

I. Is this what we want in our Neighborhood Residential District?

1. Density of 4 units on 3,100 square foot lot = 775 sq. feet per dwelling unit

In residential district in Somerville average is 1,000 to 1,600 sq. ft. per dwelling unit for three deckers.

2. Impact on green space throughout our residential districts.
3. Impact on impervious soil and water runoff.
4. Units being created are luxury condominiums
5. Rental units being replaced by luxury condominiums with no affordability requirements.
6. No protection for tenants when rental units demolished, not subject to condominium control ordinance.
7. What will happen if every lot in a residential district in Somerville with large enough area for a backyard cottage is developed along these lines. Developers can outbid residential home buyers because of huge profit from developing condos.
8. Unavailability of lower cost two and three family homes that a buyer can fix up with a rental unit or two available. Similar for immigrant families teaming up to buy two or three family unit buildings.

9. Long term impact on diversity in our residential neighborhoods and children in school system will be in a downward spiral.

II. **What do our zoning ordinances say?**

A. **LOT SPLITS**

1. Zoning. When properly exercised, zoning provides protection to community. Zoning amendments require public notice, public hearing and usually supermajority passage by City Council.

2. Lot Splits allowed as of right by Director of PPZ, if sufficient frontage on street for two lots under ZBA Policies and Procedures. No public notice, no hearing and no posting on agenda. **How did this happen?**

3. Somerville zoning ordinances do not allow current ZBA procedure

2.1.1 General

Lot Split

The division of a lot into two (2) smaller lots.

10.1.1 Development Review

a. [Development](#) review is subject to the provisions of Article 15: Administration of this Ordinance.

b. The [subdivision](#) of land requires Subdivision Plan Approval. See §[15.3.1](#) Subdivision Plan Approval for more information.

c. [Lot splits](#), [lot mergers](#), and [lot line adjustments](#) require Site Plan Approval. See §[15.3.2](#) Site Plan Approval for more information.

Why site plan approval? Lot splits are generally in in fill lots in already established neighborhoods and could result in the double the development that would ordinarily be allowed. The reason for process is to provide input to the public, especially abutters as to the impact. Even without lot split, an owner still has right to build 3 family house with Backyard Cottage.

15.3.2 Site Plan Approval

a. Purpose

- i. Site Plan Approval is the administrative review and approval of a [development](#) review application that is conforming to the provisions of this Ordinance to address any potential development impacts.
- ii. The Site Plan Approval process provides an [Applicant](#) with the opportunity to submit architectural, [site](#), landscape, and engineering

plans so that compliance to the provisions of this Ordinance can be determined prior to preparation of construction documents.

- iii. The Site Plan Approval process provides the City with the opportunity to establish conditions to address on-site or off-site impacts of development.

b. Applicability

- i. Site Plan Approval is required as indicated elsewhere in this Ordinance.
- ii. **The Building Official may not issue a Building Permit or Certificate of Occupancy for development that requires Site Plan Approval until the Site Plan Approval process has been completed in accordance with the provisions of this Article.**

c. Authority

- i. The review board serving as the decision making authority for a Site Plan Approval is determined by zoning district.

d. Procedure

- i. Unless otherwise specified, the following review procedures are required:

- a. Step 1: Pre-Submittal Meeting
 - b. Step 2: Neighborhood Meeting
 - c. Step 3: Design Review Meeting
 - d. Step 4: Neighborhood Meeting
 - e. Step 5: Application Submittal
 - f. Step 6: Application Review & Staff Report
 - g. Step 7: Public Notice
 - h. Step 8: Public Hearing
 - i. Step 9: Decision
 - j. Step 10: Appeal Period
 - k. Step 11: Certification of Decision
- ii. The review procedures required for a Site Plan Approval may, at the discretion of the designated review board, be conducted simultaneously with the review procedures required for other discretionary or administrative permits.
- e. Review Criteria

- i. The review board shall approve a development review application requiring Site Plan Approval upon verifying that the submitted plan conforms with the provisions of this Ordinance and demonstrates consistency to the following:
 - a. The [Comprehensive Plan](#) and existing policy plans and standards established by the City.
 - b. The intent of the zoning district where the property is located.
 - c. Mitigation proposed to alleviate any impacts attributable to the proposed development.
 - d. Considerations indicated elsewhere in this Ordinance for the required Site Plan Approval.
- ii. The review board may reject an application for Site Plan Approval only when:
 - a. the submittal fails to furnish adequate information required for approval;
 - b. the imposition of reasonable conditions would not ensure compliance to standards, as applicable; and/or the submittal, although proper in form, includes or creates an intractable

problem so intrusive on the needs of the public in one regulated aspect or another and cannot be adequately mitigated.

