



City of Somerville

ZONING BOARD OF APPEALS

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

TO: Zoning Board of Appeals
FROM: Planning, Preservation & Zoning (PPZ) Staff
SUBJECT: 620 Broadway, P&Z 21-140
POSTED: December 13, 2021

RECOMMENDATION: ~~None~~ Conditional Approval

* This memo has been updated to include a previously missing recommendation (see above).

Staff memos are used to communicate background information, analysis, responses to public comments, review of statutory requirements and other information from the PPZ staff to the Review Board members.

This memo summarizes the Hardship Variance request(s) submitted for 620 Broadway, identifies any additional discretionary or administrative development review that is required by the Somerville Zoning Ordinance, and provides related analysis or feedback as necessary. The application was deemed complete on November 19, 2021, and is scheduled for a public hearing on December 15, 2021. Any Staff recommended findings, conditions, and decisions in this memo are based on the information available to date prior to any public comment at the scheduled public hearing.

LEGAL NOTICE

620 Broadway, LLC seeks a variance from the minimum number of stories in the Commercial Core 5 district.

SUMMARY OF PROPOSAL

620 Broadway, LLC is proposing to construct a 1-story Commercial Building which requires Hardship Variance since the Commercial Core 5 (CC-5) district requires Commercial Buildings to be a minimum of three (3) stories.

ADDITIONAL REVIEW NECESSARY

620 Broadway is located in a 0.25mi Transit Area in the Commercial Core 5 (CC-5) zoning district in the Magoun Square neighborhood represented by Ward 5 Councilor Mark Niedergang. The Zoning Board of Appeals is the decision-making authority for all Hardship Variance in the CC5 district.

Commercial Buildings are permitted by Site Plan Approval in the CC-5 district. Site Plan Approval is the administrative review and approval of conforming development to address any potential impacts as necessary. The Planning Board is the decision-making

authority for all (non-variance) discretionary or administrative permits required for the CC-5 zoning district. The requested Hardship Variance must be decided on by the Zoning Board of Appeals prior to the Site Plan Approval process required for the Commercial Building.

NEIGHBORHOOD MEETING

The Director of Planning, Preservation & Zoning required that the Applicant hold one (1) Neighborhood Meeting prior to the submission of the application for the requested Hardship Variances. The required neighborhood meeting was held virtually by Ward 5 Councilor Mark Niedergang and the development team on October 27, 2021.

ANALYSIS

The Applicant has provided a full plan set as part of the application. However, the only item within the Board's purview is the request for a Hardship Variance to construct a one (1) story Commercial Building in the CC-5 district, when the minimum number of stories required for buildings in the district is three (3) stories.

The Applicant is required to provide an argument addressing the review criteria found in the Ordinance for the requested Hardship Variance. The Applicant's argument is attached to the end of this memo. The Applicant has also included a geotechnical report as support for the arguments related to soil conditions, and letters from two potential lenders discussing the challenge of getting financing for a three-story building at 620 Broadway at this time.

The Board must consider the purpose and intent of the specific zoning district this property is in and the intent of the Ordinance more broadly when considering whether to grant or deny the Hardship Variance. The intent and purpose of the Commercial Core district is the following:

Intent

- To implement the objectives of the comprehensive plan of the City of Somerville.
- To create, maintain, and enhance areas appropriate for moderately-scaled single- and multi-use commercial buildings; neighborhood-, community-, and region-serving uses; and a wide variety of employment opportunities.

Purpose

- To permit the development of mid- and high-rise single- and multi-use commercial buildings.
- To provide quality ground story commercial spaces and permit small and medium-scale, neighborhood-, community-, and region-serving commercial uses.

Relevant portions of the intent of the Somerville Zoning Ordinance more broadly include, but are not limited to, the following:

- To preserve and enhance the design of Somerville's public realm.

