

Madalyn Letellier

From: Jonathan Silverstein [REDACTED]
Sent: Wednesday, December 4, 2024 1:09 PM
To: Public Comments; All City Council; Planning1; Willie Burnley, Jr.; Wilfred Mbah; [REDACTED]; Jake Wilson; Matthew McLaughlin; JT Scott; Ben Ewen-Campen; [REDACTED]; Naima Sait; Lance Davis; [REDACTED]; [REDACTED] Thomas Galligani; Sarah Lewis; Mayor; Daniel Bartman; City Clerk Contact; LAW
Subject: File 24-1315
Attachments: File #24-1315 - Letter in Opposition.pdf
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Good afternoon,

Please find the attached comment letter in connection with File #24-1315, which I understand is scheduled to be discussed by the Land Use Committee at its meeting tomorrow evening.

Thank you,

Jonathan M. Silverstein
Blatman, Bobrowski, Haverty & Silverstein, LLC

[REDACTED]
Concord, MA 01742

C: [REDACTED]
[REDACTED]

View my [REDACTED]

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JONATHAN M. SILVERSTEIN
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BY ELECTRONIC MAIL - ██████████

City Council Land Use Committee
City Hall
████████████████████
Somerville, MA 02143

Re: File #24-1315 – Proposal to Require Special Permits for Lot Splits and Mergers

Dear Members of the City Council Land Use Committee:

This office has been asked to submit this letter on behalf of a coalition of Somerville property owners and developers (the “Coalition”). Members of the Coalition have renovated and developed a multitude of properties in Somerville over the last twenty-five (25) years. Much of this development has occurred since the 2019 zoning overhaul, which has afforded property owners and applicants increased clarity regarding design requirements and permitting processes and, therefore, more certainty as to the development potential of specific properties. A high percentage of their developments in the Neighborhood Residence (NR) and Urban Residence (UR) zoning districts require lot splits or lot mergers, which are processed administratively by the director of Planning, and always create compliant lots within their respective zoning districts.

Contrary to statements made at a recent City Council meeting, these lot splits and mergers are not intended to (and generally do not) affect the application of Somerville’s inclusionary zoning requirements. Rather, by creating new zoning-compliant lots, property owners and applicants are able to realize the development potential of these properties, in furtherance of the City’s oft-stated goal of creating more housing units. Members of the Coalition intend to continue redeveloping land in Somerville by constructing additional dwelling units through lot splits and lot mergers, consistent with all applicable zoning requirements.

However, members of the Coalition recently learned of a proposal to “reconsider the policy of allowing lot splits and mergers as administrative approvals rather than special permits,” although no specific zoning amendment has been proposed in this regard. Such a requirement would adversely affect the plans of Coalition members and other landowners to redevelop their properties and to create badly needed additional housing stock in the City. I understand that this

topic is on the Land Use Committee's agenda for its meeting on December 5, 2024. Please accept this letter in opposition to any proposal to require special permits in connection with lot splits and mergers that create zoning compliant lots.

1. Imposing a Special Permit Requirement on Lot Splits and Mergers Would Violate the Uniformity Requirement of G.L. c.40A, §4.

Pursuant to the state Zoning Act, “[a]ny zoning ordinance or by-law which divides cities and towns into districts shall be uniform within the district for each class or kind of structures or uses permitted.” This rule, known as the uniformity requirement, was explained by the Appeals Court as follows:

The basic assumption underlying the division of a municipality into zoning districts is that, in general, each land use will have a predictable character and that the uses of land can be sorted out into compatible groupings... Based upon this assumption, certain uses are permitted as of right within each district, without the need for a landowner or developer first to seek permission which depends upon the discretion of local zoning authorities. The uniformity requirement is based upon principles of equal treatment: all land in similar circumstances should be treated alike, so that “if anyone can go ahead with a certain development [in a district], then so can everybody else.”

These principles underpin § 4 of c. 40A, and have long constituted a limitation on municipal zoning power. As was said on the subject in Everpure Ice Mfg. Co. v. Board of Appeals of Lawrence, 324 Mass. 433, 439, 86 N.E.2d 906 (1949): “A zoning ordinance is intended to apply uniformly to all property located in a particular district ... and the properties of all the owners in that district [must be] subjected to the same restrictions for the common benefit of all.”

