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January 23, 2024

CITY CLERK'S OFFICE  
SOMERVILLE, MA

Orsola Susan Fontano, Chair  
Zoning Board of Appeals  
City of Somerville  
City Hall - 93 Highland Avenue  
Somerville, Massachusetts 02143

Re: Administrative Appeal - ISD Failure to Act on Request For Written Interpretation  
2 Union Square [MBL 82-C-6], 9 Union Square [MBL 82-C-4]  
298 Somerville Avenue [MBL 82-C-7], 290 Somerville Avenue [MBL 82-C-8]  
286 Somerville Avenue [MBL 82-C-10]  
Case #: PB2017-21, Union Square CDSP (multiple sites)  
Applicability of Master Plan Special Permit

Dear Chair Fontano and Members of the Zoning Board of Appeals:

We represent the Applicant, Union Square One Development, LLC, a wholly owned affiliate of The Hamilton Company and its partners, regarding their captioned properties (Site) - commonly known as the Union Square South Block - in connection with this Administrative Appeal prompted by the failure of the Inspectional Services Department (ISD) to timely act regarding a Request for a Written Interpretation under the Somerville Zoning Ordinance (SZO) and M.G.L. c. 40A (Zoning Act).

A. BOARD JURISDICTION; AUTHORITY

The Board has authority to hear and to rule on the subject matter of this administrative appeal pursuant to Somerville Zoning Ordinance (SZO) Sections 15.4.3(d)(ii), 15.4.3(e) and 15.5.2, and Zoning Act, §§ 8, 14 and 15. SZO Section 15.5.2(a)(i) explicitly provides that "an administrative appeal is a petition to rectify a failure to act . . . by" ISD. Similarly, Section 14 of the Zoning Act, produced in relevant part below, expressly authorizes the Board to act in ISD's stead where ISD has failed to act.

A board of appeals shall have the following powers:—

(1) To hear and decide appeals in accordance with section eight.

In exercising the powers granted by this section, a board of appeals may, in conformity with the provisions of this chapter, make orders or decisions, reverse or affirm in whole or in part, or modify any order or

decision, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.

*[underlining provided]*

Given the Board's authority under the SZO and the Zoning Act, we ask the Board respectfully to act where ISD has not, and to rule in favor of the Applicant regarding the Questions Presented in the Request for Written Interpretation, which is affixed hereto as TAB A, and incorporated herein by reference and attachment.

**B. BACKGROUND**

1. On December 5, 2023, the Request for Written Interpretation was submitted duly to ISD, supported by a comprehensive legal analysis with appropriate exhibits. Again, for the Board's consideration and decision, the Request for Written Interpretation, including the legal analysis and exhibits, are affixed here as TAB B. This letter and the Tab A materials sets forth the applicable and binding legal standards under the Constitution of the United States, the Constitution of the Commonwealth of Massachusetts, the Zoning Act, and the SZO regarding the Questions Presented in the Request for Written Interpretation.

2. On December 6, 2023, ISD provided written acknowledgement that it had received the Request for Written Interpretation and that the matter would be "reviewed." Please refer to TAB B for ISD's acknowledgement.

3. As of January 4, 2024, 30 days following its receipt of the Request for Written Interpretation, ISD had not timely provided the response prescribed by SZO Section 15.4.3(d).

4. As of the date of this Administrative Appeal, ISD still has not responded.

**C. CONCLUSION; PRAYER FOR RELIEF**

If ISD fails to provide a written response within 30 days of its receipt of a request for written interpretation, as required by SZO Section 15.4.3(d), an administrative appeal can be taken to this Board to "rectify" ISD's inaction,<sup>1</sup> That is the situation here as set forth in Section B. Background of this letter.

Accordingly, for the reasons set forth here and in the Request for Written Interpretation, TAB A hereto, we request respectfully that the Board review the Request for Written Determination, and rule in favor of the Applicant regarding the Questions Presented in the Request for Written Interpretation.

On Question Presented One, we ask the Board to find that the Site is not subject to the Master Plan Special Permit requirement of the SZO; and on Question Presented Two, we ask the Board to find that the Master Plan Special Permit requirement under the SZO, as applied to the Site, violates the Zoning Act, the Constitution of the Commonwealth of Massachusetts and the Constitution of the United States.

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<sup>1</sup> SZO Section 15.5.2(a)(i). As discussed in Section A. Board Jurisdiction; Authority, Section 14 of the Zoning Act also requires the Board to consider ISD's inaction.

We thank the Board for its due consideration of the Questions Presented, and look forward to appearing before the Board in public session to discuss the matters raised in this Administrative Appeal.

Very truly yours,

  
William J. Proia

TABS

- A Request for Written Interpretation, for Zoning Board of Appeals Review and Ruling
- B ISD Acknowledgement of Receipt of the Request for Written Interpretation

TAB A

Request for Written Interpretation, for Zoning Board of Appeals Review and Ruling

*[page blank – see following]*



December 5, 2023

Via Email: [isdzoning@somervillema.gov](mailto:isdzoning@somervillema.gov)

Inspectional Services Department  
City of Somerville  
1 Franey Road  
Somerville, Massachusetts 02145

Re: Request for Written Interpretation  
2 Union Square [MBL 82-C-6], 9 Union Square [MBL 82-C-4]  
298 Somerville Avenue [MBL 82-C-7], 290 Somerville Avenue [MBL 82-C-8]  
286 Somerville Avenue [MBL 82-C-10]  
Case #: PB2017-21, Union Square CDSP (multiple sites)  
Applicability of Master Plan Special Permit

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Good Day:

We represent Union Square One Development, LLC, a wholly owned affiliate of The Hamilton Company and its partners, regarding their captioned properties, commonly known as the Union Square South Block, in connection with this request for a Written Interpretation under the Somerville Zoning Ordinance (SZO) and M.G.L. c. 40A (Zoning Act).

A. AUTHORITY

The Inspectional Services Department (ISD) of the City of Somerville has the authority and responsibility to provide a written interpretation on the questions presented here pursuant to SZO Section 15.4.3 and Zoning Act, § 7.<sup>1</sup>

B. FACTS

1. On December 14, 2017, that certain Union Square CDSP (multiple sites), Case #: PB2017-21, was approved (CDSP). The CDSP was recorded with the Middlesex County South District Registry of Deeds in Book 70602, Page 1. Please refer to Tab A affixed hereto for a copy of the CDSP (without Appendices).

2. By its express terms, CDSP intended the Site, among other property, to be subject to the CDSP and included in the development as described thereunder.

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<sup>1</sup> Wyman v. Zoning Bd. of Appeals of Grafton, 47 Mass. App. Ct. 635, 637 (1999) (variances and special permits are subsumed in the provisions of M.G.L. c. 40A and the ordinances or bylaws under which they are promulgated, and are part of the zoning law to be enforced).

3. By its express terms, the CDSP names as Applicants the “Somerville Redevelopment Authority (SRA)” and “Union Square Station Associates LLC (US2), the Master Developer for the Union Square Revitalization Plan”.

4. Germane sections of the Somerville Zoning Ordinance in effect at the time the CDSP was issued (CDSP SZO) are affixed hereto as Tab B.

5. Germane sections of the Somerville Zoning Ordinance now in effect (SZO) are affixed hereto as Tab C.

6. The SZO, adopted in December, 2019, almost exactly two years after the CDSP was approved, amended the CDSP SZO.

C. QUESTIONS PRESENTED; DISCUSSION

*Question Presented One*

Whether the Site is subject to the Master Plan Special Permit requirement under the SZO given that the CDSP SZO provides that “[a]mendments to the Somerville Zoning Ordinance are not applicable to development subject to a previously approved Coordinated Development Plan Special Permit . . .”?