- To develop and maintain complete, mixed-use, walkable, transit-oriented, and environmentally sustainable neighborhoods that foster a strong sense of community throughout the city.
- To increase commercial tax base in support of the fiscal health of the City.

Massachusetts courts have stated that variances will naturally deviate from the intent and purpose of a zoning ordinance to some degree and that the discretionary approval of a variance is defensible if the deviation is not substantial or significant in comparison to the intent and purpose for the district in appraising the effect of the proposal on the entire neighborhood, including future impacts and other development approved or denied in the general vicinity of the development site.

CONSIDERATIONS & FINDINGS

In accordance with the Somerville Zoning Ordinance, the Zoning Board of Appeals may grant a Hardship Variance only upon deliberating and finding all of the following at the public hearing for each requested variance:

Hardship Variance Considerations

1. Special circumstances exist relating to the soil conditions, shape, or topography of a parcel of land or the unusual character of an existing structure but not affecting generally the Commercial Core zoning district in which the land or structure is located;
2. Literal enforcement of the provision of this Ordinance for the district where the subject land or structure is located would involve substantial hardship, financial or otherwise, to the petitioner or appellant, 620 Broadway, LLC, due to said special circumstances; and
3. Desirable relief could be granted without causing substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Commercial Core district in this Ordinance or the Ordinance in general.

PERMIT CONDITIONS

Should the Board approve the required Hardship Variance for the minimum number of stories, PPZ Staff recommends the following conditions:

Permit Validity

- This Decision must be recorded with the Middlesex County Registry of Deeds prior to applying for Site Plan Approval.

Public Record

- Physical copies of all submittal materials as permitted by the Review Boards must be submitted for the public record in accordance with the document format standards of the ISD/PB/ZBA Submittal Requirements.

- A copy of the Recorded Decision stamped by the Middlesex South Registry of Deeds must be submitted for the public record.

HONORABLE MEMBERS
OF THE
BOARD OF APPEALS
CITY OF SOMERVILLE

Case No. P&Z 21-140

Memorandum in Support of Hardship Variances

of

620 Broadway, LLC

Locus:

620 Broadway

Respectfully submitted:

William J. Proia
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November 16, 2021

Introduction

As set forth in 620 Broadway, LLC's ("620 Broadway") Application Form, 620 Broadway respectfully is seeking Main Massing [height] dimensional hardship variances ("Variances") from the Board of Appeals ("Board"), as noted in zoning table of Sheet Z-1 ("Plan") of the plan set ("Plan Set") submitted herewith, entitled: "ZBA Application For The Redevelopment of 620 Broadway, Somerville, MA 02145, ZBA APPL SET," dated November 16, 2021, prepared by Peter Quinn Architects LLC and Medford Engineering & Survey.¹

The purpose of the Variances is (i) to permit the proposed new portion of the building to be constructed to a height of one-story [18 feet], and (ii) to permit the existing building that will remain and be integrated into the new development also to be renovated to a height of eighteen feet [18 feet, in one story], rather than construct a building of three-stories on the Locus as required by Article 6 of the Somerville Zoning Ordinance ("SZO").

Project; Main Massing [height] Dimensional Hardship Variances

The Locus operated successfully for many decades, since around 1934, as an automotive fueling/service station. Severe disruptions caused by the Green Line Extension Project ("GLX"), forced the prior use of the Locus from business, including the removal of the accessory fuel storage tanks. Because of the injury to the business caused by the GLX, as well as subsequent market and land-use forces, the former business reasonably cannot be re-established. The only practical, economic option to return the Locus to productive use is to proceed under the current SZO, which

¹ The variance relief requested is limited to the Main Massing (height) of the proposed building, all other aspects of the redevelopment being compliant with the Somerville Zoning Ordinance ("SZO"). Accordingly, the Plan and Plan Set are submitted to evidence aspects of the Locus relevant to the requested variance, not as an immutable depiction of the redevelopment project ("Project"), which may vary from the Plan and Plan Set subject to all other applicable provisions of the SZO.

