



**CITY OF SOMERVILLE, MASSACHUSETTS**  
***MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY***  
***DEVELOPMENT***

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GEORGE PROAKIS  
EXECUTIVE DIRECTOR

**HOUSING DIVISION STAFF**

MICHAEL FELONEY, HOUSING DIRECTOR

KELLY DONATO, ASSISTANT DIRECTOR OF HOUSING, HOUSING COUNSEL

MORENA ZELAYA, HOUSING POLICY COORDINATOR

**DATE:** February 28, 2022

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**CONDOMINIUM REVIEW BOARD STAFF REPORT**

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Address: 33 Warren Avenue

Applicant Name: Jill Javor

Agent: Jill Javor & Attila Javor- 33 Warren Ave., LLC

Date of Initial Public Hearing: August 23, 2021

Date of Follow-up Hearings: October 25, 2021, December 20, 2021, January 24, 2022

**Background**

The application for conversion of the above-referenced property originally came before the Condominium Review Board ("the Board") in August 2021. Applicant Jill Javor stated that she and her husband Attila Javor purchased the property in May 2019 under the name 33 Warren Ave, LLC. (The Managers of 33 Warren Ave, LLC are Michael Murray and November Properties, LLC and the Managers of November Properties, LLC are Jill Javor and Attila Javor.) The applicant noted that the property was a single-family home and that their intent was to convert to two condominium units. The application to convert the property to condominiums was submitted to Board staff in May 2021, by which time one of the units (Unit #2) had already been sold and the other unit, Unit #1, was under contract.

Due to the departure of former Board liaison staff and subsequent transitions, the application for conversion did not go before the Board until August 2021. At that meeting the Board voted to table the application in order for the applicant to provide information on why the conversion permit application was submitted so late in the development process. The application was included on agendas and went before the Board at meetings in October and December 2021, and was tabled each time for lack of sufficient information on the original question of application timing. In January 2022 the Board tabled the application once again, with a request for staff to provide information at the next meeting on a distinction the applicant appeared to be making as the basis for the delay in application submittal: that the 1985 version of the Condo Conversion Ordinance (CCO, "the Ordinance") should govern consideration of application rather than the current 2019 CCO version.

## Project Milestones and Ordinance Applicability

In early 2019, Somerville's CCO was in the process of being revised, with the updated ordinance going into effect in October 2019. As noted previously, 33 Warren Ave, LLC purchased the property in question in May 2019. Emails from Jill Javor to now former Board staff in March 2021 stated that the property had been vacant for approximately a year prior to purchase and had previously been used as an "illegal tenement building"<sup>1</sup> that also was occupied by the owner at the time<sup>2</sup>.

The 1985 version of the ordinance stated in part that, "This article shall apply to all rental units which had not been removed from the market before September 11, 1980, including condominium units for which the master deed had not been filed."<sup>3</sup> The ordinance defined *rental units* as being:

"...any building, structure, or part thereof, rented or offered for rent for living or dwelling purposes, the most recent occupant of which was a tenant or tenants. The term 'rental unit' may include houses, apartments, rooming or boarding house units, and other properties used for living or dwelling purposes..."

Exceptions were noted in that version of the ordinance for certain uses such as hotels, government housing, units owned by a hospital, college, or charitable home.

Section 7-63 of the current 2019 conversion ordinance as updated defines *Housing accommodation* as:

"any building or buildings, structure or structures, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes, together with all services connected with the use or occupancy of such property, including two or more adjacent, adjoining or contiguous buildings under common legal or beneficial ownership which are used in whole or in part for residential purposes, but not including the following:

(iv) single family dwellings; *except where additional units will be added to the same or adjacent property, whether the project adding such units is phased or not, and the existing single family dwelling will be one or more or part thereof multiple condominium units governed by the same condominium association.*" (Italics added for emphasis.)

