



City of Somerville

ZONING BOARD OF APPEALS

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

MINUTES

Wednesday, March 11, 2020 at 6:00 pm
City Council Chambers
93 Highland Avenue, City Hall 2nd Floor
Somerville, Massachusetts

Board Members present: Susan Fontano (Chair), Danielle Evans (Clerk), Elaine Severino, Anne Brockelman, Josh Safdie

Board Members absent: Drew Kane

City staff present: George Proakis, Melissa Woods, Charlotte Leis, Dan Bartman

Meeting was opened at 6:09pm.

PUBLIC HEARINGS

ZBA 2018-10-R1-6/19

10 Oak Street

Richard Di Girolamo (attorney) and Peter Quinn (architect) went over the project history and the reason for this revision request. Original decision allowed for partial demolition, but due to some mistakes the whole building was demolished; ISD also required them to demolish and rebuild the foundation. They had considered applying for an entirely new proposal under the new zoning, but had decided that it was not feasible and so are seeking a revision to the decision to account for the full demolition.

The Board asked for public comment.

Dorinda Jaquith (6 Oak St) said the applicant had demolished the old foundation and built the new one without the proper permits. There isn't enough space between the new foundation and her property for their proposed parking area. Much of the project has been rushed and done without proper permits, but it's been a year without any construction happening. Neighborhood is very upset with this project. ChairFontano asked if there had been any neighborhood meetings in 2018 during the original process. Ms. Jaquith said no.

Jennifer Hilario (9 Bolton St) said that the old 10 Oak St owner had negotiated with neighbors in good faith, but the new developers haven't and so they shouldn't get the benefit of the doubt from the Board. Current developer has shown negligence and should have to start over with process and follow the rules.

Tom Booth (14 Oak St) said that the previous structure abuts his driveway, as does current foundation. When they tore down the original foundation without the proper permits, they caused a

sinkhole in his driveway. Their new foundation is not structurally sound, and his driveway will have to be redone after the foundation is re-poured. They should not get a variance. Chair Fontano asked when the sinkhole in the driveway was created. Mr. Booth said April 2019.

Andrew Campanella (9 Oak St) agrees with neighbors that project has been ridiculous; it's been a whole in the ground for a year and is negatively impacting the neighborhood.

Bill Cavollini (33 Oak St) said the property is being used as a parking lot right now which they need a permit for. The Board shouldn't grant the revision.

Ed Marakovitz (6 Oak St) said the Board should deny the request. The developer was arrogant, unlike most of the other developers who have worked on proposals nearby, and has only superficially met with neighbors only to not respond to their concerns. The Board should deny the request and make the applicant go back to the drawing board.

Councilor JT Scott said that the overall consensus of the neighborhood is to not grant the modification of the decision and instead make the developer design a new project that complies with the zoning code. Had the developer followed the original plans, no one would be at this meeting.

Chair Fontano asked Mr. Di Girolamo if this was the same project that neighbors have seen previously. Mr. Di Girolamo said it was, and that the revision is only to the conditions of the decision.

Mr. Di Girolamo said that he hears that the neighbors are frustrated that nothing has happened in a year, that the property has a new owner who just wants to see this project completed. A new by-right project is not possible because of setback requirements since this is a UR property abutting an NR zone on one side. He doesn't know who the cars on the site belong to, but will try to resolve that issue.

Chair Fontano expressed her frustration with this case, and said that the cars and litter make the site an eyesore and the site needs to be cleaned up.

The Board deliberated on the case. They discussed what, if any, impact maintaining the two walls has on the project from a zoning standpoint; they were using those walls to capitalize on the existing non-conformities of the structure. If they had originally proposed to demolish the building and build their proposed building, they would've needed variances for setbacks. Board and staff discussed whether they can grant the revisions or if they need to make the findings for a variance since the building was demolished; staff said they will investigate that question.

The Board agreed that they had heard the neighbors express that they wanted the applicant to 1) change from a 3-family to a 2-family and 2) get a variance for side setbacks. Mr. Di Girolamo said he wasn't sure if the Board had jurisdiction to grant a variance to a zoning code that no longer exists. Ms. Woods agreed with Mr. Di Girolamo; if a variance is needed, applicant should pursue project under current code. The Board wants someone from the law office to weigh in on this.

The Board discussed whether the wall next to the property line can have windows as proposed since building code would view them as new operable windows in an area that needs to be fire-rated. The Board wanted staff to look into whether this project is fine with a revision or needs a variance.

Mr. Di Girolamo said this is not the first time that a project was proposed and approved as a partial demolition that relied on existing nonconformities but ended up during the course of construction being a full demolition that was able to keep the old nonconformities. This was an act of god, and so should not require a variance. There is precedent for this situation. Neighborhood would like to see a smaller project but also see movement on site; it's hard to do both.

The Board said that neighborhood opinion is not important for this case; Board is focused on the ramifications of the Special Permit and the request for modifications. The big questions are whether the windows can go back and whether this requires a variance. Other questions include the timeline of neighborhood meetings and demolition.

