

MEMORANDUM

TO: Somerville Zoning Board of Appeals

FROM: Kevin O’Flaherty and Dave Zucker

DATE: June 15, 2021

SUBJECT: Remand Administrative Appeal; Building Permits B19-001687 and B19-001788

I. Introduction

This memorandum summarizes the position of YEM Somerville Ave, LLC (“YEM”) concerning the Application for Administrative Appeal on Remand of Building Permits B19-001687 and B19-001788 submitted by Claudia Murrow (“Ms. Murrow”) appealing the building permits issued by the City of Somerville Building Inspector related to the Cambria Hotel project at 515 Somerville Avenue (the “Project”). A public hearing is scheduled for June 23, 2021.

As the ZBA is aware, it granted a special permit and variances for the Project in October 2018 (“2018 Decision”) and ISD issued two building permits on October 23, 2019 (“Building Permits”).¹ At the time of the 2018 Decision, YEM submitted conceptual plans for the Project. Between the 2018 Decision and the issuance of the Building Permits, the more detailed construction plans were created and those plans were submitted and approved in connection with the Building Permits. As is the case in virtually every project, the conceptual plans and the more detailed construction plans differed in certain respects. As the Planning Director correctly determined, the differences between the conceptual plans and the more detailed construction plans were all *de minimis*.

In her appeal, Ms. Murrow alleges that the changes between the plans submitted in support of the October 2018 special permit and variances (“2018 Decision Plans”) and the plans submitted in support of the October 2019 building permits (“Building Permit Plans”) were not *de minimis* and required notice and a public hearing.² For the reasons set forth below, Ms. Murrow’s claims lack merit and the Planning Director was correct in her determination that all of

¹ The ZBA also granted YEM a special permit for a materially different project in 2019 (the “2019 Decision”). YEM subsequently abandoned the relief granted in the 2019 Decision and the ZBA annulled the 2019 Decision. The 2019 Decision is not at issue in Ms. Murrow’s appeal.

² Specifically, she alleges that the Building Permit Plans “substantially changed the location, dimension, and setbacks of the building and garage from the [2018 Decision] Plans by moving them substantially away from the rear lot line and towards Laurel Street and front lot lines, expanding the building’s width by nearly 4’, and increasing the square footage of the floor space by 3%.” Addendum to Application for Administrative Appeal on Remand of Building Permits B19-001687 and B19-001788 (“Addendum”) at xii. She also alleges that the location of the garage and configuration of its walls in the Building Permit Plans was substantially different from the garage in the 2018 Decision Plans. *Id.* at xiii.

the changes between the 2018 Decision Plans and the Building Permit Plans were *de minimis*. Accordingly, Ms. Murrow's appeal should be denied.

II. Determination of *de minimis* changes

Somerville Zoning Ordinance ("SZO") 15.2(4)(d-e) establishes the procedure and review criteria for a *de minimis* determination. Upon application for a *de minimis* revision to a special permit, the Director of Planning and Zoning "must review the application and determine if the proposed revision is *de minimis* or significant enough to be considered a major amendment to the original proposal." SZO 15.2(4)(d)(ii). In order to determine that the proposed revision is *de minimis*, the Director of Planning & Zoning must make the following findings concerning the revised application:

- a. Does not contravene the previously published public notice, any finding, or attached condition made by the review board for the original development review application;
- b. Does not detrimentally impact matters of substance identified in the meeting minutes of the original public meetings or public hearings; and
- c. Features changes that are insignificant to the degree that persons familiar with the original application would not notice a substantial change in operational or built outcome.

While significant modifications, including a significant increase in the building's size or footprint, require a new public hearing, *de minimis* changes do not. For example, in *Barlow v. Planning Bd. of Wayland*, a new special permit (requiring a new public hearing) was necessary where the plan changes included relocation of the house, septic system, and driveway shown on the original plans. *Barlow v. Planning Bd. of Wayland*, 64 Mass. App. Ct. 314, 317 (2005). There was no such substantial change to the Project that required a public hearing in this case.

III. Changes between the 2018 Decision Plans and the Building Permit Plans

Every building necessarily changes as it goes through the four stages of architectural design, from Conceptual Plans to Schematic Design to Design Development and finally to Construction Documents. The plans YEM submitted in support of the 2018 Decision were Conceptual Plans, while the Building Permit Plans were final Construction Documents. In fact, the changes that were made to the Project from Conceptual Plans through Construction Documents are far more minor than in the majority of similar projects.

