



CITY OF SOMERVILLE, MASSACHUSETTS
JOSEPH A. CURTATONE
MAYOR

February 25, 2010

The Honorable Board of Aldermen
Somerville City Hall
Somerville, MA 02143

Re: Review of Proposed Amendments to the Somerville Zoning Ordinance submitted by
Somerville Residents for Sensible Development on January 12, 2010

Dear Honorable Board of Aldermen:

Staff from the Office of Strategic Planning and Community Development (OSPCD) have prepared an analysis of the proposed amendments to the Somerville Zoning Ordinance submitted by Somerville Residents for Sensible Development for your consideration.

Staff from OSPCD will be available if you have any questions regarding these materials.

Respectfully submitted,

Joseph A. Curtatone
Mayor





CITY OF SOMERVILLE, MASSACHUSETTS
Office of Strategic Planning and Community Development
JOSEPH A. CURTATONE, MAYOR

Office of the Executive Director

MEMORANDUM

TO: Joseph A. Curtatone, Mayor

FROM: Monica R. Lamboy, Executive Director *ML*

DATE: February 25, 2010

SUBJECT: Review of Proposed Amendments to the Somerville Zoning Ordinance submitted by Somerville Residents for Sensible Development on January 12, 2010

The Office of Strategic Planning and Community Development has analyzed the proposed amendments to the Somerville Zoning Ordinance (SZO) submitted by Somerville Residents for Sensible Development and respectfully requests that you forward this memo to the Board of Aldermen (BOA) for their consideration as they review the citizen petition.

BACKGROUND

This package includes five amendments that would:

- Change the Special Permit Granting Authority (SPGA) for all special permits to the Board of Alderman;
- Downzone land near Park Street;
- Establish new special permit review criteria;
- Temporarily suspend density bonuses; and,
- Change application requirements.

The purpose statement for each amendment, as written by the citizens who submitted the application, is listed below in italics. Each of these purpose statements is followed by comments from OSPCD on each of the proposed amendments below. The Land Use Committee of the Board of Alderman and the Planning Board will be reviewing the proposed amendments in a joint public hearing on March 4, 2010.

ANALYSIS

1. Revision to SPGA

The purpose of this ordinance is to remove from the Zoning Board of Appeals (and the Planning Board) the authority to grant special permits or special permits with site plan review and to vest it in the Board of Alderman.

The Zoning Act in MGL 40A Section 1 states that the Special Permit Granting Authority "shall include the board of selectmen, city council, board of appeals, planning board, or zoning administrators as designated by zoning ordinance or by-law for the issuance of special permits." Despite the authorization to do so, very few communities give special permit granting authority to their chief legislative body, and those that do usually reserve such authority for very specific types of special permit or group of special permits.

There are a number of reasons that most communities have specialized boards review and grant special permits under zoning:

- Placing land use decisions in the hands of appointed boards is a reform-minded strategy that has been popular since the early 1900s progressive era. Use of groups of citizens appointed for fixed staggered terms of office responsible for representing the public interest in considering complicated technical matters has been a long established "good government" strategy. As a part of this movement, Massachusetts established Planning Boards in 1913 at the local level for the purpose of doing these sorts of reviews.
- To this day, Planning Boards and Zoning Boards of Appeals provide direct community representation into the permit review process and are typically staffed by residents with particular dedication and expertise in addressing land use issues. Current Planning Board members have expertise in planning, finance, construction, housing and law, while the ZBA members have backgrounds in planning, finance, architecture, law and small business management. This mix of backgrounds provides the opportunity for a balanced board to address development issues.
- The Planning Board and Zoning Board have the capacity to dedicate the time necessary to consider each application. Each board meets 23 times per year at meetings that on occasion can last upwards of 4 to 5 hours.

The Somerville Zoning Ordinance contains hundreds of special permit provisions for specific uses in districts, adjustment of dimensional requirements, applications for projects at or above a certain density. Special permits, according to MGL 40A Section 9 "may be issued only for uses which are in harmony with the general purpose and intent of the ordinance...", "shall be subject to general or specific provisions set forth therein...", and "may impose conditions, safeguards and limitations on time or use." In 2009, the ZBA and Planning Board in Somerville processed 68 applications for Special Permits that were considered at their 46 public meetings.

2. Downzone of land near Park Street

The purpose of this ordinance is to down zone to a more restrictive residential district certain parcels of land and the buildings thereon situated near Park Street in Ward 2.

The request is to rezone certain parcels within the Residence C (RC) district into the Residence B (RB) district. Eighteen lots on the zoning map are identified for re-zoning. With some lots combined under single ownership, these lots represent 14 separate parcels. The table below summarizes existing uses and lot areas.