SCIT, Inc. v. Plan. Bd. of Braintree, 19 Mass. App. Ct. 101, 107 (1984).

The proposal to require discretionary special permit relief in order to divide or merge lots in full compliance with all dimensional requirements of the Zoning Ordinance would clearly violate the uniformity requirement of Chapter 40A. It would delegate to the special permit granting authority “a new power to alter the characteristics of zoning districts, a power conferred ... only upon the legislative body of the city to be exercised only in the manner prescribed by [G.L. c. 40A] ... and it [would] to do this without furnishing any principles or rules by which the board should be guided, leaving the board unlimited authority to indulge in ‘spot zoning’ at its discretion or whim.” Smith v. Board of Appeals of Fall River, 319 Mass. 341, 344 (1946).

The City has the authority to adopt reasonable dimensional requirements, such as lot area, frontage and lot coverage limitations. However, such dimensional requirements must be applied equally (and equitably) to all properties within a given zoning district. There is simply no valid basis to create a regulatory scheme whereby the owner of a property that could be divided into two fully conforming lots may be precluded from doing so at the discretion of a special permit

granting authority, while the owner of another property in the same district is allowed to do so. Such a system would represent the antithesis of uniform application of zoning requirements within a district. See, e.g., Amberwood Development Corp. v. Board of Appeals of Boxford, 65 Mass. App. Ct. 205, 211-212 (2005) (judgment exempting one lot created through reduced frontage provision from prohibition on further subdivision that applied to other properties created through that provision “undermines the uniform application of otherwise valid local zoning.”); contrast Noto v. Zoning Bd. of Appeals of Weston, 73 Mass. App. Ct. 1121 (2009) (unpublished opinion) (zoning amendment that created new lot “quadrangle” requirement did not violate uniformity requirement, because it was a “mathematical formula applied mechanistically across the district **to all lots** created after its enactment.”) (emphasis added).

2. Requiring a Discretionary Special Permit for the Otherwise By-Right Creation and Development of Zoning Compliant Lots Would Be Inconsistent with the Requirements of G.L. c.40A, §3A.

Imposing a discretionary special permit requirement on the creation of zoning compliant lots would also run afoul of the City’s obligations under §3A of the Zoning Act, the so-called MBTA Communities Law. Pursuant to §3A, Somerville and other communities served by the MBTA were required to adopt zoning provisions allowing for the **as of right** development of multi-family housing at minimum densities prescribed by statute and through the guidelines adopted by the Executive Office of Housing and Livable Communities (“EOHLC”).

In order to comply with the requirements of §3A, Somerville amended its Zoning Ordinance to eliminate various special permit requirements and allow for the as of right development of additional multifamily housing units. Compliance with the MBTA Communities Law requires close review of zoning amendments by EOHLC to ensure compliance with the statute and EOHLC’s Guidelines. The proposal to impose a new discretionary special permit requirement, throughout the City to any attempt to create merge or divide lots to facilitate housing development, would place the City at risk of falling out of compliance with §3A. This, in turn, would result in the loss of various state grants and other funding sources, as well as potential enforcement action by the Attorney General’s Office.

For the reasons set forth herein, as well as the reasons articulated by other opponents of the proposal, the City should not give further consideration to the proposal to require special permit relief for the creation of zoning compliant properties through lot splits or mergers.

Thank you for your time and consideration. Please do not hesitate to contact me with any questions.

Very truly yours,

Jonathan M. Silverstein

Madalyn Letellier

From: Peter Mullane [REDACTED]
Sent: Thursday, December 5, 2024 4:04 PM
To: Mayor; Public Comments; All City Council; Planning1; Willie Burnley, Jr.; Wilfred Mbah; [REDACTED]; Jake Wilson; Matthew McLaughlin; Ben Ewen-Campen; [REDACTED]; Naima Sait; Lance Davis; Thomas Galligani; Sarah Lewis; Daniel Bartman; City Clerk Contact; LAW [REDACTED]; JT Scott
Subject: RE: Legal Memo Regarding Issue Involving Lot Splits and/or Mergers
Attachments: Memo-Lot Split and Mergers.pdf
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To protect against wire fraud all wiring instructions sent to our office should be in the form of a secure e-mail or fax.
If you did not receive instructions via a secure method from our office do not initiate any wire transfers of funds.
If you are transferring funds to us via wire please contact our office first and ask for verbal confirmation of our wiring instructions.