noted above requires a building proposed for the Locus to be constructed no fewer than three stories in height.²

620 Broadway is excited to redevelop the Locus, believes it has a sound, financeable concept, and is committed to a substantial investment in the Locus and in the community. However, as further discussed below, the Locus is afflicted with unique conditions related to soil, shape and topography of the land, and structures that make it commercially unreasonable and uneconomic to construct a three-story building, in which the two top stories will remain vacant, based on an applicable financing and market assessment.³

Necessitated by the unique, challenging, soil, shape, topography and structures affecting the Locus, the proposed 620 Broadway redevelopment (“Project”) particularly has been designed to use the Locus innovatively in an attractive, feasible one-story building that will feature the required first-floor uses in the Commercial Core 5 district (“CC District”). As a result, the Project substantially promotes the intent of the SZO and the CC District, without substantial derogation therefrom or substantial detriment to the public good.

Variances

The Variances requested are pursuant to SZO Article 6, the CC District regulations, SZO Section 15.2(3) - Hardship Variance, and General Laws c. 40A, §10 (“Zoning Act”). Under those authorities, the Board is empowered to grant the Variances where:

1. “owing to circumstances relating to the soil conditions, shape, or topography of such land . . . especially affecting such land . . . , but not affecting generally the zoning district in which it is located”;

² 620 Broadway reserves, and does not waive, rights under M.G.L. c. 240, §14A, and other laws, relative to any provision of the Somerville Zoning Ordinance (SZO) that purports to compel it to construct a building of a minimum size or to a minimum height; or that effects a regulatory taking of its property without compensation.

³ Please see letters from two real estate financial lending institutions affixed as Tab A. Other than office uses, those uses otherwise permitted in the CC District historically have not been located on the upper stories of multi-story buildings in similar market settings for a host of reasons.

or⁴

“owing to circumstances relating to . . . structures . . . especially affecting such. . . structures. . . but not affecting generally the zoning district in which it is located”; and

2. “a literal enforcement of the provisions of the ordinance would involve substantial hardship, financial or otherwise, to the petitioner . . .”; and

3. “desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance.”⁵

In this case, as discussed below, each of the criteria is satisfied. Consequently, the Board lawfully may and should grant the Variances as desirable.

1. Circumstances relating to (i) soil conditions and topography; (ii) shape; (iii) circumstances relating to structures; (iv) affecting such land and structures

(i) Circumstances relating to soil conditions and topography

The soil conditions of the Locus were evaluated by Kevin M. Martin, P.E. of KMM Geotechnical Consultants, LLC. A copy of that geotechnical report is affixed hereto as Tab B (“Geotech Report”). The Geotech Report also touches upon apposite topographical characteristics affecting the Locus.

⁴ The courts have long formulated the first segment of the variance test in this bifurcated fashion to highlight that the statutory phrase “. . . the soil conditions, shape or topography. . .” relates only to “. . .such land”, and not to “structures.” This is common sense as a circumstance regarding the “soil conditions” or “topography” of a “structure” is incongruous. Kairis v. Bd. of Appeal of Cambridge, 337 Mass. 528 (1958). Guiragossian v. Bd. of Appeals of Watertown, 21 Mass. App. Ct. 111 (1985). Gordon v. Zoning Bd. of Appeals of Lee, 22 Mass. App. Ct. 343 (1986).

⁵ The variance standard reproduced above is from the Zoning Act. From a legal viewpoint, the SZO variance review criteria, following, are effectively the same.

Review Criteria

a). Special circumstances exist relating to the soil conditions, shape, or topography of a parcel of land or the unusual character of an existing structure but not affecting generally the zoning district in which the land or structure is located;

b). Literal enforcement of the provision of this Ordinance for the district where the subject land or structure is located would involve substantial hardship, financial or otherwise, to the petitioner or appellant due to said special circumstances; and

c). Desirable relief could be granted without causing substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of a specific district in this Ordinance or the Ordinance in general.

