



Hamlen & Company, Inc.

March 27, 2014

Honorable Board of Aldermen
C/O John Long, City Clerk
City Hall
93 Highland Avenue
Somerville, MA 02143

Re: 2015 Somerville Zoning Overhaul

Dear Sir/Madam,

Thank you for allowing me the opportunity to comment on the proposed 2015 City of Somerville Zoning Overhaul. With further refinement and time I have no doubt that this Zoning Overhaul will create greater clarity, predictability, and greater ease of interpretation for many neighborhoods in the City, and for property owners like me.

As a property owner in the Inner Belt District (21 Third Avenue, 43 Third Avenue, 57-59 Inner Belt Road, and 61 Inner Belt Road), I applaud the efforts the City is making to transform this neighborhood and the exciting vision that is developing for the longer term. However, in the near term I am very concerned that some of the newly proposed zoning regulations will severely limit my existing operations and the operations of my current tenants, as well as those of potential future tenants.

Attached you will find highlighted sections of the proposed Ordinance that more clearly articulate some of my concerns. I certainly realize that I am late in providing these comments, but I would very much welcome the opportunity to meet with you (or the Planning Director on your behalf), and discuss them in greater detail at your earliest convenience. I can be reached at 617-742-9955 x33 or at Charlie@hamlen.net.

Thank you and I look forward to hearing from you.

Sincerely,

Charlie McKenzie.

D. INNER BELT (IB-SD)

GRAPHIC STILL IN PRODUCTION

1. INTENT

- a. To accommodate a neighborhood of mixed-use, high-density transit-oriented development with the following characteristics:
 - i. An interconnected street grid and comprehensive thoroughfare network that includes new streets and alleys.
 - ii. Appealing physical connections to the Washington Street Green Line Station, East Somerville, the North Point neighborhood in Cambridge, the Roland Street neighborhood in Boston, and regional pathways.
 - iii. Upgraded physical connections across the Lowell commuter rail link embankment.
 - iv. A distribution of diverse civic space types to serve the various social needs of neighborhood residents, workers, and visitors, including a public common.
 - v. **A diverse mix of uses including commercial industry, fabrication, production, office, research & development, and residential uses.**
 - vi. Primary uses distributed throughout the neighborhood so that the many activities of daily living can occur within walking distance to residences and workplaces.
 - vii. Medium-scale building types that do not exceed 7 stories fronting on Washington Street and New Washington Street and large-scale building types

- that do not exceed 20 stories.
- viii. Architectural and landscape design that spatially defines civic spaces and thoroughfares as outdoor rooms and corridors.

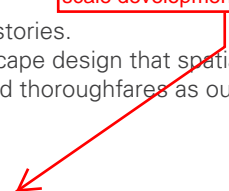
2. PURPOSE

- a. **To incentivize the coordinated planning of development in Innerbelt at multiple scales**
- b. To require a mix of uses consistent with the objectives of the comprehensive Master Plan of the City of Somerville
- c. To permit the development of commercial building types.
- d. To permit the development of mixed use building types following the approval of a neighborhood development plan or large development plan.
- e. To use discretion in the permitting of residential uses.
- f. To promote diversity in housing, including unit type, size, bedroom count, and affordability.

3. APPLICABILITY

- a. Where the provisions of this Section conflict with those found elsewhere in this Ordinance, the provisions of this Section shall apply.

Purpose is inconsistent with dimensional requirements, which allow for only modest, small scale development under the IB-SD base zoning, or for major development to occur through an LDP or NDP. There is no mechanism to allow for moderate scale development.



The intent of the District is not consistent with the Use Table. Unfortunately the Use Table does not allow for commercial industry, fabrication, production type uses.

4. DEVELOPMENT PLANNING

- a. Development Sites
 - i. Development sites of eight (8) or more acres in land area require large development plan approval as a prerequisite to other development review and permitting.
 - ii. Development sites of twenty (20) or more acres in land area require neighborhood development plan approval as a prerequisite to other development review and permitting.
 - iii. Development sites are not permitted to include portions of land area separated by more than 100 feet in distance.
 - iv. Development sites are not permitted to include land area which is part of a separate large development plan.
 - v. Ownership of a development site need not be in common, but all landowners must consent to the plan.
- b. Subdivision
 - i. The subdivision of a development site and the construction of thoroughfares is prohibited prior to the approval of a neighborhood development plan or a large development plan.
- c. Build-Out
 - i. A minimum of five percent (5%) of the total gross floor area of development subject to a neighborhood development plan or large development plan must be provided as leasable floor area for uses from the Arts & Creative Enterprise use category.
 - ii. At full build-out, no less than sixty-five percent (65%) of the total gross floor area of development subject to a neighborhood development plan or large development plan must be provided to commercial uses.
- d. Phasing
 - i. Neighborhood development plans and large development plans must include a development phasing program indicating the expected sequence of development within the plan area.
 - ii. Development phasing must include a strategy for the delivery of required civic space and arts & creative enterprise uses prior to, or in conjunction with, the completion of other development.

