

Somerville Zoning Review

Introduction

The Innovative Housing Institute (IHI) has been retained by the Somerville Community Corporation (SCC) to assist with the review of the revised Somerville Zoning Ordinance and to help ensure that the profound changes contemplated embody Somerville’s commitment to residential inclusion and address civic goals for affordable housing. At the same time we assisted the Affordable Housing Organizing Committee (AHOC) develop and refine recommendations to improve Somerville’s ability to address the shrinking supply of affordable housing and to avoid residential displacement.

IHI, a nonprofit organization, was created in 1996 by housing professionals with extensive, successful experience in developing, financing and managing affordable housing in a mixed income setting, to foster inclusion, and to promote good affordable housing practices nationally. As a national organization, our Board is made up of housing leaders with extensive experience in affordable housing and community development. We bring this national experience to bear on each engagement to share best practices and effective policies. This provides SCC and AHOC with a national perspective as consideration is given to local changes.

Most recently we assisted the City of Chicago in revamping their Affordable Requirements Ordinance. The amendment that was developed out of this effort was just adopted unanimously by the Chicago City Council on March 18th of this year.

Our work with SCC and the AHOC is intended to help ensure the achievement of the *Somervision* Housing Goals and the incorporation of best practices in the City’s inclusionary housing program. This work began in mid-2014 and will continue through the City’s adoption of the new zoning ordinance. Somerville has a strong foundation of civic commitment to the preservation and development of affordable housing and racial and economic inclusivity. We are pleased to be able to assist SCC and the AHOC in maintaining and strengthening this civic commitment.

Executive Summary

The new zoning ordinance prioritizes commercial development to such an extent that it may result in exclusion or minimal provision of new residential development. It does this by setting specific goals for commercial development in the transformation areas, but has no such parallel goal for new residential housing. While we understand and support the City's desire to balance residential and commercial development the present zoning proposal is a seesaw swing towards commercial with no baseline requirement of residential or affordable provision.

Development capacity in the areas where most of the City's new growth will go is not identified in the plan, so it is not possible to estimate what amount of development will be built over time. This is further complicated by the elasticity of use implicit in the form based zones, which, to a certain extent, leaves the determination of use up to the developer. This provides market flexibility within the form based constraints, but makes meeting the City's goals for residential development and affordability highly uncertain.

Establishing minimum goals for commercial development at 65% for Large Development Plans and Neighborhood Development Plans may result in developers focusing entirely on commercial development, with residential provision not required in LDPs and NDPs at all.

While the City's inclusionary housing requirements have been strengthened by the draft Zoning Plan. In particular the new income tiers that serve up to median income households reflect the contemporary reality of housing un-affordability. Serving households at the lowest income tier (up to 40%) recognizes the extent of need and the inclusionary program's ability to help address this need. However, the lack of directive language to ensure substantial development of residential housing means that the provision of inclusionary homes may fall well short of City goals.

Overview

The draft Somerville Zoning Ordinance represents a comprehensive effort to overhaul the current zoning ordinance using a form based approach with detailed physical design requirements and development stipulations. It is intended to provide a permissive framework for development within defined zoning districts, each with its own set of requirements.

We have some concerns regarding this approach, with the most significant concern being the draft ordinance's failure to stipulate ratios of required residential development to the favored commercial components of the Special Districts. We understand and support the City's intention to use the new zoning plan to address the current imbalance of existing residential development to commercial uses, but we are not convinced that the current plan will accomplish a balance, which is so important to the City's vitality and the creation and retention of workforce and affordable housing.

The current plan appears to be predicated on the apparent belief that the current market interest in the development of new residential housing will continue indefinitely. This expectation is expressed in the requirement in several of the Special Districts that at least 65% of the gross square footage in Large Development Plans and Neighborhood Development Plans must be commercial. There is no corresponding minimum requirement for residential development. The apparent presumption is that there is an inexhaustible investment interest in residential housing that the zoning plan needs to ward off, rather than accommodate.