*Short Answer One*

No, the Site is not subject to the Master Plan Special Permit requirement of the SZO because the Site is part of development subject to the CDSP, which was approved before the CDSP SZO was amended by the adoption of the SZO.

*Question Presented Two*

Whether the Master Plan Special Permit requirement under the SZO, as applied to the Site, is lawful under the Zoning Act, the Constitution of the Commonwealth of Massachusetts and the Constitution of the United States?

*Short Answer Two*

No, for the reasons set forth following, the Master Plan Special Permit requirement under the SZO, as applied to the Site, violates the Zoning Act, the Constitution of the Commonwealth of Massachusetts and the Constitution of the United States.

*Discussion*

Question Presented One

The CDSP was granted on December 14, 2017 under Section 5.8 and Section 6.8.5 of the CDSP. The SZO, adopted in December of 2019, amended the CDSP SZO. Accordingly, the CDSP was approved previous to the CDSP SZO being amended by the SZO.

CDSP SZO Section 6.8.5.C.7.a, and Section 6.8.5.C.7.b, provide:

*Vested Rights*

- a. Amendments to the Somerville Zoning Ordinance are not applicable to development subject to a previously approved Coordinated Development Plan Special Permit, except for the following:
  - i. Article 13: Inclusionary Housing
  - ii. Article 15: Linkage
  - iii. Outdoor Lighting/Dark Sky Regulations
- b. Amendments to Section 6.7 Union Square Overlay District are not applicable to development subject to a previously approved Coordinated Development Plan Special Permit, except for the following:
  - i. Section 6.8.10.G.4 Environmental Performance
  - ii. Section 6.8.10.1 Sustainable Development
  - iii. Section 6.1.14 Mobility Management

As the Site is part of the development subject to the CDSP, which was approved before the CDSP SZO was amended by the SZO, the requirements of the SZO, including without limitation the Master Plan Special Permit requirement of SZO Section 8.4.17, are not applicable to the Site under the plain language and intent of the CDSP SZO Sections reproduced above.<sup>2</sup> Note as well that the Master Plan Special Permit requirement is not among the exceptions to the CDSP SZO mandate that subsequent zoning amendments are inapplicable to property covered by a previously approved Coordinated Development Special Permit.

For these reasons, the Master Special Permit Requirement of the SZO plainly is inapplicable to the Site under the City's own zoning regulations and the Zoning Act, and the Site enjoys all the rights, benefits and protections afforded by the CDSP, the CDSP SZO and the Zoning Act, and ISD should so rule.

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<sup>2</sup> See also Zoning Act Section 6 (M.G.L. c. 40A, s. 6) which exempts certain special permits from subsequently adopted zoning amendments.

### Question Presented Two

Any credible discussion of this topic must acknowledge that private-property rights are paramount and are protected expressly by federal and state assurances.<sup>3</sup>

By its terms, it appears the main purpose of SZO Section 8.4.17 (Section 8.4.17) is to attempt to implement and enforce the Union Square Urban Renewal plan, even against landowners whose land has not been acquired by the redevelopment authority.<sup>4</sup> That illegitimate purpose<sup>5</sup> violates those landowners' protected rights and sets up a scheme favoring one private party and a self-interested government entity while infringing the rights of the other landowners.<sup>6</sup>

Similarly, Section 8.4.17.d. appears to forbid Development of an individual Lot in the USQ Sub-Area without all the landowners first joining in a Master Plan Special Permit encompassing all the Lots in the USQ Sub-Area. That application of Section 8.4.17.d. – requiring the multiple landowners to consent to pursue a Master Plan Special Permit – unlawfully deprives an individual landowner of its sole protected right to improve its land. That scheme also confers veto power to any single landowner that desires to block any or all of the other owners from exercising their guaranteed property rights, which constitutes an unlawful delegation of the zoning power.<sup>7</sup>

Proper objectives for which zoning may be established under the Zoning Act are generally recognized as lessening congestion in the streets, conservation of health, securing safety from fire and other dangers, provision of adequate light and air, prevention of overcrowding of land, and avoidance of undue concentration of population. As applied to the Site, the Master Plan Special Permit requirement – given its apparent favored treatment of the CDSP Applicants and its unlawful delegation of the zoning

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<sup>3</sup> Article X, Constitution of the Commonwealth of Massachusetts. Fifth Amendment and Fourteenth Amendment, United States Constitution. Washington ex rel. Seattle Title Tr. Co. v. Roberge, 278 U.S. 116, 121 (1928). In an urban renewal or pre-condemnation setting like here, these guaranteed property rights are especially vulnerable to improper infringement or improper acts that impose negative constraints on a landowner's rights. Jensen v. City of New York, 369 N.E.2d 1179 (1977). Foster v. City of Detroit, 405 F.2d 138 (6<sup>th</sup> Cir. 1968). Amen v. City of Dearborn, 718 F.2d 789 (6<sup>th</sup> Cir. 1983).

<sup>4</sup> SZO Section 8.4.17.a.iv. Under Article X, Constitution of the Commonwealth of Massachusetts, absent a formal eminent domain taking, no property can be "applied to public uses", like urban renewal, without the property owner's consent.

<sup>5</sup> MacNeil v. Town of Avon, 386 Mass. 339 (1982) ("[W]hile property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking . . . . [A] strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change . . . . [T]his is a question of degree . . . ." Aronson v. Sharon, 346 Mass. 598, 604 (1964), quoting Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415-416 (1922))

<sup>6</sup> SZO Section 8.4.17C.iii provides that site plans approved prior to the adoption of the SZO are subject to the SZO in effect as of December 14, 2017, the precise date of the CDSP, Applicants "Somerville Redevelopment Authority (SRA)" and "Union Square Station Associates LLC (US2), the Master Developer for the Union Square Revitalization Plan"

<sup>7</sup> Washington ex rel. Seattle Title Tr. Co. v. Roberge, 278 U.S. 116 (1928). Eubank v. City of Richmond, 226 U.S. 137 (1912). Larkin v. Grendel's Den, Inc., 459 U.S. 116 (1982). Grendel's Den, Inc. v. Goodwin, 662 F.2d 88 (1<sup>st</sup> Cir.) (1981). Rice v. Johnstown, 30 F.4<sup>th</sup> 584 (6<sup>th</sup> Cir.) (2022). The nondelegation rule of Eubank and Roberge remains a vital due process doctrine. See also, footnote 3 regarding the impermissible potential abuse of this veto power given the Union Square urban renewal context.

power – contravenes the Zoning Act because it is not rationally related to, and is not necessary to accomplish a valid zoning objective and therefor is not predicated on a lawful public purpose.<sup>8</sup>

For these reasons, the Master Plan Special Permit requirement under the SZO, as applied to the Site, violates the Zoning Act, the Constitution of the Commonwealth of Massachusetts and the Constitution of the United States, and ISD should so rule.

D. CONCLUSION

As the Master Plan Special Permit requirement generally, and as applied to the Site, violates relevant local, state and federal standards, ISD should make that easy finding and duly issue a written interpretation consistent with those local, state and federal standards.

Given that improvement of the Site is being infringed by the improper imposition of the Master Plan Special Permit requirement, we would appreciate a response from ISD as soon as practicable. In any case, Zoning Act § 7 suggests a response time of fourteen (14) days, so we thank you for your efforts to respond within that time frame, if not sooner, reserving all rights.

