



City of Somerville

ZONING BOARD OF APPEALS

City Hall 3rd Floor, 93 Highland Avenue, Somerville MA 02143

TO: Zoning Board of Appeals
FROM: Planning & Zoning Staff
HEARING DATE: December 15, 2021
RE: 483 Broadway, P&Z 2021-012

RECOMMENDATION: Conditional Approval

Staff memos are used to communicate background information, analysis, responses to public comments, review of statutory requirements and other information from the Planning & Zoning staff to the Review Board members.

This memo summarizes the development review application submitted for 483 Broadway, identifies any additional discretionary or administrative development review that is required by the Somerville Zoning Ordinance (SZO), and provides related analysis or feedback as necessary. The application was deemed complete on October 19, 2021 and was heard at public hearing on November 17, 2021. The proposal will be heard again at the December 15, 2021 ZBA hearing. Any Staff-recommended findings, conditions, and decisions in this memo are based on the information available to-date prior to any public comment at the scheduled public hearing.

This project was re-advertised to include the additional variance needed for story height. The Applicant team has re-worked their plans in response to the ZBA's November 17, 2021 feedback and has provided a brief narrative citing the changes made.

This staff report has been updated to reflect the new legal ad. In addition, the ZBA decision from the City of Medford has now been received. This decision is attached to this report. Lastly, minor edits to the staff report have been made to clean up/streamline language and provide any additional clarifying information. The substance of the staff report and the recommendation otherwise remain the same.

LEGAL NOTICE

Tavis Babbitt seeks variances for story height and from the minimum number of stories in the Mid-Rise 4 (MR4) district.

SUMMARY OF PROPOSAL

The Applicant proposes constructing a two-story addition to an existing building in a zone where a minimum of three stories is required. The Applicant has proposed an interior first floor story height that is lower than the 14' required.

ADDITIONAL REVIEW NECESSARY

483 Broadway is located in the Mid-Rise 4 (MR4) zoning district in the heart of Magoun Square, an area represented by Ward 5 Councilor Mark Niedergang.

The proposal requires a Hardship Variance from the Zoning Board of Appeals (ZBA) for number of stories and a Hardship Variance for the story height of the first story.

The minimum number of stories required in the MR4 zoning district is three (3) for new construction, with a maximum of four (4) stories allowed. As the Applicant is proposing to construct only two stories, the Applicant must obtain a variance in order to be exempted from the minimum number of stories required. In addition, a variance is needed for the interior first story height. The interior floor-to-ceiling height of the first story of the addition will be 11'2" which is shorter than the 14' required in the SZO (see "Summary of Proposal" above).

The ZBA is the review board for all Hardship Variance requests regardless of zoning district.

ANALYSIS

The Applicant has provided an updated plan set and a brief narrative describing the updates made to the plans. Since the November 17, 2021 ZBA hearing, the City of Medford has issued their ZBA decision for the relief sought by the applicant for the Medford portion of the property.

The items within the purview of the ZBA are the Hardship Variance requests for number of stories and story height.

As noted earlier, the MR4 zoning district allows for a maximum of four (4) stories and requires that a minimum of three (3) stories be built. The Applicant proposes to construct only two stories on the Somerville portion of the lot. The Ordinance further requires that the first story height of new construction be 14' floor-to-ceiling. The Applicant proposes a first story height of 11'2". The Ordinance anticipates the construction of new buildings in the MR4 district that create a strong, contiguous, and defined street wall.

The Ward Councilor is aware of the project and the Applicant's request.

The property at 483 Broadway presents constraints that have brought the Applicant before the ZBA requesting relief from certain standards (story number and story height).

The boundary line separating Somerville from the City of Medford runs through this property. Thus, the property is subject to zoning ordinances in two different jurisdictions, and each jurisdiction has set forth very different requirements for what each wants to achieve in their respective zones.

