



CITY OF SOMERVILLE, MASSACHUSETTS
Office of Strategic Planning and Community Development
JOSEPH A. CURTATONE, MAYOR

Office of the Executive Director

MEMORANDUM

TO: Joseph A. Curtatone, Mayor

FROM: Monica R. Lamboy, Executive Director *ML*

DATE: May 27, 2010

SUBJECT: Review of Proposed Amendments to the Somerville Zoning Ordinance submitted by Somerville Residents for Sensible Development on March 7, 2010

The Office of Strategic Planning and Community Development has analyzed the proposed amendments to the Somerville Zoning Ordinance (SZO) submitted by Somerville Residents for Sensible Development on March 7, 2010 and respectfully requests that you forward this memo to the Board of Aldermen (BOA) for their consideration as they review the citizen petition.

BACKGROUND

This package includes three amendments that would:

1. Require submission of a pro-forma financial analysis for certain projects;
2. Prohibit locating certain residential uses within 150 feet of an active railroad grade crossing; and,
3. Prohibit tandem parking when seeking approval for off-street parking plans.

The registered voters submitting this petition did not provide written comment for the individual proposed amendments, but did indicate that they were submitting the proposals “as a part of our continuing effort to identify areas for improvement in Somerville’s principal zoning policy document and to present you with reasonable policy proposals.”

Comments from OSPCD on each of the proposed ordinances are below. The Land Use Committee of the Board of Alderman and the Planning Board will be reviewing these ordinances in a joint public hearing on June 1, 2010.

ANALYSIS

1. Financial Pro-Forma

The proposed ordinance would change the application requirements, requiring a number of new items in

the application, for residential projects of 10 or more units, and all other projects with 10,000 or more square feet of gross floor area, including:

- *A pro-forma financial analysis*
- *Sources and methods of financing*
- *Full identity of every person providing debt or equity funding and the amount of each*
- *Amortization schedules for borrowed funds*
- *Interest rate(s) to be paid*
- *Identification of all federal, state and local programs that will be relied upon to provide permanent financing*
- *Estimated total construction cost*
- *Identity of general contractor*
- *Estimated length of construction*
- *Outline of previous experience of the development team*
- *List of previous projects built by the development team*
- *Detailed plan for management and operation of the project.*

Current requirements for special permit applications are outlined in Section 5.1.2 of the SZO, with a similar Section 5.2.3 establishing application requirements for special permits with site plan review. Sections 5.1.4, 5.1.5 and 5.1.6 establish findings, design review guidelines and conditions for special permits, while 5.2.4, 5.2.5 and 5.2.6 provide similar guidance for special permits with site plan review. At present, there is no requirement in the findings, design review guidelines or conditions for special permit and special permit with site plan review that would require any of the information recommended above. Furthermore, it would be difficult to establish any relevant findings or conditions from the new information that would be provided. As noted in a previous opinion from the Law Department in response to proposed application amendments presented by SomeSense in January 2010, it is not appropriate or legal for the Planning Board to base decisions on the character, reputation or economic viability of the applicant.

Specifically, the proposal recommends that additional information on three areas be collected including financing, experience, and management and operations.

a. Financial Analysis, Methods and Funding Programs

Financial data of the type being recommended is often generated by developers and then kept private to ensure that the project stays competitive. Because developers work in a high risk business with constant changing costs and margins, a pro-forma is a living document that changes over the life of a project. In addition, many developers have not completed financing until after the initial project approval, making it difficult to identify interest rates, amortization schedules, and funding sources. Oftentimes funders will not consider a project until they know that it has a certain level of viability, as seen by receipt of a special permit.

As noted above, these areas of concern are not relevant to the issuing of a project decision, and for these reasons, the City of Somerville has not typically required this data.

b. Identity and Experience of Contractor and Applicant

As noted above, during the discussion on the first SomeSense petition, the Law Department issued an opinion that it would be improper to base a decision or condition based upon the character or reputation of the developer. Therefore, while it is often of interest to the public to provide information about character

and reputation, it is not information that is used in crafting a decision or conditions.

Furthermore, a requirement to identify the lender and contractor is premature for many projects. Many larger developers seek financing and put construction contracts out to bid only after receiving zoning approvals. Requiring this information early in the process would not be permissible to influence the decision of the SPGA. But, it would also not be reliable information. Approved projects can be and often are sold after approval.

