contact the Planning, Preservation & Zoning Division at zoningboard@somervillema.gov