



Joseph A. Curtatone
Mayor

George J. Proakis
OSPCD Executive Director

CITY OF SOMERVILLE

Office of Strategic Planning & Community Development

TO: Zoning Board of Appeals
FROM: Planning Staff
DATE: February 20, 2020
RE: AA #2020-001, 515 Somerville Avenue

This memo summarizes the administrative appeal submitted by Claudia Murrow ("Murrow") challenging the building inspector's refusal to take action on an enforcement request filed by Murrow and related to the Cambria Hotel project at 515 Somerville Avenue and provides related analysis and/or feedback as necessary. The application for administrative appeal was deemed complete on February 3, 2020 and is scheduled for a public hearing on February 26, 2020.

SUMMARY OF PROPOSAL

The application for the appeal was submitted on January 13, 2020.

The appeal challenges the building inspector's decision of December 12, 2019 in which the building inspector refused to take action on Murrow's enforcement request related to the issuance of a building permit.

ADDITIONAL MATERIAL

Provided as appendices to this report are the following (in chronological order):

- The enforcement request dated November 22, 2019 from Murrow
- The response of that enforcement request dated December 12, 2019 from Nicholas Antanavica, Director of Inspectional Services ("ISD Director")
- The application memo of the administrative appeal dated January 13, 2020 from Murrow

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www.somervillezoning.com

PROJECT APPROVALS

This address has received numerous project approvals from the ZBA for several different development proposals. Those related to the current development are summarized here for clarity.

- ZBA 2018-122 – Date of Decision: October 24, 2018
- ZBA 2018-122-R1-7/19 – Date of Decision: August 21, 2019

CASE HISTORY

After signing a purchase and sale agreement to acquire the site in 2018, the Cambria Hotel project team conducted community meetings in September 2018. As a part of the community process, neighbors and the ward councilor expressed an interest in ensuring that the site had a high-quality landscape plan, a vibrant public streetscape, greater than required setbacks, and underground parking. The project team worked through these issues with the councilor and the community, eventually presenting a project that was taller than permitted by zoning, which enabled the above community-desired goals to be met. While this design required zoning relief for height, it was within zoning for density and other key metrics. With extensive community support, the project was approved by the ZBA (special permit and variances) in October 2018 (ZBA 2018-122, the “2018 Approval”). No appeal of the 2018 Approval was timely filed.

In 2019, with the project nearing the end of the permitted one-year timeframe to exercise the variance, the project team expressed interest in applying for a permit extension (an additional six-months to exercise the variance). Additionally, to address the typical minor changes that occur between conceptual plans and final construction documents, the project team also suggested a number of small design tweaks that could have been addressed via de minimis change. However, due to declining hotel parking demand and the steep cost of underground parking, the project team also proposed a significant reduction to the garage footprint. The project team submitted the otherwise de minimis changes, garage reduction, and time extension as one combined case before the ZBA. After a public hearing, the Board approved the time extension and design changes (ZBA 2019-122-R1-7/19), the “2019 Approval”). Murrow appealed the 2019 Approval to the Land Court.

Subsequently, the project team elected to revert to the larger garage shown in the 2018 Approval plans, with plans to make any surplus garage parking available to local residents and businesses, and to build based on the 2018 Approval plans. The minor changes described above in advancing from conceptual drawings to final construction documents were submitted to the Planning Staff to be approved as de minimis changes. A building permit was issued before the expiration of the original variance in October 2019. Therefore, as there was no actual need to exercise the 2019 extension or apply for the amendment, the project could move forward.¹

On November 22, 2019, Murrow filed an enforcement request to the ISD Director. In the enforcement request, Murrow requests enforcement under MGL Chapter 40A Section 7 - Enforcement of zoning regulations; violations; penalties; legally nonconforming structures; notice of action; jurisdiction of superior court. Murrow did not file an application to the ZBA, and therefore did not appeal the October 2019 building permit at that time.² While Murrow provided a copy of the November 22, 2019 letter to the Planning Staff and City Clerk, she did not file the application required by the ZBA, address her appeal letter to the ZBA, nor submit fees to the ZBA or request a hearing. Therefore, the November 22, 2019 letter was not an appeal of the October building permit under MGL Chapter 40A, Section 8.

ISD responded on December 12, 2019. In the response to the enforcement request, ISD referenced a procedural error in the filing. "[W]here the aggrieved party had adequate notice of the building permit's issuance, he or she is required to appeal to the appropriate zoning board of appeals within thirty days of the permit's issue date under MGL Chapter 40A Section 8 and 15." This is consistent with the decision in *Connors v. Annino*, 460 Mass. 790, 791 (2011).

Murrow has now filed an administrative appeal **of the building inspector's action as set forth in his December 12, 2019 response to Murrow's enforcement request**. In this appeal Murrow has indicated objections to the building permit, including the procedure by which

¹ To clarify some differences between the submitted plans and the ZBA plans, the staff approved an additional de minimis application in January 2020. Both changes do not alter the design of the structure to the level of the original design change application from earlier in 2019. Therefore, the project being built is substantially similar to the project proposed in the original 2018 approval, not the 2019 amended version that was appealed.

² Ms. Murrow also did not file an appeal of either de minimis change application.

it was issued, along with the differences between the plans for the building permit and the two plans reviewed by the ZBA in 2018 and 2019. All of these issues are not properly before the ZBA at this time and are irrelevant to this case. Murrow did not timely appeal the 2018 Decision and did not appeal the building permit under MGL Chapter 40A, Section 8 within the required 30 days after which it was issued. As a result, the appeal letter issued on January 13, 2020 cannot be treated as an appeal of the October 23, 2019 building permit as it is well beyond the statutory time limit to file such an appeal.