The Geotech Report notes that not until 5 feet below grade, but as deep as 20 feet below grade, is there any suitable soil to support a foundation of any kind, never mind a foundation for a considerable three-story building. The Geotech Report characterizes these deep soils as “loose and unstable” fill that is “poor-draining, moisture sensitive and frost susceptible.” The picture provided by the Geotech Report is that of an irregular and complex pattern of subsurface soil conditions and materials at varying levels of elevation, and an active, variable ground water table. The Geotech Report cautions that the uncertain soil conditions are “not considered suitable for foundation bearing support due to their poor strength and compressibility characteristics.”

Finally, the Geotech Report cites the historical use and treatment of the Locus, prior to its acquisition by 620 Broadway, as the reason for its poor soils. Accordingly, the Locus’s soil conditions are unique to it and do not generally affect the CC District.

Because of the unreliable soil conditions, and the corollary absence of structural soils, the cost of foundation construction at the Locus will be at a premium, which would not be the case were suitable soils present. Such construction would require (i) massive excavation of the inadequate fill and its replacement with structural soils (“R&R”), or (ii) rammed aggregate piers (“RAP”), which implicates extraordinary, proprietary and patented products and methods.⁶

The R&R approach is not recommended for the Project being complicated by site constrictions, groundwater control, excavation support (due to shape and topography affecting the Locus), environmental exposure, and disposal of potentially contaminated soils.⁷ Those complications produce a complex subsurface profile, and require extensive subsurface preparation,

⁶ Geopiers™

⁷ Even if the R&R methodology was recommended by the Geotech Report from a soils perspective, the cost for that approach would be prohibitive for a redevelopment as modest as the Project, creating a clear hardship. In fact, for just the soils scope of the R&R project [not including foundation design/construction], EBI Consulting estimated the cost to range from 1.1 million dollars to 2.2 million dollars [Soil Excavation, Excavation Shoring, Soil Testing, Off-site Soil Disposal, and Off-Site Groundwater Disposal]

plainly pointing to a cost premium directly owing to the soil conditions and topography affecting the Locus.

The RAP approach, again, involves trademark products and methods, typically more expensive than customary means and methods, especially where a three-story building is mandated. Moreover, the RAP approach creates major stresses on surrounding soils due to its impact and vibratory methods. Ordinarily such stresses may not be a concern. However, given the GLX line directly abuts the Locus, but substantially down-grade which requires the support of a state-of-the-art retaining wall⁸, the concussive force and more extensive RAP system associated with a three-story building foundation, generates additional construction costs and considerations, including enhanced slope protection measures along the entire rear property line adjacent to the GLX. Moreover, the RAP method also will require a robust soils and groundwater management plan as noted in Footnote 7; a considerable expense for even a one-story building, but expected to increase by magnitudes relative to a three-story building.

Such soil conditions and abutting property characteristics are among the soil and topographical circumstances warranting variance relief under the Zoning Act and the SZO. Wolfman v. Board of Appeals of Brookline, 15 Mass. App. Ct. 112 (1982). Josephs v. Board of Appeals of Brookline, 362 Mass. 290 (1972). Sherman v. Board of Appeals of Worcester, 354 Mass. 133 (1968). Dion v. Bd. of Appeals of Waltham, 344 Mass. 547 (1962). Marhefka v. Zoning Bd. of Appeals of Sutton, 21 LCR 1 (2013).

