

**CITY OF SOMERVILLE**  
**ORDINANCE NO. \_\_\_\_\_**  
**IN THE BOARD OF ALDERMEN: \_\_\_\_\_**

**AN ORDINANCE AMENDING THE SOMERVILLE ZONING ORDINANCE (SZO) TO REVISE THE REVIEW PROCESS FOR SPECIAL PERMITS, SPECIAL PERMITS WITH SITE PLAN REVIEW AND VARIANCES**

WHEREAS, transparency and public involvement in the full permitting process is of utmost importance to the City of Somerville;

WHEREAS, dual review by the Planning Board and Zoning Board is a complicated process for the applicant and the public who want to follow the process; and,

WHEREAS, eliminating dual review would streamline the permitting process and create a more efficient and predictable public review procedure; and,

WHEREAS, the Planning Board is not subordinate to the Zoning Board; now,

THEREFORE, be it adopted by the Board of Aldermen, in session assembled, that the below listed sections of the Somerville Zoning Ordinance are hereby amended as identified.

1. Article 2: Definitions, Section 2.2.102 (*Neighbor*) is hereby amended as follows (additions are underlined and deletions are ~~crossed out~~):

2.2.102. *Neighbor*. An owner of land, any part of which is within ~~two~~ three hundred (200300) feet of the perimeter of the legal boundaries of a subject property in the case of a special permit ~~or special permit with design review application, or and any part of which is within three hundred (300) feet of the perimeter of the legal boundaries of a subject property in the case of a special permit with site plan review.~~

2. Article 2: Definitions, Section 2.2.124 (*Planning Board*) is hereby amended as follows (additions are underlined and deletions are ~~crossed out~~):

2.2.124. *Planning Board*. The Somerville Planning Board as established in accordance with Chapter 41, Section 70 of the Massachusetts General Laws and through Sections 2-231 through 2-235 of the Code of Ordinances of the City of Somerville.

~~The Somerville Planning Board, consisting of five (5) members and one (1) associate member, appointed by the Mayor for five (5) year terms on a staggered basis, established in accordance with Chapter 41, Section 70 of the Massachusetts General Laws as amended, and whose responsibilities include making recommendations to the Board of Aldermen on all amendments to this Ordinance, making recommendations to the Board of Appeals on variance and special permit applications, and hearing and deciding upon requests for special permits where the Planning Board is the SPGA as provided for elsewhere in this Ordinance.~~

3. Article 2: Definitions, Section 2.2.149 (*Special Permit Granting Authority (SPGA)*) is hereby amended as follows (additions are underlined and deletions are ~~crossed-out~~):

*2.2.149 Special Permit Granting Authority (SPGA).* An appointed public Board or administrative officer of the City of Somerville, authorized under enabling provisions of M.G.L. Chapter 40A and specific provisions of this Ordinance to hold hearings, make determinations and findings, and subsequently issue or deny Special Permits or other special approvals specified in this Ordinance (also refer to Article 3, Enforcement, and Article 5, Special Permits, for more information). The SPGA shall be the Planning Board, Board of Appeals or its appointed Zoning Administrator. ~~Unless unless~~ specifically designated otherwise in this Ordinance to be another authorized Board or Agency as allowed under the Massachusetts General Laws, the SPGA is the Board of Appeals.

4. Article 3: Enforcement, Board of Appeals, and Amendments, Section 3.2 (*The Board of Appeals*) is hereby amended as follows (additions are underlined and deletions are ~~crossed-out~~):

*3.2.2. Powers and Duties.* The Board of Appeals shall act in strict accordance with the procedure specified by law and by this Ordinance, and shall have the following powers and duties as are prescribed by law:

a. *Zoning Appeals.* To hear and decide appeals from any person unable to obtain a permit or enforcement action from the Building Official or an administrative officer; or from any person, including any officer or board of the City, aggrieved by an order or decision of the Building Official or other administrative official, in violation of M.G.L. Chapter 40A or the zoning ordinance.

b. *Special Permits.* To hear and decide requests for Special Permits upon which the Planning Board is not specifically designated as the Special Permit Granting Authority under this ordinance. ~~upon which the Board is required to pass under this Ordinance unless some other SPGA is so designated in this Ordinance.~~

c. *Variances.* To authorize upon appeal with respect to a particular parcel of land or to an existing building thereon, a Variance from the terms of this Ordinance where, owing to soil conditions, shape or topography of land or structure, especially affecting such parcel or building, but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this Ordinance would involve substantial hardship to the appellant, and where desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Ordinance, but not otherwise.