Uses and Lot Areas - Proposed Zoning Change RC to RB					
Use	Parcels Separately Owned	Total Lots On Zoning Map	Size (sf)	Lot Area per Unit	% of Total Land Area
Single Family	3	3	8,091	2,697	6.0%
Two Family	3	4	6,786	1,131	5.1%
Multi-Family	2	2	12,604	741	9.4%
Industrial	4	7	98,894	n/a	73.6%
Vacant Land	2	2	7,903	n/a	5.9%
Totals	14	18	134,278	1,057	100.0%

The following items are for consideration:

- The parcels proposed for rezoning directly abut the Fitchburg Line railroad right-of-way and were zoned as RC in 1989. Currently, the area contains a mix of small scale industrial uses, mainly warehouses, and some residentially occupied parcels. In reviewing other properties along the Fitchburg Line that have been developed under the RC zoning, it is staff's belief that these properties were zoned RC to encourage change of use away from industrial operations and develop a scale of building that will help screen the abutting lower scale residential areas from the noise from the tracks.
- Many of the current uses in this area are not compatible with the existing residential neighborhood that abuts them. To downzone these properties from one residential district to a lower density residential district would reduce the likelihood of redevelopment in this area, effectively freezing a mix of obsolete buildings on the land that could be more detrimental to the neighborhood in the long run than a redevelopment under the RC zoning district.
- RC allows for integration of neighborhood-serving retail into residential development in this area, providing more services to current and future residents. RB does not allow for this.
- A future green line extension from Union Square to Davis Square would likely have a stop in this area. Downzoning may complicate plans for future transit-oriented development in this area.

3. New Special Permit Criteria

The purpose of this ordinance is to require development projects seeking a special permit that are a certain minimum size to be subject to water & sewer and traffic studies that are conducted by an independent engineer who has not had a business relationship with the city or the developer during the seven (7) years preceding application submission.

This will replace Section 5.1.4 with new language. Section 5.1.4 was last amended in 1991. This section presents the basis for making findings and determinations for special permits by a special permit granting authority. The intent of the special permit requirement is to provide the opportunity for an independent review of a proposed development project or change of use, hear concerns of abutters and parties of interest, and incorporate conditions of approval that will create a better project and address potential adverse impacts. Special permits in Somerville are required for projects of varying size and type, including additions to non-conforming residences, residential developments with affordable housing, and many commercial and industrial uses.

Currently, projects submitted for review are distributed to a number of City departments including engineering, traffic & parking and fire prevention. Project reviews address concerns about traffic, utilities and environmental concerns, amongst other issues. Additional information and/or peer reviews can be, and often are, required by these departments or the special permit granting authority.

The following are for consideration:

- The proposed change to this section could limit the ability for a special permit granting authority to use judgment in making decisions. As proposed, no special permit could be approved unless it can establish that it has no adverse impacts at all (i.e. is not inconsistent "in whole or in part" with the intent of the ordinance). Typically, the permit granting authority has to balance community needs, enhancing positive impacts of a project while identifying appropriate mitigation for negative impacts. The proposed "whole or in part" standard will require the permit granting authority to apply a strict criteria that every aspect of a project be better in every way than the existing condition, stripping the granting authority of their ability to balance often conflicting needs, and opening up significant risk if project approvals are appealed.
- The proposed amendment would require projects to be compatible with the "fundamental character of the immediate surrounding neighborhood." Typically, a wider neighborhood-based approach is taken, particularly in neighborhoods that have mixed characters. For example, it would be difficult to convert an obsolete industrial area into more mixed-use properties if each individual project had to remain compatible with the character of the immediately adjacent existing industrial buildings. But, it would be more reasonable to look at the entire neighborhood context and nearby examples for appropriate design considerations.
- The review procedure under Section A references the "Planning Board, when there are other SPGAs.
- Traffic impact is regularly addressed and mitigated through the current code and current practice. This proposal requires a traffic study for all projects of 10 or more dwelling units. A typical daily traffic demand for a 10 unit building is in the range of 60 trips per day, or one trip per 24 minutes. Requiring developers of small projects to do extensive traffic analysis could impact project affordability.
- The proposal also requires that the traffic engineer and water/sewer engineer certify that they have not represented the City or represented a development proponent before the City in the previous seven years. Based upon the 2009 caseload, if each individual applicant had to hire a different traffic engineer, there would need to be over 500 separate engineers doing separate studies for the boards over the course of 7 years. For comparison sake, there are 24 registered professional civil engineers (PEs) in the City of Somerville and a total of 53 certified professional traffic engineers (PTOEs) in the Commonwealth of Massachusetts. Given the significant caseload before the City, this will require developers to seek out engineers that are further away who will have to spend significant effort doing baseline work before being able to render an opinion. Such opinions would not be as well developed as those from an engineer with experience in an urban community in general and the streets of Somerville in particular.
- The denial of a project due to a lack of a certificate from traffic and parking may be inconsistent with the State Zoning Act in MGL 40A Section 11 which states:
 - Zoning ordinances or by-laws may provide that petitions for special permits shall be submitted to and reviewed by one or more of the following and may further provide that such reviews may be held jointly:--the board of health, the planning board or department, the city or town engineer, the conservation commission or any other town agency or board. Any such board or agency to which petitions are referred for review shall make such recommendations as they deem appropriate and shall send copies thereof to the special permit granting

authority and to the applicant; provided, however, that *failure of any such board or agency to make recommendations within thirty-five days of receipt by such board or agency of the petition shall be deemed lack of opposition thereto. (emphasis added.)*