or large development plan, the following building types require site development plan approval as a prerequisite to the issuance of a zoning permit:

- i. Mixed-Use Building

The minimum land area requirements for a Development Site are too large to encourage existing owners to participate. Most existing lots in the District are in the 1 to 3 acre range, therefore the assembly of multiple parcels would be necessary. A reduction from 8 acres to 4 acres for Development sites would provide a greater incentive to existing owners and subsequent development to occur more rapidly. Further, since a Neighborhood Development Plan which requires at least 20 acres offers no greater zoning flexibility than a Large Development at 8 acres, there is no incentive to assemble land at a larger scale.

5. PUBLIC REALM STANDARDS

- a. Civic Space
 - i. At least twelve and a half percent (12.5%) of the total land area of a development site subject to large development plan approval or neighborhood development plan approval must be designed as publicly accessible civic space. See §8.C. Civic & Recreation Spaces.
 - ii. Civic space provided must be distributed as a series of separate spaces of various types and sizes throughout the development site.

6. BUILDING STANDARDS

- a. The following building types are permitted by-right and require only a zoning permit:
 - i. Commercial Building
- b. Subject to an approved neighborhood development plan

7. PRINCIPAL BUILDING TYPES

a. Commercial Building

A multi-story building type with ground story commercial and upper story non-residential uses.

i. Lot Standards

ii. Placement



LOT DIMENSIONS

Width (min/max)	30 ft.	150 ft.
Subsequent to a LDP or NDP	30 ft.	200 ft.
Depth (min)	40 ft.	
Subsequent to a LDP or NDP	100 ft.	
Area (max)	20,000 sq. ft.	
Subsequent to a LDP or NDP	45,000 sq. ft.	

BUILDING SETBACKS

Primary Front Setback (min/max)	2 feet	15 feet
Secondary Front Setback (min/max)	2 feet	15 feet
Side Setback (min)		0 ft.
Side Setback Abutting NR (min)		5 ft.
Rear Setback (min)		10 ft.
Rear Setback Abutting NR (min)		15 ft.

LOT COVERAGE

Permeable Surface	10%
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PARKING SETBACKS

Primary Street	--
Secondary Street	20 feet
Side Street	20 feet
Secondary Street	--
Side Street	10 feet
Street	2 feet

The introduction of minimum and maximum lot dimensions and building setback requirements for the IB-SD district results in virtually every existing lot becoming nonconforming, increasing the likelihood that special permits (and potentially variances) will be triggered for exterior alterations. Retaining the existing IA dimensional requirements until the approval of the first LDP or NDP in the IB-SD district would not place an undue permitting burden on existing property owners, giving them some additional flexibility until the district begins to transition.

Typical lots are at least 100,000s.f. in the Inner Belt, while there is no clear path to subdivision if obtaining LDP or NDP approval is not an option (Article 4 Section 4B and Article 8 Section B1a appear to conflict). Will nonconforming lot sizes trigger the need for a special permit if a lot is otherwise conforming?

Commercial Building (cont.)

A multi-story building type with ground story commercial and upper story non-residential uses.

iii. Height & Massing

iv. Uses & Features

**GRAPHIC STILL
IN PRODUCTION**

**GRAPHIC STILL
IN PRODUCTION**

MAIN BODY

Facade Build Out (min)	80%
Floor Plate (max)	15,000 sq. ft.
Subsequent to a LDP or NDP	--
Up to 5 stories (max)	40,000 sq. ft.
Above 5 stories (max)	20,000 sq. ft.
Building Height (max)	3 stories (45 ft.)
Subsequent to a LDP or NDP	20 stories (270 ft.)
Ground Story Height (min)	14 feet
Upper Story Height (min)	9 feet

PERMITTED BUILDING COMPONENTS

Awning	See §3.D.2
Entry Canopy	See §3.D.3
Bay	See §3.D.4
Balcony	See §3.D.5

The introduction of minimum and maximum dimensional requirements relating to the design of a building also renders most of the existing buildings in the Inner Belt district nonconforming, which in turn significantly increases the likelihood that altering these buildings will require a special permit. As previously suggested, retaining the existing IA dimensional requirements until the approval of the first LDP or IDP in the IB-SD District would not place an undue permitting burden on existing property owners, giving them some additional flexibility until the area begins to transition.