Further, Section 7-63 of the current conversion ordinance defines *intent to convert* as:

"the intent to make the initial sale and transfer of title to a residential unit in a housing accommodation as one or more condominium or cooperative units pursuant to an individual unit deed or deeds....Factors which shall be considered in determining whether an owner has the intent to convert are:

- (i) a master deed or articles of organization for the housing accommodation has been prepared or recorded;
- (ii) the owner of the housing accommodation dwelling has prepared or is in the process of preparing a purchase and sale agreement for the sale of any unit as a condominium or cooperative unit;
- (iii) the owner has advertised for sale any unit in the housing accommodation as a condominium or cooperative unit;
- (iv) the owner has shown to any prospective purchaser a unit in the housing accommodation for the sale of such unit as a condominium or cooperative unit; ...
- (vi) the owner has had any unit in the housing accommodation measured or inspected to facilitate the sale of the units as a condominium or cooperative unit;

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<sup>1</sup> Email from Jill Javor dated March 22, 2021

<sup>2</sup> Email from Jill Javor dated March 26, 2021

<sup>3</sup> <https://www.somervillema.gov/sites/default/files/current-condominium-conversion-ordinance.pdf>

- (vii) the owner has had the land surveyed, an engineering study performed or architectural plans prepared for the purpose of converting such housing accommodation into one or more condominium or cooperative units;
- (viii) retaining a real estate agent for the sale of the converted unit; and
- (ix) retaining an attorney for the purpose of pursuing a conversion”

The Javors applied for a Certificate of Occupancy for a two-family dwelling in June 2019. The permit application was categorized as “R-3 Residential, 1 or 2 family”, and not as another available category, “R-3 Residential, 1 or 2 family (CONDO).” In August 2019 the developer applied for a demolition permit for the interior of the property.

The developer subsequently applied for a residential renovation building permit in January 2020 and received one in February 2020 to, “Renovate [an] existing structure which has been gutted (previous permit), including new roof, new windows, 2 new kitchens, 4 new bathrooms, new wiring, new HVAC, new insulation, new blueboard and plaster, new doors and trim work.” Various other building permits were applied for and, in March 2021, Attila Javor applied for a Certificate of Occupancy for one of the two units. Unlike the prior Certificate of Occupancy application submitted for the building in June 2019, the March 2021 application described the use as “TWO CONDOMINIUM UNITS” under the “R-3 Residential, 1 or 2 family (CONDO)” use group.

Other activity conducted around this time included preparation of a Master Deed and Declaration of Trust that were recorded with the Registry of Deeds on March 10, 2021. Staff at the Somerville Water Department contacted former Board staff liaison Hannah Carrillo the same month (March 2021) to inquire if the property had been approved for conversion. As one unit requiring approval had not been approved (nor had an application for the unit’s conversion been submitted), Ms. Carrillo emailed Ms. Javor on March 22, 2021 to inform her that an application for condo conversion was required. Only one of the two units triggers the CCO, as the second unit is new construction.

Ms. Javor responded via email that the building had been “previously an illegal tenement building”<sup>4</sup> and further noted that she and her husband had been informed that “because it was only 2 units [they] did not reach the threshold where [they] were required to apply for the condo conversion.”<sup>5</sup> This however is not the case. (See Concluding Observations and Summary Information below for further details.)

On March 25<sup>th</sup> Ms. Carrillo responded that, “Any owner seeking to convert a property at this point in time is subject to the updated ordinance unless an application was submitted before 10/2019”. Ms. Carrillo further noted that, “We have had other illegal rooming houses be converted in the past”, to reinforce the point that the project in question likewise would be subject to the same requirement.<sup>6</sup> Ms. Javor subsequently emailed March 26<sup>th</sup> and reported that ISD had considered the property a single-family residence at the beginning of their project, and that it therefore should be exempt from the condo conversion process.

