



City of Somerville

ZONING BOARD OF APPEALS

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

MINUTES

Wednesday, April 22, 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 (Alternate)

Board Members absent: none

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

Meeting was opened at 6:05pm.

PUBLIC HEARINGS

ZBA2019-114-R1 (continued from April 15, 2020)
453 Somerville Ave

Ms. Evans made a motion to continue the case to May 6, 2020. 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.

DRA2020-0018 (continued from March 25, 2020)
3 Hawkins Street

Ms. Evans made a motion to continue the case to May 6, 2020. 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.

ZBA 2018-10-R1-6/19 (continued from March 25, 2020)
10 Oak Street

Ms. Evans made a motion to continue the case to May 6, 2020. 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.

ZBA2018-19-R1-4-19-E1-3-20
50-54 Murdock Street

The case was opened and read into the record.

Adam Dash, attorney for the applicant, presented the case. He explained that a condition of their approval requires that the MBTA sewer is relocated on the property, but that the MBTA has not finished doing that yet. Without an extension, they will not meet the deadline for getting a building permit.

Chair Fontano opened public comment and asked staff if anyone wished to speak. Ms. Leis said that there was one person indicating that they wished to speak.

Christopher Clark (58 Murdock) said that construction has caused conflicts around parking. He would like the cones blocking parking to be removed. Mr. Dash said that the current construction and cones pertain to MBTA work, not the permit that's in front of the ZBA.

Chair Fontano closed public comment. She asked whether the Board had any questions; they did not.

Ms. Evans made a motion to approve the request for a one-year time extension for the Special Permit. 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.

ZBA2018-78-E2-3/20

1154 Broadway

The case was opened and read into the record.

Adam Dash, attorney for the applicant, presented the case. He said that the Board previously extended the variances for this project, but that the Special Permit was never extended. He explained that they've been delayed by utility connections with Eversource and construction moratorium issues.

Chair Fontano opened public comment and asked staff if anyone wished to speak. Ms. Leis said that no one was indicating that they wished to speak. Chair Fontano closed public comment.

Chair Fontano asked whether the Board had any questions. The Board said that neighbors had expressed frustration that the property is a hole in the ground and asked when Eversource will solve things with the applicant. Mr. Dash said they have resolved the Eversource issue, but they can't move forward because of construction moratorium.

The Board asked staff for clarification on why the variances cannot be extended. Ms. Leis said that state law does not allow for more than a six month extension of variances, which this project has already received.

The Board asked whether the construction moratorium applies to this project. Mr. Dash said it does, but when they applied for the extensions the governor had not tolled deadlines yet. He said the safest thing for the project is to apply for the extension.

Ms. Evans made a motion to approve the request for a one-year time extension for the Special Permit. 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.

ZBA2019-37-E1

391-395 Somerville Ave

The case was opened and read into the record.

Adam Dash, attorney for the applicant, presented the case. He said that the project had run into issues with the contractor, the AHIP, and other hurdles including construction moratorium.

Chair Fontano opened public comment and asked staff if anyone wished to speak. Ms. Leis said that no one was indicating that they wished to speak. Chair Fontano closed public comment.

Ms. Evans made a motion to approve the request for a one-year time extension to June 19, 2021 for the Special Permit. 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.

The Board took a 5-minute recess from 6:44pm to 6:49pm.

AA2020-0001 (continued from April 15, 2020)
515 Somerville Ave

The Board acknowledged that they had received a continuance request from the applicant. They asked if staff had offered to help Ms. Murrow. Ms. Woods said that staff had offered to help Ms. Murrow multiple times but that she had not accepted our offers.

Chair Fontano opened public comment and asked staff if anyone wished to speak. Ms. Leis said that no one was indicating that they wished to speak. Chair Fontano closed public comment.

Mr. Proakis said that he had received the continuance request at 4:28pm that afternoon. He said that over the last week staff had offered Ms. Murrow help with the technology multiple times.

Chair Fontano said that the Board was aware of staff's offers to help Ms. Murrow. She said the Board has received no new information on this case over the last 3 meetings that it's been scheduled for. She asked the Board what they would like to do.

The Board asked what their options were since Ms. Murrow was requesting to have the meeting in person, but it's not clear when that can happen.

Mr. Proakis said the Board could continue it to another meeting in the near future, continue it until meetings are back in person, or make a decision on the case tonight. He said Ms. Murrow is capable of appealing the Board's decision.

Chair Fontano asked if construction was currently happening on the site. Mr. Proakis said that it was not due to the City's construction moratorium.

Chair Fontano asked whether the developer can resume construction when the moratorium is lifted. Mr. Proakis said they could proceed at risk, but there is a limit to how far they can go at risk. They've been doing construction prep work at risk, but that's different than building the whole project at risk. He said that if the Board makes a decision soon it positions the case to move onto next step (either appealed or not). If the case is continued indefinitely, it delays when that next step can be taken.

Chair Fontano said she likes to give applicants the opportunity to continue, but that the Board must think about future. It's not fair to the developer that they can't go forward because this appeal is pending. Once the construction moratorium is lifted, they'll want to start work again and she doesn't want them to proceed at risk if they don't need to. She doesn't want to deny appeal under the current conditions, but the Board needs to balance the applicant's concerns with the property owner's concerns.

Mr. Kane asked whether the developer is prevented from doing construction because this case is pending. Mr. Proakis said the appeal doesn't stop construction but does cause problems during construction between it makes the project at-risk which causes challenges with lenders.

Chair Fontano asked if the Board keeps continuing the case, would the project be halted due to lack of financing? Mr. Proakis said it likely would, because the case brings a high level of uncertainty to the project.