FACADE COMPOSITION

Ground Story Fenestration (min)	70%
Upper Story Fenestration (min/max)	20% min 50% max.
Blank Wall (max)	20 ft.

PERMITTED BUILDING FRONTAGE (1 required)

Forecourt	See §3.E.7
Lobby Entrance	See §3.E.8
Storefront	See §3.E.9
Terrace	See §3.E.10
Lightwell	See §3.E.11

PEDESTRIAN ACCESS

Principal Entrance Spacing (min)	n/a
Subsequent to a LDP or NDP	30 ft.

USE & OCCUPANCY

Leasable Space Depth (min)	30 feet
Ground Story Use	Any COMMERCIAL
Upper Story Use	Any COMMERCIAL

b. Mixed-Use Building

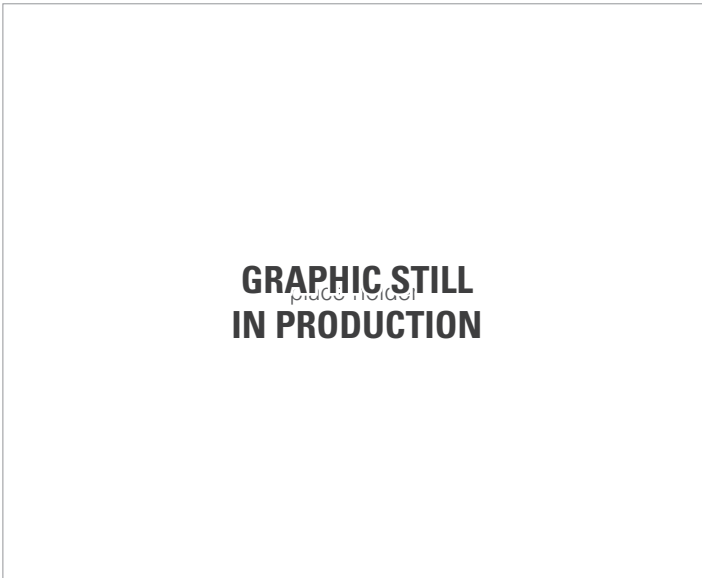
Should this read "residential"?



A multi-story building type with ground story commercial and upper story ~~non-~~residential uses.

i. Lot Standards

ii. Placement



LOT DIMENSIONS

Width (min/max)	30 ft.	150 ft.
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LOT COVERAGE

Permeable Surface	10%
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PARKING SETBACKS

Primary Front Setback (min)	--
Surface Parking	20 feet
Structured Parking	20 feet
Secondary Front Setback (min)	--
Surface Parking	10 feet
Structured Parking	2 feet

Should this read "residential"?



Mixed-Use Building (cont.)

A multi-story building type with ground story commercial and upper story ~~non-~~residential uses.

iii. Height & Massing

iv. Uses & Features

**GRAPHIC STILL
IN PRODUCTION**

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MAIN BODY

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Storefront	See §3.E.9
Terrace	See §3.E.10
Lightwell	See §3.E.11

PEDESTRIAN ACCESS

Principal Entrance Spacing (min)	n/a
Subsequent to a LDP or NDP	30 ft.

USE & OCCUPANCY

Leasable Space Depth (min)	30 feet
Ground Story Use	Commercial
Upper Story Use	Residential
Average Dwelling Unit Size (min)	900 sq. ft.