MULLANE, MICHEL & MCINNES

COUNSELLORS AT LAW

CAMBRIDGE, MASSACHUSETTS 02138-5708

FAX

Memo to: City Council, Land Use Committee, and Planning Department

Subject: Lot Splits and Lot Mergers in Somerville

Somerville's zoning ordinance outlines specific requirements for land platting. The dimensional requirements of a parcel, i.e., minimum lot sizes, depths, and frontage determine a lot's compliance or nonconformance. These provisions are fundamental to how the code is administered. These standards clearly define what are compliant lots within each zoning subdistrict, and outline what are the allowed building types in each district. A lot split or merger may only occur if it results in the existence of a compliant lot(s) within the zoning district.

Recently, Councilor Scott has raised concerns suggesting that developers may use lot splits and/or mergers to circumvent Inclusionary Housing Requirements. This concern is factually unsupported in reality. Below, for purposes of demonstration we have provide a detailed analysis of the two most common scenarios, which account for approximately 95% of land platting actions requiring Minor Site Plan Approval, and their positive impact for housing production.

Lot Split in Neighborhood Residence (NR) Zone

Consider as an example an oversized 8,000 square foot lot in an NR zone that currently contains a single-family home, while the neighboring lots are typically 4,000 square feet. Without the ability to divide this lot into two conforming 4,000-square-foot lots (each meeting required frontage and depth), only three (3) units could be built on the entire 8,000-square-foot lot. Conversely, splitting the lot would allow for the construction of one three-unit building on each new lot, resulting in an increase to six units total. This scenario highlights the potential to double housing capacity for similarly situated lots, while maintaining the neighborhood's character and adhering to the intent of the NR District.

Lot Merger in Urban Residence (UR) Zone

Consider two adjacent 6,000 square foot lots in the UR zone under common ownership. If these lots remain separate, developers will face stricter setback and separation requirements, reducing buildable square footage by 50%, and halving the number of allowable units. By merging the lots into a single compliant lot, one larger building could be constructed thereby doubling the permissible housing units and affordable units produced while adhering to the UR District's intent and goals.

Planning and Housing Objectives

Somerville's zoning ordinance intentionally provides a by-right process for lot splits and mergers to support increasing housing production. Introducing a lengthy, discretionary special permit requirement for these actions would only serve to undermine years of planning, and be in direct conflict with the city's stated housing goals.

Councilor Scott has also raised his concerns about potential odd lot assemblies or undesirable configurations that potentially could result from lot splits and mergers. There have been no specifics provided by him to support this specific concern. However, we do know that only the lots that ISD and the Planning Department determine are compliant will be the end result from these actions. The dimensions of the new lots dictate allowable building types, ensuring outcomes consistent with planning objectives and overall neighborhood character.

Compliance with the MBTA Communities Act

Somerville is appropriately classified as a "rapid transit community" under the MBTA Communities Act. Therefore, it must provide for zoning allowing for multifamily housing units equivalent to 25% of its existing housing stock. With approximately 36,269 housing units as of 2020, Somerville must allow at least 9,067 multifamily units by right, and without requiring special permits (Section 3A Guidelines).

To meet this mandate, the City Council approved zoning amendments allowing three-family homes by right across all residential districts. These actions align with the state's goal of increasing housing density in all of these transit-oriented cities.

However, Councilor Scott's proposal to require special permits for lot splits and mergers would appear to be in conflict with the state's directive for by-right development, and potentially could render Somerville non-compliant with the MBTA Communities Act (Section 3A of MGL c. 40A). Such non-compliance would of course jeopardize the City's housing goals and planning objectives.

Conclusion

Lot splits and mergers are one of the many practical and critical tools for achieving Somerville's housing production goals, while maintaining neighborhood integrity and zoning compliance. Based on our research, a significant percentage of by-right projects do require a lot split or lot merger. Therefore, it is apparent that requiring a special permit in these circumstances would have a negative impact on Somerville's goal of increased housing production.

Therefore, we respectfully urge on behalf of our clients that the City Council to continue supporting the administrative by-right process for lot splits and mergers to ensure Somerville remains a leader in addressing our regional housing crisis. Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. Peter Mullane". The signature is fluid and cursive, with a prominent initial "E" and a long, sweeping tail.

E. Peter Mullane

EPM/rwm