



City of Somerville

ZONING BOARD OF APPEALS

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

MINUTES

Wednesday, April 15, 2020 at 6:00 pm

GoToWebinar

Pursuant to Governor Baker's March 12, 2020 Order suspending certain provisions of the Open Meeting Law, G.L. C. 30A, s. 18, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, as well as Mayor Curtatone's Declaration of Emergency, dated March 15, 2020, this meeting of the Zoning Board of Appeals was conducted via remote participation. We will have an audio recording available upon request as soon as possible after the meeting.

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

Board Members absent: none

City staff present: George Proakis, Melissa Woods, Charlotte Leis, Sarah White, David Shapiro

Meeting was opened at 6:00pm.

GENERAL BUSINESS

Chair Fontano reminded the audience to "raise their hand" to speak.

Ms. Evans made a motion to approve the minutes from March 25th and April 8th. Ms. Severino seconded. The Board took a roll-call vote: Danielle Evans - aye; Anne Brockelman - aye; Drew Kane - aye; Susan Fontano - aye; Josh Safdie - aye; Elaine Severino - aye. Motion passed 6-0.

PUBLIC HEARINGS

ZBA 2018-10-R1-6/19

10 Oak Street

Ms. Woods said the case continued to the April 22nd meeting at the March 25th meeting and was accidentally included on this agenda. It is still the applicant's intent to appear next week.

ZBA2019-114-R1

453 Somerville Ave

Ms. Leis noted that Jack Saade and Rick Nilsson were both on the line and unmuted. She also noted that Mr. Nilsson was self-muted and needed to unmute himself in order to be heard.

Chair Fontano noted the Board's condolences on the loss of Mr. Nilsson's mother.

Mr. Nilsson explained that Jack Saade hired him to make his presentation better and to present to the Board. He has worked with Ms. Woods. He has redesigned the building to be smaller and respect the required setbacks. The main issue from the last plan set was the rear yard setback which would have required a variance; the redesigned plans comply with the rear yard setback. He said they are before the Board for 5 units and parking relief. They have

provided two parking options in order to be responsive to concerns. One option provides for three parking spaces under the building and two uncovered spaces. The other option provides 5 uncovered parking spaces.

Mr. Nilsson said that Mr. Saade is interested in being aligned with the more contemporary style buildings going up in Union Square. Mr. Nilsson went over the proposed materials and design of the building. He noted that all setback requirements are complied with, and that the 4th floor is set back from the façade of the lower floors to make the design more appealing; railing of front deck on 4th floor is intended to look like a cornice. Mr. Nilsson said that size, height, and setback requirements are being respected in this version of the project.

Ms. Leis noted that the plan set is on the screen to aid his presentation and that Mr. Nilsson can direct her to go to different pages. Mr. Nilsson walked the Board through the plan set, including the street elevations and the 3-D models. Explained that materials and setbacks were intended to reduce the visual massing of the building; they tried to keep the building massing in line with abutting structures. He said that because the project has become so much smaller, they cannot afford to do open space at the street.

Mr. Nilsson said Mr. Saade is open to suggestions on landscaping and noted that they could do 100% permeable surfaces. The 5 parking spaces needed to go behind the building, but the back portion of the residential lot is fully available for landscaping. Said that having all 5 parking spaces in the open rather than having 3 covered allows for a larger retail space on the first floor; believes having a larger retail space is good.

Mr. Nilsson went over the floor plans for the upper three floors. Explained that the projections on the sides of the 2nd and 3rd floors make the bedrooms a little bigger and the project viable; he believes the projections comply with all dimensional and setback requirements for the BA zone. Said the 4th floor is set back at least 30' from the rear and includes a rear deck to reduce the visual massing of the building. Mr. Nilsson anticipates an elevator override on the roof.

Mr. Nilsson then went over the building elevations. He proposed an open base with light-colored materials, then two stories of horizontal terracotta color/texture of cementitious siding board; building is intended to pick up the commercial style of the brick buildings. He mentioned the proposed bike spaces.

Chair Fontano asked staff if there are people signed on tonight as participants. Ms. Leis said that 16 people were in the audience and that two people currently had their virtual hands raised.

Chair Fontano opened public comment and reminded people they have two minutes to speak.

Tori Antonino (65 Boston Street) is an ecological landscaper and belongs to Green and Open Somerville. She thanked the developer for making the floor plan smaller and providing more open space. Asked that native plants are used rather than turf cover and offered to provide the applicant with a list of her preferred plants; cares about pollinator health. Asked what zoning the project was developed under, and whether it needs to comply with the Green Score; asked that the applicant do the Green Score calculation either way. Doesn't like that the 4-story, 5-unit building doesn't have any affordable housing.