Therefore, the only question before the ZBA is whether the ISD Director was correct in indicating that he has no authority to issue an enforcement action against this project under MGL 40, Section 7.

The Massachusetts Supreme Judicial Court (SJC), in the *Connors v. Annino* case, established:

"Where the "decision" of the building commissioner is the issuance of a building permit, it is reasonable and consistent with the statutory scheme to require the aggrieved party to comply with the route prescribed in §§ 8 and 15 if the party has adequate notice of the permit's issuance and therefore an ability to meet the thirty-day limitation period imposed by these two sections. In such circumstances -- that is, where adequate notice exists -- we reject the plaintiffs' position that § 7 affords them the opportunity to bypass the procedure laid out in §§ 8 and 15"

Since Murrow filed an enforcement request under Section 7, and did not file a timely appeal of the building permit under Section 8, Staff feels that the request was properly denied and recommends that the ZBA uphold the decision of ISD.

Enforcement Request

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Claudia Murrow
23 Park St. #2
Somerville, MA 02143

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2019 NOV 22 AM 11:12

CITY CLERK'S OFFICE
SOMERVILLE, MA

November 22, 2019

Nicholas Antanavica, Inspector of Buildings
Director of Inspectional Services Department
City of Somerville
One Franey Rd.
Somerville MA 02145
(617) 625-6600 ext. 5600 ext. 5610
FAX: (617) 666-2624
isd@somervillema.gov

CITY OF SOMERVILLE
INSPECTIONAL SERVICES
1 Franey Road
Somerville, MA 02145

5 11/22/19 11:44 am

Re: Appeal of Building Permit Nos.: B19-001687 and B19-001788 for 515
Somerville Avenue

Dear Mr. Nicholas Antanavica,

1. On August 21, 2019, the Zoning Board of Appeals ("ZBA") approved a large hotel project, Case #: ZBA 2018-122-R1-7/1 ("Revised Decision") and filed with the city clerk on August 22, 2019. This was the first revision (R1) of Case #: ZBA 2018-122 ("First Decision") approved on October 24, 2018 and filed with the city clerk on October 25, 2019. I appealed the First Decision and Revised Decisions under G.L. 40A, § 17 to the Land Court on September 9, 2019.

DESCRIPTION: This current proposal is to construct a **six-story 164 room hotel** with a full service public restaurant and bar on the ground level. The proposal includes 20 surface parking spaces, 60 garage parking space under the proposed building, and surface and garage bicycle parking spaces. Amenities within the building include a meeting room, a pool, and bicycle parking spaces. Other site amenities include a robust landscaping plan, a covered drop-off and pick up area, and outdoor seating. [Emphasis added.]
Case #: ZBA 2018-122 ("First Decision") pg. 2.

I.PROJECT DESCRIPTION The current proposal is to make revisions to the previously approved hotel project. The revisions include changes

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to the site layout and utility plan, parking garage layout, the landscape design, and the architecture. The Applicant provided a comprehensive list of all the proposed revisions in a memo dated July 12, 2019. The proposed revisions are drawn in the plan set dated July 29, 2019. As a result of the proposed revisions the hotel will include 163 guest rooms rather than the originally approved 164 guest rooms. The revised garage layout will result in a loss of self-parking spaces; however, the hotel will operate a valet service so that the site will be able to accommodate the previously approved 80 spaces (58 self-park and 22 valet). [Emphasis added.]

Case #: ZBA 2018-122-R1-7/19 (*"Revised Decision"*) pg. 2.

2. I reside at 23 Park Street, #2. I am aggrieved that Building Permit B19-001687 for "ZBA 2018-122: New construction of 6 story 163 room hotel with underground garage" and B19-001788 per "ZBA 2018-122 Foundation Permit for Hotel. See B19-0011687 for construction" at 515 Somerville Ave, issued to DEVB, LLC, as property owner (at the time), Contractor Chris Scarvalas, Consigli (617) 799-9576, Director of Operations-Boston/Project Executive and Architect/Engineer, Cambridge Seven Associates without a registration number on October 23, 2019, by Local Building Inspector Jim Aurilio.
3. The project will cause detriment to me by increased traffic volumes and congestion, an increase of queuing of vehicles, a change for the worse in the type(s) of traffic and traffic patterns overall and across to the site, a reduction in on-street parking, and an increase in unsafe conflict of motor vehicle and pedestrian traffic. The vehicles will be circulating through and around Somerville Avenue at Park Street to locate available parking spaces. The lack of providing all the required off-street parking spaces will result in an increase of vehicle queues and congestion, and delays and a decrease in pedestrian safety in this area, and queues via increased parking space turnover at parking meter locations on Somerville Ave and the surrounding area.
4. This appeal is of the changes in the Memorandum dated 7/12/2019 ("Memorandum"), Exhibit 1, that were approved in the Revised Decision. However, the building permits were allegedly based upon the plans approved for the First Decision. The Building Permits state the following, but do not state which plans each is based upon and approving.

