

September 14, 2021

VIA ELECTRONIC MAIL

City of Somerville
Mayor's Office of Strategic Planning &
Community Development
City Hall
93 Highland Avenue
Somerville, Massachusetts 02143
Attention: Sarah A. Lewis, RA, LEED-AP, CNUa
Director of Planning and Zoning
Email: slewis@somervillema.gov

**RE: 120-132 Middlesex Avenue, Somerville (the "Property")
Hardship Variance in City of Somerville Zoning Board of Appeals
Case No. MP 2020-0003, dated November 25, 2020 (the "Hardship
Variance")
Extension of**

Dear Sarah -

Following up to our conversations, my client, DWCH Assembly Row, LLC, successor-in-interest by assignment to Brickyard at Assembly LLC (the "**Applicant**"), hereby requests an extension of the Hardship Variance under Section 15. of the City of Somerville Zoning Ordinance (the "**SZO**"), extending the exercise period for the Hardship Variance from November 18, 2021, to May 18, 2022, in order to provide the Applicant to complete the Site Plan Approval process associated with the proposed project (the "**Project**") identified in that certain Master Plan Special Permit in Case No. 2020-0003 issued by the Planning Board on April 30, 2021 (the "**MPSP**").

Reference is made to the above Hardship Variance, which granted a variance from the requirements of Section 7.4.5.b.i. of the City of Somerville Zoning Ordinance (the "**SZO**"), which requires twenty-five percent (25%) of the lot area of a development parcel be comprised of Civic Space. The Hardship Variance, a copy of which is attached hereto as Exhibit A, contains the following conditions:

- "1. The Applicant is required to apply for a Master Plan Special Permit.

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2. Upper stories of any building must be reserved for uses from the Research & Development or Laboratory use category and ground story uses must be non-residential.
3. This Hardship Variance is valid for two (2) years from the date of decision.”

As indicated above, the Applicant has received a Master Plan Special Permit for the Project and is in the process of developing plans and preparing to file for Site Plan Approval for the building proposed in the MPSP. Additionally, the Applicant confirms that it intends to utilize the upper floors of the Project for research and development and laboratory uses and that the first floor will be used for non-residential uses as indicated in the MPSP.

We note that notwithstanding the language of the Hardship Variance, which purports to provide for an effective period of the Hardship Variance of two (2) years, Section 15.2.3.h.i. of the SZO provides that Hardship Variances are only valid for a period of one (1) year from the date on which the decision of the Zoning Board of Appeals is made on a Hardship Variance and not the date on which the decision with regard to the same is filed with the City Clerk. The Zoning Board of Appeals made its Decision on the Hardship Variance at its hearing on November 18, 2020. In order to continue to have certainty in the design and site plan approval process, the Applicant requests that the Zoning Board of Appeals extend the effective period of the Hardship Variance for six (6) months from November 18, 2021 to May 18, 2022.

Should you have any questions concerning the above, please feel free to contact me.

Thank you.

Sincerely,



Darren M. Baird
Counsel for and on behalf
of DWCH Assembly Row LLC

cc.: File
Rebecca Lynn Cooper
Mark Johnson and Jackson Hunter

Enclosure – Hardship Variance dated November 24, 2020

DWCH Assembly Row, LLC
120 Middlesex Avenue
Request for Hardship Variance Extension

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EXHIBIT A

HARDSHIP VARIANCE

[attached behind]



City of Somerville

ZONING BOARD OF APPEALS

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

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DECISION

CITY CLERK'S OFFICE
SOMERVILLE, MA

PROPERTY ADDRESS: 120-132 Middlesex Avenue
CASE NUMBER: MP#2020-0003
OWNER: Brickyard at Assembly, LLC (c/o McDermott Quilty & Miller, LLP)
OWNER ADDRESS: 28 State Street, Suite 802, Boston MA 02109
DECISION: Approved with Conditions
DECISION DATE: November 25, 2020

This decision summarizes the public hearing and findings made by the Zoning Board of Appeals ("the Board") regarding development proposed for 120-132 Middlesex Avenue.