Chair Fontano asked staff to address the zoning question and green score. Ms. Woods stated that the project is under the old zoning code because the case was appealed so there is no green score requirement, only a landscaping requirement. Landscaping will be addressed through a condition.

Howard Frazen (22 Knapp Street) is one of the rear neighbors and was part of a group that sent a letter to the ZBA. Concerned about the number of windows, doors, and transoms at the rear of the property in terms of privacy; noted that abutting buildings have fewer windows. The current green space on the lot is something that the abutters use as their back yards; has health and welfare concerns with the transformation of the back yard. Doesn't understand the 5-unit proposal; 3 units would be different.

Tristan Doherty (5 Granite Street, Apt. 2R) wanted to know if the ZBA received abutters' most recent letter. Opposed to the option that puts parking all the way back to the lot line. Wants the building to be only 3 stories.

Paul Bane (26 Knapp St) also signed the abutters' letter and wanted to underscore privacy and size concerns. Has privacy concerns regarding the rear deck. Also concerned about what this will do to the feel of Somerville Avenue given that the building will be right up to the sidewalk; building is taller than he would like and looks too big for the site. Would like architect and developer to consider smaller size more in line with its neighbors.

Chair Fontano closed the public comment portion.

Ms. Severino asked about how landscaping will be handled. Mr. Nilsson said they have done landscaping calculation (believes it is at 30%) but hasn't done detailed landscaping plan; developer is open to suggestions regarding natural plantings and landscaping generally. Chair Fontano said usually either the applicant comes back with a full plan or the Board has staff review and approve landscaping plans.

Ms. Severino asked about the parking options. The Board and staff discussed the differences between the two parking options and the impact that each option would have on the square footage of the commercial space.

The Board asked about why the upper floors overhanging the ground floor and commented on the visual impact of that overhang. Mr. Nilsson said that the overhanging floors comply with setback requirements and that vertical open spaces are common in this zone; said they were asked to keep the side of the building open. The Board said that the overhang emphasized the horizontality/wideness and bulkiness of the building, and while it might comply with setback requirements it is not maintaining the street wall created by the triple-deckers on either side; would like to see 3rd floor cornice aligned with those of abutting triple-deckers. The Board also felt that the 1st and 4th floor materials are too dark. Mr. Nilsson tried to explain what his goal was for the design; the Board understood his intention but felt he was not achieving it.

Chair Fontano said that this case was only supposed to take 15-20 minutes, and that she wanted to know whether the Board felt that it was worth going forward with the proposal or not. The Board decided to provide the applicant with their comments and then have the applicant come back with a proposal that addresses their comments. The Board wanted to see: a rotated 3-D model showing the front; a developed landscaping plan; a front elevation showing two abutters to understand height differences between abutters and proposed. The Board was happy to finally have a plan set that they could respond to from an architectural standpoint. Some members of the Board expressed a preference for the scheme with 3 parking spaces under the building.

The Board asked about the parking requirement and options. Ms. Woods said the project requires 11 spaces and that if they ask for more than their current request of 6 spaces of relief, they will need a variance which was not in their original advertisement. Ms. Woods said she could investigate whether a smaller retail space would reduce their parking requirement.

Chair Fontano said a lot of buildings are proposing parking in backyards, and that she wants to be conscious of that, especially in older neighborhoods, and try to provide a buffer. The Board would like the applicant to come back with an altered plan that incorporates the comments heard from the board tonight.

Mr. Saade stated that he was happy to incorporate comments. He asked that the Board conditionally approve the proposal and that he would incorporate the comments afterwards. Chair Fontano said that the applicant could choose to either incorporate the Board's comments or choose to not move forward. Ms. Woods said she was happy to work with the applicant.

Mr. Nilsson stated that the changes that he needs to make are relatively minor and that Mr. Saade has a schedule issue; he asked for documented off-line feedback. Chair Fontano said that due to the history of the case and the credibility issues, they needed to come back again after having made the changes.

Ms. Evans made a motion to approve continue the case to April 22nd. Ms. Severino seconded. The Board took a roll-call vote: Danielle Evans - aye; Anne Brockelman - aye; Drew Kane - aye; Susan Fontano - aye; Josh Safdie - aye; Elaine Severino - aye. Motion passed 6-0.

