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QUILTY &  
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BOSTON, MA 02109

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October 23, 2020

**VIA ELECTRONIC MAIL & FEDERAL EXPRESS**

City of Somerville Zoning Board of Appeals  
c/o Sarah Lewis, Director of Planning/Zoning and  
Rebecca Lyn Cooper, Senior Planner  
Mayor's Office of Strategic Planning & Community Development  
93 Highland Avenue, City Hall Third Floor  
Somerville, MA 02143

**Re: Variance Application  
Brickyard at Assembly LLC  
120-132 Middlesex Avenue, Ward 1, Somerville, MA**

Dear Ms. Lewis and Ms. Cooper:

On behalf of Brickyard at Assembly LLC (the "Applicant"), we hereby request that the City of Somerville (the "City") Board of Appeals grant a Hardship Variance pursuant to Section 15.2.3 of the Somerville Zoning Ordinance ("SZO") from Section 7.4.5.b of the SZO<sup>1</sup>. This includes a request to make a payment in lieu of providing on-site civic space per Section 12.3.3 of the SZO on the proposed 1.03 acre development site in the Assembly Square Mixed-Use District ("ASMD") in order to allow for the development of a mixed-use commercial office, research/development and laboratory and ground floor retail/café space building at 120-132 Middlesex Avenue in Somerville (the "Property"). Relief is sought for the Project civic space requirement, which seeks an in-lieu payment for the Civic Space requirement rather than providing Civic Space on site.

As discussed below, the Applicant proposes to construct a single new building of up to approximately 596,000 square feet of gross floor area ("SF") of commercial office, research/development and laboratory uses (office/R&D/lab), approximately 3,500 square feet of ground floor retail and/or café space and below-grade structured vehicle parking (the "Project"). As shown on the Site Plans (**Exhibit B**), due to the unusual location of the Property along the

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<sup>1</sup> At least twenty-five percent (25%) of a development site, excluding thoroughfares, must be provided as one or more civic spaces.

edges of I-93, the I-93 off-ramp and Route 28 and its unique trapezoidal shape, the Project cannot comply with Section 7.4.5.b of the SZO as cited above in order to provide at least twenty-five percent (25%) of the development site at the Property as one or more civic spaces. We note that additional review by the Planning Board will be required prior to development of the Project in the form of a Master Planned Special Permit pursuant to Article 15.2.2. of the SZO, as a prerequisite to Development Review for buildings over 50,000 square feet of gross floor area (see Section 7.4.4b of the Zoning Ordinance entitled “Master Planned Development”).

The Applicant provides the following materials in support of this request:

1. Development Review Property Owner Authorization Forms (**Exhibit A**);
2. Site and Locus Plans detailing the Property and Proposed Improvements (11x17 copies) (**Exhibit B**);
3. One check in the amount of \$250.00 (ISD Plan Review fee). We understand the variance application fee and public notice fee will be calculated and paid following review of the application (**Exhibit C**).

## **I. The Project and Relief Requested.**

### **A. The Project and the Property.**

The Property is an approximately one-acre (approximately 44,992 square feet) underutilized urban lot at the gateway to the ASMD. The Property is bounded by Middlesex Avenue to the east, the I-93 off-ramp to the west and Cummings Street to the south. In its current condition, the Property is comprised of an existing two-story office building of approximately 11,600 SF, a two-story religious use building of approximately 15,842 SF, and a surface parking area accommodating up to approximately 42 parking spaces. Please see site plans detailing the Property at **Exhibit B**. The Project will demolish and replace these existing buildings and surface parking with a new building and much-needed public realm improvements.

The Property is located within the ASMD which is among a handful of “Special Districts” covered by Article 7 of the SZO. Section 7.4 of the SZO is specific to the ASMD and defines regulations under which development in the ASMD is controlled and permitted. Generally, where the provisions of Section 7.4 conflict with those found elsewhere in the Zoning Ordinance, the provisions of Section 7.4 apply, with some noted exceptions. The Project requires a Master Plan Special Permit as a prerequisite to the Development Review of the Development Site because it proposes a building over 50,000 SF.

