



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
HEARING DATE: December 15, 2021
RE: 21 Eastman Rd., P&Z 2021-121

RECOMMENDATION: Steep Slope Special Permit: Conditional Approval
Hardship Variances: Deny

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

This memo summarizes the development review application submitted for 21 Eastman Road, identifies any additional discretionary or administrative development review that is required by the Somerville Zoning Ordinance (SZO), and provides related analysis or feedback as necessary. The application was deemed complete on October 15, 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

SGL Development seeks a steep slope special permit and variances that include: primary front setback, more than one building on a lot, building type, parking in frontage area, driveway in frontage area, habitable space depth, number of stories, ground story elevation, building width, side setback, upper story fenestration, story height. Neighborhood Residence (NR) zone.

SUMMARY OF PROPOSAL

The Applicant proposes constructing two principal structures of four stories each on an NR-zoned lot, each of which is to contain one residential unit. Each building is to be built into the slope of the land, following the downward slope as the building moves away from the Eastman Road street frontage. The Applicant proposes four on-site parking spaces, a driveway, and outdoor space.

BACKGROUND

The lot is currently vacant but until 2018 it contained a single-family structure built in the 1920s. In 2018, the Somerville Historic Preservation Commission (HPC) found the building to be *not* historically significant and it was allowed to be demolished. The Applicant team originally submitted a proposal under the old zoning code which required zoning relief. However, since the proposal did not receive SPGA approval prior

to the adoption of the current zoning code in December 2019, the original submission died in-process.

ADDITIONAL REVIEW NECESSARY

21 Eastman Road is located in the Neighborhood Residence (NR) district in the Spring Hill neighborhood area represented by Ward 5 Councilor Mark Niedergang.

Topographical considerations require the applicant to pursue a Steep Slope Special Permit. Design choices require the applicant to request numerous Hardship Variances from the ZBA in order to execute their desired project.

The Applicant seeks 22 Hardship Variances. In some instances, more than one variance is needed in each category. For example, since the Applicant is proposing two separate buildings and each of those buildings violates the front setback requirement, then a variance is need for *each* building that violates this dimension.

In addition to parenthetically indicating the number of variances needed per category below, Staff reiterates this number in the Analysis section.

- more than one principal building on a lot (1)
- building type (2)
- driveway in the frontage area (1)
- parking space and drive aisle (2)
- parking in frontage area (2)
- habitable space depth (2)
- number of stories (2)
- story height (2)
- front setback (2)
- side setback (1)
- building width (1)
- ground story elevation (2)
- upper story fenestration (2)

The ZBA is the review board for the Steep Slope Special Permit as well as for all Hardship Variance requests regardless of zoning district.

ANALYSIS

The Applicant has provided a full plan set with their application as well as a variance narrative. Documents relating to the Steep Slope Special Permit originally submitted in 2019 have also been provided.

Discussion of the Steep Slope Special Permit is followed by a discussion of the variance requests.

Steep Slope Special Permit

The site at 21 Eastman Road begins flat and then slopes downward toward Cedar Avenue and Cedar Street. This results in a ~30-35-foot change in elevation from the front of the lot to the back.

The Zoning Ordinance defines a steep slope as “any change in elevation of twenty-five percent (25%) or greater over a horizontal distance of thirty (30) feet or greater.” The Zoning Ordinance intends for discretion to be used in the permitting of development on steep slopes to minimize stormwater run-off and soil erosion, maintain the natural topography and drainage patterns of land, and help protect real property at the base of a steep slope from damage caused by erosion, mudslides, rockslides, falling trees, and other harms.

In May of 2020, after the adoption of the new Somerville Zoning Ordinance (SZO), the City also passed a comprehensive stormwater, sewers, & erosion control ordinance that began requiring a new Site Construction Permit for all construction, clearing, grading, paving, or excavation that could potentially increase runoff or introduce pollutants to the city’s storm drainage system.

The City Engineer’s rules for approving a Site Construction Permit establish stormwater management standards for final site conditions to minimize adverse impacts and requires the stormwater management controls necessary for development to comply with all local, state, and federal laws.

The Site Construction Permit approval process, the purview of the Engineering Department, will review and address stormwater run-off, soil erosion, and drainage concerns for the site, if the applicant is otherwise granted the Steep Slope Special Permit.

Staff has provided additional information regarding each required finding under the Considerations and Findings section.

Hardship Variances

The Applicant is required to provide an argument addressing the review criteria for each of the necessary hardship variances. The Applicant’s arguments are attached at the end of this memo.