*3.2.3. Zoning Appeals*

*3.2.3.1. Standing to Appeal.* Appeals to the Board of Appeals may be taken by any person aggrieved by reason of his/her inability to obtain a permit or enforcement action from any administrative official under the provisions of this Ordinance, or by any person including an officer or Board of the City, or of an abutting city or town aggrieved by an order or decision of the Superintendent of Inspectional Services or other administrative official in violation of any provision of this Ordinance, or M.G.L. Chapter 40A.

3.2.3.2. Procedure for Zoning Appeals of Officer or Board Decisions. All appeals shall be taken within thirty (30) days from the date of the order or decision which is being appealed. The petitioner shall file a notice of appeal specifying the grounds thereof, with the City Clerk. A copy of said notice, including the date and time of filing certified by the City Clerk, shall be filed forthwith by the petitioner with the officer or board whose order or decision is being appealed, and to the Board of Appeals, specifying in the notice grounds for such appeal. Such officer or board shall forthwith transmit to the Board of Appeals all documents and papers constituting the record of the case in which the appeal is taken.

All appeals shall be made on forms provided by and available in the Office of the City Clerk. Every appeal shall refer to the specific provision of the zoning ordinance involved, and shall exactly set forth the interpretation that is claimed, ~~the use for which the special permit is sought, or the details of the variance that is applied for and the grounds on which it is claimed that the relief requested should be granted, as the case may be.~~

#### 3.2.4 Reserved

3.2.5. Special Permits, Special Permits with Site Plan Review, and Variances. An application for a special permit, special permit with site plan review, site plan approval or petition for variance over which the Board of Appeals exercises original jurisdiction shall be filed by the petitioner with the City Clerk, as specified by the procedures in Article 5.

3.2.6. Notice and Hearing. The Board of Appeals shall hold a hearing on any appeal, application or petition within sixty-five (65) days from the receipt of notice by the Board of such appeal, application or petition. The Board shall give due notice of the hearing by posting a notice thereof upon the property with respect to which the appeal, application or petition is filed, and by sending a written notice to the petitioner; ~~the Planning Board;~~ the owners of the properties adjoining and opposite such property; owners of land which are abutters within three hundred (300) feet of the property line, even if in another city or town, as shown on the most recent tax list of the Board of Assessors; the Planning Board of abutting cities or towns; and to such other owners as may be deemed by the Board of Appeals to be interested. Additionally, the Board of Appeals shall publish such notice in a newspaper of general circulation within the City of Somerville, not less than fourteen (14) days in advance of the hearing with a second notice the following week.

**Note:** § 3.2.6 was amended by Ordinance 1991-1 on January 10, 1991.

3.2.7. Decisions on Appeal. ~~The d~~ Decision of the Board shall be made within one hundred (100) days after the date of the filing of an appeal, application or petition, except in regard to special permits, which decision shall be made within ninety (90) days after the closing of the public hearing held pursuant to Section 3.2.6, and as provided for in Article 5 and M.G.L. Chapter 40A, Section 9. Public hearings held open for written comment shall be deemed closed at the end of the written comment period identified by the Board in the public meeting. The required time limits for a public hearing and said action may be extended by written agreement of the applicant. ~~between the applicant and the Board of Appeals. A copy of such agreement shall be filed in the Office of the City Clerk.~~ In its decision, the Board, among other things, shall clearly state the reasons for its decision.

**Note:** § 3.2.7 was amended by Ordinance 1991-1 on January 10, 1991.

3.2.9. Contents, Notice and Filing of Decision. The Board shall make a detailed record of its

proceedings, indicating the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reason for its decision and of its official actions, copies of all of which shall be filed within fourteen (14) days in the Office of the City Clerk and shall be a public record. Notice of the decision shall be mailed forthwith to the petitioner, applicant or appellant, ~~to the Planning Board~~, to the parties in interest, ~~to the local newspapers~~, and to every person present at the hearing who requested that notice be sent to him/her and stated the address to which such notice was to be sent. Each notice shall specify that appeals to the decision, if any, shall be made pursuant to M.G.L. Chapter 40A, Section 17 and shall be filed within twenty (20) days after the date of filing of such notice in the Office of the City Clerk.