TABLE 4.6 Principal Uses in IB-SD

Y - by Right
L - by Right with Limitations
SP - by Special Permit
N - NOT Permitted

	Base Uses	Subsequent to a LDP or NDP	Use Specific Regulations and/or Performance Standards
ARTS & CREATIVE ENTERPRISE			
Artisan Production	Y	Y	\$5.B.2.a. Artisan Production
Arts Exhibition	Y	Y	\$5.B.2.b. Arts Exhibition
Arts Sales & Services	Y	Y	\$5.B.2.c. Arts Sales & Services
Creative Studio	Y	Y	\$5.B.2.d. Creative Studio
Design Services	Y	Y	\$5.B.2.e. Design Services
Shared Workspaces & Arts Education	Y	Y	\$5.B.2.f. Shared Workspaces & Arts Education
Work/Live Creative Studio	SP	SP	\$5.B.2.g. Work/Live Creative Studio
AUTO-ORIENTED			
Commercial Vehicle Repair & Maintenance	SP	SP	\$5.B.3.a. Commercial Vehicle Repair & Maintenance
Dispatch Service (except as noted below)	SP	SP	\$5.B.3.b. Dispatch Service
Towing Service	N	N	\$5.B.3.b.i. Towing Service
Gasoline Station	N	N	\$5.B.3.c. Gasoline Station
Motor Vehicle Parking (as noted below)	--	--	\$5.B.3.d. Motor Vehicle Parking
Car Share Parking	Y	Y	\$5.B.3.d.i. Car-Share Parking
Commercial Parking	SP	SP	\$5.B.3.d.ii. Commercial Parking
Off-Site Accessory Parking	SP	SP	\$5.B.3.d.iii. Off-Site Accessory Parking
Personal Vehicle Repair & Maintenance	SP	SP	\$5.B.3.e. Personal Vehicle Repair & Maintenance
Vehicle Sales	SP	SP	\$5.B.3.f. Vehicle Sales
CIVIC & INSTITUTIONAL			
Community Center	Y	Y	\$5.B.4.a. Community Center
Educational Facility	Y	Y	\$5.B.4.b. Educational Facility
Hospital	SP	SP	\$5.B.4.c. Hospital
Library	Y	Y	\$5.B.4.d. Library
Minor Utility Facility	SP	N	\$5.B.4.e. Minor Utility Facility
Major Utility Facility	N	N	\$5.B.4.f. Major Utility Facility
Museum	Y	Y	\$5.B.4.g. Museum
Private Non-Profit Club or Lodge	SP	SP	\$5.B.4.h. Private, Non-Profit Club or Lodge
COMMERCIAL SERVICES			
Animal Services (as noted below)	--	--	\$5.B.5.a. Animal Services
Pet Grooming	Y	Y	\$5.B.5.a.i. Pet Grooming
Pet Training, Care, or Shelter	Y	Y	\$5.B.5.a.ii. Pet Training, Care, or Shelter
Veterinarian	Y	Y	\$5.B.5.a.iv. Veterinarian
Assembly & Entertainment	SP	SP	\$5.B.5.b. Assembly and Entertainment
Banking & Financial Services (except as noted below)	Y	Y	\$5.B.5.c. Banking & Financial Services
Personal Credit	N	N	\$5.B.5.c.i. Personal Credit
Broadcast and/or Recording Studio	Y	Y	\$5.B.5.d. Broadcast and/or Recording Studio
Building & Home Repair Services	SP	N	\$5.B.5.e. Building & Home Repair Services

TABLE 4.6 Principal Uses in IB-SD

Y - by Right
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SP - by Special Permit
N - NOT Permitted

