



CITY OF SOMERVILLE, MASSACHUSETTS
LAW DEPARTMENT

November 29, 2016

Honorable Board of Aldermen
City Hall
93 Highland Avenue
Somerville, MA 02143

Re: That the City Solicitor appear before the Land Use Committee to Explain the Threshold
Requiring a New Notice and Hearing

Board Order No. 202357

Dear Honorable Board Members:

You have asked this office to provide a legal opinion as to the standard to determine whether changing the text of a proposed zoning ordinance amendment, after its public hearing, requires an additional public hearing. In my opinion, the applicable standard is whether the changes are of a fundamental character, change the identity of the proposal, or whether they were designed merely to perfect the proposal.

MGL c. 40A, s. 5 governs the procedure for the adoption of zoning ordinances, and states that a planning board and the city council (or committee designated by it) shall hold a public hearing on a proposed zoning amendment. The purpose of the public hearing “is to obtain public sentiment so that proper revision can be made.” Doliner v. Town Clerk of Millis, 343 Mass. 10, 13 (1961)(quoting pretrial judge). In reviewing an amended zoning map following a public hearing, the Court held that there is “nothing in the statute requiring another hearing whenever, after one hearing, the board decides to amend what had previously been proposed. The amendments were not a fundamental character. They did not change the identity of the proposal before the board. They were designed merely to perfect that proposal...” Town of Burlington v. Dunn, 318 Mass. 216 (1945)(emphasis added). *Also See M. Bobrowski, Mass. Land Use and Planning Law*, s. 3.02[C](3)(“some leeway” in textual changes under flexible standard in Dunn case).

Please contact me if you have any additional questions.

Very truly yours,

Jason D. Grossfield
Assistant City Solicitor

cc: Mayor Joseph A. Curtatone
George Proakis, Dir. of Planning and Zoning
John Long, City Clerk