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B19-0011687:

2019 NOV 22

Property: 515 SOMERVILLE AVE Map: 52 Description of Work: ZBA 2018-122:
New construction of 6 story 163 room hotel with underground garage Block: Lot:
H 38

B19-001788:

Property: 515 SOMERVILLE AVE Map: 52 Description of Work: ZBA 2018-122
Foundation Permit for Hotel. See B19-0011687 for construction Block: Lot: H 38

5. B19-0011687 does state that the room count is 163. However, the plans for the First Decision were approved for 164 rooms, and the plans for the Revised Decision were approved for 163 rooms, which is described in the Architect's Memorandum by reconfiguring the plans at A1.4-5

Architecture Drawings (refer to clouded areas shown on A1.0 through A8.1)

4- Sixth Floor Plan: a. Revised Overall Dimensions due to increased Guestroom Wall thickness per Cambria Design Standards b. Combined two Guestrooms to create a Terrace Suite due to room demand c. Reduced from 12 to 11 rooms per above change

5- Zoning Considerations: a. Revised Area Stats per changes due to Guestroom Wall thickness and deletion of Pool b. Revised room count from 164 to 163 due to Sixth Floor Change

Memorandum To: Adam Dash, Esq. From: Jan Brenner, AIA Subject: Revised ZBA Documents for Cambria Somerville-Cambridge Date: July 12, 2019, pg. 2.

6. In their application for building permits, the applicant applied for the following, and your office apparently approved their request.

B19-0011687:

ZBA 2018-122: New construction of 6 story 163 room hotel with underground garage

B19-001788:

ZBA 2018-122 Foundation Permit for Hotel. See B19-0011687 for construction

7. There were several additional de maximus changes in the Memorandum that were approved in the Revised Decision. If your office approved plans for the Hotel project based upon plans approved by the ZBA for the Revised Decision, then it

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would follow that your office approved plans for the Foundation based upon plans approved by the ZBA for the Revised Decision. The plans your office used to base your approval of the building permits on are dated September 17, 2019, which were not approved nor stamped approved by the ZBA.

8. However, your office has stated in the permits approved on October 23, 2019 that it approved plans from the First Decision when it approved the plans for the Revised Decision, which approved 163 rooms and several other changes listed in the Memorandum that were approved by the ZBA in the Revised Decision. The building permits have merged the First Decision and the Revised Decision.

Wherefore, due to approving plans and changes for the Revised Decision guised as approving Plans For the First Decision, I respectfully request that you revoke and annul these Building permits per M.G.L. c. 40A, § 7, and Somerville Zoning Ordinance 3.1.9 and 3.2 and 3.2.3 and per writ of Mandamus and stop work.

Yours Sincerely,

Claudia Murrow

Claudia Murrow

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Architecture
Urban Design
Master Planning
Programming
Interior Design
Graphic Design
Exhibit Design

Memorandum

To: Adam Dash, Esq.
From: Jan Brenner, AIA
Subject: Revised ZBA Documents for Cambria Somerville-Cambridge
Date: July 12, 2019

Stefanie Greenfield
Patricia E. Intrieri
Gary C. Johnson
Yongjoo Kim
Peter Kutner
Timothy D. Mansfield
Adam P. Mitchell
Marc Rogers
Jose Silveira

Stefan Bold
Jan L. Brenner
Justin Crane
Chris Muskopf
James C. Puopolo
Penny J. Sander
Douglas Simpson
Peter Sollogub
Joslin Stewart
Pamela N. Sullivan
David E. Wiborg

Civil Engineering Drawings

Changes to Sheet C1.0 – Site Layout & Utility Plan

1. Building doors to front patio have been deleted.
2. Footprint of below-grade garage has been modified.
3. Upper story building overhang has been modified.
4. Domestic and fire suppression water services have been relocated.
5. Sanitary sewer service has been relocated.
6. There is now a BlueBike Station on Somerville Avenue.
7. Addition of site lighting.
8. Addition of bike racks.
9. Reconfigure portion of building & sidewalk – deleted fitness center.
10. ADA parking added, trash enclosure location revised.
11. Added crosswalk and ADA parking.
12. Added porous pavement.
13. Reconfigure portion of building/sidewalk, added transformer.

Changes to Sheet C1.1 – Grading and Drainage Plan

1. Added trench drain at bottom of ramp, pump chamber, and connection to CB#1
2. Added trench drain near entrance and DMH connecting trench drain and infiltrator, prior to discharge to city system.
3. Relocated CB#1, and added DMH.
4. Added CB#3.
5. Added CB#4, and area drain for trash enclosure.
6. Added CB#5, and DMH, relocated particle separator.
7. Relocated site storm drain to connect to 66" municipal drain line in Somerville Avenue.
8. Connected foundation drain the site storm drain system.

Landscape Architecture Drawings (refer to clouded areas shown on L1.0 and on L4.0)

- 1- Hotel Drop off area:
 - a. Revised paver patterns and styles for simplified appearance
 - b. Removed granite cobbles to assist snow plowing operations
- 2- Restaurant Outdoor Dining area:
 - a. Reshaped plant beds and ADA access to conform to door location
 - b. Replaced planters with railing to maximize square footage at seating area
 - c. Added steps/access point on east end for ease of circulation
- 3- Blue Bike location:
 - a. Added 15 station Blue Bike along Somerville Ave.
- 4- Rear/Service Doors
 - a. Reshaped plant beds to conform to door locations and transformer location
- 5- Loading/Trash area
 - a. Added ADA van parking space (covered)
 - b. Added garage vent fencing

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CambridgeSeven

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Revised ZBA Documents

7/23/2019

Page 2

- c. Resized Trash Enclosure to meet requirements
 - d. Moved bike racks to accommodate transformer location
- 6- West sidewalk
 - a. Reshaped plant beds and paving to conform to door locations
- 7- North end wall
 - a. Increased plant bed size slightly due to parking area adjustments
 - b. Omitted greenscreen trellises due to cost constraints
- 8- Lighting
 - a. Added 6 lighted bollards at Hotel entry for atmospheric light