Generally, PPZ Staff does not provide analysis or recommendations concerning the existence of actual hardship, financial or otherwise, regarding the second Hardship Variance criterion.

While Staff has addressed each requested Hardship Variance individually below, Staff believes that, upon analysis of the material submitted by the Applicant, the collective impact of granting the requested hardship variances would cause a substantial

detriment to the public good and nullify or substantially derogate from the intent and purpose of the NR zoning district, copied here:

Intent

- To implement the objectives of the comprehensive plan of the City of Somerville.
- To conserve already established areas of detached and semi-detached residential buildings.

Purpose

- To permit the development of one-, two-, and three-unit detached and semi-detached residential buildings on individual lots.
- To permit contextual modifications to existing detached and semi-detached residential buildings.
- To permit the adaptive reuse of certain existing nonconforming buildings for arts and creative enterprise and retail uses compatible with residential areas.
- To create dwelling unit types, sizes, and bedroom counts ideal for larger households in houses, semi-attached houses, duplexes, and triple deckers.
- To create dwelling unit types, sizes, and bedroom counts ideal for smaller households in cottages and backyard cottages.

Additionally, PPZ Staff believe that granting the requested hardship variances would substantially derogate from the broader intent of the Somerville Zoning Ordinance, including, but not limited to, the following:

- 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 provide and protect housing that is affordable to households with low and moderate incomes.
- To preserve and enhance the existing character of Somerville's traditional housing and respect existing built form and development patterns.

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.

Additional analysis regarding each requested Hardship Variance is below.

More than one principal building on a lot (1 variance)

The Applicant proposes *two* principal buildings on this lot, when the Ordinance permits only one principal building per lot.

The granting of this particular variance would fundamentally undermine how the Zoning Ordinance functions and regulates development. The entire structure of the Zoning Ordinance is based on the fundamental rule of *one lot, one principal building*. Granting this variance will subvert the functioning of the Zoning Ordinance.

Staff recommends that the ZBA consider this Hardship Variance first since, if this Variance is not granted, the project will need to be fundamentally redesigned to have only one principal building on the lot, rather than two.

Section 3.1.6.a. of the Zoning Ordinance expressly states that in the NR zone only *one principal building* is allowed on each lot.

While the lot at 21 Eastman Road is oddly shaped and there is a steep slope, these factors do not prevent the Applicant from complying with the Ordinance by proposing one principal building rather than two. Nothing about the lot, regardless of the slope or the odd shape, forces the Applicant to propose two principal structures. The Applicant could propose one principal structure and request far fewer variances than those currently requested.

While an Applicant has the right to ask for a variance, they are not eligible to receive that variance if they cannot prove that they meet all three criteria for granting the variance. For a variance to be granted it must also be directly proportional to the stated hardship. The slope of the land and the odd dimensions have been cited as the primary challenges with the property. However, all of the variances are not necessitated by the slope and shape of the land; some of the variances are due to choices by the Applicant regarding design and desired amenities rather than pure topographical difficulties.

Despite the slope of the land and the odd shape, the Applicant could still propose a single principal building with one or two units therein. Such a project would be smaller than the one currently proposed and would likely need some type of variance relief from the ZBA. However, the number of variances the Applicant would need would likely be greatly reduced and the primary underpinnings of the SZO would not be nullified.

It is settled law that no owner is entitled to the “highest and best” use of their property, only to reasonable use. It is PPZ Staff’s position that the current proposal does not constitute “reasonable use” and that reasonable use of the property can be achieved without the need for this Hardship Variance.

Staff believes that granting this Hardship Variance in particular would nullify or substantially derogate from the intent and purpose of the NR district which is, in part, “[t]o permit the development of one-, two-, and three-unit detached and semi-detached residential buildings on individual lots.” Granting this Hardship Variance would undermine the regulatory structure of the Ordinance which permits at most one principal building on each lot.

Building Type (2 variances)

The proposed buildings do not fit any principal building type allowed in the NR district. The building specifications are larger than those allowed for a Detached House, Semi-Detached House, Cottage, Detached Triple Decker, or Duplex. The closest possible building type would be a Detached House. However, the proposed structures do not meet the story height, side setback, ground story elevation, upper story fenestration, habitable space depth, or number of story requirements for the Detached House building type.

Staff believes that the project could be redesigned to eliminate the need for this variance.

