



City of Somerville

ZONING BOARD OF APPEALS

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

DECISION

2024 AUG 20 A 9:11

PROPERTY ADDRESS: 89 College Ave
CASE NUMBER: ZP24-000065
APPLICANTS/ADDRESSES: Jane B. Becker, 7 Francesca Ave, Somerville, MA 02144
Maren Chiu, 17 Kidder Ave & 24 Francesca Ave, Somerville, MA 02144
Clair E. Pagnano, 11 Francesca Ave, Somerville, MA 02144
Alan Ball, 50 Francesca Ave, Somerville, MA 02144
John Amaral, 90 College Ave, Somerville, MA 02144
Kathleen Johanson, 14 Francesca Ave, Somerville, MA 02144
OWNER: First Congregational Church of Somerville
OWNER ADDRESS: 89 College Ave, Somerville, MA 02144
DECISION: Denied (Administrative Appeal)
DATE OF VOTE: August 14, 2024
DECISION ISSUED: August 20, 2024

CITY CLERK'S OFFICE
SOMERVILLE, MA

This decision summarizes the findings made by the Zoning Board of Appeals (the "Board") regarding the Administrative Appeal submitted for 89 College Avenue.

LEGAL NOTICE

Jane B. Becker, Maren Chiu, Clair E. Pagnano, Alan Ball, John Amaral, and Kathleen Johanson seek an Administrative Appeal of the Building Official's issuance of a Building Permit, B24-000749.

RECORD OF PROCEEDINGS

On July 31, 2024, the Zoning Board of Appeals held a public hearing advertised in accordance with M.G.L. 40A and the Somerville Zoning Ordinance. Present and sitting at the public hearing were Board Members Chair Susan Fontano, Vice-Chair Anne Brockelman, Zachary Zaremba, Alternate Brian Cook, and Alternate Sisia Daglian. The Appellants and their attorney provided an overview of the Administrative Appeal, detailing their arguments on why they believed the Building Permit was issued in error. The subject building permit (B24-000749) was issued for an accessory homeless shelter use in an existing religious institution (church) building and was issued as a protected use under the Dover Amendment. Appellants and their attorney argued that the homeless shelter accessory use is not a protected use under the Dover Amendment, and, because homeless shelter uses are not permitted by right in the zoning district for the subject property under the Somerville Zoning Ordinance, that the building permit should be revoked. The attorney for the Somerville Homeless Coalition (hereafter referred to, with the First Congregational Church of Somerville, as the Defendants) provided an argument of why the accessory homeless shelter use within

the existing church is a protected use under the Dover Amendment, and that the Building Permit was issued appropriately. The attorney for the Appellants then provided a rebuttal on why they believe the Dover Amendment was inappropriately applied.

The Chair then opened the floor for public testimony, and multiple individuals spoke both for and against the Administrative Appeal. Following public testimony, the Board asked questions of Inspectional Services Department (ISD) and Preservation, Planning, and Zoning (PPZ) staff regarding the permitting process and how homeless shelters are treated under the Somerville Zoning Ordinance. ISD and PPZ staff responded to questions. Law Department staff then responded to questions from the Board and spoke about the legal considerations for the case, and how the Dover Amendment may apply to the homeless shelter use as an accessory use to the existing church use based on existing case law. The Board continued the public hearing to August 14, 2024. The Chair left the public testimony portion of the hearing open.

On August 14, 2024, the Board resumed the public hearing. Present and sitting at the public hearing were Board Members Chair Susan Fontano, Ann Fullerton, Zachary Zaremba, and Alternate Sisia Daglian. Member Ann Fullerton was absent from the hearing on July 31, 2024, but submitted an affidavit confirming review of the evidence, and was able to participate in the hearing and decision. Law Department staff provided a brief overview of the legal matter before the Board, and the attorney for the Appellants provided a presentation on the case and their arguments for the Administrative Appeal. The Board asked some questions, to which the Appellants' attorney responded. The Appellants then provided additional arguments for the Administrative Appeal. The attorney for the Defendants then provided arguments against the Administrative Appeal.

The Chair then reopened the floor to public testimony, and multiple people spoke against the Administrative Appeal, and some in support. Following the completion of public testimony, the Chair closed the public hearing. Law Department staff provided additional clarification regarding their submitted legal opinion and responded to questions from the Board. The Board then discussed the facts of the case and made findings related to the homeless shelter accessory use and the applicability of the Dover Amendment.

Following the public testimony period and deliberations, and after reviewing the arguments and making findings, the Board voted against approving the Administrative Appeal.

FINDINGS

The First Congregational Church of Somerville's faith specifically includes supporting those in need in their community.

The homeless shelter use is consistent with the First Congregational Church of Somerville's core beliefs, including mission statements.

The homeless shelter use is clear accessory use to the First Congregational Church of Somerville and is covered by the Dover Amendment.

DECISION

Following public testimony, review of the submitted documents, and discussion of the statutorily required considerations, Ann Fullerton moved to approve the Administrative Appeal of the Building Official's issuance of a Building Permit, B24-000749. Zachary Zaremba seconded the motion. The Board voted **0-4** on the motion. **The motion failed and the Administrative Appeal was subsequently denied.**

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chair*
Ann Fullerton
Zachary Zaremba
Sisia Daglian, *Alternate*

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.

FOR SITE PLAN APPROVAL(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

FOR ADMINISTRATIVE APPEAL(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 _____