The actual experience of residential development cycles nationally is one of boom and bust. Today, portions of the residential market are recovering from the 2006-2008 meltdown, with the development of expensive market-rate rental housing in the forefront. In some parts of the country this is already resulting in a glut of new rental housing with higher vacancies and lower asking rents. While this will provide welcome price moderation, it will also result in investment shifts as financing for rental development will diminish and other types of development will come to the fore. This may happen in Somerville, and the lack of production of new homes will mean fewer inclusionary homes.

What is not recovering from the market meltdown is the development of homes affordable to moderate income and working class people. Prices of new homes and

condominiums have spiked nationally, and rent levels of new apartments are often in excess of \$2000 per month. Federal housing and tax subsidies are flat or declining and subsidy assistance is only available to 1 out of five households needing it. On the ownership side housing is less affordable due to the difficulty of qualifying for a mortgage and accumulating funds for a down payment given today's more stringent standards.

Robust residential construction is essential if the City is to meet its growth and affordable housing goals. Nine thousand new residences are called for in the Mayor's housing goals, with the hope that 20% of them will be affordable. Achieving this will require careful delineation of areas for residential development within the new Zoning Ordinance and the marshalling of all available housing resources to meet the affordable housing goals.

In addition, or as an alternative to inclusionary requirements, the draft ordinance may need to stipulate the provision of sites for "purpose built" affordable housing to meet the affordable housing goal. This may include publicly owned surplus or obsolete buildings, or the authorization of "purpose built" affordable housing site within Large Development Plans or Neighborhood Development Plans that allow for off-site provision of inclusionary housing requirements.

Lastly, an expectation that the development marketplace will achieve a balance of new residential development and commercial uses is without foundation. Private development will invest in building the products that offer the highest returns in response to market demands. Implicitly, the plan recognizes this by setting minimum percentages of commercial square footage and requiring 5% of square footage as leasable space for Arts and Creative Enterprise use in certain districts. What it doesn't do is define spaces for new residential development or mandate certain portions of development plans that will achieve the hoped for balance of residential and commercial uses.

We reviewed the January 14, 2015 Working Draft of the proposed Zoning Ordinance and have a number of comments pertinent to individual sections. These are listed below with the page and Section reference. Language in italics is excerpted from the draft zoning text.

Section A. General Part 2: Purpose

This is an excellent Purpose statement. Subsections c, e, and g articulate important purposes that are critical to the achievement of housing goals.

A. Neighborhood Residence (NR) (Page 5) Purpose clause 2c. *To permit the adaptive reuse of already existing civic and institutional facilities as arts & creative enterprise uses*

Key Issue: Why can't existing civic and institutional facilities be reused for affordable housing?

Consequence: Important and valuable civic and institutional facilities can only be reused for a narrow set of options. This may result in obsolete public or institutional buildings sitting vacant if there is no demand or funding for arts and creative enterprise uses.

Recommendation: Expand the set of qualified uses to include purpose built affordable housing.

Discussion: Whether the existing structure is reused or redeveloped, these existing facilities are important assets. Often they can be repurposed to provide affordable housing for members of the community that are at an age or economic point when they can no longer maintain their homes.

This preference for arts and creative enterprise is also expressed in Section 4a Use Provisions (Page 6) which permits existing nonconforming uses (including buildings used for municipal operations) to convert to Art and Creative enterprise use subcategories but not to housing.

E. 5-Story Mixed-Use (Page 13-14) introduces Required Uses (4.a.i.) *A minimum of five percent of the gross floor area of any Mixed Use or Commercial Building must be provided as leasable floor area for uses from the Arts and Creative Enterprise use category.* This requirement is repeated in the seven (7MU) and (10MU) categories. In addition the Intent language for 7MU and 10 MU emphasizes commercial uses for the first time.

Key Issue: The Required Uses support Arts and Creative Enterprises but do not address affordable housing.

Consequence: Lack of demand for Arts or Creative Enterprise space may result in reductions in lease income and increase vacancy in the Mixed Use category.

Recommendation: Consider the inclusion of affordable housing as a public benefit and alternative for this 5% set-aside in Mixed Use structures.

H. Fabrication (FAB) (Pages 19-20) and **I. Commercial Industry (CI)** (Pages 21-22) These two zoning categories are reserved for production and commercial uses and specifically limit residential uses to protect work space.

