

Madalyn Letellier

From: Smith, Jordan [REDACTED]
Sent: Friday, October 27, 2023 11:34 AM
To: All City Council; Planning1; Public Comments
Cc: Sarah Lewis; Schultz, Jennifer; Raisa Saniat
Subject: Public Comment - 627 Somerville Avenue Rezoning
Attachments: 627 Somerville - Zoning Amendment - Supplemental Filing - 10.27.23.pdf

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Hi,

Attached please find a supplemental letter on behalf of the owner of 627 Somerville Avenue regarding the proposed zoning amendment to this lot following the Land Use Committee's October 19th meeting on this matter.

Thanks very much,
Jordan

Jordan Smith
COUNSEL

Sullivan & Worcester LLP



Bio | vCard | LinkedIn
sullivanlaw.com



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October 27, 2023

VIA E-MAIL ONLY

Somerville City Council
Somerville City Hall
93 Highland Avenue
Somerville, MA 02143
Citycouncil@somervillema.gov

Somerville Planning Board
Somerville City Hall
93 Highland Avenue
Somerville, MA 02143
planning@somervillema.gov

Re: 627 Somerville Avenue Proposed Zoning Amendment

Dear Honorable Members of the City Council and Members of the Planning Board:

On behalf of 635 Somerville Avenue, LLC (the “Applicant”), owner of the single unified parcel of land known as 627 Somerville Avenue (hereinafter the “Lot”), we respectfully submit this supplemental filing regarding its proposed Zoning Map Amendment to update the zoning district of a small northeast corner of the Lot (approx. 6% of the entire lot) to the Mid-Rise 3 district (“MR3”) so that the entirety of this single Lot is in the same zoning district.

I. Fixing a Seemingly Inadvertent Error

The Lot has been in common ownership as a single lot for at least 40 years. Prior to the Zoning Overhaul in 2019, this single lot was singularly zoned as BA. In addition, since at least this same period of time there has been a single contiguous building on the Lot that is now split into two-zones.

However, in the 2019 zoning overhaul, the Lot appears to have been inadvertently rezoned into both MR3 and NR, with the zoning district line cutting through an existing commercial building located on the Lot. The Lot – and existing building on the Lot – is now split into two, making it so that the Applicant cannot make any reuse of its property without triggering zoning violations.¹ Allowing this map change fixes what appears to be an inadvertent mistake.

¹ For further details regarding the zoning and legal challenges posed by the highly unusual split-zoning of this Lot, please refer to the supporting legal memorandum filed with the Zoning Amendment entitled “627 Somerville Ave. Zoning Map Amendment Petition – Supporting Legal Memorandum”, dated August 21, 2023.

Split zoning of a single lot is very rare, and is strongly disfavored in Massachusetts. In fact, looking at the City's Zoning Atlas, it is clear that the City follows this rule and planning policy to avoid split-zoning. For example, just 2 blocks away at 515 Somerville Avenue, the City accommodated the irregular lot shape and singularly zoned the whole lot. Such examples of singular zoning of unified legal lots are by far the norm throughout Somerville. Moreover, there are practically countless examples of MR3 and even MR4 zones directly abutting NR parcels throughout the City along the same street – 17 out of the 19 pages of the Official Zoning Map each include *multiple* examples of this abutting zoning condition – indicating that as a matter of zoning there is no compelling reason to find that these two zoning districts are not, in fact, **meant to coexist on abutting parcels along the same street**. Both zoning districts allow for 3-story buildings, and therefore, the form of development arising from these two districts side by side can, and often does, result in a similar harmonious built environment.

Thus, the only logical conclusion to draw is that this single Lot was inadvertently divided, 94%-6%, into two zones by mistake, and should now be corrected.

II. Proposal is in Line with Existing Conditions of the Neighborhood

Fixing the zoning map to allow the whole Lot to be in MR3 – which is the zoning now for approximately 94% of the Lot – does not negatively impact the immediate neighborhood on Pitman Street. As is shown in Attachment A, **all but one** of the parcels on the northern side of the block of Pitman Street that the Lot is on are already three-story buildings – this will be the same result if the small portion of the Lot is re-zoned to MR-3, a zoning district that encourages 3-story building forms. Moreover, **NR zoning already allows three-story buildings**, so the Applicant is not asking for any additional increase in the number of stories that can be built on the Lot.

Suggestions to exacerbate the highly unusual split-zoning condition on the Applicant's Lot by making *more* of the single legal lot NR and less of it MR-3 is not only illogical given the existing context of Pitman Street, but also runs squarely counter to Massachusetts case law. In Massachusetts, judges have found that “**reverse spot zoning**”, which is singling out a small area for treatment that is more onerous than the zoning imposed on indistinguishable nearby property solely for the sole purpose of benefitting someone other than the owner of the rezoned land or hurting the owner of the rezoned land, **is illegal**. Suggestions such as the one above would fall into this category of reverse spot zoning and constitute a regulatory taking that requires just compensation especially considering **how pervasive** it is throughout Somerville to have MR3 and NR parcels directly abutting each other along the same street.

III. Strong Neighborhood Support

The Applicant has received 21 letters of support for the zoning map change from tenants (100% of the tenants at the subject property owned by the Applicant have written in support), as well as from neighbors and abutters; these letters have been submitted to the City Council and Planning

Board. In addition, 7 out of 10 neighbors, including two neighbors from Pittman Street, who spoke at the Zoning amendment hearing on October 19, 2023, either supported or showed no opposition against the zoning map correction proposal; any concerns or questions raised regarding a future potential development of the Site will be addressed by the Applicant and the Planning Board during Site Plan Review. The Applicant has also been in regular communication with its tenants to ensure they are aware of the pending process. The Applicant is committed to continued dialogue with neighbors and abutters regarding its plans to make the Lot, which currently consists of an outdated residential building and auto body repair uses, a safer and better development that will support the goals of SomerVision.

Thank you for your consideration,

/s/ Jennifer Schultz

Name: Jennifer Schultz, Esq.

CC: publiccomments@somervillema.gov

Sarah Lewis, Director of Planning, Preservation, and Zoning, slewis@somervillema.gov

Attachment A
Examples of 3-Story Buildings on the Same Block of Pitman Street

57 Pitman Street – Across the Street



51 Pitman Street – Across the Street



43 Pitman Street



14 Spring Street – Corner of Spring and Pitman



Attachment B
Lot Zoning and 515 Somerville Ave. Zoning