Chair Fontano said she is keeping public comment open for the next meeting. Danielle Evans made a motion to continue the case to March 25, 2020. Elaine Severino seconded. Motion passed 5-0.

DRA2020-0018

3 Hawkins Street

Scott Zinke (owner) said they have had 3 neighborhood meetings about project, and have tried to design project to address concerns expressed during those meetings. Peter Quinn (architect) gave an overview of the building design. Project is requesting variances for 1 extra story, side step backs for upper floors, and building height. They have adjusted the design of the building to try and make it work well for the neighborhood and community.

Board asked what relief is needed for the setbacks. Mr. Bartman explained that the code requires a 10' setback of 5th story facades from 4th story façade, but proposal has 0' setback; only street-facing exterior walls are facades. Mr. Quinn went over the massing diagram that compared project as proposed with project that complies with zoning.

The Board asked for public comment.

Alex Friedman (4 Lake St) said he is in strong support of this project. The developer has been very accommodating to the many neighborhood requests, including moving access to the underground parking and having the family units on the Lake St side; they have also extended the park at 346 Somerville Ave. He would like the Board to make sure that the transformers are fenced and that there is no parking on the same side of the street as the project. He is supportive of the raised crosswalk that the developer offered to pay for, but is disappointed that City staff said no. Chair Fontano asked City staff about the raised crosswalk. Mr. Bartman said that sidewalks are handled by the Mobility and Engineering staff, not by Planning & Zoning; the City is also considering a redesign of the entire streetscape, and is not opposed to a raised crosswalk, but doesn't want something to be installed only to be ripped up.

Bill Cavallini (33 Oak St) said he is the co-chair of the Union Square Neighborhood Council (USNC). He wished that the USNC had been involved in the neighborhood meetings, and that the owner had come to the USNC, but is happy that the developer had 3 neighborhood meetings. He had numerous questions about what happened to the people who used to live at the site. Chair Fontano said that since the USNC is a private group of citizens, it's their job to make sure they know what's going on in their neighborhood.

Meredith Porter (104 Josephine Ave) said that no documents were posted to the City website despite the new zoning requiring staff to do so. He also said that as someone who isn't an abutter, it's very difficult to learn about neighborhood meetings and he wants more people to be notified about them and have them be more accessible to the general public.

Councilor JT Scott said that the USNC has been officially recognized by the City Council and will be more involved in neighborhood meetings in the future. He said that generally the neighborhood has been very supportive, but he's worried that they might have missed something since plans weren't posted online. He also said that the Board should support the developer putting in the raised crosswalk since the City has no concrete plans for when it is redesigning the street. Chair Fontano said she doesn't like continuing every case and doesn't want to continue this one if the only issue is that the plans weren't posted.

The Board also clarified that the ZBA is only considering the Hardship Variances tonight, and that the details will be reviewed during the site plan approval done by the Planning Board. Councilor Scott said that the neighborhood was supportive of the variances.

The Board deliberated about the variances. They discussed their role in the overall Development Review process, and the impact that them granting the variances would have on the rest of the process; also discussed the fact that they can condition the approval of the variances, or approve a smaller variance than the proposal was requesting. Their role in this case is to decide whether to give the project a variance, and if they decide yes, then all the details of the project will be reviewed by the Planning Board for conformance to the zoning code and the variance decision.

Ms. Severino expressed concern about the impact of shadows on the park. Ms. Evans agreed that there would likely be an impact on the park, and asked to hear the arguments for the variances. Mr. Quinn read the written argument for the variances as submitted with the original application into the record. The site is contaminated and must be cleaned up by applicant; significant cost, but big social/public benefit. Property also has high water table, which makes providing parking more difficult. Granting relief will offset higher cost of project due to need for environmental remediation. Proposed building is not significantly more detrimental to the neighborhood than what would be allowed by-right. Variances make it easier to remove existing non-conforming use and make the building fit in better with the neighborhood.

Ms. Evans said she doesn't believe the variance is necessary since the property has been upzoned from 4 to 5 stories as part of the zoning overhaul. She doesn't want 6 stories next to the park and doesn't think the site is unique. She is fine with the setback variance, but not with the additional height or story.

Ms. Brockelman said the underground garage and remediation are both expensive, so seems like they're asking for extra units to offset that extra cost. The intent of zoning is to have this site appear to be 4 stories, so if applicant could make building appear to be 4 stories, she would be fine with the variances for the additional story and height. She sees the sidewalk being widened as a public benefit; they are basically moving that square footage to the top of the building. Ms. Severino said that she's nervous about the park, but sees the argument for the variances; fine with setback variance but concerned about height and story variances.

Mr. Safdie said he largely agrees with the other Board members' comments. Glad the parking is underground; surface parking would be cheaper but wouldn't look as good and would take away from the number of units. Agree that subsurface conditions are not unique to parcel. Feels like Hawkins St elevation isn't compatible with the intent of the ordinance.