Key Issue: These zones preclude residential development and foreclose a popular form of redevelopment –the conversion of historic factory buildings and lofts to housing. It also prevents the use of such structures in these zoning categories as live-work domiciles.

Consequence: These areas are off-limits to residential development, limiting overall residential potential in the City. While this may be desirable to ensure areas for production and manufacture, it impairs the provision of housing for people who will work there.

Recommendation: Allow the provision of live-work units in these zones.

Table 3.3 Minimum Dwelling Unit Size (Page30) This table sets a minimum useable floor area of 400 square feet for a studio, 600 for a one bedroom, and 900 for a two bedroom.

Key Issue: The necessity for establishing such minimums is not clear and may have an adverse impact on the production of affordable small apartments.

Consequence: The affordable provision of apartments suitable for individuals or small households, seniors, and the formerly homeless may be needlessly impaired.

Recommendation: Remove the minimums.

14. Mixed Use Building (pages 57-58) Use and Occupancy. Ground story use is limited to Commercial and the upper stories to Residential.

Key Issue: The delineation of uses within Mixed Use Buildings is overly prescriptive.

Consequence: the latitude to allow the developer to really mix and integrate different uses is limited by this requirement, and may limit market opportunities.

Recommendation: Allow residential entrances and door yards on non-primary streets. Permit office use, lodging or home enterprises in the upper stories of the building.

F. Outdoor Amenity space (page 77) a. *At least one (1) outdoor amenity space is required for each dwelling unit. C. Each outdoor amenity space must provide at least twenty-four (24) square feet of unobstructed seating area. D. Apartment buildings and mixed use building types may provide shared outdoor amenity space...*

Key Issue: While the provision of adequate outdoor living space is desirable, particularly in high density settings, it is important to test the required amount of space in light of other demands on rooftop spaces.

Consequence: This difficulty and expense may cause landowners and developers to turn to other types of development rather than residential.

Recommendation: Eliminate this requirement in areas where there are provisions for nearby open space.

Discussion: Rooftop spaces are often used for mechanical penthouses, heat pumps and exhaust ductwork that can make it very difficult to accommodate well designed roof decks and terraces. In addition, the Energy Efficiency requirements for flat roofs (Energy efficiency(Page 78) d. *Roof Albedo ...must have a minimum solar reflectance index rating of seventy eight for a minimum of seventy five percent of the roof surface.* This requirement, together with the other spatial demands of apartment systems, may make it well-nigh impossible to create the roof top amenity that is required. Balconies are desirable but expensive, and may not be essential in the creation of affordable housing in urban settings that offer other nearby open spaces and amenities.

Assembly Square

Article 4: Special Districts, Assembly Square (Page 86). This high density development district will accommodate significant amounts of new commercial development and housing, with height limits as high as 250 feet.

Key Issue: The requirements for this District do not specify the portion of Large Development Plans or Neighborhood Development Plans to be devoted to housing or commercial development, but it does require 12.5% per cent of the total land areas in NDPs or LDPs to be devoted to publicly accessible civic space. Oddly, mixed use buildings are not listed among the Principal Uses in Assembly Square (Pages 82-85), but this may be an oversight.

Consequence: The omission of mixed use buildings among the Principal Uses eliminates a desirable market option and may result in a reduction in the amount of housing proposed in Assembly Square.

Recommendation: Add Mixed Use buildings to the list of permitted Principal Uses.

Also of interest in the ASQ Section is language which speaks to the ability of the Planning Board to specify uses (8. Use Provisions d. Changes in Use iii. *As part of an approved large development plan or neighborhood development plan, the Planning Board may specify permitted uses for any or all phases of development and permit the change of use between these specified uses without further review.*

Key Issue: This language is important if it is intended to permit the Planning Board to specify permitted uses including the inclusion of housing in an LDP or NDP. As it is written it is not clear that it applies to initial uses. It is also not clear whether this PB permission only applies to Assembly Square or to all of the Transformation areas.

Consequence: The Planning Board's discretion to ensure a balance of uses is very important. If it only applies to subsequent *Changes in Use* after initial approval and only to Assembly Square that discretion is substantially limited.

Recommendation: Clarify the Planning Board's discretion to specify permitted uses and make it clear that it applies to all LDPs and NDPs.