LEGAL NOTICE

Applicant Brickyard at Assembly, LLC proposes a master plan for a 1.03 acre development site in the Assembly Square Mixed-Use District of a 18-story laboratory building providing approximately 644,000 gsf and a payment in lieu of the required civic space, which requires a Hardship Variance.

RECORD OF PROCEEDINGS

The Board held a public hearing advertised in accordance with M.G.L. 40A and the Somerville Zoning Ordinance on November 4 and November 18, 2020. Present and sitting on both dates were Zoning Board members Orsola Susan Fontano, Danielle Evans, Josh Safdie, Elaine Severino, and Anne Brockelman.

Attorney Joe Hanley, representing the Applicant, provided an overview of the proposed laboratory building and argued that the Civic Space requirement for Master Plans would render development of a viable laboratory building impossible. The Applicant team proposed making a payment to Somerville's Open Space Acquisition and Improvements Stabilization Fund in lieu of providing the required civic space. Planning Director Sarah Lewis discussed a forthcoming zoning amendment to authorize a payment in-lieu of civic space for development sites located in close proximity to Interstates due to air quality concerns, but that such a program was not otherwise available at this time until approved by the Somerville City Council. The Board discussed the unique characteristics of the development site and considered requiring a payment in-lieu of civic space as a condition of the potential Hardship Variance, but determined doing so would be inappropriate.

The Board heard comments from members of the public and addressed written public comments received by email. Necessary permit conditions to address concerns were discussed.

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FINDINGS

In accordance with M.G.L. 40A and the Somerville Zoning Ordinance, the Zoning Board of Appeals may grant a hardship variance only upon finding all of the following for each hardship variance:

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 ASMD zoning district.

The Zoning Board of Appeals finds that special circumstances exist relating to the shape and location of the subject lot in contrast to other land located in the ASMD zoning district.

2. Literal enforcement of the provisions of the ASMD district would involve substantial hardship, financial or otherwise, to the petitioner, 120 Middlesex Ave, LLC, due to said circumstances.

The Board finds that literal enforcement of the twenty five percent (25%) civic space requirement would create a hardship to the petitioner in causing development consistent with the intent and purpose of the ASMD zoning district unfeasible.

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 NR district or the Somerville Zoning Ordinance in general.

The Board finds that the specific relief authorized by the Hardship Variance would not cause a substantial detriment to the public good. The Board also finds that the relief granted would not nullify or substantially derogate from the intent and purpose of the ASMD district including, but not limited to, permit the development of commercial high-rise buildings, and provide quality commercial spaces or the broader intent of the Somerville Zoning Ordinance including, but not limited to, increase commercial tax base in support of the fiscal health of the City increase accessibility to diverse employment opportunities within Somerville, and equitably balance the regulation of real property with the interests of the community as a whole.

DECISION

Following public testimony, review of the submitted plans, and discussion of the statutorily required considerations, Danielle Evans moved to approve a Hardship Variance exempting master planned development from the twenty five percent (25%) civic space requirement of the ASMD zoning district. Elaine Severino seconded. The Board voted **5-0** to approve the Hardship Variance and imposes the following conditions:

1. The Applicant is required to apply for a Master Plan Special Permit.
2. Upper stories of any building must be reserved for uses from the Research & Development or Laboratory use category and ground story uses must be non-residential.
3. This Hardship Variance is valid for two (2) years from the date of decision.

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chair*
Danielle Evans, *Clerk*
Anne Brockelman
Elaine Severino
Josh Safdie

Attest, by the Director of Planning & Zoning:



Sarah Lewis

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CITY CLERK'S OFFICE
SOMERVILLE, MA

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.

Signed _____ City Clerk Date _____

CITY CLERK'S OFFICE
SOMERVILLE, MA

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