Very truly yours,



William J. Proia

Tabs

- A CDSP – Record Copy (w/o Appendices)
- B Select Sections of the CDSP SZO
- C Select Sections of the SZO

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<sup>8</sup> MacNeil v. Town of Avon, 386 Mass. 339 (1982). The Master Plan Special Permit requirement is interfering with investment in the Site and having a negative economic impact. See, Lingle v. Chevron U.S.A., Inc., 544 U.S. 528 (2005).

Tab A

CDSP – Record Copy  
(w/o Appendices)

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## CITY OF SOMERVILLE

MASSACHUSETTS

2017 DEC 28 P 6: 28

Joseph A. Curtatone, Mayor

Office of Strategic Planning and Community Development (OSPCD) ERK'S OFFICE  
City Hall 3<sup>rd</sup> Floor, 93 Highland Avenue, Somerville, MA 02143

Michael F. Glavin, Executive Director

## PLANNING BOARD MEMBERS

KEVIN PRIOR, CHAIRMAN  
JOSEPH FAVALORO, CLERK  
DOROTHY A. KELLY GAY  
MICHAEL A. CAPUANO, ESQ.  
REBECCA LYN COOPER  
GERARD AMARAL (ALT)



Case #: PB2017-21

Site: Union Square CDSP (multiple sites)

Date of Decision: December 14, 2017

Decision: Petition Approved with Conditions

Date Filed with City Clerk: December 28, 2017



2018 00017964

Bk: 70602 Pg: 1 Doc: DECIS  
Page: 1 of 37 02/06/2018 03:48 PM

## PLANNING BOARD DECISION

**Site:** Union Square Coordinated Development Special Permit

(238 Washington St; 273 Somerville Ave; 269 Somerville Ave; 269 Rear Somerville Ave; 261 Somerville Ave;  
259 Somerville Ave; 228 Washington Street; 234 Washington Street; 26 Prospect Street; 30 Prospect Street;  
27 Bennett Street; 50 Prospect Street; 40 Bennett Street; 41 Bennett Street; 42 Bennett Street; 43 Bennett  
Street; 44 Bennett Street; 49-51 Allen Street; 4 Milk Place; 258 Somerville Avenue; 20-22 Prospect Street; 42  
Prospect Street; 50 Webster Ave; 520 Columbia Street; 56 Webster Ave; 41 Webster Ave; 45 Webster Ave;  
47 Webster Ave; 48 Webster Ave; 35 Prospect Street; 70 Prospect Street; 223 Washington Street; 231  
Washington Street; 237 Washington Street; 9 Union Square; 2 Union Square; 298 Somerville Ave; 290  
Somerville Ave; 286 Somerville Ave; 41 Union Square; 1 Bow Street) \*

**Applicant Name:** Union Square Station Associates LLC**Applicant Address:** 31 Union Square, Somerville, MA 02143**Property Owner Name:** Various, including the Somerville Redevelopment Authority**Property Owner Address:** Various**Agent Name:** John Rattigan, DLA Piper

**Legal Notice:** Applicants Somerville Redevelopment Authority (SRA) and Union Square Station Associates LLC (US2), the Master Developer for the Union Square Revitalization Plan, a M.G.L. Chapter 121B "Urban Renewal Plan", seek a Coordinated Development Special Permit (CDSP) under Sections 5.8 and 6.8.5.C (formerly known as 6.7.5.C) of the Somerville Zoning Ordinance (SZO), and related Special Permits pursuant to Sections 6.8.11.F (formerly known as 6.7.11.F) for a Residential principal use, 6.8.6.A.3 (formerly known as 6.7.6.A.3) for partial payment in lieu of civic space, and 6.8.6.E (formerly known as 6.7.6.E) for off-site compliance to consolidate Arts & Creative Enterprise uses of the SZO, as well as waivers under Sections 5.1.2.2 (certified plot plan) and 5.1.2.7 (2' contours) of the SZO, for the review of a multi-lot development that establishes general phasing parameters, analyzes the impacts related to build-out, and identifies subsequent Design & Site Plan Review applications.

**Zoning District/Ward:** CCD-45, CCD-45-C, CCD-55, CCD-55-C, NB, TOD-70, and TOD-100 zones.**USOD Overlay District:** Wards 2 & 3.**Zoning Approval Sought:** CDSP, 3 simultaneous Special Permits, and 2 Waivers

A TRUE COPY ATTEST:



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Unsub. lot \* 264918 - 1508 - 44 - Bldg 1 H Associates LLC  
Lot 10 \* \* 1508 - 44 - Bldg 1 H Associates LLC

N

64065.48  
69299.94  
64300.45  
69972.125  
50569.599  
BK 15843.303  
62730.385  
35179.500

Date of Application: September 19, 2017 (supplemental information provided November 8, 2017)

Date(s) of Public Hearing: November 20, 2017 and November 30, 2017

Date of Decision: December 14, 2017

Vote: 5-0

Case #PB2017-21 was opened before the Planning Board at Albert F. Argenziano School Cafeteria (290 Washington Street) on Monday November 20<sup>th</sup>, 2017. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L. c. 40A, sec. 11 and the Somerville Zoning Ordinance. After two (2) meetings with public hearings, and an additional meeting with deliberation, the Planning Board took a vote.

#### **DESCRIPTION:**

This redevelopment project is part of the state-approved *Union Square Revitalization Plan*, an urban renewal plan (M.G.L. Chapter 121B) that focuses on transit connectivity in order to prepare the area for economic development. The proposed project will evolve Union Square into the transit-oriented mixed-use urban employment center envisioned in *SomerVision* and, at completion, the project will include approximately 2.4 million square feet of new space. Approximately 1.46 million square feet will be commercial spaces (61% of the total development) that will generate over 5,300 permanent jobs.

The approximately 1.46 million square feet of new commercial space, much of it in the form of office and lab space, will provide a range of jobs to support the regional economy, provide employment opportunities for Somerville residents, and grow the commercial tax base that can support the City's many other priorities, such as citywide school and infrastructure needs.

New residential uses help meet regional housing needs, and complement new commercial uses in order to create the vibrant 18-hour employment district envisioned for Union Square. This is important to maintain a vibrant neighborhood for existing residents and new workers. A proposed total of approximately 933,000 SF of residential uses (39%) or approximately 900 to 1,000 new homes of which 180 to 200 (20%) will be permanently affordable units for existing or recently displaced Somerville residents. Approximately 157,000sf of public realm improvements including approximately 110,000 SF of new high-quality civic spaces, will be created as part of the development. The Civic Space includes a 27,000+ square foot neighborhood park, and a significant plaza that connects the new Green Line station to the neighborhood.

The proposal also includes a public and community benefits program which is valued at approximately \$100 million, and aims to address a range of community priorities such as affordable housing, local jobs & workforce development, local business support, open space & sustainability, mobility, and infrastructure. This program is designed to ensure that Somerville residents and business, old and new, are able to benefit from this development program.

#### **FINDINGS FOR COORDINATED DEVELOPMENT SPECIAL PERMIT (SZO \$5.8):**



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The review of the Coordinated Development Special Permit was based on the original application dated September 19, 2017 and the updated complete package of materials submitted November 8, 2017. The Board finds that the proposal is consistent with the purposes and requirements of the Master Plan of the City of Somerville and the Somerville Zoning Ordinance as required for a CDSP. The itemized findings for \$5.8 Coordinated Development Special Permit can be found in attached Appendix A.