As noted in the definition above, the potential exemption for single family dwellings did not take effect until adoption of the current version of the ordinance. Further, the exemption as defined above was only for cases where additional units will **not** be added to the same or adjacent property and where the existing single-family dwelling will **not** be one or more or part thereof multiple condominium units governed by the same condominium association. This exemption therefore does not apply to this case; accordingly, Ms. Carrillo restated that the former ordinance “is not applicable in any way in this case.”<sup>7</sup> Around this time Ms. Javor also informed Ms. Carrillo that both units were scheduled to have closings soon.

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<sup>4</sup> Email from Jill Javor dated March 22, 2021

<sup>5</sup> Email from Jill Javor dated March 22, 2021

<sup>6</sup> Email from Hannah Carrillo dated March 25, 2021

<sup>7</sup> Email from Hannah Carrillo dated March 31, 2021

After consulting with the Housing Division Director and its Assistant Director/Housing Counsel, Ms. Carrillo informed Ms. Javor that the sales would be permitted to proceed, despite the fact that conversion applications had not been submitted and the City had not been offered the opportunity to exercise its right to purchase one unit as required under the ordinance. The sales were permitted to proceed solely because bona fide purchasers were depending on Purchase & Sales agreements in order to secure their financing; staff did not want to risk penalizing purchasers for circumstances beyond their control and/or knowledge.

For reference, online listing histories show marketing for the two units as condominiums began in October 2020. A Registry search reveals the first unit deed conveying unit #2 to Alexander Grace was recorded on April 16, 2021, and the second unit deed conveying unit #1 to Jarod and Carole Oatley was recorded on August 19, 2021. Consistent with former staff's comment excerpted in the above paragraph, current staff have not identified anything to suggest that former staff at any point stated or suggested that proceeding to sale meant the property was somehow exempt from ordinance requirements.

### **Summary Information and Concluding Points for Consideration**

In prior appearances before the Board, the Javors stated that they had relied on information apparently provided by other municipal departments during the permitting process<sup>8</sup>, along with their own recollection regarding the prior (1985) version of the ordinance. This is in spite of the fact that, for the entire period in which the ordinance has existed in any form, its enforcement has been solely the responsibility of the Condominium Review Board, with staff support provided by Housing Division staff. In light of that history, it would seem less than prudent to rely on information received about the ordinance from other municipal departments and its application on a matter exclusively in the CRB's purview to act on and to administer.

At no point prior to the City's Water Department making Board staff aware of the project did the applicant reach out to Board staff. In summary, the timeline of emails, permit applications including the certificate of occupancy application that finally specified it was for condominiums as opposed to a two family, and recording of the Master Deed and Declaration of Trust, acknowledgement the units were under agreement as well as the sale of one of the condo units reviewed in this report's 'Project Milestones' section collectively suggest an intent to convert manifested in March 2021 – at which point the current version of the condo conversion ordinance would apply – despite renovation work having commenced prior to that date. With that being the case, the application submitted should have been for one rental conversion permit and one "courtesy permit". Neither the timing as to purchase of a property, nor any misunderstandings and/or ignorance as to ordinance application have any bearing on the case.

Per Article XII of the Somerville CRB Rules, "Any violation of the Somerville Condominium Conversion Ordinance shall be subject to Section 1-11 of the Somerville Code of Ordinances. Points the Board may wish to consider regarding having the unit under agreement with a bona fide purchaser and thereby precluding the City's option to exercise its right to purchase on it include:

- The Board may fine \$300/violation and each day a violation exists may constitute a separate violation.
- The Board could consider a variety of scenarios for determining fine amount, including but not limited to:
  - Number of days a violation existed.
  - Number of times the application has been before the Board.
- The initial application submitted by the Javors indicates an application fee was paid for both units. As stated earlier, a fee would only have been required for one permit as the second for new construction is a courtesy permit.
- Should the Board determine a violation occurred and fines be imposed, Board staff will work with the appropriate enforcement agency to get the ticket(s) issued.

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<sup>8</sup> Such as an email from Hans Jensen dated February 10, 2020