Architecture Drawings (refer to clouded areas shown on A1.0 through A8.1)

- 1- Parking Plan:
 - a. Reduced Overall Garage Size due to Construction Cost and Avoiding Contaminated Soil Area
 - b. Revised Elevator Core due to Cambria Standards
 - c. Added ADA Parking Spaces per code
- 2- First Floor Plan:
 - a. Deleted Pool due to Construction Cost
 - b. Added Covered HCP Van Parking per code
 - c. Revised Overall Dimensions due to increased Guestroom Wall thickness per Cambria Design Standards
- 3- Second through Fifth Floor:
 - a. Revised Overall Dimensions due to increased Guestroom Wall thickness per Cambria Design Standards
- 4- Sixth Floor Plan:
 - a. Revised Overall Dimensions due to increased Guestroom Wall thickness per Cambria Design Standards
 - b. Combined two Guestrooms to create a Terrace Suite due to room demand
 - c. Reduced from 12 to 11 rooms per above change
- 5- Zoning Considerations:
 - a. Revised Area Stats per changes due to Guestroom Wall thickness and deletion of Pool
 - b. Revised room count from 164 to 163 due to Sixth Floor Change
- 6- Exterior Elevations:
 - a. Changes to Exterior materials due to Construction Cost and because previous proposed wood material did not meet Fire Protection code (NFPA 285)



*Enforcement
Request
Response*

CITY OF SOMERVILLE, MASSACHUSETTS
INSPECTIONAL SERVICES DEPARTMENT – BUILDING DIVISION
JOSEPH A. CURTATONE - MAYOR

December 12, 2019

Ms. Claudia Murrow
23 Park Street #2
Somerville, MA 02143
murrowc@comcast.net

VIA EMAIL & USPS

Re: Site Address: 515 Somerville Ave
Permits: B19-001687; B19-001788
Subject: Request for Enforcement

Dear Ms. Murrow:

Please allow this letter to serve as a response to your request for enforcement to me, pursuant to G. L. c. 40A § 7, dated and received by the City Clerk on November 22, 2019.

It is my determination that a request for enforcement to the building official pursuant to MGL 40A s. 7 is not the procedurally valid avenue to challenge the issuance of a building permit in this instance. “[W]here the aggrieved party had adequate notice of the building permit’s issuance, he or she is required to **appeal to the appropriate zoning board of appeals** within thirty days of the permit’s issue date **under G. L. c. 40A §§ 8 and 15**. See Connors v. Annino, 460 Mass. 790, 791 (2011)(emphasis added).

Accordingly, I lack authority to make an official determination pursuant to your November 22, 2019 letter challenging the issuance of the above referenced permits.

Notwithstanding the above and without waiving any procedural rights, I am reexamining the plans. I will provide you an update in the next several days.

If you are aggrieved of the determination related to my authority to rule on your request for enforcement dated November 22, 2019 challenging the issuance of the building permits, you have the right to appeal to the Zoning Board of Appeals pursuant to SZO Sections 3.1.9 and 3.2.3 and G. L. c. 40A §§ 8 and 15.

Sincerely,

Nicholas Antanavica, CBO, LEED AP
Director, Inspectional Services Department



DPW BUILDING • 1 FRANEY ROAD • SOMERVILLE, MASSACHUSETTS 02145
(617) 625-6600 EXT. 5600 • TTY: (866) 808-4851 • FAX: (617) 666-2624

www.somervillema.gov



*Application
Memo*

Claudia Murrow,
23 Park St. #2
Somerville, MA 02143

2020 JAN 13 A 4: 34

January 13, 2019

CITY CLERK'S OFFICE
SOMERVILLE, MA

Zoning Board of Appeals
City of Somerville
93 Highland Avenue
Somerville MA 02145
(617) 625-6600 ext. 2600
FAX: (617) 625-0722

Re: First Amended Administrative Appeal to Administrative Appeal dated November 22, 2019 for Building Permit Nos.: B19-001687 and B19-001788 for 515 Somerville Avenue

Dear Zoning Board of Appeals,

1. On August 21, 2019, the Zoning Board of Appeals¹ ("ZBA") approved a large hotel project, Case #: ZBA 2018-122-R1-7/1 ("Revised Decision") and filed with the city clerk on August 22, 2019.
2. The Revised Decision was named as the first revision (R1) of Case #: ZBA 2018-122 ("First Decision") approved on October 24, 2018 and filed with the city clerk on October 25, 2018. I appealed the Original and Revised Decisions under G.L. 40A, § 17 to the Land Court on September 9, 2019.
3. The Building Permits, (Exhibit A) state,
B19-001687: Property: 515 SOMREVILLE AVE Map: 52 Description of Work: ZBA 2018-122: New construction of 6 story 163 room hotel with underground garage Block: Lot: H 38, and
B19-001788: Property: 515 SOMERVILLE AVE Map: 52 Description of Work: ZBA 2018-122 Foundation Permit for Hotel. See B19-00[1]1687 [sic] for construction Block: Lot H 38
4. They were issued to DEVB, LLC, as property owner, Contractor Chris Scarvalas, Consigli (617) 799-9576, Director of Operations-Boston/Project Executive and Architect/Engineer, Cambridge Seven Associates on October 23, 2019, by a Local Building Inspector. ("Building Permits").

¹ The Somerville Zoning Board of Appeals is the Special Permit Granting Authority.