AA2020-0001

515 Somerville Ave

Ms. Woods asked Chair Fontano for a brief pause in the meeting while staff contacted Ms. Murrow who appeared to no longer be online. Chair Fontano agreed to allow that. After a few minutes, Ms. Leis said that she had spoken to Ms. Murrow over the phone; Ms. Murrow accused the ZBA of violating state law and violating ADA requirements by not accommodating her. Ms. Leis said she believed that Ms. Murrow would like to continue.

Mr. Proakis (Executive Director of OSPCD) offered to go over the history of the case before the Board voted on anything. The Board accepted his offer.

Mr. Proakis explained that this case is Ms. Murrow appealing a decision by the Building Commissioner. The case was advertised and first scheduled to be heard on February 26th. Just before that ZBA meeting began, Ms. Murrow claimed she was ill and asked for a continuance to March 11th.

At the March 11th meeting, Ms. Murrow talked with Mr. Proakis in the hallway outside the meeting room and expressed concerns about being in a room full of people. She stated that if she could be allowed to call into the meeting, then she would participate. Mr. Proakis also offered that she could participate towards the end of the meeting when the room would be less full. Ms. Murrow declined saying she had paper documents at home that she needed. Mr. Proakis asked the Board for a continuance on her behalf to March 25th.

As March 25th approached, Ms. Murrow told Mr. Proakis that she had concerns participating by phone. She requested a continuance to April 22nd. The Board denied the request and continued the case to the next Board meeting on April 15th.

Between the March 25th and April 15th meetings, Mr. Proakis offered her numerous ways that she could submit hard copies of documents to the City and how they could be returned to her. A few days prior to the April 15th meeting, Ms. Murrow requested a continuance until she can participate in an in-person meeting.

Mr. Proakis believes that we have provided her with every possible means of having the opportunity to participate. He has since learned that Ms. Murrow has now stated to a different staff member that her "hard copy" documents were actually on her computer; she emailed him a 15-page PDF document today, so he does not know why she did not email those documents as well.

Chair Fontano asked if Mr. Shapiro (Assistant City Solicitor) wanted to tell the Board anything about the issue at hand.

Mr. Shapiro stated that he had no concerns regarding how the law stood.

Mr. Proakis offered to explain the crux of the appeal at hand. Chair Fontano accepted his offer.

Chair Fontano asked Ms. Leis if Ms. Murrow was still on the line. Ms. Leis said Ms. Murrow told her that the meeting had sounded like a foghorn to her when she had called in earlier, and so Ms. Leis believes that Ms. Murrow has decided to not call back in despite being able to access the meeting.

Mr. Proakis explained the background to the approvals at the site, 515 Somerville Avenue, starting in 2018. A hotel project requested and received Special Permits and Variances from the ZBA. Subsequent to those approvals, the hotel applicant requested an extension for the variances and some modifications to the Special Permits; Ms. Murrow appealed that decision to the courts.

When the hotel got its' building permit under the original (un-appealed) approvals in October 2019, Ms. Murrow filed a letter with ISD (attached to the staff report). Mr. Proakis explained that in Somerville, appeals need to be submitted by filling out a ZBA application. Ms. Murrow filed her appeal with ISD, not with the ZBA as she was supposed to. Mr. Proakis explained how enforcement request works and about 40A §7 requests for a new building permit. He noted the SJC case "Connors v. Annino."

Mr. Proakis briefly explained the back-and-forth between Ms. Murrow and ISD regarding how she filed her appeal/complaints.

Mr. Proakis stated that the only issue before the ZBA in this case is whether they agree that the 40A §7 letter that Ms. Murrow filed with the Building Commissioner is the wrong type of "appeal" to file.

Chair Fontano stated that she thought the issue was very clear and noted the staff report and attachments. The Board did not have any questions for Mr. Proakis or Mr. Shapiro.

Mr. Proakis noted that Chair Fontano did need to open the case for public comment, which she then did. Ms. Leis noted that she did not see any "raised hands," written comments, or any other indication that a member of the public wanted to comment.

Chair Fontano asked for the record whether Ms. Murrow was currently on the call. Ms. Leis stated that Ms. Murrow was not on the call.

Chair Fontano stated that she was ready to move forward and vote. She said that the Board has really tried to be very sympathetic and patient with Ms. Murrow.

Mr. Safdie appreciated Mr. Proakis walking them through the case. Knowing the applicant's history with the Board and given the nature of the extreme circumstances of COVID-19, he would be more comfortable waiting to have Ms. Murrow come and present in person if that is her preference.