	Base Uses	Subsequent to a LDP or NDP	Use Specific Regulations and/or Performance Standards
COMMERCIAL SERVICES (CONT.)			
Business Support Services	Y	Y	\$5.B.5.f. Business Support Services
Caterer/Wholesale Food Production	Y	Y	\$5.B.5.g. Caterer/Wholesale Food Production
Day Care Service (as noted below)	--	--	\$5.B.5.h. Day Care Service
Adult Day Care Center	L	L	\$5.B.5.h.i. Adult Day Care Center
Child Day Care Center	Y	Y	\$5.B.5.h.ii. Child Day Care Center
Maintenance & Repair of Consumer Goods	Y	Y	\$5.B.5.i. Maintenance & Repair of Consumer Goods
Personal Services (except as noted below)	Y	Y	\$5.B.5.j. Personal Services
Body-Art Establishment	SP	SP	\$5.B.5.j.i. Body Art
Gym or Health Club	SP	SP	\$5.B.5.j.ii. Gym or Health Club
Funeral Home	SP	SP	\$5.B.5.j.iii. Funeral Home
Health Care Provider	SP	SP	\$5.B.5.j.iv. Health Care Provider
Recreation Facility	SP	SP	\$5.B.5.k. Recreation Facility
EATING AND DRINKING			
Bar or Tavern	SP	SP	\$5.B.6.a. Bar or Tavern
Restaurant, Café, Bakery	Y	Y	\$5.B.6.b. Restaurant/Cafe/Bakery
Formula Eating & Drinking Est	SP	SP	\$5.B.6.c. Formula Eating and/or Drinking Establishment
INDUSTRIAL			
Commercial Dry Cleaning & L	SP	N	\$5.B.7.a. Commercial Dry Cleaning & Laundry Services
Data Center	N	N	\$5.B.7.b. Data Center
Industrial Manufacturing	N	N	\$5.B.7.c. Industrial Manufacturing
Moving and/or Self Storage	N	N	\$5.B.7.d. Moving & Self Storage
Recycling Collection	N	N	\$5.B.7.e. Recycling Collection
Salvage Yard	N	N	\$5.B.7.f. Salvage Yard
Trucking and Transportation Depot	SP	N	\$5.B.7.g. Trucking & Transportation Depot
Wholesale Trade & Distribution	L	N	\$5.B.7.h. Wholesale Trade & Distribution
LODGING			
Bed & Breakfast	N	N	\$5.B.8.a. Bed & Breakfast
Hotel	N	SP	\$5.B.8.b. Hotel or Hostel
Short Term Rental of a Dwelling	N	N	\$5.B.8.c. Short Term Rental of a Dwelling Unit
OFFICE			
Co-Working	Y	Y	\$5.B.9.a. Co-Working
General Office	Y	Y	\$5.B.9.b. General Office
Research and Development and/or Laboratory	Y	Y	\$5.B.9.c. Research & Development and/or Laboratory
RESIDENTIAL			
Household Living	N	SP	\$5.B.10.a. Household Living
Group Living (except as noted below)	N	N	\$5.B.10.b. Group Living
Community or Group Residence	N	Y	\$5.B.10.b.i. Community or Group Residence

Industrial Uses are more strictly regulated than the existing IA district. Can more uses be allowed by Special Permit? For example, medical device manufacturing, or small manufacturing incubator spaces, would be suitable uses that don't appear to be addressed in proposed Use Table.

Would Wholesale Trade & Distribution allow for parcel delivery or commercial mail delivery? Can the Use category definition in Article 5 be amended to reflect these specific uses?

TABLE 4.6 Principal Uses in IB-SD

Y - by Right
L - by Right with Limitations
SP - by Special Permit
N - NOT Permitted

	Base Uses	Subsequent to a LDP or NDP	Use Specific Regulations and/or Performance Standards
RESIDENTIAL (CONT.)			
Dormitory, Fraternity or Sorority	N	N	\$5.B.10.b.ii. Dormitory, Fraternity, or Sorority
Homeless Shelter	N	N	\$5.B.10.b.iii. Homeless Shelter
Nursing Home/Assisted Living Facility	N	N	\$5.B.10.b.iv. Nursing Home/Assisted Living
Single Room Occupancy Housing	N	N	\$5.B.10.b.v. Single Room Occupancy Housing (SRO)
RETAIL SALES			
Building/Home Supplies & Equipment	Y	Y	\$5.B.11.a. Building/Home Supplies & Equipment
Consumer Goods (except as noted below)	L	L	\$5.B.11.b. Consumer Goods
Drug Paraphernalia Store	N	N	\$5.B.11.b.ii. Drug Paraphernalia Store
Firearms	N	N	\$5.B.11.b.iii. Firearms
Packaged Liquor	N	N	\$5.B.11.b.iv. Packaged Liquor
Medical Marijuana	N	N	\$5.B.11.b.v. Medical Marijuana Facility
Pet Store	SP	SP	\$5.B.11.b.vi. Pet Store
Formula Retail	SP	SP	\$5.B.11.c. Formula Retail
Fresh Food Market and/or Grocery Store	SP	SP	\$5.B.11.d. Fresh Food Market or Grocery Store
Farm/Vendor Market	Y	Y	\$5.B.11.e. Farmer/Vendor Market
URBAN AGRICULTURE			
Farming (as noted below)	--	--	\$5.B.12.a. Farming
Commercial Farm	Y	Y	\$5.B.12.a.i. Commercial Farming
Community Farm	Y	Y	\$5.B.12.a.ii. Community Farming
Community Gardening	Y	Y	\$5.B.12.b. Community Gardening