**ADDITIONAL FINDINGS FOR OTHER SPECIAL PERMITS (SZO \$5.1):**

The Applicant requested additional Special Permits coincident with this filing as allowed by SZO \$6.7.5.C.4.B (codified as \$6.8):

- Pursuant to \$6.7.11.F (codified as \$6.8), permitting Residential as a principal use on Blocks D2, D3, D4, D5, and D7.
- Pursuant to \$6.7.6.A.3 (codified as \$6.8), up to five percent (5%) or approximately 5,507sf the required Civic Space to be satisfied by a payment in lieu.
- Pursuant to \$6.7.6.E (codified as \$6.8), the Arts and Creative Enterprise space requirement set forth in \$6.7.6.B.3 to be satisfied through off-site compliance (by consolidating the requirements at one or more larger Receiving Sites).

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in \$5.1 (Special Permits) of the SZO. This section of the report goes through \$5.1.4 for all three Special Permit applications simultaneously.

1. Information Supplied:

The board finds that the information provided by the Applicant conforms to the requirements of \$5.1 of the SZO and allows for a comprehensive analysis of the project with respect to the required Special Permits. See attached Appendix A for more detail.

3. Consistency with Purposes: "Is consistent with: 1) the purposes of this Ordinance, particularly those set forth in Article 1 and Article 5; and 2) the purposes, provisions, and specific objectives applicable to the requested special permit with site plan review which may be set forth elsewhere in this Ordinance, such as, but not limited to, those at the beginning of the various sections."

Purpose of Ordinance:

The proposal is consistent with the general purposes of the Ordinance as set forth under \$1.2.

Purpose of District:

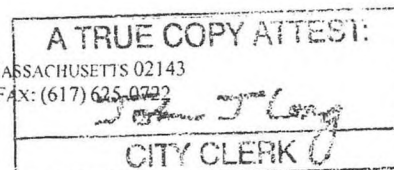
The proposal is consistent with the purpose of the Union Square Overlay District; please refer to attached Appendix A for more information.

4. Site and Area Compatibility: The Applicant has to ensure that the project "(i)s designed in a manner that is compatible with the existing natural features of the site and is compatible with the characteristics of the surrounding area, and that the scale, massing and detailing of the buildings are compatible with those prevalent in the surrounding area".

Surrounding Neighborhood:



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Historically, Union Square was a center of commerce, rail, manufacturing, and industry because of its proximity to downtown Boston. Transit-oriented development in Union Square began with row houses and apartment hotels along the first horse-drawn streetcar system (established in 1852) and continued in the early 1900's as electric streetcars made 88 stops a day.

Union Square lost density and urban character after the light rail system was removed and property owners with vacant commercial spaces removed the top stories of their buildings to lower their commercial property tax. Due to cultural shifts over the course of a century, Union Square has become a neighborhood-serving square that is burdened with a regional traffic problem and surrounded by automotive niche businesses, including salvage and auto repair and resale.

At the same time, the neighborhood has emerged as one of the region's most interesting cultural destinations with artists, young professionals, entrepreneurs, and families joining longtime residents in an affordable place to live. The location is poised, once again, to become increasingly desirable as a result of significant infrastructure improvements and the MBTA's Green Line Extension (GLX) project to build a new light rail station extending public transit service to the area and connecting it to employment centers in Cambridge, Boston, and beyond.

*Impacts of Proposal (Design and Compatibility):*

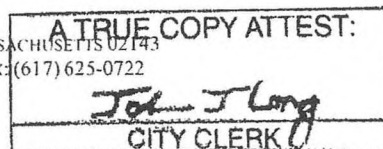
As the surrounding area is intended to be transformed, and there are no existing natural features of the site, the impacts of the project should be reviewed under slightly different standards than those outlined in the current ordinance. As the massing of the proposed development is considerably different than the existing buildings and fabric of the neighborhood, the "compatibility in scale, design and use with those buildings and designs which are visually related to the development site" will be difficult to interpret. The Board believes that the conceptual development will create a good urban environment.

The Board supports and approves Residential as a principal use on Blocks D2, D3, D4, D5, and D7 to support the proposed mixed-use program. There is a demonstrated need for residential to catalyze development, transportation services, and/or commercial activities in the neighborhood. The residential uses will be strategically timed or phased and located to serve as a balance to the development of commercial uses. Residential development will be conditioned to be constructed at a schedule tied to commercial development per the Development Covenant, Master Land Disposition Agreement, and Master Developer Designation Agreement. No residential development, except Blocks D2 or D7 (affordable housing), can begin until after the first D2 commercial building construction is complete and an additional commercial building has begun construction.

The Applicant is seeking a Special Permit pursuant to Section 6.7.6.A.3 (codified as §6.8) of the Ordinance in order to maintain flexibility to accommodate design modifications and changes to the required calculated areas of civic and open space through a payment in lieu. The ability to provide a small portion of the civic spaces via in lieu payment will offer much needed design flexibility to ensure that individual building projects can maximize the opportunity to realize project goals, respond to physical or site constraints and changing market needs. This request meets the goals and objectives of the City of Somerville Open Space & Recreation Plan 2016-2023 while providing funding to improve or maintain



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existing civic spaces, particularly athletic fields, located elsewhere in the city. The applicant initially requested 10% of Civic Space in the "payment in lieu" program, and the Board approves 5% of total open space in this program.

A Special Permit is requested to consolidate the Arts and Creative Enterprise space requirement at one or more larger Receiving Sites. It is the intent of this application to fulfill the Arts and Creative Enterprise area requirement through off-site compliance - reallocated from one D Block to another. This is in order to provide higher quality, affordable, and ultimately more useful space for a variety of end users. If Arts and Creative Enterprise space were to be delivered to track with commercial space on each D block, smaller development sites, or those with limited commercial space would yield similarly small Arts and Creative Enterprise areas, resulting in inefficient spaces of questionable utility. The specific Generating and Receiving sites and anticipated program transfers can be found in Table 19 on page 193 of the application package.

The Board approves the requested waivers from specific application materials. Plot plans certified by a land surveyor and contour elevations in two foot increments will be included in subsequent DSPR applications when that level of detail is more appropriate and necessary for detailed review.

5. Environmental Impacts: *"The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception."*

Permitting Residential as a principal use, allowing a maximum 5% of Civic Space requirements to be satisfied by a payment in lieu, or consenting to consolidation of the Arts and Creative Enterprise spaces, would not create any additional environmental impacts beyond those created by development of the D Blocks. However, consistent with the community's vision for an employment center, the proposed project includes potential laboratory buildings. Exhaust from these facilities will include building systems specifically designed to sensitively manage laboratory exhaust as is customary in other life sciences centers in the region.

6. Vehicular and pedestrian circulation: *The circulation patterns for motor vehicles and pedestrians which would result from the use or structure will not result in conditions that create traffic congestion or the potential for traffic accidents on the site or in the surrounding area.*

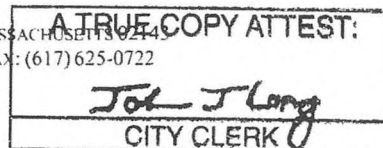
Permitting Residential as a principal use, allowing a maximum 5% of Civic Space requirements to be satisfied by a payment in lieu, or consenting to consolidation of the Arts and Creative Enterprise spaces, would not create any additional environmental impacts beyond those created by development of the D Blocks.