To be sure, the circumstances in Wolfman, which sustained the grant of dimensional variances, practically are identical to the facts of this case. That court found in relevant part that:

“(1) the locus ‘contains an irregular pattern of subsurface soil conditions and materials at varying levels of elevation and a relatively high water table’; (2) these soil conditions ‘show the locus to be unique as compared to other lots along Beacon Street’; (3) ‘[a]ny construction on this lot requires

⁸ See germane MBTA GLX plans, affixed as Tab C.

extra expenses, amounting to a premium cost, for bracing of the rear slope of the lot adjacent to the existing . . . residence . . . and adjacent to the medical office building'; and (4) the developers would be required to spend amounts . . . in premium costs for construction of a foundation on this lot due to the uncertain soil conditions and the need for protective measures for the adjacent structures, which are peculiar to this lot and not generally found in the immediate vicinity."

Wolfman, 15 Mass. App. Ct. at 115 (see also Wolfman at 116, and Footnote 4; the cost premium to construct a large building on poor subsurface conditions warrants dimensional variances).

(ii) Circumstances relating to shape

It is plain to see, as depicted on any number of sheets of the Plan Set, that the Locus is a highly deformed and irregular polygon squeezed between Broadway and the GLX right of way. The Locus is so misshapen by the acute angles caused by Broadway and the GLX that within only one hundred feet along its frontage the Locus's depth drastically tapers from 135 feet at its west side line to a mere 43 feet at its east side line.

The resulting severe compression of the Locus from front to back precludes the construction of a conventional rectangular foundation. Instead, as depicted on the Plan, the foundation must be designed and built in a series of smaller, numerous rectangular sections⁹ to maintain compliant zoning setbacks, as well as to accommodate the heightened protective measures that must be implemented due to the adjacent steep GLX slope and retaining wall. The necessary sectional foundation adds considerable design, labor and construction costs to an already inflated foundation budget as established in Section 1(i) of this Memorandum.

That the extreme shape of the Locus is the type contemplated for relief under the Zoning Act and the SZO is without question. For instance, a lot that was "not essentially rectangular in shape" validated the grant of a dimensional variance. Josephs, 362 Mass. at 293. Similarly, an "irregular, trapezoidal" lot (polygonal, i.e. not rectangular) justified the grant of a dimensional variance to construct an otherwise non-compliant garage. Marhefka, 21 LCR at 6. Finally, a

public transportation easement that uniquely disfigured a lot provided the statutory basis for a dimensional variance. Bateman v. Board of Appeals of Georgetown, 56 Mass. App. Ct. 236 (2002). The Locus and the Project squarely fit within these trial court and appellate court precedents.

Sheet Z-1 of the Plan Set demonstrates that while a nearby lot or two maybe affected minimally by proximity to the GLX and an intersecting roadway, the CC District is not affected generally by the special circumstances affecting the Locus. In fact, those few lots that minimally maybe affected are not within the CC District.

(iii) Circumstances relating to structures

As set forth in statutory variance test reproduced above, and in Footnotes 4 and 5, “circumstances relating to structures” is a valid basis for grant of a variance (provided remainder of variance test is satisfied).

There is an existing building on the Locus that can be incorporated optimally into the Project, but not expanded reasonably from its height of twelve feet (12’) to three stories as mandated by the SZO. By requiring the existing building be expanded, or razed and replaced, with a building of compliant height would multiply the hardships to 620 Broadway relative to increased foundation costs and costs for those certain GLX protective measures engendered by the soil conditions, topography and shape of the Locus. Johnson v. Board of Appeals of Wareham, 360 Mass. 872 (1972) (hardship derived “in not being able reasonably to use” a substantial existing building, also citing Dion and Sherman). Not to mention that any expansion or replacement of the existing building with a compliant three-story building likely would suffer measurable vacancy of its second and third stories.

⁹ Designing and constructing a foundation parallel to the Locus rear lot line most probably would create an unmarketable building interior floor plan, based on generally accepted commercial real estate principles.

The adjacent GLX line with its steep down-grade embankment and accessory retaining wall also constitute a statutory structure affecting the Locus and creating a hardship based on the need for enhanced foundation costs and additional expenses for shoring and other stabilizing measures to safeguard those elements. In this connection, recall Wolfman, which recognized “lot bracing” and “protective measures for adjacent structures” as lawful elements of the Zoning Act variance criteria due to the hardship imposed by the resulting extra design and construction requirements.