5. Citizenserve Somerville stated,
B19-001687 <https://www.citizenserve.com/Portal/PortalController>

Permit #	Address	Permit Type	Sub Type	Status	Issue Date	Work Description
B19-001687	515 SOMERVILLE AVE	Building Permit	Commercial New Construction	Issued	10/23/2019	ZBA 2018-122: New 163 room hotel with
B19-001788	515 SOMERVILLE AVE	Building Permit	Commercial New Construction	Issued	10/23/2019	ZBA 2018-122 Fou See B19-001687 f

6. Project Descriptions and Legal Notices:
a. Original Decision:

DESCRIPTION: This current proposal is to construct a **six-story 164 room hotel** with a full service public restaurant and bar on the ground level. The proposal includes 20 surface parking spaces, 60 garage parking space under the proposed building, and surface and garage bicycle parking spaces. Amenities within the building include a meeting room, a pool, and bicycle parking spaces. Other site amenities include a robust landscaping plan, a covered drop-off and pick up area, and outdoor seating. [Emphasis added.] *Case #: ZBA 2018-122 ("Original Decision") pg. 2.*

Legal Notice: Applicant, YEM Somerville Ave, LLC, c/o Jordan Warshaw, and Owner, DEVB LLC, seeks a **Special Permit with Site Plan Review per SZO §7.11.10.5.b and Variances per Article 8 (dimensional requirements) and Article 9 (parking) of the SZO to construct a 164-room hotel with a first floor restaurant. BA/RB Zone. Ward 2.** [Emphasis added.] *Case #: ZBA 2018-122 ("Original Decision") pg. 1.*

- b. Revised Decision:

I.PROJECT DESCRIPTION The current proposal is to make revisions to the previously approved hotel project. The revisions include changes to the site layout and utility plan, parking garage layout, the landscape design, and the architecture. The Applicant provided a comprehensive list of all the proposed revisions in a memo dated July 12, 2019. The proposed revisions are drawn in the plan set dated July 29, 2019. As a result of the proposed revisions the hotel will include **163 guest rooms** rather than the originally approved 164 guest rooms. The revised garage layout will result in a loss of self-parking spaces; however, the hotel will operate a

valet service so that the site will be able to accommodate the previously approved 80 spaces (58 self-park and 22 valet). [Emphasis added.] *Case #: ZBA 2018-122-R1-7/19 ("Revised Decision")* pg. 2.

*Legal Notice**: Applicant, YEM Somerville Ave LLC, and Owner, DEVB LLC, seek a revision under SZO §5.3.8 to a previously approved (ZBA 2018-122) Special Permit with Site Plan Review and Variance to construct a hotel. Revisions include changes to the parking layout, floor plans, site plan, and architecture. **The Applicant also seeks a six-month time extension of the Variance under M.G.L Ch. 40A Sect. 10 to extend the time for exercising such rights.** BA and RB Zones. Ward 2. *The legal notice was revised to reflect the actual proposal. An earlier notice mistakenly described a different case. [Emphasis added.] *Case #: ZBA 2018-122-R1-7/19 ("Revised Decision")* pg. 1.

7. I reside at 23 Park Street, #2. I am aggrieved that the Building Permits were approved and issued. The proposed project will cause detriment to me by increased traffic volumes and congestion, hazards, an increase of queuing of vehicles, a change for the worse in the type(s) of traffic and traffic patterns overall and across to the site, a reduction in on-street parking, and an increase in unsafe conflict of motor vehicle and pedestrian traffic. The vehicles will be circulating through and around Somerville Avenue at Park Street to locate available parking spaces. The lack of providing all the required off-street parking spaces will result in an increase of vehicle queues and congestion, delays and a decrease in pedestrian safety in this area, and queues via increased parking space turnover at and about parking meter locations on Somerville Ave and the surrounding area and otherwise adversely impact the safety and convenience of traffic.
8. This Administrative Appeal ("AA") is of the changes in the Memorandum dated 7/12/2019 ("Memorandum"), (Exhibit 1 of Exhibit B to AA), that were approved by the ZBA in the Revised Decision that were the basis for plans approved for the Building Permits. However, the Building Permits state that they were based and approved upon the plans approved for the Original Decision.
9. Applicant, Defendant, YEM, Somerville Ave, LLC and City of Somerville ZBA filed about January 3, 2019: Defendants YEM Somerville Ave, LLC, Jordan D. Warshaw, and City of Somerville Zoning Board of Appeals' Joint Motion For Entry of Judgment. Asking the court to annul it the Revised Decision, however the Building Permits issued were based and approved upon the plans with De Maximus changes approved by the ZBA for the Revised Decision. Therefore, there is no merit to YEM, Somerville Ave, LLC's and the ZBA Defendants writing that they are not relying on the Revised Decision when the Building Permits issued are based upon it.

The defendants YEM Somerville Ave, LLC ("YEM"), Jordan D. Warshaw ("Warshaw"), and City of Somerville Zoning Board of Appeals ("ZBA") (collectively, the "Defendants") hereby seek an Order of Judgment annulling the ZBA's August 21, 2019 decision approving revisions to the special permit and variances originally granted to YEM on October 24, 2018 ("ZBA 2019 Decision") on the basis that YEM and Warshaw have irrevocably abandoned and will not seek to exercise their rights under the ZBA 2019 Decision, which is the subject of this action, such abandonment to be binding upon successors and assigns.