D. MOBILITY MANAGEMENT

1. PURPOSE

- a. To improve transportation options available to travelers, promote the use of efficient travel modes, and reduce the need to travel.
- b. To decrease vehicular air pollutant emissions, conserve energy resources, and reduce ambient noise levels by reducing vehicular trips, total vehicle miles traveled, and traffic congestion within the city.
- c. To reduce automobile dependence and the associated costs of owning, operating, and maintaining a motor vehicle.
- d. To decrease costs associated with the construction, repair, maintenance, and improvement of city thoroughfares and parking facilities.
- e. To decrease the cost of traffic enforcement and promote traffic safety.
- f. To reduce the demand for parking facilities and increase the capacity and efficiency of existing transportation infrastructure.
- g. To support a fiscal return on federal, state, and local financial investment made in public transportation infrastructure by increasing ridership of public transportation services.
- h. To incorporate transportation planning considerations into development review.
- i. To encourage the establishment of Mobility Management Associations (MMA's) within the city.

2. APPLICABILITY

- a. This section is applicable to the following:
 - i. all non-residential development greater than twenty thousand (20,000) gross square feet in total floor area;
 - ii. all non-residential uses, including the City of Somerville, that have a permanent place of business within the city and twenty (20) or more employees or students;
 - all multi-tenant buildings with non-residential uses that in combination have over twenty (20) employees or students in total;
 - all residential development of more than twenty (20) dwelling units;
 - any alteration, expansion, reconstruction, extension, or structural change to an existing commercial parking facility that causes an increase in the number of parking spaces; and
 - the change in use of a parking facility from accessory parking to commercial parking.

Although a proactive and innovative idea to address transportation related issues, the new Mobility Management Plan places an additional burden on small business owners. Reporting thresholds should be raised to 50,000 sf and 150 employees/students.

- b. The mobility management plan must identify existing site based parking and travel conditions, proposed mobility management programs & services, implementation schedule, and targets and benchmarks for performance review.
- c. The mobility management plan should be consistent with and contribute to the achievement of the comprehensive master plan of the City of Somerville in accordance with the purpose of this section.

5. PERFORMANCE REVIEW

- a. Property owners and employers must submit an annual report to validate continued compliance with the provisions of this section.
- b. A statistically valid survey of employees and/or residents is required to ascertain the level of success of implemented programs, services, incentives, and other measures in accordance with the purpose of this section. The costs associated with any survey shall be borne by the business or property owner.

6. MOBILITY MANAGEMENT ASSOCIATIONS

- a. Mobility Management Association formed to help individual uses and collectively implement and administer or services required by this Section.
- b. A representative from an approved Management Association may join and/or property owners subject to this Section in place of a required coordinator.

The increased likelihood of the need for special permits combined with the submittal of a mobility management plan (updated annually), will make it more difficult to find suitable business tenants that are prepared to wait for a special permit and then commit to an annual mobility management plan. Can the plan be updated every three years as opposed to annually?

7. REQUIRED PROGRAMS & SERVICES

- a. The following programs and/or services are required for all non-residential uses:
 - i. Annual Mobility Education Meeting
 - ii. Distributed Information
 - iii. Guaranteed Ride Home Program
 - iv. On-Site Transportation Coordinator
 - v. Posted Information
 - vi. Preferential Parking Locations for Carpool/Vanpool
 - vii. Qualified Transportation Fringe Benefits
- b. The following programs and/or services are required for all residential uses:
 - i. Distributed Information
 - ii. Posted Information
 - iii. Unbundled Parking
- c. The following programs and/or services are required for commercial parking facilities:
 - i. Posted Information

8. STANDARDS FOR PROGRAMS & SERVICES

- a. Transportation management plans may include, but are not limited to, any or all of the following:
 - i. Financial Incentives
 - a). Car-Sharing/Bike-Sharing Memberships: Full or partial employer-funded monthly membership for local car-sharing and/or bike-sharing services.
 - b). Parking Cash-Out Program: An employer-funded cash payment made available to employees who choose not to use a parking space in an

3. VOLUNTARY PARTICIPATION

- a. Uses and property owners not subject to the provisions of this Section are encouraged to implement mobility management programs and services voluntarily.

4. MOBILITY MANAGEMENT PLAN

- a. Prior to the issuance of any zoning permit, special permit, building permit, certificate of occupancy, business license, or other permit, a mobility management plan must be approved by the Building Official.

Is the Building Official qualified to approve these plans? A plan for a 250 person business is going to be significantly different than a 20 person business.