Chair Fontano asked how this compared to the neighboring building. Mr. Quinn said that the neighboring building is slightly taller. He offered to step back the 5th and 6th floors 4' so that they are 12' away from the property line as would be required if the main structure was taking full advantage of the allowed setbacks.

Board discussed potential next steps. Mr. Proakis suggested that the Board continue the case and give the applicant time to consider the feedback the Board has given so far. Danielle Evans made a motion to continue the case to March 25, 2020. Elaine Severino seconded. Motion passed 5-0.

AA2020-0001

515 Somerville Avenue

Mr. Proakis said that he has been discussing the case with the applicant and the developer, and they have agreed to continue the case to March 25 so he requests that the Board grant the continuance.

Danielle Evans made a motion to continue the case to March 25, 2020. Elaine Severino seconded. Motion passed 5-0.

ZBA2019-114-R1

453 Somerville Ave

Chair Fontano noted that per previous agreements, the applicant team has 15 minutes to present their case.

Richard Neilson (architect) said that he was recently brought on to the team. He said the applicant, Jack Saade, would like to get his project approval from the Board rather than from somewhere else and is willing to work with the Board. Mr. Saade had been working on this project for over a year and has tried to get the Board all necessary information and improved architectural drawings. Mr. Neilson said that if we pretend that the entire site is zoned BA, then the proposal meets most requirements. Site is currently 100% impervious, and applicant is proposing more open space than required by zoning. He said it is strange that the site is within two zoning districts. The Planning Board has made a conditional recommendation of approval for the project. The Board shouldn't require an owner to provide a setback from his own property. He said that if the Board is going to consider the zoning on other half of lot as applying, then they also have to consider the non-conforming commercial use on that half of the lot. This project complies with the spirit and intention of the zoning code and the wording of the variance criteria is written for a project exactly like this.

Chair Fontano said they heard Mr. Saade's case in December, and had asked him to work with neighbors. The applicant has not changed his application at all since then. At the last meeting, she begged the applicant to request a withdrawal or ask for a continuance at last meeting; the applicant requested a denial. Since then, Ms. Woods has been working with the applicant. Chair Fontano asked Ms. Woods if the changes requested by the neighborhood or Board have been made. Ms. Woods said they have not; the packets given to the Board include the material submitted in December as well as

some additional elevations submitted since then. Chair Fontano said she wanted the applicant to show a good faith attempt to address neighborhood's and board's concerns.

Ms. Woods said she has meet with the applicant 2 or 3 times since December to address the list of requests and concerns from the Board and neighborhood, including: a workable parking layout; an improved drawing set; context of neighborhood shown in drawings; a smaller proposal; concerns about height/side of building and open space. She said the applicant has not changed anything in response to the notes given to him. She also noted that based on official zoning maps, the lot has had 2 zonings since 1960s.

Chair Fontano asked what the old zoning was versus the new. Ms. Woods said it used to be split between RB and BA, and now is just Fabrication. Fabrication doesn't allow housing, so if the applicant wants housing he should pursue a zoning change.

The Board and applicant discussed what plans were submitted to the Board and what those plans were trying to depict. The Board expressed frustration because they only agreed to hear the case if they got real drawings, but the drawings are still grossly deficient. This case has not been remanded, and it was heard as a courtesy, so this is disrespectful. Mr. Neilson said he was hired recently to improve the drawings for a future meeting, but the applicant didn't want to skip his spot on the agenda tonight.

Ms. Woods asked the Board to give the applicant feedback on their willingness to grant the variance for the rear yard. Chair Fontano asked what the applicant must do to get the variance to go away. Ms. Woods said the building needs to get further away from the rear lot line.

The Board and applicant discussed the chronology of drawings and what the drawings are depicting since many of them conflicted with each other.

Ms. Woods provided context on the variance request by reading the staff report from November. Based on zoning analysis, staff understood the desire for variance, but due to neighborhood concerns about massing they have suggested that the applicant get rid of the variance.

Chair Fontano said she is willing to continue the case if they get rid of variance and have better plans, but she won't hear case next time if changes have not been made.

Danielle Evans made a motion to continue the case to April 8, 2020. Elaine Severino seconded. Motion passed 5-0.

OTHER BUSINESS

Ms. Evans made a motion to approve the minutes from February 5th and 26th. Ms. Severino seconded. Motion passed 5-0.

Due to the hour, Mr. Bartman asked if the Board would like to discuss rules and procedure on another night. The Board agreed.

Ms. Evans made a motion to close the meeting. Ms. Severino seconded. Motion passed 5-0.

Meeting was adjourned at 9:45pm.

Plans and reports are available to view in person in the Planning Office, 3rd Floor of City Hall or at the City of Somerville website via the following link: <https://www.somervillema.gov/departments/ospcd/planning-and-zoning/reports-and-decisions>

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