



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

MEMORANDUM

Office of the Executive Director

MEMORANDUM

TO: Mayor Joseph A. Curtatone

FROM: Monica R. Lamboy, Executive Director 

DATE: September 23, 2010

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

The Office of Strategic Planning and Community Development (OSPCD) respectfully requests that you forward the attached proposed amendment to the Somerville Zoning Ordinance (SZO) to the Board of Aldermen for their review and consideration. This ordinance is designed to improve review procedures for developments required to go before the Planning Board and Board of Appeals. Specifically, it will remove the Planning Board's responsibility to make recommendations to the Board of Appeals and make other minor amendments such as referencing the Comprehensive Permit process pursuant to MGL 40B sections 2-23. The proposed ordinance also makes other minor changes to improve the transparency and predictability of the public review process.

Background

When first established, Planning Boards and Boards of Appeals were created with specific and different roles. Planning Boards were authorized under MGL Section 81 to establish long-range planning for communities, provide recommendations on developments, and guide municipal growth. The orderly subdivision of land was a primary Planning Board duty, ensuring that the growth of the community proceeded according to plan. The Board of Appeals was established through the Zoning Act (MGL 40A) to hear appeals of building permit cases and hear variances from local zoning. With the establishment of modern review procedures, the Board of Appeals became the default permit granting authority for Special Permits, as the Board of Appeals was familiar with the process of issuing zoning appeals. Site Plan Review, a later creation of local zoning control without specific state level authorization, was typically delegated to Planning Boards, as they often had a greater focus on design issues.

It was through this original format that communities adopted a policy of having the Planning Board, as the Board most familiar with comprehensive planning and community design concerns, provide a recommendation on special permit and variance cases to the Board of Appeals, a board typically more familiar with building code and procedural review. In many of these communities, the Board of Appeals did not have access to professional planning staff, leaving most of the planning expertise in the community with the Planning Board, or its staff. In Somerville, this tradition was further reinforced by a process that, for a long time, had both Planning Board and ZBA staffed separately, with the Planning Board receiving support from planning professionals and the ZBA receiving clerical support only.

Today, the same planning staff within the OSPCD Planning Division provides formal staff reports and recommendations to both the Planning Board and Board of Appeals. Review of cases has been further simplified through the development of a common application for all permit types. Planning staff solicits recommendations on cases from the Director of Traffic & Parking, Fire Department, and Department of Public Works, as appropriate, and incorporates their comments in the reports.

In Somerville, as part of the rezoning of Assembly Square (ASMD, PUD-A), Union Square, and Broadway in Winter Hill and East Somerville (TODs and CCDs), the Board of Aldermen established the Planning Board as the special permit granting authority. In addition, the Planning Board considers modifications to the special permits it approves. The ZBA retains authority for special permits in all other zoning districts and has sole authority for issuance of variances. Projects before the ZBA are often small additions, dormers, cellular installations or changes of use to small non-conforming traditional retail storefronts.

In 2009, the ZBA heard 63 cases. The Planning Board provided recommendations on most of the 63 ZBA cases, heard ten cases under its jurisdiction, and provided recommendations on several zoning amendments. Each board met 23 times in 2009, with full agendas on most nights.

Existing Review Process

The current zoning and Board regulations require the Board of Appeals to seek a recommendation from the Planning Board before acting on special permit or variance cases. Special Permits heard by the Planning Board have no similar requirement for a recommendation from the Board of Appeals. The current dual review process has created several challenges with the processing of applications including confusion among community members and applicants, extended review time periods, and potential conflicts in decisionmaking between the two boards. This creates a number of difficulties including:

1. **Confusion in public notification and public comments**

The current process places the Planning Board recommendation process in a public meeting that is not a public hearing. This meeting typically takes place 2 to 3 weeks before the formal public hearing at the Zoning Board of Appeals. While the Planning Board often takes testimony from members of the public who attend the meeting, the public only attends when they are aware of the issue because abutters letters are not sent until after the Planning Board meeting. In some cases, supporters or opponents can rally a group to attend the Planning Board meeting while the other side of the issue is not heard by the Planning Board because others were not aware of the step. Overall,

this situation is most frustrating to abutters who have to attend two meetings, if they are aware of the Planning Board meeting, and sometimes find that they are not able to testify at the first meeting.

In many cases, the Board of Appeals case will be scheduled before the applicant sees and has a chance to react to the staff report. As a result, the ZBA hearing is advertised before it is ready to begin, requiring attending neighbors to attend a ZBA hearing, find the case continued, then need to return to the Planning Board the following night and a follow-up meeting.

While Planning Staff often cautions applicants and abutters that the recommendation that comes out of this process is only a recommendation and is not based upon the full benefit of a public hearing, often it creates frustration amongst those that disagree with the recommendation and a general feeling that the decision has moved forward without their insight.