7. Fast food establishments: *In special permit applications for fast-order, take-out or automobile oriented food service establishments, there shall be establishment of a need for such a facility in the neighborhood or in the City, and impacts on traffic circulation, parking and visual, physical, or historical characteristics of the particular location shall not be detrimental.*

Not applicable as no auto-oriented fast food establishments are permitted in the USOD.



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8. Housing Impact: Will not create adverse impacts on the stock of existing affordable housing. Only 2 existing dwelling units are expected to be removed as a result of this project so there will not be an adverse impact on the stock of existing affordable housing. The full build-out of the D Blocks will greatly improve the housing stock by providing up to 998 total dwelling units of which 20% will be permanently affordable. The final numbers and types/sizes of those units will be determined at each subsequent DSPR.

9. SomerVision Plan: Complies with the applicable goals, policies and actions of the SomerVision plan, including the following, as appropriate: Preserve and enhance the character of Somerville's neighborhoods, transform key opportunity areas, preserve and expand an integrated, balanced mix of safe, affordable and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups; and, make Somerville a regional employment center with a mix of diverse and high-quality jobs. The areas in the SomerVision map that are designated as enhance and transform should most significantly contribute towards the SomerVision goals that are outlined in the table below. The areas marked as conserve are not expected to greatly increase the figures in the table since these areas are not intended for large scale change.

In addition to the above criteria and objectives listed above, the proposed development shall take into account, insofar as is practicable, any existing or proposed plans for the neighborhood which have been or may be adopted by the City of Somerville. Detailed findings addressing specific USOD zoning requirements and the Union Square Neighborhood Plan can be found in attached Exhibit A.

<u>SomerVision Summary</u>	<u>Existing</u>	<u>Proposed (approx.)</u>
Dwelling Units:	2	998
Affordable Units:	0	183-200 TBD at DSPR
Commercial Sq. Ft.:	295,229 (demolished)	1,464,000
Estimated Employment:	unknown	5,300 jobs
Parking Spaces:	unknown	1,500
Publicly Accessible Open Space:	0	157,000sf

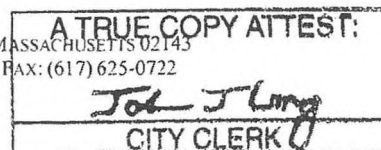
10. Impact on Affordable Housing: In conjunction with its decision to grant or deny a special permit for a structure of four or more units of housing, the SPGA shall make a finding and determination as to how implementation of the project would increase, decrease, or leave unchanged the number of units of rental and homeownership housing that are affordable to households with low or moderate incomes, as defined by HUD, for different sized households and units.

It is the intent of the Applicant to fulfill the requirements for affordable units on-site for each residential project. The resulting distribution of affordable units by block can be seen in Table 9 (Build-Out Program Estimate) and represents 20% of the total units delivered. This will be, in total, between 183 and 200 permanently affordable units. Pursuant to article 6.7.6.D.a (codified as §6.8) of the Union Square Zoning, the delivery and phasing of these units will be determined as individual buildings are submitted for subsequent DSPR approvals.

The units will be provided in accordance with the requirements of SZO Section 13 and an Affordable Housing Implementation Plan (AHIP) should be approved and executed by the OSPCD Housing Division. Written certification of the creation of affordable housing units, any fractional payment required, or alternative methods of compliance, must be obtained from the OSPCD Housing Division. No



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Certificate of Occupancy shall be issued until the OSPCD Housing Division has confirmed that the Affordable Housing Restriction has been approved and recorded and the Applicant has provided the promised affordable units on-site.

The Applicant did NOT request permission to shift affordable housing units between D Block projects, therefore, the Board expects that 20% on-site affordable housing, at a minimum, will be provided with each individual project.

**DECISION:**

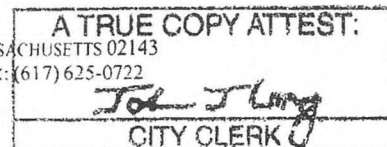
Present and sitting were Members Kevin Prior, Joseph Favaloro, Dorothy Kelly Gay, Michael Capuano, and Rebecca Lyn Cooper. Upon making the above findings, Kevin Prior made a motion to conditionally approve the request for a special permit, incorporating the findings and conditions of the decision. Rebecca Lyn Cooper seconded the motion. Wherefore the Planning Board voted 5-0 to **CONDITIONALLY APPROVE** the request.

This approval is based upon the findings in this report and in Appendix A.

The approval incorporates the conditions in Appendix B.



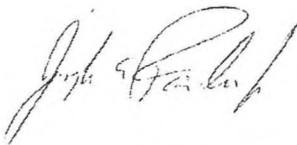
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Attest, by the Planning Board:



Kevin Prior, Chairman



Joseph Favaloro



Dorothy A. Kelly Gay



Rebecca Lyn Cooper



Gerard Amaral

Copies of this decision are filed in the Somerville City Clerk's office.  
Copies of all plans referred to in this decision and a detailed record of the  
SPGA proceedings are filed in the Somerville Planning Dept.



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A TRUE COPY ATTEST:



CITY CLERK



**CLERK'S CERTIFICATE**

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 3.2.10.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on Dec. 28, 2017 in the Office of the City Clerk, and twenty days have elapsed, and

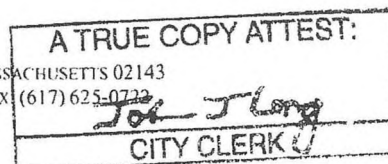
FOR SPECIAL PERMIT(S) WITHIN

☒ there have been no appeals filed in the Office of the City Clerk, or  
☐ there has been an appeal filed.

Signed John J Long City Clerk Date Jan 18, 2018



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Tab B

Select Sections of the CDSP SZO

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*Sign:* Any permanent or temporary name, identification, description, emblem, logo, structure, or device, that is illuminated or non-illuminated; visible or intended to be visible from any public place; and directs attention to a person, product, place, activity, institution, business, organization, activity, or service including any letter, numeral, character, figure, emblem, painting, illustration, banner, pennant, placard, or temporary sign designed to advertise, identify, solicit, or convey information. Signs include devices designed to attract the eye by intermittent or repeated motion and any permanently installed or situated merchandise, including any banner, pennant, placard, or temporary sign, with the exception of window displays. Flags of the United States and the Commonwealth of Massachusetts are not signs.

*Sign Band:* A wall area of a non-residential building built along the entire width of a principal or secondary frontage allocated for the placement of a sign above a shopfront or at the cornice.

*Slope:* The ratio of vertical to horizontal distance.

*Soil Volume:* An amount of soil provided for a tree, calculated as the horizontal area of open or covered soil multiplied by three (3) feet of depth.

*Stallriser:* A section of wall below a storefront display window.

*Story:* The portion of a building located between the surface of a habitable floor and the surface of the habitable floor or roof next above.

*Story, Ground:* The lowest story of a building with a finished floor at or above the finished ground level of the lot abutting the facade.

*Story, Upper:* Any story above the ground story of a building.

*Structural Cells:* A subsurface system that supports the weight of sidewalks and other paved surfaces and is filled with uncompacted soil.

*Suspended Pavement:* Pavement slabs spanning supports that allow soil under sidewalks and other paved surfaces to remain uncompacted.

*Terminated Vista:* A location at the axial conclusion of a thoroughfare.

*Thoroughfare:* A public or private way for use by vehicular and pedestrian traffic and providing access to lots and civic spaces.

*Tower:* Any portion of a high-rise building above seventy (70) feet.