Therefore, there is no guarantee that any of the recommended information would remain accurate and there would be no mechanism available to ensure that it remains unchanged. Between approval and construction, the owner, the developer, the lender, the financing mechanism and the contractor for a project may all change. In the end, the City utilizes its authority to ensure that the project is built to the plans, specifications, findings and conditions that were established in the project review process regardless of who is the project sponsor at the time of construction.

Finally, OSPCD staff is concerned that establishing such a system may be unfair to smaller local developers without the track record held by more experienced developers. The special permit provisions of the SZO focus on the merits and the zoning compliance of specific projects and they therefore do not discriminate against perfectly capable and talented development teams that may have not established a track record. Requiring significant financial resources to participate in development creates a high barrier to entry for new players, limiting the ability for newcomers to participate in development opportunities and restricting the diversity of development teams and development projects that may be presented in the City.

c. Management and Operations Plan

The last portion of this ordinance amendment requests a management and operations plan. The operating attributes of a completed project are regularly reviewed as a part of the special permit review process. It is reasonable for findings and conditions to ensure that projects are maintained and operated to a high standard. Typically these issues are addressed in project review, and conditioned as appropriate.

2. Railroad Crossing

The proposed ordinance would prohibit dwelling units intended for occupancy exclusively by older person(s) or disabled person(s) or any combination thereof from being located within 150 feet of an at grade railroad crossing.

The City of Somerville has only one remaining at-grade railroad crossing. Therefore, this proposed amendment has very site-specific results. It serves to eliminate the ability to provide affordable age-restricted housing on a few parcels within proximity to Park Street between Beacon Street and Somerville Avenue.

Pedestrian accidents at rail grade crossings are very rare. There have been 3 in Massachusetts since 2006 and 443 incidents nationwide in the past three years. It is unclear from the data how many of these incidents resulted in injury or death.¹

In general, the unique circumstances of elderly housing near railroad grade crossings are the types of project attributes regularly reviewed by the city departments during evaluation of a proposed project. If

¹ Federal Railroad Administration, Office of Safety Analysis

appropriate, modifications to site design could be required or mitigation or specific conditions of approval could be added to address any potential conflicts. It is important to recognize that limiting housing types near railroads will not prevent the elderly or disabled (or, for that matter, children or others) from being near and using grade crossings for whatever purposes they see fit. Safety of rail crossings remains very important to the City of Somerville and would be addressed with any project that created new pedestrian traffic near a railroad right-of-way.

3. Tandem Parking

This proposal would preclude the approval of tandem parking as part of a project's parking plan and no waiver would be allowed.

Somerville is a community of modest houses on modest lots, the majority of which were built at a time when residents had access to 17 train stations and the automobile was not commonplace. As a result, many multi-family homes that have been here for generations do not have adequate lot area to meet parking requirements and use tandem parking as their daily system for addressing parking needs. More recently, projects have been approved with tandem parking as an efficient use of space and way to reduce impervious surface.

Somerville also has unique challenges with vehicle ownership and storage. Data indicates that 42% of Somerville's population does not drive to work - 29.9% use transit, 9.7% walk and 2.9% bike to work. Nonetheless, only 22.73% of Somerville's households choose to live car free. As a result of this, Somerville has a significantly higher number of vehicles that remain in the city all day, while their owners take public transportation to work each day. So, while the City ranks 4th nationally on non-car journey to work, Somerville ranks 30th nationally in carless households.

While Somerville will continue to use many sources to encourage households to reduce car usage and ownership, including review of parking regulations and the use of shared cars like Zipcar, many residents continue to express an interest in having a vehicle or two without the need to use it every day. For those people, tandem parking offers an opportunity to secure space to store a vehicle that will not regularly be used, without the need to provide excessive on-lot maneuvering areas that further reduce landscape areas and increase impervious runoff areas.

The SZO currently does not specifically address tandem parking spaces, except to allow them for Historic Bed and Breakfast uses. As all projects of a significant size are reviewed by the Traffic and Parking Department (T&P), issues of tandem parking are addressed on a case by case basis. T&P and OSPCD have supported the use of tandem parking spaces in limited circumstances and only where the following conditions are present:

1. All tandem spaces are for residential uses only.
2. Tandem spaces are assigned to a single residential unit.
3. Tandem spaces must not be used to satisfy parking requirements for additional units (if 1.5 spaces per unit are required, and tandem spaces are used, the 2 spaces only count as 1.5).
4. Maneuverability must meet standards set by traffic and parking, to allow for the ability to move the first vehicle to access the second vehicle.

An outright provision on tandem parking would reduce creativity in project design, increase the dominance of the auto in site planning, and would, in many instances, increase the amount of paving required on a project at the expense of increased landscaping and open space.