10. This request is mala fides and is contradicted by the fact that the Building Permits were issued on the basis of plans with De Maximus changes approved in the Revised Decision.
11. The plans ISD used to base its approval of the Building Permits are dated September 17, 2019, which were not congruent with the plans approved and stamped approved by the ZBA for the Original Decision.
12. ISD state in the Building Permits that it approved plans from the Original Decision when it approved the plans for the Revised Decision, which approved 163 rooms and all, but not limited to, all the De Maximus changes listed in the Memorandum that the ZBA approved in the Revised Decision. Exhibit 1 of Exhibit B to AA
13. B19-001[1]687 [sic] states that the room count is 163. However, the plans for the Original Decision were approved for 164 rooms, and the plans for the Revised Decision were approved for 163 rooms, which is described in the Architect's Memorandum by reconfiguring the plans, including, but not limited to A1.0 through A8.1, 1-6, (4-5);

Civil Engineering Drawings Changes to Sheet C1.0 –Site Layout & Utility Plan (1-13); Changes to Sheet C1.1–Grading and Drainage Plan (1-8); Landscape Architecture Drawings (refer to clouded areas shown on L1.0 and on L4.0) (1-8); and Architecture Drawings (refer to clouded areas shown on A1.0 through A8.1 (1-6).
Exhibit 1 of Exhibit B to AA

The applicant applied for the following and the Building Department of Inspectional Services Department ("ISD") approved their plans and issued the Building Permits, which included, but not limited to, all the De Maximus changes approved to the Revised Decision allegedly under SZO §5.3.8², which included changes to the special

²5.3.8. Revision of Special Permit. Subsequent to a special permit, special permit with design review, or special permit with site plan review being granted by the SPGA, revisions in the plan may be made prior to the granting of the Certificate of Occupancy, in accordance with the following procedures and applicable law, ordinances, and regulations.

permits with site plan review and variances in the Memorandum. Exhibit 1 of Exhibit B to AA

14. The De Maximus revisions to the variances, approved in the Revised Decision, were not allowed to be revised under SZO §5.3.8.
15. SZO §5.3.8 does not allow revisions and/or De Maximus revisions to variances, nor extensions to exercise variances.
16. B To revise and extend the time to exercise the variances that were approved in the Original Decision under SZO §5.3.8, is a violation of it and of SZO 5.5³.

1. Only revisions deemed de minimis (i.e., minor details, final touches) by the Planning Director (or designee) may be approved without a public hearing. Approval of such changes shall be documented in the case file and Planning Director approval or disapproval of such changes may be appealed to the SPGA in accordance with Article 3.1.9.

a. Revisions may only be considered de minimis upon the Planning Director's making the following findings:

i. Changes would not contravene the legal notice, any finding, or condition of the SPGA in the original approval;

ii. Changes would not detrimentally impact matters of substance identified in meeting minutes of original hearings;

iii. Changes would not alter the character of the development; and

iv. Changes would be so insignificant as not to be noticeable to persons generally familiar with the original approval.

b. The Planning Director shall memorialize any de minimis findings and approvals in memoranda to the SPGA, affected City departments, and the Applicant.

c. Approved revised plans shall be marked by Planning Staff as substantially conforming to prior SPGA approval.

2. Revisions that are not de minimis shall be subject to the full notice and hearing provisions of § 5.3.2. of this Ordinance, but shall not be subject to review by additional boards, departments, city agencies or commissions except as requested by the SPGA or upon the recommendation of the Planning Director. Applicable findings shall be made in accordance with the type of permit(s) being revised.

3. The use or development as originally approved shall otherwise be in accordance with the originally approved plans and conditions of approval.

4. Additional rules may be set forth in the Rules and Regulations of the Permit Granting Authorities.

5. Upon the issuance of a Certificate of Occupancy for a development, revision rights shall lapse, and further development or use changes shall be subject to the zoning applicable at that time.

(Ord. No. 2008-07, 5-22-2008)

³ **Section 5.5. - Variances.**

5.5.1. Purpose. The purpose of this Section is to grant variances from the terms of this Ordinance where the standards for granting variances as set forth in M.G.L. Chapter 40A, Section 10 are met by the Applicant.

17. Variances approved in the-Original Decision and then revised illegally under SZO 5.3.8., and extended in the Revised Decision in violation of M.G.L. c. 40A, § 10, (last ¶) and in violation of SZO 5.5 and Article 5.
18. New variances have to go through the relevant application process, including but not limited to, under SZO Article 5, § 5.5 and M.G.L. c. 40A, § 10 in order to qualify for a six month extension to exercise after one year. The application process to apply for new variances was skipped and did not occur, SZO, Chapter 1. Instead, a revision to variances was illegally approved under SZO 5.3.8 and an illegal extension to exercise the variances was approved for 6 months to the Revised variances under M.G.L. c. 40A, § 10 (last ¶), however, changed variances did not qualify for a 6 month extension under it.

5.5.2. Application and Notice for Variances. All requests for a variance shall be filed with the Board of Appeals. All papers, plans, statements, photographs, or other material having a direct bearing upon the request shall be forwarded to the Board of Appeals along with such notice. Upon receipt of a request for a variance, the Board of Appeals shall forthwith hold a public hearing at which time all parties-in-interest, including but not limited to the applicant, abutters and abutters-to-abutters of the property at issue, members of the Board of Aldermen, the Mayor and the Superintendent of Inspectional Services, may give testimony. Staff to the Board of Appeals may, no later than the date of the public hearing on the request for a variance, transmit to the Board of Appeals a report and recommendations with respect to said request.