Ms. Evans asked if construction had started at the site. Mr. Proakis explained that construction was underway but was forced to pause due to the City's current policy on construction during COVID-19. He said there is a distinct possibility that construction will be able to restart before in-person meetings can. He said the state has given municipalities flexibility with regard to project timelines due to COVID-19, but that the City hopes to have as many projects shovel-ready as possible since that was what helped the City come out of the last recession.

Mr. Proakis said he has done everything possible to get Ms. Murrow to participate by phone today and has made many accommodations for her. The Board said they had heard Ms. Leis talking on the phone with Ms. Murrow and so it was clear that Ms. Murrow is able to successfully use a phone. The Board wanted to extend her one more chance since virtual meetings were new to everyone and asked whether Planning staff could help Ms. Murrow figure out the technology. Ms. Woods offered that she and Ms. Leis could set up a time to test this platform with Ms. Murrow and give her one-on-one technical support, possibly before next Wednesday if Ms. Murrow was willing. Ms. Woods said she would be willing to report back on their efforts at the next Board meeting in a week.

Mr. Proakis felt that he has tried everything to get Ms. Murrow to participate, but last time heard nothing back for two weeks. He trusts that Ms. Woods and Ms. Leis will work with Ms. Murrow to help her figure out this platform if she is willing.

Chair Fontano understands that this is new technology for a lot of people, including herself. She stated that this whole experience teaches tolerance and patience, but that Ms. Murrow only wants things one way. She said she is willing to continue one more week and that's it. She noted that Ms. Severino had to participate last time with just audio and no video.

Mr. Proakis said that he will commit the staff to working with Ms. Murrow over the course of the next week.

Chair Fontano asked Mr. Shapiro if their move to continue one more week was fine with Legal. Mr. Shapiro said that it was.

Ms. Evans made a motion to approve continue the case to April 22nd. Ms. Severino seconded. The Board took a roll-call vote: Danielle Evans - aye; Anne Brockelman - aye; Drew Kane - aye; Susan Fontano - aye; Josh Safdie - aye; Elaine Severino - aye. Motion passed 6-0.

OTHER BUSINESS

Ms. Evans read the following information into the record: "Pursuant to an Order and Judgment of the Massachusetts Land Court dated March 19, 2020 in the case of Claudia Murrow v. YEM Somerville Ave, LLC, et al., Land Court Misc. Case No. 19 MISC 000434 (RBF), Applicant YEM Somerville Ave, LLC seeks an annulment of the ZBA's August 21, 2019 decision, related to the project at 515 Somerville Avenue and identified as Board decision number 2018-122-R1-7/19, on the basis that the Applicant has abandoned the rights granted under the decision. Applicant also seeks to withdraw the application which sought the relief granted in the ZBA's said August 21, 2019 decision."

Mr. Proakis explained that to end the land court appeal against the time extension and non-de minimis changes, the Board needed to annul the August 24, 2019 decision and accept the withdrawal of that application. If the Board does this, this will allow the land court to close out that additional case and return to the original case in court.

Ms. Leis noted that one of the case attorneys, Adam Dash, Esq., was on the line and willing to answer questions.

Chair Fontano asked if the Board had questions. They did not.

Mr. Dash explained that there would need to be a motion to annul the revision decision and then another motion to accept the withdrawal of the application (case number ZBA 2018-122-R1-7/19).

Ms. Evans made a motion to annul the decision for ZBA 2018-122-R1-7/19. Ms. Severino seconded. The Board took a roll-call vote: Danielle Evans - aye; Anne Brockelman - aye; Drew Kane - aye; Susan Fontano - aye; Josh Safdie - aye; Elaine Severino - aye. Motion passed 6-0.

Ms. Evans made a motion to annul the decision for ZBA 2018-122-R1-7/19. Ms. Severino seconded. The Board took a roll-call vote: Danielle Evans - aye; Anne Brockelman - aye; Drew Kane - aye; Susan Fontano - aye; Josh Safdie - aye; Elaine Severino - aye. Motion passed 6-0.

Ms. Evans made a motion to adjourn. Ms. Severino seconded. The Board took a roll-call vote: Danielle Evans - aye; Anne Brockelman - aye; Drew Kane - aye; Susan Fontano - aye; Josh Safdie - aye; Elaine Severino - aye. Motion passed 6-0.

Meeting ended at 8:17pm.

Plans and reports are available to view at the City of Somerville website via the following link:
<https://www.somervillema.gov/departments/ospcd/planning-and-zoning/reports-and-decisions>