*Tree Pit:* A three (3) foot deep pit filled with soil for the planting and growth of a tree. Tree pits have surface area open to air and water flow.

*Trip Reduction:* Reducing in the number of work-related trips made by single-occupant vehicles.

(Ord. No. 2017-07, App. B, 6-8-2017)

#### *6.8.5 Development Review.*

##### *A. Authority.*

1. The Planning Board is the review authority for all development review in the USOD, including Special Permits and Design and Site Plan Review, but excluding Variances.

##### *B. Review Process.*

1. Development within the USOD requires a two- (2) stage permitting process. First, a Coordinated Development Special Permit is required as a prerequisite to the development review for any individual lot. Second, Design and Site Plan Review is required for the development of any individual lot as a building or civic space, the construction or reconstruction of any thoroughfare, and the subdivision of a development site.
2. Additionally, proposed development on an individual lot may or may not necessitate the need for a Special Permit required by this Section or a Variance based on the nature of the proposal.
3. Lot splits, lot mergers, and lot line adjustments are considered minor projects subject to the Rules and Regulations of the Planning Board.

##### *C. Coordinated Development Planning.*

###### *1. Applicability.*

- a. A Coordinated Development Special Permit, in accordance with the provisions of Section 5.8, is required prior to the development of any lot.
- b. Development sites must include a minimum of two (2) lots (existing or proposed) and at least six hundred and seventy-five thousand (675,000) square feet of land area.

###### *2. Review Process.*

- a. The following steps are required for a Coordinated Development Special Permit:
  - i. *Preliminary Review.*
    - (a) Step 1: Pre-Submittal Meeting.
    - (b) Step 2: Neighborhood Meeting.
  - ii. *Discretionary Review.*
    - (a) Step 3: Public Hearing.
- 3. *Preliminary Review.*
  - a. *Pre-Submittal Meeting.*
    - i. *Procedure.*
      - (a) Development review applications requiring a Coordinated Development Special Permit are not considered complete until a pre-submittal meeting has been held with Planning Staff.
      - (b) A pre-submittal meeting must occur at least fourteen (14) days in advance of the required neighborhood meeting (step 2).
      - (c) Applicants or their representatives are required to attend a pre-submittal meeting.
      - (d) A pre-submittal meeting is not a public meeting.
  - b. *Neighborhood Meeting.*
    - i. *Procedure.*
      - (a) Development review applications requiring a Coordinated Development Special Permit applications are not considered complete until the required neighborhood meeting has been held.
      - (b) Applications for development review must be submitted within one hundred and twenty (120) days of the neighborhood meeting. If an application is not submitted in this time frame, the Applicant is required to hold a new neighborhood meeting.
      - (c) A neighborhood meeting must occur at least ten (10) days prior to submittal of a development review application for a Coordinated Development Special Permit.
      - (d) Neighborhood meetings should be held at a location in close proximity to the subject property on a weekday evening after 6:00 p.m. or on weekends at any reasonable time and shall not occur on a local, state, or national holiday.
      - (e) Applicants or their representatives are required to attend a neighborhood meeting.
      - (f) The Applicant is responsible for coordinating a neighborhood meeting in conjunction with the Ward representative from the Board of Aldermen and the Staff of the Mayor's Office of Strategic Planning and Community Development.
      - (g) The Applicant shall provide notice of the neighborhood meeting, at a minimum, by:
        - 1. Mailing notice to Parties in Interest;
        - 2. Mailing to a list of residents of the addresses owned by Parties in Interest, as provided by the US Post Office;
        - 3. Making best efforts to hand deliver a flyer at each abutting property;
        - 4. Emailing individuals in the City that have request to be notified about updates to projects within the Union Square Overlay District;
        - 5. Requesting local businesses post notice of the meeting in their establishment.

Compliance with the foregoing notice requirements shall be evidenced by a letter of certification from the Planning Director.

  - (h) The format and agenda of the neighborhood meeting is at the discretion of the applicant, in consultation with the Ward representative from the Board of Aldermen, and may consist of any or all of the following:
    - 1. A formal presentation; or
    - 2. A drop-in, open house style informational session.
  - (i) A neighborhood meeting must provide substantive engagement between the community and development team, including designers, regarding the district and design and placement of major land uses, inclusive of buildings and civic and open spaces. This obligation is intended to require meaningful engagement on form and design, but is not intended to limit gross square footage of land uses and buildings already decided.
  - (j) Opportunity must be provided for attendees to ask questions regarding the proposed development.

- (k) Applicants are required to bring all required application information and materials to a neighborhood meeting.
- (l) The Planning Director shall assign a scribe or stenographer to attend the neighborhood meeting, and submit a report and minutes of the neighborhood meeting to the Planning Director prior to application submittal that includes, at a minimum, the following:
  - 1. A list of those persons and organizations contacted about the meeting, and manner and date of contact;
  - 2. The date, time, and location of the meeting;
  - 3. A roster or signature sheet of attendees at the meeting;
  - 4. Copies of all materials provided by the applicant at the meeting;
  - 5. A summary of issues discussed at the meeting; and
  - 6. A description of any changes to the proposed development made as a result of the meeting.

4. *Application Submittal.*

- a. Applicants must demonstrate ownership or site control of a development site through one or more of the following:
  - i. Fee ownership or consent of the fee owner of a parcel;
  - ii. Leasehold interest;
  - iii. An easement agreement;
  - iv. An option to purchase or lease; or
  - v. A Land Disposition Agreement with the Somerville Redevelopment Authority pursuant to the Union Square Revitalization Plan and the provisions of 760 CMR 12.05.
- b. The following Special Permits required elsewhere in this Section may be simultaneously requested as part of a Coordinated Development Special Permit application:
  - i. Payment in lieu of Civic Space (Section 6.8.6.A.3);
  - ii. The siting and orientation of Civic Spaces (Section 6.8.9.B.2);
  - iii. The size of a proposed Dog Park (Section 6.8.9.B.1);
  - iv. Residential principal uses (Section 6.8.11.A.1).

5. *Information Required.*

- a. In cases where legal access to a property is not available to create a formal plot plan by a registered land surveyor, plans submitted as part of any Coordinated Development Special Permit application shall illustrate lots for building sites and civic spaces with estimated boundaries and sizes based on the best available data available from the City Assessors Office or Registry of Deeds.

6. *Additional Review Criteria.*

- a. In its discretion to approve or deny a Coordinated Development Special Permit, the Planning Board shall consider the following:
  - i. Compliance with the standards of Section 5.8 Coordinated Development Special Permit;
  - ii. Consistency with the 2012 Union Square Revitalization Plan and the 2016 Union Square Neighborhood Plan, as amended; and
- b. The Planning Board may approve a Coordinated Development Plan only upon making a finding that the provisions of Section 6.8.6 have been met.
- c. The Planning Board shall establish, in its decision, criteria and procedures for applicants to provide for infrastructure improvements, community impact mitigation, and the extension of the MBTA's Green Line.