5. Article 5: Special Permits, Special Permits with Site Plan Review, Site Plan Approval and Variances, Section 5.3.1 (*Application Procedures and Information Required*) is hereby amended as follows (additions are underlined and deletions are ~~crossed-out~~):

Applications for a special permit under Section 5.1 or a special permit with site plan review under Section 5.2 shall be made to the SPGA on forms provided for that purpose, accompanied by the required fee. The SPGA shall adopt specific Rules and Regulations governing application and fee. The SPGA Rules and Regulations shall specifically provide for fast-tracking of any special permit or special permit with site plan review application that includes at least twenty-five percent (25%) affordable housing units as defined by Article 2 (also see the provisions of Article 13 for more detail on income and affordability guidelines used in defining affordable housing units). The fast-tracking Rules and Regulations should comply with those provisions set forth in Section 13.2 related to expediting the permitting process. ~~In addition, any special permit or special permit with site plan review application that includes at least twenty five percent (25%) affordable housing units as defined by Article 2 shall be entitled to a waiver of any fees normally associated with the special permit process.~~

When the application has been received in a completed form as designated by said Rules and Regulations, a copy shall be forwarded to the City Clerk. The stamp of this City Clerk shall designate the date of filing. Copies of the completed application shall be distributed to those boards and departments as specified in the aforementioned Rules and Regulations, which shall include, but not be limited to, ~~the Planning Board~~ and the Director of Traffic and Parking.

~~Staff to~~ The Board of Appeals and the Planning Board may, within thirty-five (35) days of their receipt of a completed application, transmit to the ~~Board of Appeals~~ appropriate SPGA a report or recommendations accompanied by such material, maps or plans as will aid the ~~Board of Appeals~~ SPGA in judging the application and in determining special conditions and safeguards. The SPGA, ~~if it is not the Planning Board~~, shall not take final action on the application until either a report from the staff is received or the expiration of such thirty-five (35) days. ~~Failure of the Planning Board to make a report or recommendations within thirty five (35) days of their receipt of such application shall be deemed lack of opposition thereto.~~

6. Article 5: Special Permits, Special Permits with Site Plan Review, Site Plan Approval and Variances, Section 5.3.3 (*Public Hearing, Receipt of Recommendations*) is hereby amended as follows (additions are underlined and deletions are ~~crossed-out~~):

Except as hereinafter provided, tThe SPGA shall hold a public hearing on the application, as provided in M.G.L. Chapter 40A, Section 9 and also meeting the notification requirements of Section 5.3.2 above, within sixty-five (65) days after the filing of an complete application and, except as hereinafter provided, shall take final action on an application within ninety (90) days after the hearing. The applicant may grant permission for the SPGA to extend the required timeframe before which the SPGA must provide notice and open a public hearing. The SPGA shall not make a decision on an application for a special permit or special permit with site plan review until boards, commissions and departments which have been notified have submitted reports or recommendations thereon or if reports are not received, until thirty-five (35) days have elapsed since receipt by such boards or agencies of the application. Failure of any such board or agency to make recommendations within said thirty-five (35) days shall be deemed lack of opposition thereto.

7. Article 5: Special Permits, Special Permits with Site Plan Review, Site Plan Approval and Variances, Section 5.3.5 (*Decision of the SPGA*) is hereby amended as follows (additions are underlined and deletions are ~~crossed out~~):

The SPGA may grant, grant with conditions, deny, or grant a leave to withdraw an application for a special permit or a special permit with site plan review. A decision to grant, or grant with conditions, shall cite the specific section of this Ordinance which refers to the granting of a special permit or special permit with site plan review and shall incorporate by reference the plans which have been filed with the application. A copy of the decision shall be filed with the City Clerk ~~and the Planning Board, when it is not the SPGA, the City Solicitor's Office~~ and shall be furnished to the applicant, to all parties in interest, and to every person present at the hearing who requested that notice be sent to him/her and stated the address to which the notice was to be sent.

The Applicant shall be responsible for filing in the Registry of Deeds, or, where applicable, in the Land Court of the Commonwealth, a copy of the City Clerk certified decision of the SPGA granting a special permit or special permit with site plan review. Prior to the issuance of a building permit, the applicant shall present to the Superintendent of Inspectional Services evidence of such recording.

8. Article 5: Special Permits, Special Permits with Site Plan Review, Site Plan Approval and Variances, Section 5.5.2 (*Application and Notice for Variances*) is hereby amended as follows (additions are underlined and deletions are ~~crossed out~~):

All requests for a variance shall be filed with ~~the Planning Board and~~ the Board of Appeals. All papers, plans, statements, photographs, or other material having a direct bearing upon the request shall be forwarded to the ~~Planning Board~~ Board of Appeals along with such notice. Upon receipt of a request for a variance, the Board of Appeals shall forthwith hold a public hearing at which time all parties-in-interest, including but not limited to the applicant, abutters and abutters-to-abutters of the property at issue, members of the Board of Aldermen, the Mayor and the Superintendent of Inspectional Services, may give testimony. ~~Thereafter,~~ staff to the Board of Appeals ~~the Planning Board~~ may, no later than the date of the public hearing on the request for a variance, transmit to the Board of Appeals a report and recommendations with respect to said request.

9. *Effective Date.* This ordinance shall be effective 45 days after enactment.