Chair Fontano asked whether Ms. Murrow had filed the appeal late or under the wrong section. Mr. Proakis said Ms. Murrow filed it under Section 7; he believes her intent was to file under Section 8, but she didn't do that. He said that the case pending before the Board is an appeal of the ISD decision, which they can uphold or send back.

Chair Fontano asked what the Board would like to do. She is sympathetic to Ms. Murrow's situation, but it's redundant to have meetings that Ms. Murrow doesn't show up to.

Mr. Kane asked, hypothetically, what would happen if they continue the case until the first meeting after the construction moratorium is lifted and make a decision at that meeting. It would give Ms. Murrow more time to learn the technology.

Mr. Proakis said he doesn't think the request from Ms. Murrow will change and that when the moratorium is lifted meetings will still be remote. He said that staff has tried to address her concerns and give her reasonable accommodation. The only accommodation she seems willing to accept is an in-person meeting, but staff cannot reasonably make that happen; if the case is continued until in-person meetings can happen, it will undoubtedly impact the project.

Mr. Proakis said he has numerous correspondence between City staff and Ms. Murrow trying to accommodate her and help her join meeting. He doesn't foresee staff suddenly being able to make progress with Ms. Murrow and believes that if the case is continued the Board will end up in same situation as today regardless of what staff does.

Ms. Severino said it has been explained so many times that staff members have gone out of their ways to accommodate Ms. Murrow; she thinks Ms. Murrow doesn't want to participate. She feels that the Board should uphold ISD's decision and that Ms. Murrow can appeal it. It will be a lengthy process if the Board keeps continuing the case. Ms. Severino doesn't understand why Ms. Murrow hasn't accepted staff's offers for help.

Mr. Safdie said these are extremely extenuating circumstances, and if he looks only at the reasons Ms. Murrow has requested a continuance tonight, he thinks they are legitimate reasons.

Ms. Evans said that the Board has no idea when meetings can be held in person again, and that for the foreseeable future they need to accept that meetings will be virtual. She is unwilling to continue the case until Ms. Murrow can attend in person without any risk of contracting COVID-19. She would be willing to continue the case until the construction moratorium ends. She asked whether the City can give Ms. Murrow technology to use for the meeting.

Ms. Woods said that staff is happy to offer help, but that the City cannot give or lend Ms. Murrow technology; the IT department is at capacity trying to ensure that City staff can work remotely. Ms. Murrow only needs a landline or cellphone to participate; staff have spoken to Ms. Murrow on the phone multiple times and so believe that Ms. Murrow is able but not willing to participate.

Ms. Leis said that staff had sent Ms. Murrow very clear directions about the numbers that she needed to dial to join the meeting. She noted that Ms. Murrow is currently emailing staff claiming that she has tried to join meeting but is unable to.

Mr. Proakis said staff gave Ms. Murrow specific instructions on how to participate. He expressed his frustration that this is the 5th meeting this case has been heard at. He said that he spoke with Ms. Murrow in person during the 2nd meeting when she declined to go into the meeting room to participate in person and instead requested to could participate by phone. He said the case is straightforward, and that he wants the Board to hear whatever she wants to say. However, this case impacts the property rights of both the person filing the appeal and the person it's filed against; staff tries to balance those issues and keep things fair for everyone, but that is very challenging in this situation. He said that even with construction shut down, continuous delays cause real impacts on the developer. He understands that a neighbor has the right to file appeal, but Ms. Murrow has been offered multiple opportunities and instructions to participate and at this point he doesn't know what else to do. He noted that Ms. Murrow is emailing him live responses to the meeting.

Ms. Woods suggested that Ms. Murrow hang up and call back using the instructions sent to her at 5pm. Chair Fontano said she had called into the meeting twice and it had worked perfectly both times.

Chair Fontano said she had begun the meeting leaning towards continuing the case but has changed her mind as the meeting has progressed. She thinks the Board needs to move forward and that it's not fair to the developer to have this case constantly continued. If the Board votes and Ms. Murrow isn't happy, she is welcome to appeal. Chair Fontano said she didn't want this to end up going to court because the Board was insensitive, but she feels that the record clearly shows that the Board and staff have tried to accommodate Ms. Murrow.

Mr. Proakis said that Ms. Murrow has rejected or not responded to multiple offers from staff to sit down with her and help her with the technology, and that now at approx. 7:20pm in the middle of the meeting she is emailing him she's asking why she hasn't received help from staff.

Chair Fontano asked the Board what they would like to do. Ms. Severino said move forward. Ms. Evans asked if staff could try one more time to get her on the line.

The Board waited while staff worked to get in contact with Ms. Murrow.

Ms. Woods said she called Ms. Murrow but she did not answer.

The Board discussed what motions to make.

Mr. Proakis told the Board he had just received an email from Ms. Murrow which said that she didn't answer Ms. Wood's call because she was already on the phone with us.

Continuance Vote: Ms. Evans makes motion to continue the case to May 6, 2020. Ms. Severino seconded. Ms. Leis asked if Ms. Evans would like to conduct the roll call vote since Chair Fontano seemed to have temporarily disconnected. Elaine Severino – nay. Josh Safdie – yay. Chair Fontano reconnected and the Board recapped the vote so far before continuing. Drew Kane is an alternate but would vote nay. Danielle Evans – nay. Anne Brockelman – nay. Susan Fontano – nay. Motion failed 1-4.

Ms. Evans made a motion to uphold the decision of the ISD Director. Ms. Severino seconded. The Board conducted a roll call vote: Danielle Evans - aye; Anne Brockelman - aye; Susan Fontano - aye; Josh Safdie - abstain; Elaine Severino - aye. Drew Kane was an alternate and did not vote. Motion passed 4-0-1.

OTHER BUSINESS

Ms. Evans made a motion to approve the minutes from April 15, 2020. 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 7:37pm.

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>