Reference to the Plan Set demonstrates that no other lots within the CC District share the special structural characteristics of the Locus.

(iv) Affecting such land and structures

To qualify for variance relief the circumstances relating to land and/or structures must “especially” affect such land and/or structures, but not affect “generally the zoning district in which” the land and/or structures are located.

Absent a specific statutory definition, it is a rule of statutory construction to give terms used in a statute their ordinary meanings, consistent with common sense and practicality. The Zoning Act does not define the term “generally.” However, the ordinary dictionary definition of “generally,” is “for the most part, as a rule.”

While the special circumstances may affect land in the area other than the Locus tangentially, the CC District for the most part is not affected. The cases addressing this question teach that the “conditions” at issue may affect other land in the district without voiding the grant of a variance, provided that the predominance of land in the district is free of those “conditions.” Page v. Board of Appeals of Middleton, Misc. Case No. 160449 (Land Ct. 1992) (quoting Dion, 344 Mass. 547). That the Locus falls within the rule of these cases is beyond question given the

foregoing discussion of the unique soil conditions, topography, shape and structures affecting the Locus, while little if any land within the CC District is similarly affected, if affected at all.

For all these reasons, the first prong of the variance test is satisfied because the Locus is subject to “circumstances relating to the soil conditions, shape, or topography of such land” and “circumstances relating to . . . structures,” “especially” affecting the Locus, but not affecting generally the CC District in which the Locus is located.

2. A literal enforcement would involve substantial hardship financial or otherwise

A literal enforcement of the SZO would require 620 Broadway to construct the Project to at least three stories in height.

To reconstruct the Project to SZO standards would add at least hundreds of thousands of dollars to Project costs given the special conditions of the Locus and the available feasible means and methods, which are very limited. Footnote 7. That additional expense represents a considerable percentage of Project costs and long-term economic viability, especially given the potentiality that the top two stories of the Project would be unoccupied, dark unprofitable space.

Increased construction costs in the hundreds of thousands of dollars, or more, have been recognized by the courts as a substantial financial hardship justifying a grant of variance. Wolfman, 15 Mass. App. Ct. 112. Josephs, 362 Mass. 290. In Wolfman a literal enforcement of the zoning regulations would have cost the applicant around \$250,000 or more in increased foundation costs. In Josephs strict compliance with the regulations would have resulted in less usable space within a building, an “economic loss” which the court found constituted a valid hardship. By analogy, the compelled second and third floors of the Project would be unoccupied, that is a major “economic loss” and a comparable, valid hardship.

A literal enforcement of the SZO would create the additional hardship of unreasonably forcing 620 Broadway to construct and maintain a Project building wholly inconsistent with applicable market economics, market demand and financial constraints. Without the Variances, the Locus is likely to remain undeveloped, unproductive and in ever more disrepair, a condition inconsistent with the goals of the SZO to encourage the constructive use of property in the City. Accordingly, requiring strict adherence to the SZO respecting the Project height would involve a substantial hardship, financial and otherwise, to 620 Broadway.

These expenses are not personal to 620 Broadway, but as demonstrated, relate to conditions affecting the Locus and structures, and the market place, and as such would be experienced by anyone attempting to make a reasonable use of the Locus. Wolfman, 15 Mass. App. Ct. at 116. Sherman, 354 Mass. at 135. Johnson v. Board of Appeals of Wareham, 360 Mass. 872, 873 (1972). Under Brackett v. Board of Appeals of Boston, 311 Mass. 52 (1942), hardship is not being able “reasonably” to use property for the purposes, or in the manner, allowed by the bylaw. On the issue of hardship analysis, the courts have opined that “[n]o one factor determines the question of what is practical difficulty or unnecessary hardship, but all relevant factors, when taken together, must indicate that . . . the premises in question . . . cannot be reasonably put to a conforming use . . .” Brackett, 311 Mass. 52.