As depicted in the provided site plans, the Project as proposed by the Applicant includes the revitalization and transformation of the Property with a pedestrian oriented, mixed-use development that proposes one (1) building containing up to approximately 596,000 SF of office, research and development (R&D) and lab uses (office/R&D/lab), approximately 3,500 SF of retail/café uses, and below-grade structured parking spaces. Recognizing the unique opportunity to further enhance the ASMD through the transformation of the Development Site, the proposed building will be designed to accommodate cutting-edge labs, modern offices, innovative startups

and creative enterprise uses that address current investor and market demand in proximity to emerging and existing life science clusters in Somerville and Cambridge. With smart growth in mind, the Project hopes to be a catalyst to activate and unite the residential and commercial uses to the north of Middlesex Avenue with the residential and commercial uses to the south of Middlesex Avenue. The Project also hopes to diminish the visual impact of the elevated roadway and highway ramps from the ASMD by providing a visual barrier between the elevated roadway and the Project. However, the Project's ability to provide appropriate and usable Civic Space on the Property is severely hampered by its location adjacent to the I-93 highway, the I-93 off-ramp and Route 28, with their accompanying noise, air and other pollution contributors.

The Project is planned to be a vibrant mixed-use development located at an important and visible nexus at the gateway to the ASMD and along the edges of I-93 and Route 28. The Applicant proposes a sustainable building with active ground floor uses and an improved pedestrian streetscape that will catalyze the transformation of this section of Middlesex Avenue. It will be a new and welcoming part of the neighborhood that will help extend the City's efforts to connect Assembly Row to the adjacent communities. The Property's prominent location along I-93 provides an exceptional opportunity to create a landmark building with direct visual connections to and from the ASMD and the commercial uses and residential neighborhoods of Somerville west of I-93. The proposed building will be the first of a number of taller buildings in the Assembly Row Area visible when traveling by car from the north, and has been contextually shaped to complement the forms of the other buildings currently planned or already built in the Somerville skyline.

#### B. Relief Requested.

The Project seeks to obtain a Hardship Variance pursuant to Section 15.2.3 of the SZO from Section 7.4.5.b of the SZO; this includes a request to make a payment in lieu of providing on-site civic space per Section 12.3.3 of the SZO. Master Plan Standards of Section 7.4 of the SZO require that at least 25 percent of a development site must be provided in one or more Civic Spaces. Relief is sought for the Project civic space requirement, which seeks an in-lieu payment for the Civic Space requirement rather than providing Civic Space on site at the Property, as the Project's ability to provide appropriate and usable Civic Space on the Property is severely hampered by its location adjacent to the I-93 highway, the I-93 off-ramp and Route 28 with their accompanying noise, air and other pollution contributors. Additionally, due to the Property's unique trapezoidal shape and contours it is extremely difficult to provide for on-site Civic Space along with sufficient lot area required for a viable Office/R&D/Lab Building with adequate floor plates.

## II. Compliance with the Variance Standards.

Pursuant to Massachusetts General Laws, Chapter 40A, Section 15 and Section 15.2.3 of the SZO, the Board of Appeals has the authority to hear this application where the Applicant seeks a variance from the SZO, showing that: (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 zoning district in which the land or structure is located; (2) literal enforcement of the provision of the SZO 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 (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 a specific district in the SZO or the SZO in general.

In the instant matter with regard to the Project, approval of the variance request for a payment in lieu of the required civic space is proper due to the unique and special circumstances of the subject Property with regard to its shape and location, which does not affect generally the ASMD zoning district in which the land is located and in contrast to other properties throughout the general ASMD. Again, the Project's ability to provide appropriate and usable Civic Space on the Property is severely hampered by its location adjacent to the I-93 highway, the I-93 off-ramp and Route 28 with their accompanying noise, air and other pollution contributors. This location is not suitable for usable open and civic space, therefore the requested payment in lieu of civic space should be allowed by the Board of Appeals. Additionally, due to the Property's unique trapezoidal shape and contours it is extremely difficult to provide for on-site Civic Space along with sufficient lot area required for a viable Office/R&D/Lab Building with adequate floor plates.

