



City of Somerville

ZONING BOARD OF APPEALS

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

DECISION

PROPERTY ADDRESS: 515 Somerville Ave
CASE NUMBER: P&Z 21-049
APPLICANT: Claudia Murrow
APPLICANT ADDRESS: 23 Park St #2, Somerville, MA 02143
OWNER: DEVB LLC
OWNER ADDRESS: 689 Somerville Ave, Somerville, MA 02143
DECISION: Denied (Administrative Appeal)
DECISION DATE: June 23, 2021

CITY CLERK'S OFFICE
SOMERVILLE, MA

2021 JUL -6 A 10:11

This decision summarizes the findings made by the Zoning Board of Appeals (the "Board") regarding the administrative appeal submitted for 515 Somerville Ave.

LEGAL NOTICE

Applicant Claudia Murrow seeks an administrative appeal of the building inspector's decision of October 23, 2019, to issue two building permits for 515 Somerville Ave (B19-001687 and B19-001788). Remand pursuant to NO. 20 MISC 000283 (RBF).

RECORD OF PROCEEDINGS

On June 23, 2021, the Zoning Board of Appeals held a public hearing advertised in accordance with M.G.L. 40A and the Somerville Zoning Ordinance. Present and sitting at the public hearing were Board Members Susan Fontano, Elaine Severino, Josh Safdie, Anne Brockelman, and Alternate Member Katherine Garavaglia.

Philip Cahalin, attorney for Claudia Murrow, provided a summary of his client's argument and reiterated many of the points raised in his application submitted to the Board in April 2021, and the supplemental memo submitted to the Board on June 23, 2021.

George Proakis, Executive Director of OSPCD, then provided a summary of Staff's position. Mr. Proakis noted that the Somerville Zoning Ordinance and Condition 1 of the 2018 Decision allows changes deemed to be *de minimis* to be approved without a Board hearing, and that the 2018 Decision had not been appealed.

David Zucker, attorney for DEVB LLC, provided a summary of his client's position. Changes to the approved plans do not require *de novo* review simply because variances were issued for the property. Variances in the 2018 Decision were issued for height, number of stories, and number of parking spaces; the variances required for the project has not changed since the original approval and were not affected by the *de minimis* approvals.

Mr. Cahalin and Mr. Zucker also provided arguments specifically regarding how the facts of *Lussier v. Zoning Board of Appeals of Peabody* and *DiGiovanni v. Board of Appeals of Rockport* were or were not similar to the facts of this case. Mr. Cahalin argued that, like in those cases, even small changes in the footprint or floor plan for which a variance was issued require *de novo* review. Mr. Zucker and Mr. Proakis noted that, unlike in those cases, the changes to this project were unrelated to the items for which variances had been granted, and the decision approving the variances explicitly provided a process for reviewing and approving *de minimis* changes which had been followed.

The Board then asked several questions to confirm their understanding of the arguments made by each party, and to confirm the questions that each party was requesting the Board to consider. All parties agreed that the first question before the Board was whether any change to the approved plans and/or any change to the approved footprint of the building automatically requires *de novo* review by the Board. If *de novo* review is not automatically required, the second question is then whether the changes in this case required a public hearing based on the requirements of the Somerville Zoning Ordinance and the specific changes proposed.

FINDINGS

The Board finds that the Staff Memo posted on June 18, 2021, which recommended denial of the administrative appeal, was thorough and that the presentations from all parties at the hearing sufficiently addressed the issues.

The Board finds that not every change to a project requires *de novo* review by the Board, and that it is practical and fitting that the Director of Planning & Zoning review changes to determine whether they are *de minimis* or require *de novo* review by the Board, as permitted by the Somerville Zoning Ordinance and the 2018 decision.

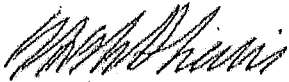
The Board finds that the Director of Planning & Zoning properly determined that the changes to the plans approved by the 2018 Decision were *de minimis* and did not require a public hearing with the Board.

DECISION

Following public testimony, review of the submitted materials, and discussion of the statutorily required considerations, Clerk Safdie moved to deny the administrative appeal of ISD's decision. Ms. Severino seconded. The Board voted **5-0** to deny the administrative appeal.

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chair*
Josh Safdie, *Clerk*
Elaine Severino
Anne Brockelman
Katherine Garavaglia, *Alternate*



Sarah Lewis,
Director of Planning & Zoning

CLERK'S CERTIFICATE

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 15.5.3.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. 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.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on _____ in the Office of the City Clerk, and twenty days have elapsed, and

FOR VARIANCE(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ any appeals that were filed have been finally dismissed or denied.

FOR SPECIAL PERMIT(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

FOR SITE PLAN APPROVAL(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

FOR ADMINISTRATIVE APPEAL(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

Signed _____ City Clerk Date _____