On this basis, a literal enforcement of the SZO would involve a substantial financial hardship “owing to circumstances relating to the soil conditions, shape, or topography of such land . . . especially affecting such land . . . , but not affecting generally the zoning district in which it is located” and “owing to circumstances relating to . . . structures . . . especially affecting such . . . structures. . . but not affecting generally the zoning district in which it is located.”

It is interesting to note that where dimensional variances are implicated, as here, the courts have held that relatively minor hardships may justify a grant. Marashlian v. Zoning Bd. of Appeals of Newburyport, 421 Mass. 719 (1996). Josephs, 362 Mass. 290. DiGiovanni v. Board of Appeals of Rockport, 19 Mass. App. Ct. 339 (1984). The courts have apparently indicated that the level of hardship warranting a dimensional variance is lower than the level of hardship warranting a use variance because dimensional variances do not alter the nature of the zoning district or threaten adjacent properties by the introduction of an otherwise prohibited land use. DiGiovanni v. Board of Appeals of Rockport, 19 Mass. App. Ct. 339 (1984). See also, Boston Edison Co. v. Boston Redevelopment Authority, 374 Mass. 37 (1977). This would seem to be even more the case where the dimensional variance being sought, as here, is not to exceed the SZO requirements, but to lessen the SZO mandate and thereby reduce impacts on the district and nearby properties.

3. Relief will not be substantially detrimental to the public good nor nullify or substantially derogate from SZO intent or purpose

The intent and purpose of the CC District, as set forth in SZO Article 6 is as follows:

2. Intent

- a. To implement the objectives of the comprehensive plan of the City of Somerville for commercial development.
- b. To create, maintain, and enhance areas appropriate for moderately-scaled single- and multi-use commercial buildings; neighborhood-, community-, and region serving uses; and a wide variety of employment opportunities.

3. Purpose

- a. To permit the development of mid- and high-rise single and multi-use commercial buildings.
- b. To provide quality ground story commercial spaces and permit small and medium-scale, neighborhood-, community-, and region-serving commercial uses.

It seems plain that even at one-story, the Project substantially advances the Intent and Purpose of the CC District. That is especially true given the reality that no owner of the Locus

rationally would opt to construct a three-story building based on applicable costs, market fundamentals and expected return.

It is also of note that all the zoning districts abutting the Project and the CC District permit 1 and 2 story buildings. As a consequence, the grant of the Variances would not create scale, massing or other design concerns relative to abutting and nearby sites. Moreover, the Locus directly abuts the intersection of Broadway and the GLX on the west side, so would function as a nice visual transition parcel moving west to east along this corridor.

When assessing whether relief can be granted consistent with this prong of the statutory test, a court would consider the “overall effect of the proposed” Variances “upon other property within the same district, a necessary element in determining whether the statutory standard has been met.” Planning Bd. of Framingham, v. Zoning Bd. of Appeals of Framingham, 5 Mass. App. Ct. 789 (1977). Cavanaugh v. DiFlumera, 9 Mass. App. Ct. 396 (1980).

As discussed regarding the lesser showing of hardship required where dimensional relief is sought, dimensional variances typically have a negligible overall effect on nearby properties because no foreign use is being introduced, which may undermine the integrity of the district or the proximate uses. This is especially true when the directly abutting property is similarly zoned, which is the case here, as discussed above. It follows that courts readily hold that dimensional variances are not detrimental to the public health and do not nullify or substantially derogate the ordinance’s purpose in cases like this. Boston Edison Co. v. Boston Redevelopment Authority, 374 Mass. 37 (1977).

For all the foregoing reasons, the Variances may and should be granted by the Board, and 620 Broadway respectfully prays the Board do so.