Attached as **Exhibit A** is a plan set that shows just how minor the changes were between the 2018 Decision Plans and the Building Permit Plans. The plan set shows the 2018 Decision Plans as the base in black line and then overlays the Building Permit Plans in red line, including the first floor, upper floors (2-5), the partial top floor (6), and the garage. The dimensional changes between the black line and the red line are minimal and certainly not a substantial change.

The height of the building did not change at all between the 2018 Decision Plans and the Building Permit Plans. In fact, the two plans show the exact same height to the top of the main building (54') and the Building Permit Plans are two inches shorter to the top of the partial floor

(63'7" versus 63'9"). For the ZBA's convenience, these and other relevant dimensions discussed herein are summarized in a table attached hereto as **Exhibit B**.

Ms. Murrow makes a number of allegations in her petition that are factually inaccurate. First, she points to certain changes in the distance from the building to the property lines. Addendum at v, xii-xiii. However, these figures are disingenuous and do not provide the complete story, as they relate to small pieces of the building that jog in and out before returning to meet the main building. For example, as shown on Exhibit A, the west and southwest walls of the first floor of the building are exactly the same distances from the property lines in both the 2018 Decision Plans and the Building Permit Plans, while the north, east, and southeast walls jog in and out alternately slightly further from or slightly closer to the property lines than in the Building Permit Plans. These are usual and customary changes as structural and other typical construction coordination is incorporated into the evolving building plans, and when viewed on a floor-wide and building-wide basis, the changes are negligible and are imperceptible to the public, as seen when comparing the black line (2018 Decision Plans) and red line (Building Permit Plans) in Exhibit A.

Ms. Murrow also alleges that the square footage of the floor space in the Building Permit Plans increased by more than 3% from the 2018 Decision Plans. Addendum at vi, xii-xiii. As a review of Exhibit A shows, no new usable space was added to the building as the plans evolved. During the project's Design Development phase, the structural system chosen was "load bearing light gauge metal wall framing," which requires 6" load bearing walls rather than 3 5/8" metal stud walls. This increase of 2 3/8" per demising wall accounts for a very slight increase to the gross square footage of the building, as well as some of the other *de minimis* dimensional tweaks. More importantly, the amount of occupiable area (which drives the Project's impact on the community) was actually slightly reduced between the 2018 Decision Plans and the Building Permit Plans, as the gross square footage increase is limited to the inside of walls. And even with the small increase in gross square footage, the Project's FAR square footage has remained below the as of right limit in both the 2018 Decision Plans and Building Permit Plans. Additionally, both sets of plans conformed and continue to confirm with all required setbacks, coverage requirements, and other applicable zoning requirements.

Next, Ms. Murrow alleges that the garage in the Building Permit Plans has the same configuration as the garage in the plans supporting the 2019 Decision, rather than the configuration in the 2018 Decision Plans. Addendum at vi, xii-xiii. This is also inaccurate. The garage in the Building Permit Plans is substantially the same as the garage in the 2018 conceptual plans, as shown on the garage overlay included in Exhibit A and in the dimensional table in Exhibit B.

Finally, Ms. Murrow raises a number of allegations concerning the issuance of the 2018 Decision in an improper attempt to challenge the special permit and variances granted in that decision. Addendum at xv-xxiv. If Ms. Murrow wanted to challenge the 2018 Decision, she was required to do so by appealing to court within 20 days of the decision's issuance, pursuant to G.L. c. 40A, § 17. She did not do so and may not now challenge the 2018 Decision through this proceeding. In addition, her allegations are again factually inaccurate. For example, she claims that "[t]he hotel is roughly 10 times larger than that allowed as of right...." *Id.* at xviii. To the

contrary, both the 2018 Decision Plans and the Building Permit Plans comply with zoning from an FAR standpoint.

IV. Conclusion

The minor changes between the conceptual 2018 Decision Plans and the more detailed construction Building Permit Plans were *de minimis* and do not even approach the level of a substantial change in operational or building outcome that would be noticeable to persons familiar with the original application. The Planning Director was correct to determine the changes were *de minimis* changes and the ZBA should uphold her determination. Accordingly, Ms. Murrow's appeal should be denied.