Discussion: This may allow the Planning Board to direct the developer of a LDP or NDP to incorporate certain uses into the proposed plan. As it appears under the heading of *Changes in Use*, it is not entirely clear that this is an action that can be taken in the initial approval of an LDP or NDP or only in subsequent amendments to those plans. Later in this Section under f. Discretionary Development Review i. Development permitted “by Special Permit” a) *In its discretion to grant any Special Permit required by this Section the Planning Board shall consider the following: 1) the adopted comprehensive Master Plan of the City of Somerville; the ASQ Plan, and other existing policy plans and standards established by the City; ...*

This discretionary language may provide the Planning Board the latitude to choose not to approve a Special Permit if the proposed development does not measure up to City plans and standards.

Brickbottom

The Purpose statement for Brickbottom (page 89) suggests a restrained approach to approving residential uses: *e. To use discretion in the permitting of residential uses.* That restraint is carried over to the Development Planning Section of page 90: *c. Build-out ii. At full build-out no less than sixty-five percent of the total gross square footage of development subject to a NDP or LDP must be provided to commercial uses.* That is in addition to the five percent that must be reserved for the Arts and Creative Enterprise use Category.

Key Issue: No less than 70% of NDP or LDPs must be devoted to commercial or arts/enterprises, but no requirement for a minimum amount of housing uses.

Consequence: Setting such a high minimum and effectively no maximum for commercial development in Brickbottom sends a message to developers that the larger parcels in this area are reserved for commercial development. Their plans will reflect that direction, and housing production will suffer.

Recommendation: Establish corresponding minimums for residential development that reflect overall development capacity and the City’s housing goals.

Key Issue: Single Room Occupancy and Homeless Shelters are not permitted.

Consequence: Placing some parts of the City off-limits to SROs and Homeless Shelters reduces the City's ability to address these important needs and makes it likely that residents of other areas will seek similar prohibitions.

Recommendation: Eliminate this prohibition.

Inner Belt

Key Issues, Consequences and Recommendation are the same as Brickbottom listed above.

Discussion: This same reservation, 65% commercial and 5% Arts and Creative enterprise is carried over to the Inner Belt Special District. Again there is no specified minimum percentage of residential development required. Single Room Occupancy and Homeless Shelters are not permitted.

North Point

Key Issues: High non-residential minimum requirements; no residential requirements; parking requirements that favor commercial uses, and procedural requirements (special permit) that only apply to residential uses.

Consequence: Developers will take the path of least resistance, and avoid residential development.

Recommendation: Establish corresponding minimums for residential development that reflect overall development capacity and the City's housing goals. Introduce parity in parking requirements. Do not require only residential developments to obtain special permits.

The Build- Out section for North Point (page 114) permits a somewhat more diverse set of uses in the 65% reservation, identifying Retail and Consumer Service, Commercial Office, and /or R&D and/or Laboratory use categories. The following clause repeats those use types and stipulates no less than 350,000 square feet of total gross floor area be dedicated to those uses. The Build out section is silent on residential minimum requirements.

Further, on page 121 Use Provisions of the North Point section Section 7a identifies eight uses (including urban agriculture!) that can be developed by-right or by-right with limitations. The next clause b. states that *Uses from the residential principal use category require a special permit.*

Again, this procedural hurdle will direct developers to take the path of least resistance, and avoid residential development. Another impediment can be seen on Table X Parking Requirements (page 122) for the North Point Special District. Residential development must provide 1 space for each dwelling unit. Office use must provide one space for every 5000 square feet. Since apartments probably average around 1000-1200 gross square feet this parking requirement is roughly a multiple of four times that which is required of commercial office space.

Article 9 Community Benefits A. Affordable Housing

The Affordable Housing section is well crafted and incorporates many best practices from inclusionary programs nationally. It establishes a low threshold or trigger mechanism for compliance at seven units, and a sliding scale of ADU requirements geared to increased density and proximity to transit. The target income tiers ranging from 40% to 100% of Median Family Income (MFI) for rental housing, and 70% to 120% of MFI for for-sale housing seem reasonable given income levels and cost of construction in the Boston area.