The existing building on the property is located wholly in the City of Medford. Medford zoning allows for a maximum of two stories in this area. Medford is allowing for a second story to be added to the existing structure. The City of Somerville's MR4 zoning district is predicated on the construction of 3-4 story buildings. The Applicant is challenged to marry the two disparate zoning code requirements into one building.

In total, only about ~800 square feet of land on this property is located in the City of Somerville and affected by the SZO. The land in question is located along the building frontage on Broadway. It is on this ~800 square feet of land in Somerville that the Applicant proposes constructing a two-story addition to the existing building. This building, including the Somerville side addition, will be utilized for commercial purposes.

The Somerville-side two-story addition will match the renovated Medford building in number of stories, overall building height and story height. In order for the building to work internally and provide visual harmony externally, Hardship Variances are required for number of stories and story height. The first story of the addition will be 11'2" instead of the required 14'.

The attached zoning map shows the location of 483 Broadway and its association with all of the other MR4 lots in Magoun Square.

The Applicant is required to provide an argument addressing the review criteria for each of the necessary hardship variances. The Applicant's argument is attached to this memo.

Generally, Planning & Zoning Staff does not provide analysis or recommendations concerning the existence of actual hardship, financial or otherwise, in relation to the Applicant for the second variance review criterion (see "Considerations and Findings" section below).

Upon analysis of the material submitted by the Applicant, Planning & Zoning Staff do not believe that the granting of the requested hardship variance would cause a substantial detriment to the public good nor would it nullify or substantially derogate from the intent and purpose of the MR4 district, copied here:

Intent

- To implement the objectives of the comprehensive plan of the City of Somerville.
- To create, maintain, and enhance areas appropriate for smaller scale, multi-use and mixed-use buildings and neighborhood serving uses.

Purpose

- To permit the development of multi-unit and mixed-use buildings that do not exceed four (4) stories in height.
- To provide quality commercial spaces and permit small-scale, neighborhood-serving commercial uses.

- To create dwelling unit types, sizes, and bedroom counts ideal for larger households in apartment buildings.
- To create dwelling unit types, sizes, and bedroom counts ideal for smaller households in general buildings.
- To permit increased residential density for buildings that are sustainable or that provide 100% affordable housing.
- To permit increased residential density for buildings that meet the definition of a Net Zero Ready Building or 100% affordable housing.

Additionally, Planning & Zoning Staff believe that granting the requested hardship variance would not substantially derogate from the broader intent of the Somerville Zoning Ordinance, including, but not limited to, the following:

- To preserve and enhance the existing character of Somerville's traditional housing and respect existing built form and development patterns.
- To require a strong connection and gradual transition between the public realm (sidewalks, thoroughfares, and civic spaces) and private realm (yards and building interiors).

Massachusetts courts have stated that variances will naturally deviate from the intent and purpose of a zoning ordinance to some degree and that the discretionary approval of a variance is defensible if the deviation is not substantial or significant in comparison to the intent and purpose for the district in appraising the effect of the proposal on the entire neighborhood, including future impacts and other development approved or denied in the general vicinity of the development site.

CONSIDERATIONS & FINDINGS

In accordance with the Somerville Zoning Ordinance, the ZBA may grant a Hardship Variance only upon deliberating and finding all of the following at the public hearing for each requested variance:

Hardship Variance Considerations

1. Special circumstances exist relating to the soil conditions, shape, or topography of a parcel of land or the unusual character of an existing structure but not affecting generally the MR4 district;
2. Literal enforcement of the provision of this Ordinance for the MR4 district would involve substantial hardship, financial or otherwise, to the petitioner, James Rissling, due to said special circumstances; and
3. Desirable relief could be granted without causing substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the MR4 district or the Ordinance in general.

PERMIT CONDITIONS

Should the Board approve the Hardship Variance, Planning & Zoning Staff recommends the following conditions:

Validity

- This Decision shall be recorded with the Middlesex County Registry of Deeds.