As detailed herein and evidenced further on the Site Plans, the requested variance is imperative for the Property in order to construct an allowed building type and to provide for adequate floorplates to serve future commercial office, research/development and laboratory use tenants. Affording at least 25 percent of the Property to one or more Civic Spaces would severely restrict this type of tenancy, provide for an oddly shaped floorplate with multiple angles, corners and open space areas not conducive to location on either the I-93/Route 28 side of the Property nor at the front of the Property on Middlesex Avenue. In essence, neither the required floor plates nor the required civic space would be appropriately sized or located on the Property. Given the large footprint required to accommodate an economically viable and efficient lab floorplate, and given existing lot constraints, the Applicant determined that the available open space on the Property with the Project is not suitable to support the civic space requirement on-site. Instead, the Project will focus on activating the public realm along Middlesex Avenue and will work with the City to provide a payment in lieu of civic space that will allow the City to support existing civic space, or to create new civic space on a more suitable lot elsewhere in the City.

However, the Project does propose new street trees and on-site open space to assist in introducing new open spaces, public realm improvements and pedestrian amenities that will continue the transformation of this historically and largely industrial district into a vibrant, 24/7 urban community. In this regard, in keeping with the City's vision to create a pedestrian and bicycle friendly urban environment, and in an effort to create vibrant street activity where none currently exists, the Applicant proposes to pull back the ground floor of the building by approximately ten (10) feet to improve walkability along the Project's Middlesex frontage, and to create more space and flexibility for an inviting and active urban pedestrian zone.

The literal enforcement of this provision of the SZO on the Project would involve substantial hardship, financial or otherwise, to the Applicant due to said special circumstances

and conditions, as detailed above. The granting of the variance request will not violate the purpose of the SZO. A literal enforcement of the provisions of the SZO would create substantial hardship, financial or otherwise, because the Applicant has the need to design the proposed building in a manner that is useable and marketable for future tenants and for uses that are Allowed under the SZO in the ASMD. Again, designing the building to comply with the required civic space allotment on site would result in inadequate floorplates for lab tenants and inadequate, unusable and unsafe civic space for building tenants and local residents. An irregularly shaped floorplate, versus the rectangular lab building proscribed by the SZO, may not appeal to potential lab tenants and would severely reduce the rentability of the Project and impact the Project's financial feasibility. Therefore, a strict interpretation of the SZO will create a substantial hardship by impacting the usefulness of the proposed building and Project.

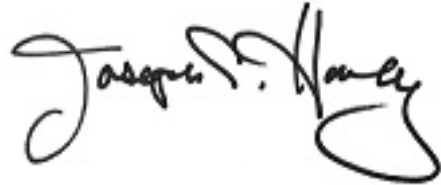
Additionally, according to Section 12.3.3b.i of the SZO., Civic Space in Lieu Payments are made available to a Master Planned Development. The term "Master Planned Development" is not a defined term in the Zoning Ordinance. There is no reference to it in the Glossary section of Article 2.1, which defines its specific applicable terms. Section 12.3.3 is not explicit that it is only applicable to Master Planned Development "districts", or more importantly, that it is NOT applicable to the ASMD Special District. As a result, the fact that the Property is not yet located in a Master Planned Development Overlay District governed by Section 8.3 of the Zoning Ordinance, should not be dispositive of this issue. Furthermore, there is no language precluding or forbidding the issuance of a Special Permit for the payment in lieu of creating on-site civic space in the ASMD. Nothing in the enacted language of the Zoning Ordinance supports such a narrow interpretation that Section 12.3.3 applies *only* to development projects in a Master Planned Development Overlay District.

Finally, the desired relief can be granted without causing substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the SZO. Here, the existing condition at the Property is an underutilized urban lot at the gateway to the ASMD and Assembly Square. The existing condition of the Property is pre-existing nonconforming with regard to the SZO as it is comprised of an existing two-story office building of approximately 11,600 SF, a two-story religious use building of approximately 15,842 SF, and a surface parking area accommodating up to approximately 42 parking spaces. The Project will significantly enhance this condition and include substantial site, pedestrian and landscaping improvements. The Project's proposed uses are Allowed under the SZO and the proposed Project has been processed and reviewed with the community, including at a well-attended neighborhood virtual meeting on September 23, 2020. As such, the Applicant submits that the requested relief is consistent with the character and concerns providing for the public good, as the Applicant has given special attention to the siting, scale, design, and scope of the new structure, open space and vehicular and pedestrian access and neighborhood safety.

For the reasons stated above, the Applicant respectfully requests that the Board of Appeals grant the Variance from the SZO as requested.