EXHIBIT A



The Noannet Group
515 Somerville Ave

CambridgeSeven

Architects and Planners

1050 Massachusetts Avenue
Cambridge, MA 02138
617 492-7000 Fax 492-7007



Consultant Name and Logo

Number	Revision	Date

Job #	0000		
Project	515 Somerville Ave		
Drawn By	JB	Checked	GJ
Date	OCTOBER 4, 2018		
Scale	1/16" = 1'-0"		

Drawing Title
FIRST FLOOR PLAN

A1.1





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Job #	0000		
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Scale	1/16" = 1'-0"		

Drawing Title
SECOND FLOOR PLAN

A1.2





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[Signature]

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Job #	0000		
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Scale	1/16" = 1'-0"		

Drawing Title
SIXTH FLOOR PLAN

A1.6





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Job #	0000	
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Scale	1/16" = 1'-0"	

Drawing Title
PARKING

A1.0

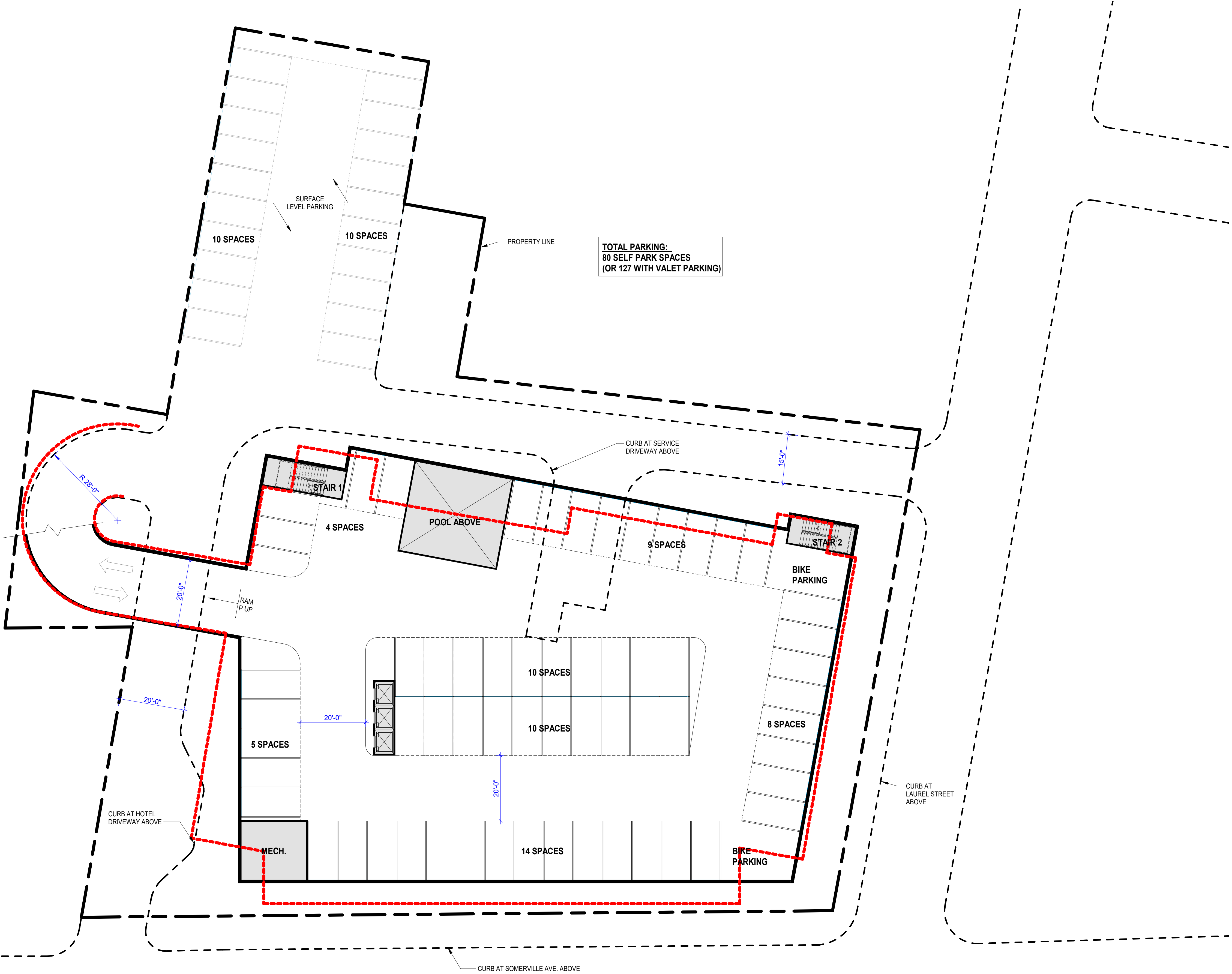


Exhibit B

Dimensional Changes Between 2018 Decision Plans and Building Permit Plans

	2018 Decision Plans	Building Permit Plans	Percent Change
Height to Main Roof	54'-0"	54'-0"	0%
Height to 6th Floor Roof	63'-9"	63'-7"	-0.3%
Garage SF	20,998 SF	20,824 SF	-1.0%