Driveway in Frontage Area (1 variance, possibly 2 variances. See below)

The frontage area is defined as the area of a lot between the facade of a principal building and any front lot line(s), extending fully to each side lot line(s). The façade is defined as any exterior wall of a building oriented in whole or in part toward a front lot line, or civic space, excluding the exterior walls of any roof elements. Driveways in the frontage area are not permitted by the SZO.

Staff believes that the project could be redesigned to eliminate the need for this variance.

In addition, Section 3.1.18.c.iv of the SZO states that driveways may be up to 12 feet in width, however sheets Z-2 and A1.0 of the plan set suggest that the proposed driveway is much wider, which would require another variance in addition to the variance needed for a driveway in the frontage area. The Applicant did not identify this Variance in their list of requested Hardship Variances.

Staff believes that the project could be redesigned to eliminate the need for this variance.

Parking Space Dimensions (2 variances)

Parking space 2A, labeled as the tandem parking space on the Applicant’s plans, does not have a drive aisle that meets the minimum dimensions required by the Ordinance. In order to have a tandem parking space, it must be accompanied by a 12-foot-wide drive aisle. The Applicant has not indicated how wide the proposed drive aisle is with a

dimension on plan. That said, driveways are only allowed to be a maximum of 12 feet wide. Any driveway that provides an access aisle for tandem parking will automatically violate the maximum driveway width dimension. (see “Driveway in Frontage Area” above)

The parking space labeled 1B “compact space” is undersized by a few inches in width. Parallel or 90-degree spaces must be at least 8’ wide by 16’ long; the proposed space is 7.5’ wide by 16’ long. The variance request can be eliminated by slightly increasing the width of the space or eliminating it entirely, as the proposal has four parking spaces when only two are required.

Staff believes that the project could be redesigned to eliminate the need for these variances.

Parking in Frontage Area (2 variances)

Parking in the frontage area is not permitted. The Applicant has proposed two parking spaces in the frontage area: the Unit 1 compact parking space, and the Unit 1 space in the enclosed garage. The compact parking space is in the frontage area for Unit 2 and the garage itself for building 1 is in the frontage area for Unit 2, thus placing the garage parking space in the frontage area.

The minimum number of parking spaces required for a development in the NR zoning district is 1 space per unit. The Applicant is only required to provide two parking spaces. By proposing 4 parking spaces, the Applicant is providing two parking spaces more than the minimum required. This Hardship Variance is required due to design choices made by the Applicant rather than any fundamental uniqueness of the property.

The Applicant could eliminate this Hardship Variance by making different design choices for the site.

Habitable Space Depth (2 variances)

First floor habitable space must measure at least 20 feet from the façade toward the interior of the building. Storage areas, including garages, are not considered habitable spaces. As the first ~20 feet of each building are taken up by a garage, the proposal does not meet the habitable space depth requirement.

Staff believes that the project could be redesigned to eliminate the need for these variances.

Number of Stories (2 variances) and Story Height (2 variances)

A detached building in the NR zone is allowed a maximum of 2.5 stories and each story may have a height of 10 feet to 12 feet. Anything above or below that story height range requires additional variances.

The Applicant has proposed two 4-story buildings, which requires two Hardship Variances, one hardship variance for each building violating the story height. In addition, one story in each of the buildings exceeds the allowable per-story height by one foot (Unit 1) and two feet (Unit 2), for a total of two variances needed for story height.

Front Setback (2 variances)

The minimum front setback for a detached building type is 10 feet. The second story of the first building (Unit 1) encroaches on the front setback such that it is reduced to 5.6 feet.

The second building (Unit 2) which, at roughly 30 feet, exceeds the permitted maximum front setback of 20 feet.

Staff believes that the project could be redesigned to eliminate the need for these variances.

Side setback (1 variance)

The shape of the lot results in the property having more than two side setbacks. The minimum required side setback in the NR zone for a property with front driveway access is 3 feet but the applicant's building is designed such that only 1.5 feet of setback is provided for Unit 2.

Staff believes that the project could be redesigned to eliminate the need for these variances.

Building Width (1 variance)

This is limited to no more than 28 feet anywhere on the main massing of the building. The Applicant has proposed a 34.5-foot-wide section, requiring relief. A redesign of the buildings would eliminate the need for this variance request.

Ground Story Elevation (2 variances)

The minimum ground story elevation required for a Detached House is 2 feet. The Applicant has proposed two buildings, each with a ground story elevation of 0.67 feet.

Staff believes that the project could be redesigned to eliminate the need for these variances.