7. *Vested Rights.*

- a. Amendments to the Somerville Zoning Ordinance are not applicable to development subject to a previously approved Coordinated Development Plan Special Permit, except for the following:
  - i. Article 13: Inclusionary Housing;
  - ii. Article 15: Linkage;
  - iii. Outdoor Lighting/Dark Sky regulations;
- b. Amendments to Section 6.7 Union Square Overlay District are not applicable to development subject to a previously approved Coordinated Development Special Permit, except for the following:

- i. Section 6.8.10.G.4 Environmental Performance;
    - ii. Section 6.8.10.i Sustainable Development;
    - iii. Section 6.8.14 Mobility Management.
  8. *Subsequent Development Review.*
    - a. Applicants may not proceed with the development review required for individual lots until a Coordinated Development Special Permit is approved.
  9. *Plan Revisions.*
    - a. Proposed revisions to a Coordinated Development Special Permit application that do not meet the minimum land area applicability requirements of Section 6.8.5.C.1 may be made by an applicant, but are not considered de-minimus and require approval and written notification from the Somerville Redevelopment Authority that one or more lots cannot be redeveloped as originally proposed for the previously approved Coordinated Development Special Permit.
    - b. Proposed revisions to a Coordinated Development Special Permit application must remain compliant with the provisions of Section 6.8.6.
- D. *Lots, Civic Spaces, and Buildings.*
  1. *Applicability.*
    - a. Design and Site Plan Review, in accordance with the provisions of Section 5.4, is required for the development of any lot as a building or civic space, the construction or reconstruction of any thoroughfare, and the subdivision of a development site.
    - b. Proposed development on an individual lot may or may not necessitate the need for a Special Permit required by this Section or a Variance based on the nature of the proposal.
  2. *Review Process.*
    - a. The following steps are required for Design and Site Plan Review:
      - i. *Preliminary Review.*
        - (a) Step 1: Pre-Submittal Meeting;
        - (b) Step 2: Neighborhood Meeting;
        - (c) Step 3: Design Review Meeting;
        - (d) Step 4: Neighborhood Meeting.
      - ii. *Administrative Review.*
        - (a) Step 5: Public Hearing.
  3. *Consistency.*
    - a. Development of individual lots as buildings or civic spaces within the USOD must comply with the approved Coordinated Development Special Permit and any previously approved Special Permits, as applicable.
  4. *Preliminary Review.*
    - a. *Pre-Submittal Meeting.*
      - i. *Procedure.*
        - (a) Applications for development review are not considered complete until a pre-submittal meeting has been held with the Planning Staff.
        - (b) A pre-submittal meeting must occur at least fourteen (14) days in advance of the required neighborhood meeting (step 2).
        - (c) Applicants or their representatives are required to attend a pre-submittal meeting.
        - (d) A pre-submittal meeting is not a public meeting.
    - b. *Neighborhood Meetings.*
      - i. *Procedure.*
        - (a) Applications for development review are not considered complete until all required neighborhood meetings have been held.
        - (b) Applications for development review must be submitted within one hundred and twenty (120) days of the neighborhood meeting. If an application is not submitted in this time frame, the Applicant is required to hold a new neighborhood meeting.

Tab C

Select Sections of the SZO

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3783143.1



## 8. OVERLAY DISTRICTS

### Master Planned Development (MPD)

#### 17. Union Square (USQ) Sub-Area

- a. Intent
  - i. To implement the Union Square Urban Design Framework adopted by the Planning Board.
  - ii. To maintain and enhance already established commercial areas in the core of Union Square.
  - iii. To redevelop underutilized areas within close walking distance to the future Union Square T-station with mixed-USE, mid-rise and HIGH-RISE DEVELOPMENT that will support the transformation of Union Square into an urban employment center.
  - iv. To implement the 2003 Union Square MASTER PLAN, the 2012 Union Square Revitalization Plan, and the 2016 Union Square Neighborhood Plan, as amended.
- b. Purpose
  - i. To permit DEVELOPMENT in accordance with the provisions of the MR4, MR5, CC, and HR districts.
  - ii. To require a minimum percentage of developed floor space to be set aside for occupancy by non-residential PRINCIPAL USES.
  - iii. To permit flexibility in compliance with certain dimensional standards than would otherwise be permitted by the zoning districts shown on the maps of the Official Zoning Atlas of the City of Somerville.
  - iv. To require DEVELOPMENT to be contextually sensitive to the existing neighborhood of Union Square.
  - v. To constrain the supply of MOTOR VEHICLE PARKING spaces to encourage the USE of public transit, bicycles, and walking in lieu of driving.
- c. Applicability
  - i. The section is applicable to all real property shown on Map 8.3.15.
  - ii. Zoning districts shown on map 8.3.15 supersede those shown on the maps of the Official Zoning Atlas of the City of Somerville for DEVELOPMENT complying with the provisions of Section 8.3 and the Union Square Sub-Area.
  - iii. Real property subject to an approved Design & Site Plan Review (DSPR) first approved prior to the adoption date of this Ordinance may be developed in accordance with the provisions of the Somerville Zoning Ordinance effective as of December 14, 2017 in lieu of the provisions of this Ordinance.
- d. Development Review
  - i. All DEVELOPMENT requires a Master Plan Special Permit as a prerequisite to the DEVELOPMENT review required for SUBDIVISION or the development of an individual LOT.
  - ii. Development of real property as a contributing lot is prohibited.
- e. Master Plan Standards
  - i. At least one (1) neighborhood park, with a minimum size of twenty-seven thousand (27,000) square feet, and one (1) plaza must be proposed in any master plan.
  - ii. At least twenty-five percent (25%) of the cumulative land area proposed as CIVIC SPACE in a master plan must be landscaped area compliant with §10.3 Landscaping.
  - iii. At least fifty percent (50%) of the cumulative land area proposed as CIVIC SPACE in a master plan must be landscaped area compliant with §10.3 Landscaping or be covered by tree canopy at full maturity of the trees provided in each CIVIC SPACE.
- f. Build Out Standards
  - i. General
    - a). DEVELOPMENT SITES subject to a Master Plan Special Permit may comply with the following standards in aggregate rather than for each individual LOT by Master Plan Special Permit.
  - ii. CIVIC SPACE
    - a). At least twenty-five percent (25%) of each LOT, excluding ALLEYS and any land occupied by the MBTA's Union Square Green Line station, must be improved as follows:
      - i). At least seventy percent (70%) must be provided as one or more CIVIC SPACES.
      - ii). Up to thirty percent (30%) may be provided in the form of PUBLIC REALM improvements.
    - b). CIVIC SPACE created through EASEMENT or decommissioning of an existing THOROUGHFARE or other right-of-way may be counted toward the required amount of CIVIC SPACE.
  - iii. Commercial Floor Area
    - a). At least sixty percent (60%) of the GROSS FLOOR AREA of any building must be dedicated to non-residential USES, excluding Auto-Oriented and Industrial PRINCIPAL USES.
    - b). At least forty percent (40%) of the COMMERCIAL FLOOR AREA required by §8.3.16.f.iii.a) must be dedicated to either Office PRINCIPAL USES or Design SERVICES USES from the Arts & Creative Enterprise USE category.
    - c). At least five percent (5%) of the total GROSS FLOOR AREA required by §8.3.16.f.iii.a) must be dedicated to PRINCIPAL USES within the Arts & Creative Enterprise USE category.
    - d). At least three hundred and seventy five (375) square feet of commercial space must be provided for each DWELLING UNIT.
- g. Building Standards
  - i. Standards & Measurements
    - a). For any LOT with frontage on (2) two or more THOROUGHFARES with a difference in elevation of at least ten (10) feet, the GROUND STORY at