4. Temporary suspension of density bonuses

The purpose of this ordinance is to suspend the SPGA's authority to grant density bonus special permits until a comprehensive analysis and report has been prepared and submitted to the Board of Alderman by an independent land use consultant detailing the impacts of the ordinance on the city.

These provisions of the SZO allow for development bonuses for providing affordable housing. In RA and RB districts, a certain number of units are allowed by right (2 units in RA and 3 units in RB). In order to permit a higher number of units, up to the maximum determined by lot area of the parcel, the developer must provide at least 12.5% affordable units. In addition, a rarely-used provision in Section 13.5 allows a bonus up to 20% for family rental housing in multi-family developments.

According to the Five Year Consolidated Plan completed in 2008, Somerville still has challenges with housing affordability. The majority of renter-occupied units in the Somerville have one or two bedrooms, while average rents for a three-bedroom unit are over \$1800 per month. A family at median income in Somerville would have to pay 35% of their income to afford a median rent in the city.

The Consolidated Plan identifies goals of creating 200 additional units of affordable housing by 2013. Clearly this goal is easier to achieve when there are opportunities to have developers carry the costs of affordable housing through the use of these bonuses. Delay of the bonus for one year would set back the City on its commitments to affordable housing as reported to the Department of Housing and Urban Development in the Consolidated Plan.

These inclusionary housing provisions have contributed to Somerville's affordable housing stock by adding about 70 units since the inclusionary housing ordinance was enacted in 2000. These contributions, while small, are valuable to achieving the City's affordability goals.

5. Application Information

The purpose of this ordinance is to correct a serious flaw in the zoning ordinance that allows the true applicants for special permits or variances to hide behind this loophole and not disclose themselves at the time of application to the SPGA or the Zoning Board of Appeals.

The role of a Special Permit Granting Authority is to approve or deny a project based upon its location, merits and ability to meet the specific criteria set out in the Zoning Ordinance, i.e., whether the proposed project is appropriate in the location proposed. The purpose of collecting accurate information about landowners, applicants and agents is simply to ensure that communication with the development team between the board and its staff is simplified. Furthermore, the inclusion of a signature page in the application ensures that landowners are authorizing their agents and applicants to act on their behalf. The ZBA or Planning Board do not address the quality of the applicant or the form of legal entity such as a trust or LLC. It is only necessary to ensure that the landowner who had a decision-making capacity over the parcel (owner in fee, owner of corporation, trustee, etc.) has authorized the application on his/her/its behalf.

While, obviously, the public has a right to know about conflicts of interest that may exist when board members or their family members or business associates have a financial interest in a project, the State Ethics Law strictly requires that members disclose these conflicts publicly and recuse themselves from participation in these items. If a board member fails to act in accordance with the State Ethics Law (MGL 268A), they can be held accountable by the State Ethics Commission.

The proposed amendment, requiring that the names of all holders of beneficial interests in trusts and corporations, suggests that the boards should be using this information as a part of their decision making criteria. This implies that land use decisions should be based upon who the applicant is instead of the appropriateness of the project, a circumstance that is contrary to good governmental practices, in general, and good planning practices in particular.

Furthermore, zoning permits run with the land, not with the owners or their applicants. Any owner can sell an approved project upon completion of the permitting process, thereby voiding any benefit this extensive declaration of information could have provided.

That said, Planning Staff recognize that there is a need to clarify the application form to ensure that we collect complete information and OSPCD staff are working to update the application form, to address the following issues:

- Clear identification of land owner and the name of the individual or individuals that control decision-making capacity on behalf of the land owner;
- Opportunity for the owner to identify one or more agents to represent them as architect, engineer, attorney, etc.;
- Optional opportunity for the owner to authorize an 'applicant' (a tenant, lessee, or prospective purchaser) to be identified to shepherd the application through the approval process;
- A required signature page to ensure that the controlling landowner has authorized the applicant and/or agents to act on his/her/its behalf;
- Submittal of deed information to verify the identity of the controlling landowner;
- Submittal of information to establish that the entity exists at the time of application (whether it is an LLC submittal, DBA certificate or trust certificate); and,
- Requirement that the owner supply up-to-date information should the ownership change during the review process.

All of the abovementioned updates can be done administratively and none would require an amendment to the zoning ordinance.