Upper Story Fenestration (2 variances)

Fenestration requirements apply to facades of buildings, and the Ordinance does not distinguish between facades that are within the frontage area and facades that are not when it comes to fenestration. The Ordinance states that, with the exception of ground story commercial spaces which have their own requirements, "...[for] all other buildings and all other stories, fenestration is measured independently for each story, from the top of a finished floor to the top of the finished floor above" (See Section 2.5.a.i.a.ii).

Without figures in the zoning table, it is unclear if the Applicant meets the minimum 15% fenestration requirement. The Applicant will need to show the calculation/proof of compliance and would need to receive a Hardship Variance for each building that does not meet this requirement.

Further, the SZO states that the façade of upper stories may not project forward of the façade of the ground story except through the use of Building Components and building frontages. The upper story of each building projects over the ground story and does not meet this criterion.

Staff believes that the project could be redesigned to eliminate the need for these variances.

CONSIDERATIONS & FINDINGS

The Zoning Board of Appeals is required by the Somerville Zoning Ordinance to deliberate each of the following considerations at the public hearing. The Board must discuss and draw conclusions for each consideration but may make additional findings beyond this minimum statutory requirement.

Special Permit Considerations

Information relative to the required considerations is provided below:

1. The comprehensive plan and existing policy plans and standards established by the City.

The proposal would provide two market-rate units which partially contributes toward achieving the following goal(s) from SomerVision 2040, the comprehensive plan of the City of Somerville:

- Significantly increase housing stock to keep up with demand while pursuing the goals of increasing the proportion of affordable housing and housing stock diversity.

2. The intent of the zoning district where the property is located.

The intent of the NR zoning district is, in part, “[t]o conserve already established areas of detached and semi-detached residential buildings.” If a more conforming project is proposed with one conforming detached or semi-detached principal building on the lot, then such a proposal may help to meet the intent of the zoning district.

3. Consistency of site disturbance with the intent and purpose of Section 10.10 Steep Slopes:

- a. *To minimize storm water runoff and soil erosion problems incurred by the grading of steep slopes.*
- b. *To maintain the natural topography and drainage patterns of land.*
- c. *To help protect real property at the base of a steep slope from damage caused by erosion, mudslides, rockslides, falling trees, and other harms.*

As with any construction project, there will be some degree of site disturbance. However, due to the choice to construct nearly 5,000 square feet of living area in addition to parking spaces, driveways, and stairs running downslope between the two proposed buildings, the proposed development project on 21 Eastman Road would result in more site disturbance than is typical for a one- or two- unit project.

Though there are some older and smaller retaining walls on site, the natural topography of the site will not be maintained due to the construction of retaining walls ranging from 12’ – 20’ in height, particularly along the rear of the property. The drainage patterns will also be altered due to the proposed retaining walls, construction of nearly 5,000 square feet of living area, and the construction of a staircase that runs between the two proposed buildings. Many trees were already removed from the site prior to the adoption of the Tree Ordinance as part of site preparation.

The site will further be disturbed through significant grading and by bringing in large amounts of fill in order to create the conditions necessary to construct the proposed buildings.

4. Geo-technical, structural engineering, and arboreal best practices for successfully and safely stabilizing steep slopes.

Significant geotechnical, structural engineering, and arboreal techniques will be needed in order to mitigate the impacts of the site disturbances. In addition to the large retaining wall along at the rear of the property, the proposed buildings themselves will partly function as their own retaining walls, eliminating the need for additional large retaining walls to be built on the property.

The existing reports (including geotechnical, stormwater/drainage, erosion control, recon retaining wall calculations) were generated in 2018 and 2019, and do not reference the currently proposed buildings or site design).

The Board may find it valuable to request additional information from the Applicant during the public hearing regarding the extent to which best practices will be utilized during and after construction.

Hardship Variances

In accordance with the Somerville Zoning Ordinance (SZO), the ZBA 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 NR district;
2. Literal enforcement of the provision of this Ordinance for the NR district would involve substantial hardship, financial or otherwise, to the petitioner 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 NR district or the Ordinance in general.

PERMIT CONDITIONS

Should the Board approve the Steep Slope Special Permit and/or Hardship Variances, PPZ Staff recommends the following conditions:

Validity

- This Decision shall be recorded with the Middlesex County Registry of Deeds.

Public Record

- A copy of the Recorded Decision stamped by the Middlesex South Registry of Deeds shall be submitted for the public record.
- Physical copies of all submittal materials as permitted by the Review Boards shall be submitted for the public record in accordance with the document format standards of the ISD/PB/ZBA Submittal Requirements.