(Ord. No. 2011-02, § 8, 2-10-2011)

5.5.3. Authorization and Conditions for Variances. A variance from the requirements of this Ordinance may be authorized by the Board of Appeals only for reasons of practical difficulty and substantial hardship, and only where the Board finds that all of the following conditions apply:

(a) There are special circumstances relating to soil conditions, shape or topography of land or structures which especially affect such land or structures but not affecting generally the zoning district in which it is located, causing a substantial hardship, financial or otherwise.

(b) The specific variance as may be granted by the Board is the minimum variance that will grant reasonable relief to the owner, and is necessary for a reasonable use of the building or land.

(c) The granting of the variance will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. In addition to considering the character and use of the nearby buildings, the Board, in making its findings, shall take into account the number of persons residing or working in such buildings or upon such land, and the present and probable future traffic conditions.

In approving a variance the Board may attach such conditions and safeguards as are deemed necessary to protect the neighborhood, public health, safety, and welfare. In addition, such conditions and safeguards shall be related to the purpose and provisions of this Ordinance such that the approved deviation from a strict standard of this Ordinance still allows for compliance with the general intent for such standard.

19. An extension to exercise *variances* under M.G.L. c. 40A, § 10, (last ¶) that were illegally revised under SZO §5.3.8 in the Revised Decision, violates M.G.L. c. 40A, § 10, (last ¶).
20. Variances illegally revised under SZO §5.3.8 in the Revised Decision, are not legally extended to exercise the variances under M.G.L. c. 40A, § 10, (last ¶).
21. Including, but not limited to all the De Maximus changes in the Memorandum (Exhibit 1 of Exhibit B to AA) were approved in the Revised Decision, including, but not limited to, revisions to the variances, which were approved in the Building Permits. M.G.L. c. 40A, § 11, (last ¶) does not allow the building of a variance(s) while under timely appeal.
22. The special permits with site plan review and variances that the Building Permits are based upon intertwine in their development of the proposed Hotel Project and are not separable, as without the variances, the special permits with site plan review do not remain intact.
23. On November 22, 2019, I timely filed an AA with the city clerk at 11:07 am, Exhibit B; the ZBA at 11:12 am, Exhibit B; and the Building Department at 11:44 am, Exhibit B.
24. The Building Permits were issued on October 23, 2019 to build the variances that were and are on appeal from September 9, 2019. Consequently, there is no right to build at risk or at all under a variance until the appeal is dismissed or denied under M.G.L. c. 40A, § 11.

M.G.L. c. 40A, § 11, No variance, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the city or town 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 . . .

25. Building Permits issued per Special Permits timely appealed would be At Risk under M.G.L. c. 40A, § 11. However, the Building Permits issued on the Revised Decision guised as the Original Decision with two special permits with site plan review and variances are interwoven and work exercised under the Building Permits could not separate work under the two special permits from work under the two variances.

The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. *M.G.L. c. 40A, § 11, last ¶.*

26. M.G.L. c. 40A, § 15 states in relevant part:

Any appeal under section eight⁴ to a permit granting authority shall be taken within thirty days from the date of the order or decision which is being appealed.

27. The Building Permits were issued on October 23, 2019, and I timely filed an AA on November 22, 2019. Exhibit A.

The petitioner shall file a notice of appeal specifying the grounds thereof, with the city or town clerk,

28. The appeal was timely filed with the city clerk on November 22, 2019 at 11:07 am. Exhibit C. The grounds of the appeal were specified under M.G.L. c. 40A, § 8 and 15. SZO, which SZO 3.1.9⁵, 3.2, and 3.2.3⁶ are based upon.

⁴ Section 8. An appeal to the permit granting authority as the zoning ordinance or by-law may provide, may be taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of this chapter, by the regional planning agency in whose area the city or town is situated, or by any person including an officer or board of the city or town, or of an abutting city or town aggrieved by an order or decision of the inspector of buildings, or other administrative official, in violation of any provision of this chapter or any ordinance or by-law adopted thereunder.

⁵ 3.1.9. Appeal from Decisions. Any person, including an officer, board, or member of the Board of Aldermen of the City, aggrieved by an order or decision of the Building Official, or other administrative official, in violation of M.G.L. Chapter 40A or any zoning ordinance may appeal to the Board of Appeals as provided in Section 3.2 of this Ordinance. Appeals may also be taken as allowed by Section 3.2.3.

⁶ Section 3.2. - The Board of Appeals.

3.2.3. Zoning Appeals.

3.2.3.1. Standing to Appeal. Appeals to the Board of Appeals may be taken by any person aggrieved by reason of his/her inability to obtain a permit or enforcement action from any administrative official under the provisions of this Ordinance, or by any person including an officer or Board of the City, or of an abutting city or town aggrieved by an order or decision of the Superintendent of Inspectional Services or other administrative official in violation of any provision of this Ordinance, or M.G.L. Chapter 40A.

3.2.3.2. Procedure for Zoning Appeals. All appeals shall be taken within thirty (30) days from the date of the order or decision which is being appealed. The petitioner shall file a notice of appeal specifying the grounds thereof, with the City Clerk. A copy of said notice, including the date and time of filing certified by the City Clerk, shall be filed forthwith by the petitioner with the officer or board whose order or decision is being appealed, and to the Board of Appeals, specifying in the notice grounds for such appeal. Such officer or board shall forthwith transmit to the Board of Appeals all documents and papers constituting the record of the case in which the appeal is taken.

(Ord. No. 2011-02, § 4, 2-10-2011)

- 3) due to the variances that the ZBA approved in the Original and Revised Decisions are well outside their legal discretion under, including, but not limited to, M.G.L c. 40A § 10 (last ¶), SZO § 5.5, and case law;

I respectfully request the honorable Zoning Board of Appeals to annul the Building Permits, the Revised Decision, and the Original Decision under M.G.L. c. 40A, §§ 8, 15, and 11 and SZO §5.3.8; and §5.5; and any and all other pertinent laws, chapters, sections, regulations, ordinances, and rules under your discretion and per writ of mandamus.