- the lower elevation is not included in the calculation of total number of stories.
- ii. Stepback Exemption
    - a). Buildings developed in accordance with the provisions of the MR5 and MR6 districts are exempt from UPPER STORY stepback requirements.
  - iii. Dimensional Compliance
    - a). DEVELOPMENT of any building type permitted in the USQ sub-area may deviate up to five percent (5%) from the BUILDING WIDTH; POINT TOWER width, depth, diagonal, and FLOOR PLATE; FACADE build out; FENESTRATION; entrance spacing; and commercial space depth standards by Special Permit.
    - b). In addition to the review criteria for all Special Permits specified in §15.2.1.e. Review Criteria, the review board shall make findings considering the following in its discretion to permit DEVELOPMENT to deviate up to five (5) percent:
      - i). If the proposed deviation can provide a positive refinement of the massing of a BUILDING in context to its surroundings, improve FLOOR PLATE efficiency, provide for unique storefront design, or better address specific operational requirements of commercial tenants.
  - iv. Contextual Massing & Design
    - a). For real property within the MR4 or MR5 districts as shown on Map 8.3.15, any General BUILDING on a CORNER LOT may be designed according to the standards of the Apartment BUILDING TYPE along the secondary frontage in the following circumstances:
      - i). The CORNER LOT has a secondary FRONT LOT LINE over one hundred and fifty (150) feet in width; and
      - ii). The BUILDING has GROUND STORY commercial space along the primary frontage and for at least the first sixty (60) feet of the secondary frontage, measured from the intersection of the FRONT LOT LINES.
    - b). For real property within the HIGH-RISE district as shown on Map 8.3.15, the UPPER STORIES of any BUILDING that exceeds five (5) stories in height must step back at either the 3rd, 4th, or 5th STORY at least ten (10) feet from the FACADE of the stories below for any BUILDING fronting Somerville Avenue, Washington STREET, Prospect STREET, or Webster Avenue and at least thirty (30) feet from the FACADE of the stories below for any BUILDING fronting Merriam STREET.
  - c). For real property within the HIGH-RISE district as shown on Map 8.3.15, any Mid-Rise Podium Tower BUILDING on a LOT directly fronting onto Somerville Avenue, Washington STREET, or Merriam STREET the maximum building height is limited to ten (10) stories.
  - d). Notwithstanding the maximum heights indicated for the Mid-Rise Podium Tower BUILDING TYPE, any Mid-Rise Podium Tower on a LOT fronting onto a CIVIC SPACE that fronts onto Prospect STREET may be built to twenty-five (25) stories and two hundred and eighty-six (288) feet.
  - e). For real property within the Commercial Core district as shown on Map 8.3.15, the maximum height of any BUILDING on a LOT with NORTH-FACING frontage along Somerville Avenue directly opposite of Union Square Plaza is limited to seventy-five (75) feet. Together with any mechanical penthouses on such a BUILDING, the total height is limited to eighty-five (85) feet, except as follows:
    - i). Mechanical penthouses must be set back a minimum distance from the FACADE equal to the height of the penthouse
    - ii). The Planning Board may approve the extension of rooftop mechanical elements above the aforementioned limit, provided that (a) the Board finds that such additional height is the minimum necessary to achieve the desired objective, taking into account other important zoning goals such as energy efficiency and sustainability, will not create unreasonable shadow or other visual impacts, and cannot otherwise reasonably be addressed within the proposed height and (b) the additional height of such rooftop mechanical elements must be limited to five (5) additional feet; and (c) such rooftop mechanical elements must be located to the south of the centerline of the BUILDING roof.
  - h. DEVELOPMENT Standards
    - i). For real property with a frontage on Everett STREET, luminaries located in the FRONTAGE AREA must be provided with sensors, timers, or other means to automatically reduce the LUMENS emitted by at least thirty percent (30%) beginning one hour after the close of business of the GROUND STORY tenant until 7:00am. Lighting required by the Massachusetts State BUILDING Code is exempt.
    - ii). Sound emanating from rooftop mechanical equipment must be minimized to every extent

## 8. OVERLAY DISTRICTS

### Master Planned Development (MPD)

practicable including, but not limited to, the location and sizing of equipment, the selection of equipment, and sound attenuation measures.

- iii. At a minimum, rooftop mechanical equipment must not exceed ambient noise levels at ground level measured at the property line or cause a noise disturbance as defined by Article VII, Division 2, Section 9-114 of the Code of Ordinances, City of Somerville, Massachusetts.
- iv. The review board shall require an acoustical report, prepared by a professional acoustical engineer and including field measurements, demonstrating compliance with all applicable noise standards to be submitted to the Building Official prior to the issuance of a Certificate of Occupancy as a condition of any Site Plan Approval for a Commercial Building or Laboratory Building.
- i. Parking & Mobility
  - i. The maximum number of OFF-STREET PARKING SPACES in the BY sub-area may not exceed one thousand five hundred (1,500) spaces.
  - ii. Up to three hundred (300) OFF-STREET PARKING SPACES may be provided as RESERVED PARKING SPACES.
    - a). CAR-SHARE PARKING spaces are exempt.
  - iii. Accessory parking for customers of retail sales or Food & Beverage Service USES is prohibited for real property in any MR district shown on Map 8.3.11 (a), but may be provided for employees.
  - iv. Off-STREET motor vehicle parking spaces may be provided as SURFACE PARKING on a revolving two (2) year basis for real property in any HR district shown on Map 8.3.11 (a) by Special Permit.
    - a). In addition to the review criteria for all Special Permits specified in §15.2.1.e. Review Criteria, the review board shall make findings considering the following in its discretion to approve or deny a special permit authorizing an interim SURFACE PARKING LOT:
      - i). Documented un-met demand for parking;
      - ii). The DEVELOPMENT schedule and phasing for DEVELOPMENT subject to a Master Plan Special Permit;
      - iii). The capacity of the local THOROUGHFARE network providing ACCESS to the SITE; and
      - iv). The impact of the PARKING LOT on pedestrian, bicycle, and motor vehicle traffic and circulation patterns in the neighborhood.



TAB B

ISD Acknowledgement of Receipt of the Request for Written Interpretation

*[page blank – see following]*

3829367.1

**Jaclyn Fraser**

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**From:** Matthew Sarcione <msarcione@somervillema.gov>  
**Sent:** Wednesday, December 6, 2023 7:12 AM  
**To:** William J Proia

**External E-Mail. Use caution opening links or attachments.**

Good morning,

This has been received and will be reviewed.

Thank you,

Matt Sarcione  
Zoning Review Planner  
Inspectional Services

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**From:** William J Proia <WProia@riemerlaw.com>  
**Sent:** Tuesday, December 5, 2023 4:53 PM  
**To:** ISD Zoning <isdzoning@somervillema.gov>  
**Subject:**

Good Day:

Hope all are faring well.

Regarding the matter described below, we understand that this address is the official address to submit a request for interpretation/determination under the Somerville Zoning Ordinance, Article 15, for your review.

### **Request for Written Interpretation**

**2 Union Square [MBL 82-C-6], 9 Union Square [MBL 82-C-4]**

**298 Somerville Avenue [MBL 82-C-7], 290 Somerville Avenue [MBL 82-C-8]**

**286 Somerville Avenue [MBL 82-C-10]**

**Case #: PB2017-21, Union Square CDSP (multiple sites)**

## Applicability of Master Plan Special Permit

Please see attached for your consideration, a hard copy of which has also been sent via mail to the ISD office.

Thank you.

Best,

Bill

William J Proia, Esq.

Rierner | Braunstein LLP

700 District Avenue, 11th Floor | Burlington, Massachusetts 01803

d: +1-617-880-3462 | f: +1-617-692-3462

[WProia@riernerlaw.com](mailto:WProia@riernerlaw.com) | [www.riernerlaw.com](http://www.riernerlaw.com)



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