Public Record

- A copy of the Recorded Decision stamped by the Middlesex South Registry of Deeds shall be submitted for the public record.
- Physical copies of all submittal materials as permitted by the Review Boards shall be submitted for the public record in accordance with the document format standards of the ISD/PB/ZBA Submittal Requirements.

Changes to the set for 483 Broadway:

A100 - Front rendering the building has an updated perspective view and window changes to reflect the feedback from the board.

A100-1 - New sheet added with zoning data per 4.2.8 a & b Lot Standards & Building Placement and 4.2.8 c & d Massing & Height and Uses Features.

A100-2 - New sheet added with zoning data per 4.2.10 f Building Components.

A104 - New storefront window added to Strathmore Rd side of building in the Somerville portion of the building to meet the zoning requirements doe street facing facades.

A105 - Additional windows added to the front and two sides of the second floor, size and design of windows was changed to be more in line with a commercial space based on the feedback from the board.

A107 - Section 1 and Section 2 both have changes to accurately reflect the correct floor (story) heights based on the recommendations of the board and review of the existing conditions. The ground floor has been changed from 9'-10" (first story height) to 11'-2", the second floor has been changed from 19'-10" (10' second story height) to 21'-2" (still 10' second story height), and the overall building height has changed from 23'-3" to 24'-7".

A108 - The additional sections 3 & 4 have been replaced with revised elevations for the two street facing views. The revised elevations show the new taller storefront windows and new larger more commercial style second floor windows. There is an additional storefront window on the secondary front elevation (Strathmore Rd) in the Somerville portion of the addition. The front awning has been reduced from 3'-11" to 3'-5" in overhang depth.

A109 - The previous set had this sheet as the elevations for the two street facing views. The updated set has this sheet showing a larger scale color rendering of the front elevation facing Broadway to give the board a better feel for the overall design changes.

A110 - Window types A & B have been changed. The previous set had type A as 4'-3" x 5'-6" double-hung and type B as 2'-8" x 5'-11" double-hung, the revised set has type A as 2'-8" x 5'-4" double-hung and type B as 4'-6" x 5'-6" personalized (custom).

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**CITY OF MEDFORD
ZONING BOARD OF APPEALS**

DECISION OF THE BOARD NO. A-2021-11

Name of Applicant:

266 Broadway Realty Trust c/o John Wood

Property Location:

479 Broadway, Medford, MA

Application for:

(from Permit Refusal)

The petitioner seeks to re-build an existing non-conforming structure damaged by fire, thereby creating a two-story structure with an expansion to the front of the building to be utilized as a liquor and retail sales facility in an Apartment Two (APT-2) Zoning District - Not Allowed -Section 94-148 (d), Table of Use Regulations Item #30, thereby requiring a finding by the zoning board of appeals - Section 94-242, with insufficient:

Lot Area, Lot Width, Lot Depth, Open Space, Front Rear & both Side Yard Setbacks - Section 94-171, Table 6.3 Item #5 (C),
Off-Street Parking - Section 94-191 (b) (1),
Off-Street Loading Space - Section 94-191 (d) (1).

This project also exceeds the maximum allowed lot coverage - Section 94-171, Table 6.3 Item #5 (c), Chapter 94 - City of Medford Zoning Ordinance

Date of Hearing: July 29, 2021

Members of the Board Present at the Public Hearing:

Scott Carman, Chair
Yvette Claudia Velez
James Halloran
Jacqueline Doherty, Alternate (non-voting)

Decision of the Board:

Application for a Finding granted with condition.