There are a couple of technical issues that may require some adjustment or additional explanation. Table 9.3 Bedroom Count Adjustments (page 213) provides an adjustment from the MFI for different household sizes and states that *the number of bedrooms provided in an ADU is substituted for the number of persons in a household or one (1) for a studio, to determine adjusted MFI using HUD's Family Size Adjustments, ii. The adjusted MFI for the appropriate price limit tier is multiplied by thirty percent to determine the maximum amount of gross income that can be spent on housing expenses by a household without becoming cost burdened.*

Key Issue: This method of adjustment will result in the same rent for a studio as a one bedroom, as both apartment sizes are deemed to serve one person households.

Consequence: Astute developers will build efficiencies to minimize the reduction of rental income.

Recommendation: Adjust program requirements so that studios serve one person households, one bedroom units serve a two person household, two bedrooms, three persons and so on. This results in a slightly higher rent for each unit after the studio.

In the same Unit Price section, f. Maximum sale price (page 214) identifies the pricing procedure in much the same way as for rental housing, using 30% as the target percentage. Somewhat surprisingly, the procedure permits the deduction of Private Mortgage Insurance, Real Estate Taxes, Condominium fees, Homeowners Insurance and required parking fees from that calculation, to arrive at the portion of income that can be devoted to a mortgage payment. This is a rather generous calculation as other inclusionary homeownership models will allow these expenses to reach 40% of income or simply do not adjust the buyer's payment for these additional expenses.

Key Issue: Should purchase prices derived from qualifying income levels reflect reductions due to taxes, condo and HOA fees, and parking fees?

Consequence: Program participants are afforded reduced prices that may be out of keeping with the costs of producing the inclusionary homes and not consonant with the housing costs borne by other residents. This may result in developers avoiding the development of housing because of the stringent and costly inclusionary requirements. It may also contribute to a perception of inequity on the part of other residents of an inclusionary community.

Recommendation: Evaluate these program requirements for fairness and expense. If amenity and parking fees are levied, consider allowing the residents of affordable units to opt out of use of particular facilities.

Right of First Refusal: We were pleased to see that the City reserves the right of first refusal and/or option to purchase at the time of original sale and any subsequent resale of individual ADUs and any sale of a former rental ADU.

Recommendation: We recommend that the City have the ability to assign that right to qualified organizations that are capable of managing and maintaining the ADUs and which may have access to additional subsidies to support lower income households. This may assist in the event that previously qualified ADU residents lose income and can no longer afford the ADU rent or mortgage payment.

Alternative Compliance: This Section sets a high bar for a developer who would seek to provide ADUs at an alternative location by Special Permit. A long list of criteria is provided that must be met, including the provision of homes that can house three person or larger households. As this Section states this approval is only granted in extremely rare circumstances. This comports with our policy bias as IHI believes that residential inclusion is most effective when it occurs on site,

and the homes created are in fact integrated in the market development that precipitated their creation.

However, alternative compliance can contribute to purpose-built affordable housing and it may be appropriate to evaluate whether partnering opportunities with established affordable housing providers ought to be included within the Alternative Compliance section.

It should be noted that the Union Square Neighbors Subcommittee on Zoning have raised a question that bears on this topic. In their paper entitled *Somerville Zoning Overhaul Review* the Neighbors state, *It is worth evaluating whether this policy (inclusionary housing) will create the largest number of affordable units within range of public transportation and other amenities. Development of larger numbers of units on sites with lower land costs might be more productive....* (Page 7 Somerville Zoning Overhaul Review)

This is a fair question to ask, and is one that a number of inclusionary programs have answered in the affirmative. Use of in-lieu fees, linkage dollars, and increased tax base revenues can all help produce significant quantities of affordable housing. Often, however they are produced in the less desirable parts of town, and do not accomplish the economic and social integration that inclusionary policy strives for.

Linkage Fee

The Linkage Fee Section (page 216) is well thought out and comprehensive. The fee at \$5.15 per square foot of non-residential development for the portion of construction in excess of 30,000 square feet is reasonable. It allows for a phased payment of the fee in relationship to certificates of occupancy. It also, importantly calls for a review for potential recalculation every five years with the recalculation related to a Housing Needs Assessment.