A. NONCONFORMANCE

1. GENERAL

- a. Applicability
 - i. The alteration, expansion, reconstruction, extension, or structural change (hereafter referred to as "alteration") of a lawfully nonconforming use, structure, site characteristic, lot, and/or sign must comply with the provisions of this section.
- b. Authority to Continue
 - i. Any use, structure, site characteristic, lot, sign that was lawfully established prior to and has been made nonconforming as of the first publication of the public notice for the public hearing for this Ordinance, or any amendment to this Ordinance, may continue as lawfully nonconforming so long as the nonconformity remains otherwise lawful.
 - ii. Any rights conferred upon a lawful nonconformity run with the property and are not affected by changes in tenancy or ownership.
- c. Proof of Lawful Nonconformance
 - i. The burden of establishing the prior existence of a lawful nonconformity is on the applicant applying for development review. If the applicant is a nonconformity, the Building Official shall require the applicant to submit evidence of ownership or other documentation showing that the lawful nonconformity existed prior to the date on which it became lawfully nonconforming.

This language appears to be beyond the purview of the Planning Board since it is the Planning Board determining the needs of the Applicant.

Use Category as the existing nonconforming use, the review board must consider the following:

- i. The extent and nature of the proposed alteration;
 - ii. The ability of conforming alterations to meet the demonstrated need of the Applicant;
 - iii. Consistency of the proposed alterations with the evolution of neighboring structures.
 - iv. Establishment of permeable lot surface, to the maximum extent possible.
 - v. Conformance to design guidelines in this Ordinance.
- b). The review board shall not grant a special permit authorizing a change in use of a lawfully existing nonconforming use of real property to a different nonconforming use, within the same Use Category as the existing nonconforming use, without finding that the alteration is not substantially more detrimental to the neighborhood than the existing use.
- iii. A lawfully existing nonconforming use of real property is not permitted to change to a different nonconforming use from a different Use Category than the existing nonconforming use.

As previously mentioned, current zoning allows for this through a special permit and would offer some continued flexibility for existing business owners.

2. NONCONFORMING USES

- a. Alteration
 - i. Any alteration to a lawfully existing nonconforming use may be permitted if granted a special permit by the appropriate review board in the following circumstances:
 - a). the alteration is not substantially more detrimental to the neighborhood than the existing degree of nonconformity.
- A nonconforming use is considered to be altered in, but not limited to, the following circumstances:
- a). any increase in gross floor area;
 - b). any increase in the number of dwelling units;
 - c). a change from seasonal to full-time operation and,
 - d). any substantial increase in the number of automobile trips generated by the use.
- b. Change in Use
 - i. A lawfully existing nonconforming use of real property may change to a permitted use as indicated for the district where the property is located (see Article 5: Use Provisions).
 - ii. The change in use of a lawfully existing nonconforming use of real property to a different nonconforming use within the same Use Category as the existing nonconforming use requires a Special Permit according to the provisions of §10.D.1. Special Permit.
 - a). In its discretion to approve or deny a special permit authorizing a change in use of a lawfully existing nonconforming use of real property to a different nonconforming use within the same

3. NONCONFORMING STRUCTURES

- a. Ordinary Repair and Maintenance
 - i. Normal maintenance, painting, roof replacement, and other improvement deemed to be cosmetic in nature by the Building Official is permitted but may need to meet other requirements outside of this Ordinance.
 - ii. Interior renovations within a nonconforming structure are not considered an alteration.
- b. Alteration
 - i. Any alteration to an existing building that creates a new nonconformity is prohibited.
 - ii. Any alteration to an existing nonconforming structure that does not alter the nonconforming nature of the structure, create a new nonconformity, reduce the level of nonconformity, or is determined as not substantially more detrimental to the neighborhood requires only a Zoning Permit. See §10.C.1. Zoning Permit for more information.
 - iii. The Building Official shall find that the installation or relocation of fenestration that maintains conformance the fenestration requirements of this Ordinance is not substantially more detrimental to the neighborhood and is permitted.
 - iv. The Building Official shall find that construction of the following building frontage types are not substantially more detrimental than existing nonconformities when those frontage types are conforming to the provisions of §3.D. Building Components:
 - a). Stoop
 - b). Portico
 - c). Porch, Projecting
 - d). Porch, Engaged

Should this instead read "increase"? Confusing as written.