Sincerely,

A handwritten signature in cursive script that reads "Claudia Murrow".

Claudia Murrow

cc. Director of Inspectional Services Department, Mr. Nicholas Antanavica

I made no argument under § 7. alleged by Mr. Antanavica's letter dated December 12, 2019. The AA does not avoid a timely appeal under G.L. 40A, § 17. The city clerk, the ZBA, including, but not limited to, Mr. Antanavica knew or should have known that I timely appealed the Original and Revised Decisions under G.L. 40A, § 17 to the Land Court on September 9, 2019.

and a copy of said notice, including the date and time of filing certified by the town clerk, shall be filed forthwith by the petitioner with the officer or board whose order or decision is being appealed, and to the permit granting authority, specifying in the notice grounds for such appeal.

29. I timely filed an appeal with the ZBA on November 22, 2019 at 11:12 am. Exhibit B. The building department granted/issued the Building Permits, and I filed a copy with them on November 22, 2019 at 11:44 am. Exhibit B.

Such officer or board shall forthwith transmit to the board of appeals or zoning administrator all documents and papers constituting the record of the case in which the appeal is taken.

30. The appropriate person/Building Inspector of ISD was required to forward the file to the ZBA. If it has not, I request that it do.
31. I timely appealed and met the requirements of the relevant law, chapter, sections, and ordinances, which control, including but not limited to M.G.L. c. 40A, § 8 and 15. In addition, there is no material change to the argument as amended and its timely filing. Exhibit B. Citing irrelevant sections of M.G.L. c. 40A and SZO Article 3⁷, but timely meeting the requirements of any and all relevant sections, is not fatal.

Wherefore,

- 1) due to ISD issuing Building Permits based upon approving plans, including, but not limited to, all the De Maximus changes approved by the ZBA in the Revised Decision guised as approving plans for the Original Decision, which allow building under variances that were timely appealed at the time the Building Permits were issued and now;
- 2) due to ISD issuing Building Permits for special permits with site plan review and variances that the building permits are based upon intertwine and are not separable, as without the variances, the special permits do not remain intact, and

⁷ Article 3. – Enforcement, Board Of Appeals, And Amendments: Article 3. – Enforcement, Board Of Appeals, And Amendments

Exhibit A.



CITY OF SOMERVILLE
ISD/BUILDING DIVISION

Building Permit

Permit #: B19-001687

Issue Date: 10/23/2019

CSL License Number: B18337

Property: 515 SOMERVILLE AVE
Description of Work: ZBA 2018-122:
New construction of 6 story 163 room hotel with underground garage

Map: 52
Block: Lot: H 38

Owner
DEVB LLC
689 SOMERVILLE AVE
SOMERVILLE, MA 02143

Architect/Engineer
Cambridge Seven Associates
6174927000 t
Registration #:

Contractor
Chris Scarvalas
(617) 799-9576
HIC #:

Noted below are the required minimum building inspections. It is the responsibility of the Permit Holder to notify the Building Division for the required minimum inspections. The Permit Holder shall notify the Building Official twenty-four (24) hours in advance of the required minimum inspection. The Building Official has forty-eight (48) hours to respond. Any work performed, completed and covered without the required minimum inspection is in violation of 780 CMR: The Mass. State Building Code.

An Owner who obtains a building permit to his/her own work, or an owner who hires an unregistered contractor (not registered in the Home Improvement Contractor (HIC) Program), will NOT have access to the arbitration program or guaranty fund under M.G.L. c. 142A. (The fund only applies to 1-4 unit buildings.)

**APPROVED
FOR CONSTRUCTION**

By: Jim Aurilio

Title: Local Building Inspector

Date: October 23, 2019

PLEASE CONTACT

Kelly Como

FOR INSPECTIONS AT
Tel: 617-625-6600 Ext. 5600
or on our online portal at
www.somervillema.gov/isd

A TRUE COPY ATTEST:

CITY CLERK

Inspection Type	Date	Inspector	Comments
Excavation			
Footings			
Electrical Foundation			
Rough Frame/Fire Blocking			
Foundation			
Insulation			
Screw			
Finish			
Final			
Electrical Rough			
Plumbing Rough			
Electrical Final			
Plumbing Final			
Gas Rough			
Alarm System			
Gas Final			
Sprinkler			
Engineering Inspection			
Final C of O			
Final C of I			



CITY OF SOMERVILLE
ISD/BUILDING DIVISION

Building Permit

Permit #: B19-001788

Issue Date: 10/23/2019

CSL License Number: B18337

Property: 515 SOMERVILLE AVE
Description of Work: ZBA 2018-122
Foundation Permit for Hotel.
See B19-0011687 for construction

Map: 52
Block: Lot: H 38

Owner
DEVB LLC
689 SOMERVILLE AVE
SOMERVILLE, MA 02143

Architect/Engineer
Cambridge Seven Associates
6174927000 t
Registration #:

Contractor
Chris Scarvalas
(617) 799-9576
HIC #:

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Inspection Type	Date	Inspector	Comments
Excavation			
Footings			
Electrical Foundation			
Foundation			

**APPROVED
FOR CONSTRUCTION**

By: Jim Aurilio

Title: Local Building Inspector

Date: October 23, 2019

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A TRUE COPY ATTEST:

CITY CLERK