iii. When considering a revision to a previously approved development review application that required a Site Plan Approval, the review board shall limit their review to the proposed changes to the previously approved application.

f. Conditions

i. The review board may attach conditions and limitations that it deems necessary in order to ensure compliance with the Board's findings and the standards for granting of a Site Plan Approval.

ii. Conditions must have a rational nexus to potential impacts of the proposed development, and be roughly proportional, both in nature and extent, to the impacts of the proposed development.

iii. The review board may subsequently remove conditions or limitations attached to any Site Plan Approval subject to the review procedures of [§15.3.2.d.i.e\)](#) through [§15.3.2.d.i.k\)](#).

g. Compliance

- i. The review board may require the posting of a bond or other performance guarantee to ensure compliance with the development review application and conditions, as approved.

h. Appeals

An aggrieved [party in interest](#) may appeal the decision of the Planning Board according to the procedures of §[15.5.3](#). Judicial Appeal.

III. Basis of ZBA Procedure

d.

- iv. The Zoning Board of Appeals may adopt rules of procedure and policy as it deems necessary to conduct its affairs, including but not limited to the following subjects:
 - a. rules and procedures governing applications and fees, including required written and graphical information;
 - b. rules and procedures pertaining to the development review process;
 - c. **rules and procedures of a minor Site Plan Approval process for development activities that do not require the procedural steps for Site Plan Approval**, but that are still deserving of plan review.

Zoning provision illegal and being challenged in Land Court. Delegates

unpermitted discretion to the ZBA to essentially amend zoning ordinances. Any

determination of what a minor site plan approval process should be and which development activities do not require procedural for Site Plan Approval Process can only be made via a zoning ordinance . If the Council does not agree with the current policy then it could simply repeal that provision as proposed in zoning amendment 2.6.

B. BACKYARD COTTAGES

Should they be 1500 square foot luxury condominiums with 3 bedrooms and a finished basement located 3 feet from abutters lot lines?

3.1.12 Backyard Cottage A small floor plate, detached, accessory building structure as defined in Section 10.2.1. b-f, typically providing space for one (1) small dwelling unit, a home occupation, a playhouse for children, or vehicular parking on the same lot as a principal building type.

1. (2.3 on Agenda) A Backyard Cottage currently is defined as an ancillary building “type”. The term “ancillary” generally means something that is subordinate, supplementary, or provides support to a primary function. During my tenure, a backyard cottage was thought to consist of a rental dwelling unit that would be secondary to the primary rental structure, i.e. single, two or three family home. The use of the word “ancillary” is normal language would not be taken to

apply to a free-standing fourth condominium unit on the same lot as a three-story condominium.

PPZ does not require that a backyard cottage be a rental unit or that it be ancillary in any way to the primary building. As a result, developers are acquiring property with room for a Backyard Cottage and making this Backyard Cottage a luxury condominium unit of up to 1,500 sq. ft. So, in addition to constructing three-unit luxury condominiums a fourth is now added with no affordability requirement. This profit potential basically provides them with the ability to outbid anyone who would be interested in purchasing the existing building as rental and adding a rental unit as a Backyard Cottage. Instead, year by year, as these properties enter the market, they will be purchased by developers with the problems I discussed at the start.

The proposed zoning amendment specifically states that the Backyard Cottage must be ancillary to the primary structure and thereby cannot be a condominium.

2. Size limitation. There is no direct size limitation of interior space. Based on the floor plate dimension limitation, the maximum size would be 1,500 ft. sq. if a finished basement for living space is included. The ordinance, however, is not clear as to whether such a building would fit the definition of a backyard cottage as many people would not assume a backyard cottage would consist of living on three

levels with three bedrooms. The state ADU law provides for a minimum limit of 900 ft. sq. which the proposed amendment reflects.

3.1.12 Backyard Cottage A small floor plate, detached, accessory building type typically providing space for one (1) small dwelling unit, a home occupation, a playhouse for children, or vehicular parking on the same lot as a principal building type. It shall be no larger in Gross Floor Area than 1/2 the Gross Floor Area of the Principal Dwelling or 900 square feet, whichever is smaller.

C. AFFORDABILITY REQUIREMENT FOR LOT SPLITS

Because there is no affordability requirement for NR districts, developers can split a lot and build a total of 8 luxury condominium units without providing a single affordable unit. The profits a developer will make with these projects are substantial and justify an affordability component. I would urge councilors to perhaps obtain the services of someone who can look at recent developments, review the land cost and the costs of construction, which is easily done based on average square foot costs, and the sale prices and then determine estimated profit. If the Council does not want to subject rental Backyard Cottages from this requirement, then it could pass the proposed zoning amendment requiring Backyard Cottages to be ancillary so as to eliminate condominiums and try to promote the usage of excess backyard space for rental Backyard Cottages.