This is a significant departure from the existing zoning which allows for one nonconforming use to go to another nonconforming use in any Use category through a special permit. Keeping the existing language preserves some flexibility for existing business owners.

- v. Alterations to an existing nonconforming structure are not permitted, when the alteration will:
 - a). Increase the building height in feet or stories above the height limit for the tallest permitted building type in the zoning district.
 - b). Increase building height for any portion of a building located within a required setback.
 - c). Increase the number of dwelling units beyond the maximum permitted for each building type.
 - d). Increase the number of dwelling units beyond above three (3) in any building in an NR district.
 - e). Reduce the average dwelling unit size below the permitted average dwelling unit size.

As previously mentioned, with the majority of buildings and lots in the Inner Belt going from conforming to nonconforming under the proposed zoning, existing business owners will be required to seek special permits more often. For example a 300sf addition to a 20,000sf building would trigger a special permit since the building would be nonconforming with the 15,000sf floor plate requirements being introduced

- vi. The Building Official shall find that construction of the following building components are not substantially more detrimental than existing nonconformities when those components are conforming to the provisions of §3.D. Building Components:
 - a). Awning
 - b). Entry Canopy
 - c). Bay
 - d). Deck
 - e). Dormer Window
 - f). Side Wing
 - g). Rear Addition

Any other alteration to an existing nonconforming structure that increases the degree of an existing nonconformity of a structure requires a Special Permit according to the provisions of §10.D.1. Special Permit.

- a). In its discretion to approve or deny a special permit authorizing an alteration to a nonconforming structure that increases the degree of an existing nonconformity of the structure, the review board must consider the following:
 - i). The extent and nature of the proposed alteration;
 - ii). The ability of conforming alterations to meet the demonstrated need of the Applicant;
 - iii). Consistency of the proposed alterations with the evolution of neighboring structures.
- v). Establishment of permeable lot surface, to the maximum extent possible.
- v). Conformance to design guidelines in this Ordinance.
- b). The review board shall not grant a special permit authorizing an alteration to an existing nonconforming structure that increases the degree of an existing nonconformity of the structure without finding that the alteration is not substantially more detrimental to the neighborhood.

See prior comment relating to Planning Board's purview.

4. NONCONFORMING SITE CHARACTERISTICS

- a. Immunity
 - i. Nonconforming site characteristics, including parking and permeable area requirements, do not cause uses or structures that are otherwise

- conforming to the provisions of this Ordinance to become nonconforming.
- b. Alterations
 - i. Nonconforming parking lots cannot be expanded in violation or further violation of maximum parking requirements.
 - ii. Nonconforming landscape and permeable area cannot be further reduced.
- c. Improvement
 - i. Review boards may require nonconforming site characteristics to be brought into conformance with the provisions of this Ordinance as a condition applied to the approval of an application for development review as authorized for each type of development review (see §B.10.C.1. Zoning Permit through §10.D.3. Variance).

5. NONCONFORMING LOTS

- a. Vacant lots with a dimension smaller than the corresponding dimension of all allowed building types in a zoning district are unbuildable.

6. NONCONFORMING SIGNS

- a. A nonconforming sign may alter content, but may not:
 - i. Be replaced with a sign that is larger in any dimension than the existing sign;
 - ii. Alter lighting technology, except to bring the technology into compliance with the ordinance.
- b. No establishment with a nonconforming sign may add additional signs without bringing nonconforming signs into compliance.

7. CASUALTY

- a. Lawfully existing nonconforming real property destroyed by fire, explosion, weather, flooding, or act of public enemy can be reconstructed or restored by-right and requires only a zoning permit subject to the following:
 - i. there shall be no alteration to the degree of nonconformity from the state existing prior to destruction;
 - ii. reconstruction or restoration shall be started within a period of two (2) years of the date of destruction and shall be continued in a timely fashion until completed.
- b. No building permit shall be issued until a zoning permit has been granted by the Building Official.

8. ABANDONMENT

- a. Lawfully existing nonconforming real property is considered abandoned when one or more of the following conditions exist:
 - i. the use is changed to a use permitted in the district where the property is located;
 - ii. the use is changed to a use protected under MGL 40A, Section 3;
 - iii. the use is discontinued, whether temporarily or permanently, with or without intent to abandon, for a period of two (2) years or more;
 - iv. equipment or furnishings necessary for the operation of the nonconforming use have been removed and not replace for a period of one (1) year or more or more;