Please docket and advertise this request for the next available public hearing date at your earliest convenience. Thank you for your time and consideration on this matter and please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in black ink that reads "Joseph P. Hanley". The signature is written in a cursive style with a large, looping initial "J".

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Joseph P. Hanley, Esq.

JPH/njz  
Enclosures

**EXHIBIT A –  
DEVELOPMENT REVIEW PROPERTY OWNER AUTHORIZATION  
FORMS**



# CITY OF SOMERVILLE

## Office of Strategic Planning & Community Development

### DEVELOPMENT REVIEW • PROPERTY OWNER AUTHORIZATION

Property Address: 120 Middlesex Avenue, Somerville, MA		
Zoning District: ASMD	Ward: 1	MBL: 68-B-2
Applicant: Brickyard at Assembly LLC		
Address: 200 Broadway, Suite 103		
Phone: 978-360-9558	Email: edoherty@kemscorp.com	
Property Owner: Grande Spaulding LLC		
Address: 27 Pleasant Street, North Reading, MA 01864		
Phone: 978-314-7505	Email: DGiangrande@dci-ma.com	
Agent: Kyle Greaves		
Phone: 617-607-2988	Email: kgreaves@vhb.com	

As the **Applicant**, I make the following representations:

1. I understand that an application for development review is not complete until all necessary information has been submitted and all fees have been paid
2. I understand that an incomplete application will not be reviewed, will not be publicly noticed, and will not be scheduled for a public hearing, as applicable.
3. I certify that the information supplied on and with this form is accurate to the best of my knowledge.
4. I certify that the agent listed on this application form is authorized to represent me before City staff and review boards as it relates to the development of this property.

Signature: \_\_\_\_\_

As the **Owner**, I make the following representations:

1. I certify that I am the owner of the property identified on this property owner authorization form.
2. I certify that the applicant named on this application form is authorized to apply for development review for the property identified and for the purposes indicated by the submitted documentation.
3. I certify that the agent listed on this application form is authorized to represent me before City staff and review boards as it relates to the development of this property.
4. I permit City staff to conduct site visits on my property.
5. If the ownership of this property changes before the development review is completed, I will provide updated information and new copies of this form.

Signature: \_\_\_\_\_





# CITY OF SOMERVILLE

## Office of Strategic Planning & Community Development

### DEVELOPMENT REVIEW • PROPERTY OWNER AUTHORIZATION

Property Address: 132 Middlesex Avenue, Somerville, MA		
Zoning District: ASMD	Ward: 1	MBL: 68-B-3
Applicant: Brickyard at Assembly LLC		
Address: 200 Broadway, Suite 103		
Phone: 978-360-9558	Email: edoherty@kemscorp.com	
Property Owner: Christian Assembly Inc.		
Address: 616 Fellsway, Medford, MA 02155		
Phone: 617-694-2910	Email: j.fodera@me.com	
Agent: Kyle Greaves		
Phone: 617-607-2988	Email: kgreaves@vhb.com	

As the **Applicant**, I make the following representations:

1. I understand that an application for development review is not complete until all necessary information has been submitted and all fees have been paid
2. I understand that an incomplete application will not be reviewed, will not be publicly noticed, and will not be scheduled for a public hearing, as applicable.
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Signature: \_\_\_\_\_

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2. I certify that the applicant named on this application form is authorized to apply for development review for the property identified and for the purposes indicated by the submitted documentation.
3. I certify that the agent listed on this application form is authorized to represent me before City staff and review boards as it relates to the development of this property.
4. I permit City staff to conduct site visits on my property.
5. If the ownership of this property changes before the development review is completed, I will provide updated information and new copies of this form.