Vote of the Board:**Unanimous**

In support of the Facts and Findings set forth below, the Board considered the unsworn testimony offered at the public hearing and the following documents and submissions:

- a) Permit Refusal dated June 14, 2021
- b) Application for a Finding dated June 22, 2021
- c) Worksheet in support of Application for a Finding
- c) Zoning Evaluation Sheet dated June 22, 2021, prepared by RISE Architecture 71B, Clinton St, Malden, MA 02148
- d) Architectural Plans dated April 18, 202, prepared by RISE Architecture 71B, Clinton St, Malden, MA 02148
- e) Existing & Proposed Site Plans dated January 4, 2021, prepared by Ashkar Engineering & Surveying, Michel G. El-Ashkar, PLS
- f) Area Plan dated July 2, 2021, prepared by Ashkar Engineering & Surveying, Michel G. El-Ashkar, PLS
- g) Certified Abutters List

Facts and Findings

479 Broadway (the "Property") is a 3,000 S.F. lot that is 76% located in Medford with the remaining area located in the City of Somerville and has an existing non-conforming structure (the "Building") that was formerly used as a laundromat and was damaged by a fire leaving it in disrepair for many years. In its current state, the Property and the Building are an eyesore. The building is located in an Apartment Two (APT-2) Zoning District which does not allow commercial uses and therefore the applicant

requires a finding by this board to modify and continue to use the building as a commercial space.

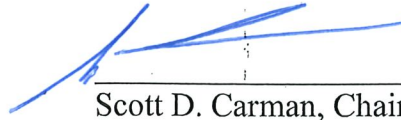
The building already has a multitude of dimensional nonconformities as listed above and noted on the submitted set of plans. The proposed building will maintain three wall locations from the existing building and will only further increase the nonconformity with respect to the lot coverage and open space expanding the footprint into the Somerville portion of the Property. The proposed building will be two stories and contain two retail spaces. The petitioner will be relocating his liquor store to the first floor space with the other space, possibly, to be rented out at a later date. It was explained to the Board that the frontage on Broadway will be converted to public parking spaces, with at least two new spaces being made available. The existing parking spaces on the Property that are being eliminated are nonconforming (too short), resulting in a longer vehicle dangerously jutting into Broadway when the spaces were used. No new parking is proposed for use on Strathmore Road so as to preserve the residential use of that area. The design intent for the building was to maintain an overall height that was in keeping with the two story residential neighborhood behind the property and improve the Property and quality of the building.

The Board did express concerns about parking and the possible use of the existing footprint as sufficient to allow on site parking, however upon further discussion it was made clear that this was not dimensionally possible. While the Board is mindful of the issues raised by a few neighbors at the hearings, there was a majority of support for the new building as well as the security improvements proposed by the petitioner, such as a motion detector. In addition, the petitioner will remove all of the graffiti on the Property. The Board noted that parking is and will continue to be an issue in this location but the new on street spaces being made available will mitigate the concern. While the proposed use of the Property is not optimal, the Board did not find that the proposed building would be "substantially more detrimental" to the neighborhood especially as the Property will be substantially improved and because no new nonconformities are being introduced.


Accordingly, the petitioner's application for a finding is allowed based upon the plans that were presented at the hearing on July 29, 2021 and subject to the following:

- Prior to renting the second floor space to a tenant or occupant, the petitioner is required to appear before the Board with a proper application and supporting materials in order to seek approval.

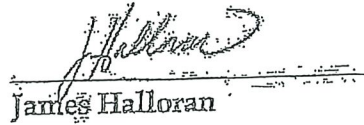
Medford Zoning Board of Appeals



Scott D. Carman, Chair



Yvette Velez, Clerk



James Halloran

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THE COMMONWEALTH OF MASSACHUSETTS

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Medford

City or Town

BOARD OF APPEALS

Date: November 18, 2021

Certificate of Granting of Variance or Special Permit
(General Laws Chapter 40A, Section 11)

The Board of appeals of the City or Town of Medford, MA

hereby certifies that a Variance or Special Permit has been granted

To John Wood
Address 7 New Meadow Lane
City or Town Topsfield, MA 01983

affecting the rights of the owner with respect to land or buildings at
479 Broadway

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said variance — special permit, and that copies of said decision, and of all plans referred to in the decision, have been filed with the planning board and the city or town clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town or city clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant

Chairman

Clerk