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June 23, 2021

By email: planning@somervillema.gov
Somerville Zoning Board of Appeals
City Hall
93 Somerville Ave
Somerville, MA 02143

Re: Remand Administrative Appeal,
ZBA Nos. AA2020-0001 and P&Z 21-049
Building Permits B19-001687 and B19-001788
Murrow response and supplemental memorandum

Dear Board:

The Land Court found that on November 22, 2019, Claudia Murrow timely and properly appealed to the Board under G.L. c. 40A, §§ 8 and 15, the ISD's issuance of the building permits to YEM. The Board's decision on April 22, 2020, based on the Planning Staff's Report, that her appeal had been improper and untimely was in error. She had appealed the building permits to the Board because the Building Permit Plans contained *non de minimis* changes that had been approved by the 2019 ZBA Revision Decision which she had appealed to the Land Court. YEM's second request for a *de minimis* determination by the Planning Director in January, 2020 was made after Murrow had already timely filed her appeal of the building permits with the Board. Having already filed her appeal of the building permits, Murrow was not obligated to file a second appeal of the Planning Director's after-the-fact *de minimis* determination. The Building Permit Plans clearly contain *non de minimis* changes to the 2018 Decision Plans as is evidenced by the plans themselves annexed to both Murrow's Addendum and to YEM's Response.

The Supreme Judicial Court has been clear that "when a variance is granted for a project `as shown by... plans' ... the variance requires strict compliance with the plans, at least as far as the site location and the bulk of buildings are concerned." *Lussier v. Zoning Board of Appeals of Peabody*, 447 Mass. 531, 536 (2006) quoting *DiGiovanni v. Board of Appeals of Rockport*, 19 Mass. App. Ct. 339, 346-347 (1985). "[A]nything beyond [the original] footprint exceeds the scope of the variance." *Id.*, 447 Mass at 535. Such a change in the plans requires a new variance or a modification of the existing variances. *Id.*

The Building Permit Plans submitted by YEM clearly show changes to the building's footprint from the 2018 Decision Plans. Moreover, critical to the approval of the 2018 Decision Plans was the movement of the building away from Laurel Street. "After public input, Applicant revised its plan to set the building back an additional 13' beyond what is required from the adjacent street (Laurel Street)." 2018 Decision, p. 9. The garage and building have clearly been moved in the Building Permit Plans several feet closer to Laurel Street. This is apparent both in the set of plans Murrow submitted and in the plans YEM submitted. It is also clear that the front of the building has been moved closer to Somerville Ave and the front of the garage has been moved significantly closer to Somerville Ave.

In addition, the applicable zoning ordinance concerning *de minimis* changes, as cited by the Planning Director,¹ is SZO, § 5.3.8 of the prior Ordinances, not SZO, § 15.2(4)(d-e) of the current Ordinances cited by YEM. SZO, § 5.3.8.1.a. states:

Revisions may only be considered *de minimis* upon the Planning Director's making the following findings

- i.Changes would not contravene the legal notice, any finding, or condition of the SPGA in the original approval;
- ii.Changes would not detrimentally impact matters of substance identified in meeting minutes of original hearings;
- iii.Changes would not alter the character of the development; and
- iv.Changes would be so insignificant as not to be noticeable to persons generally familiar with the original approval.

All the Planning Director did in making her "findings" in the *de minimis* determination was to recite the language of the Ordinance. Murrow Remand Application, Addendum, pp. 29 and 31. As such, her findings were legally inadequate. Moreover, the changes in the Building Permit Plans from the 2018 Decision Plans, particularly to the rear wall of the first floor and the movement of the building toward Laurel Street, were clearly "noticeable to persons generally familiar with the original approval." A simple review of the submissions by both Murrow and YEM show that. The movement of the building back toward Laurel Street also "detrimentally impact[ed] matters of substance identified" in the Board's Decision.

Because the Building Permit Plans required new variances, *Lussier, supra*, 447 Mass. at 536, the qualification of the property for variances under

¹ Murrow Remand Application, Addendum, pp. 29 and 31.

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G.L. c. 40A, § 10 is subject to *de novo* review. The 2018 Decision is irrelevant to this appeal. For the reasons stated in Murrow's Remand Application, the land and the Building Permit Plans clearly do not qualify for variances of any kind.

Finally, Murrow objects to the notice presumably mailed to persons of interest under G.L. C. 40A, § 11. The content and timing of the notice she received were inadequate to provide persons of interest with sufficient notice of the hearing under the statute. This is all the more significant given the prior public input on this project.

Sincerely,
/s/ Philip H. Cahalin
Philip H. Cahalin
Attorney for Claudia Murrow

c: Claudia Murrow
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David Zucker, Esq.
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