Signature: \_\_\_\_\_

**EXHIBIT B – SITE AND LOCUS PLANS**

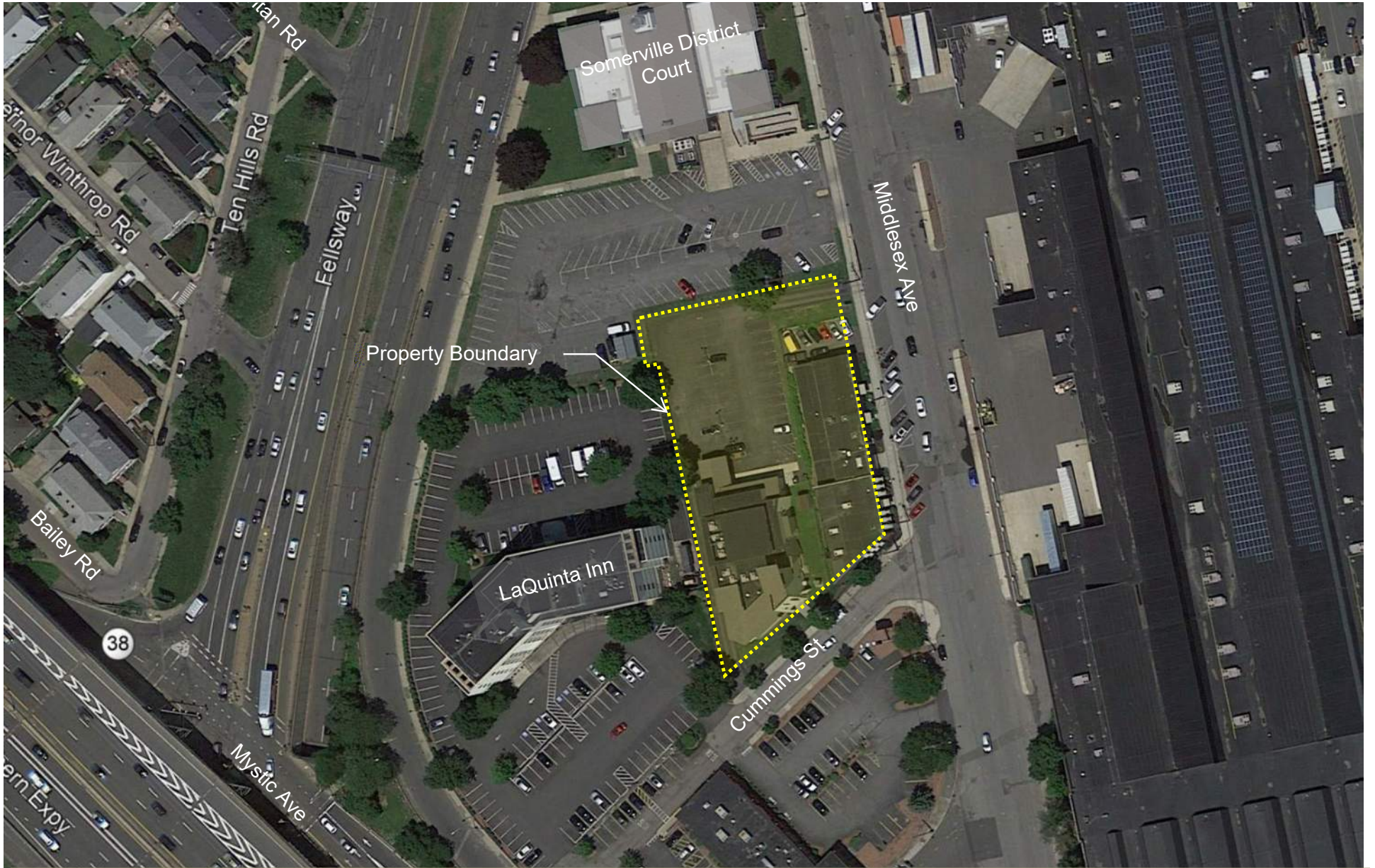


Figure 2.3  
Existing Conditions Plan  
**Brickyard at Assembly**  
**120 Middlesex Avenue**  
**Somerville, MA**