2. Confusion for Applicants

Despite extensive explanations from the Planning Staff there have still been applicants who have attended the Planning Board meeting for a recommendation and thought that their review process was complete. Explaining the need for a second meeting after receiving positive feedback at Planning Board has caused some applicants frustration in knowing that they need to repeat the process before a second board.

3. Extended Review Timeframe

The current review system creates very tight development review timeframes. This requires the Planning Staff to set application deadlines 21 days before public hearings, thereby limiting the time available to deliver plans to departments for review, process feedback, and provide complete staff reports. This either results in staff reports being delivered to the Planning Board with minimal time for their review or requires meeting continuances to ensure that department review is adequate. This is often frustrating to applicants or abutters. Ultimately, this process takes longer because of the extra step and allows less time for a detailed review and comment from City departments.

4. Inconsistent Recommendations

The current review also sets up potential for confusing messages to be given to the ZBA. There have been a number cases where a Planning Board recommendation has given applicants or opponents hope when the ZBA, as the permit granting authority and with the full benefit of a public hearing, have taken a different approach. Recently, a case before the ZBA created confusion when the Planning Board and staff offered opposing recommendations. There has also been a case recently in land court where a judge has questioned the ZBA's ability to exercise its right as a permit granting authority to deny a Special Permit when the Planning Board recommended (without the benefit of a public hearing) that the permit be granted.

When members of the public suggest reasonable and constructive conditions be added to the decision, the Planning Staff is often left to draft these conditions before the following meeting. This system does not easily allow the staff to update their recommendation to reflect comments and proposed conditions, because the report before the ZBA is from the Planning Board not the staff. The staff then has to create a supplemental report to the ZBA, leaving the Board with multiple report documents from different sources.

Recommended Ordinance Amendments

It is recommended that the ordinance remove the Planning Board recommendation as a required step before the Board of Appeals can act. This will achieve a number of significant benefits:

1. Reduce confusion to applicants, by reducing the number of meetings they need to attend and the need to continue Board of Appeals hearings to wait for a Planning Board report.
2. Reduce confusion to abutters, by reducing the need to attend multiple meetings, discover a meeting at Planning Board that is not advertised, and reduce the need to continue the first meeting at the Board of Appeals in order to allow time for the Planning Board to act.
3. Increase transparency in review by eliminating the action by the Planning Board outside of the public hearing process without the benefit of abutter input.
4. Adjust workload for the Planning Board, allowing them to focus time on zoning amendments and large project special permit / site plan review.

As a result of this change, new procedures would be established for accepting and processing applications. These include:

1. The timeframe between application submittal and hearing date will be extended by seven days, thereby allowing more time for City departments and Planning Staff to review projects for either Board and prepare complete staff reports.
2. The public hearing will always be scheduled as the first meeting on any permit application.
3. Planning staff will offer "preliminary recommendations" and "preliminary conditions" to the Boards prior the public hearing. A section entitled "Public Comment" will be added to every staff report and will summarize any comments received prior to the public hearing (via email, telephone, or visit to City offices) and indicate the date of the public hearing. If consensus is achieved in the first meeting on an application, the preliminary recommendations and conditions can serve as the foundation for the final board decision. This will allow non-controversial projects to be approved in seven days fewer than the current schedule allows.

A few minor additional amendments to procedures and process are also included in this package to ensure that the SZO is consistent with the practice of the Planning Staff as this proposed change would be implemented. These include:

1. Removal of the fee exemption for affordable housing developments. In general, all developments require complex staff review and the City cannot afford to provide exemptions that require the City to pick up the cost for review, advertising and mailings
2. Requiring that OSPCD notify abutters within 300 feet to of all special permit projects. The current ordinance requires abutter notices within 200 feet for some Special Permit projects, but OSPCD has been notifying within a 300 foot radius for all projects for the past two years.
3. Clarifying that a complete application is required before the start of the statutory 65 day time clock for scheduling hearings, thereby ensuring that the Staff is not obligated to schedule hearings for unfinished projects and confuse abutters as further continuances are required.
4. Clarifying that the public hearing closes automatically at the date that the SPGA closes written comments, thereby starting the project review time clock at that time.
5. Allowing applicants to extend statutory timeframes before meetings are scheduled or before decisions are filed, without triggering constructive approvals.

Should the Board of Aldermen choose to approve this ordinance, upon approval of the ordinance, the Special Permit Granting Authorities will need to make appropriate adjustments to their Rules and

Regulations to reflect the changes in the SZO. A 45 day implementation period has been included in the draft ordinance.

Recommendation

It is recommended that the Board of Aldermen adopt the attached ordinance to revise the review process for special permits, special permits with site plan review and variances.