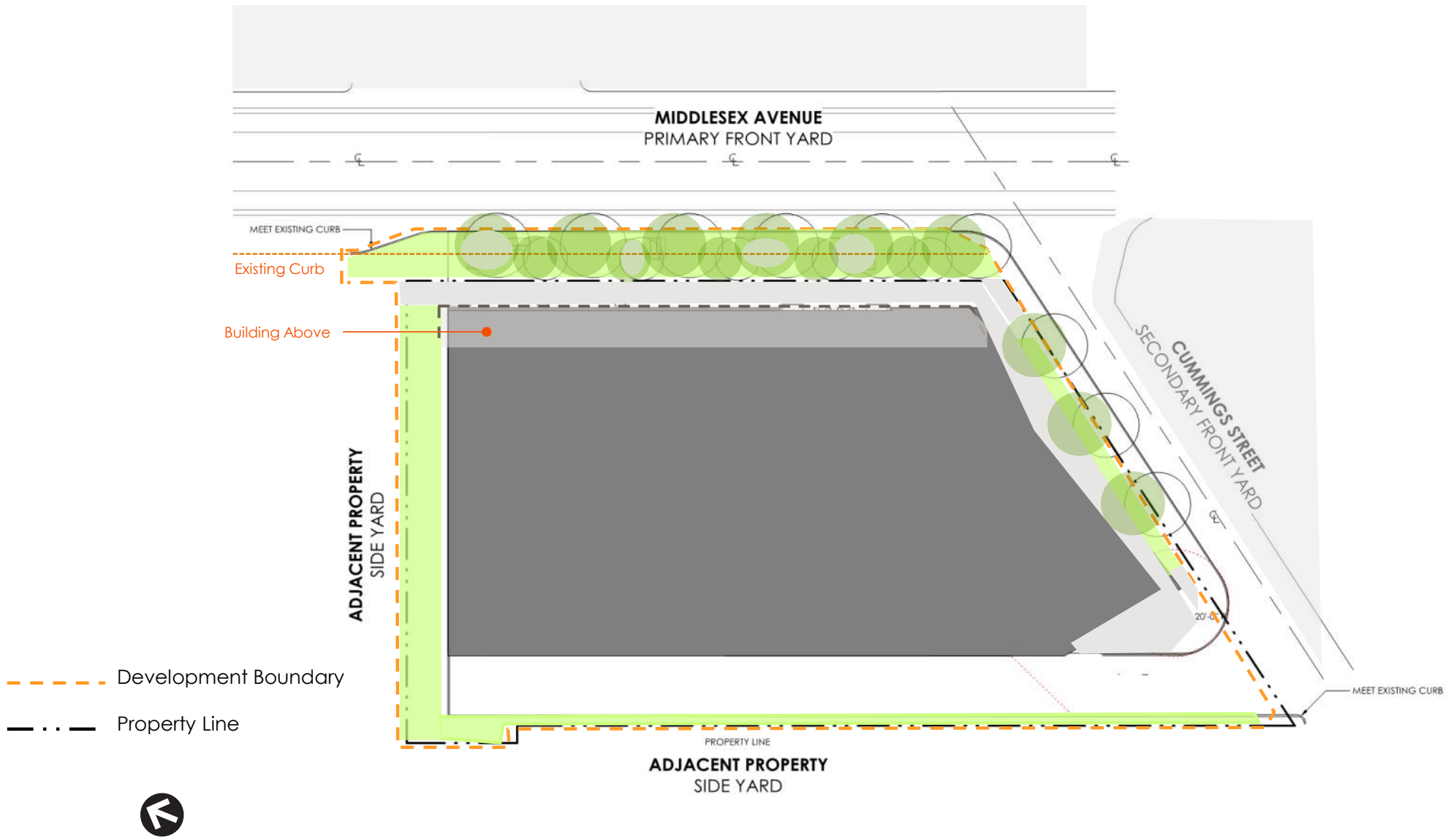


Figure 2.6  
Proposed Site Plan

**Brickyard at Assembly**  
**120 Middlesex Avenue**  
**Somerville, MA**

**EXHIBIT C – FILING FEE**

17618

**MCDERMOTT QUILTY & MILLER LLP**

OPERATING ACCOUNT  
28 STATE ST., #802  
BOSTON, MA 02109  
(617) 946-4600

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10/22/2020

PAY TO THE  
ORDER OF

City of Somerville

\$ \*\*250.00

Two Hundred Fifty and 00/100\*\*\*\*\*

DOLLARS

City of Somerville

MEMO

Variance/Advertising Fee-Doherty-120-132 Middlese



*Steve V. Miller*  
AUTHORIZED SIGNATURE

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MCDERMOTT QUILTY & MILLER LLP

17618

City of Somerville

10/22/2020

Variance/Advertising Fee-Doherty-120-132 Middlese

250.00

Citizens Operating

Variance/Advertising Fee-Doherty-120-132 Middl

250.00

Security features. Details on back