

APPLICATION
For Planning Board and Zoning Board of Appeals Approval

Electronic version available:
<http://www.somervillema.gov>
Forms Library

Supplemental Questions for:
Administrative Appeals

15. Administrative Appeal Supporting Statements

Address the following in order to submit an administrative appeal. Attach to application form.

A. Explain the enforcement order(s) or ordinance interpretation(s) you are appealing and your basis or grounds for contesting the Building Superintendent or other administrative decision. Provide any information that you feel will aid the Board in its review of your case. See SZO § 3.2 for more information.

Appeal: Certificate of Occupancy on ZBA 2009-48
Site: 187 Elm Street

Matthew Sullivan, 12 Windom Street, Somerville, MA appeals from a Somerville Inspectional Services grant of a Certificate of Occupancy on April 7, 2010 to the Alpine Restaurant Group, Inc. ("Alpine"). Alpine, operator of Pizzeria Posto at 187 Elm Street, has not met the conditions recommended by the Somerville Planning Board and imposed by the Somerville Zoning Board of Appeals in conjunction with the a Special Permit granted for its location on November 5, 2009. In addition, Alpine has not complied with City of Somerville Regulations regarding dumpster placement.

On October 22, 2009 the Somerville Planning Board held a hearing concerning a Special Permit for 187 Elm Street. The Somerville Planning Department Staff Report on the Special Permit, dated October 5, 2009, recommended a condition 7 stating that, "Applicant will screen the dumpster with fencing that blocks any view of the dumpster itself." I attended the October 22, 2009 hearing and objected to this recommendation because the recommendation seemed to address the view of the dumpster from Elm Street without addressing the view from my patio through the slatted fence that divides the Applicant's property from mine. I stated that placement of the dumpster on the Applicant's side of the fence dividing our properties would require that I see, hear and smell the dumpster from my backyard patio that is only a few feet from the slatted fence. I suggested that the proprietor be required to completely surround the dumpster with a fence so that it would not be visible from my property. The Planning Board, noting the location of the dumpster on the site photo provided with the Planning Department's Report (photo attached), accepted my objection, called it "reasonable," and adopted an alternative condition 7 that requires, "Applicant will screen the dumpster and recycling receptacles with fencing that totally encloses them and blocks views of them."

I also attended the Zoning Board of Appeals in this matter on November 4, 2009 and urged the Board of Appeals to retain a number of conditions recommended by the Planning Board, including with regard to screening the dumpster. The Zoning Board of Appeals approved the request for a Special Permit without altering the condition No. 7 recommended by the Planning Board.

In February, 2010, the proprietor erected a dumpster fence. During construction of the fence I spoke to the proprietor who directed me to the Somerville Planning Department stating that he was not involved with the fencing and that his landlord, who lives in China, is managing the outdoor aspects of the Special Permit through a local attorney. I then contacted the City of Somerville Planning Department, and was told by Lori Massa that the fencing meets the requirements of the Special Permit. Unfortunately, the existing fence (1) does not totally enclose and block views of receptacles, (2) places the dumpster in a different, closer to the property line, location than contemplated by the Somerville Planning Board and Somerville Zoning Board of Appeals, and (3) is not located at a sufficient distance from the lot line to avoid interference with the safety, convenience or health of abutters and other residents.

Fence Does Not Totally Enclose and Block View of Receptacles

Special Permit condition No. 7 requires that fencing completely surround the dumpster and recycling receptacles, and "block views of them." At the time of my objection I stated that the dumpster could be viewed from my patio, and requested that it be completely surrounded with fencing. Because the existing fence was there at the time of the objection, it was clear to the Planning Board and all other attendees, that a dumpster could be seen through the existing fence. It was with this in mind that the Planning Board imposed a requirement to "completely surround" the receptacles. Clearly, if the existing fence were adequate as a barrier between my patio and the dumpster, the Planning Board, and subsequently the Zoning Board of Appeals, would not have imposed the additional requirement.

Movement of Dumpster after Permit Approval

As you can see in the Somerville Planning Department Staff Report (photo page attached), the dumpster was between six and eight feet from the fence/property line. At the time of my objection I and the Planning Board Members assumed the dumpster would stay in its then-current location and be surrounded by a screening fence. Unfortunately, the proprietor has decided to move the dumpster closer to the property line and add two additional sections of fencing to the existing slatted fence that divides our property to form a triangular dumpster area. The proprietor seems to justify this action by implementing the fencing that was allegedly approved, though never implemented, when the proprietor (owner) was granted a Special Permit in 1996. A diagram of this fencing submitted to the Planning Department is clearly from the 1996 submission, but was clearly not provided to the Planning Board for the November 4, 2009 Special Permit hearing as evidenced by the 18-Nov-2009 date stamp on the diagram (copy attached). The Planning Board did not contemplate moving the dumpster closer to the property line and existing slatted fence. If using my slatted fence as one side of the enclosure were acceptable to the Planning Board and the Zoning Board of Appeals, there would have been no need to change the condition originally recommended by the Planning Staff Report. I would have strenuously objected to movement of the dumpster closer to the lot line if I been aware of Applicant's intention.

Interferes with Safety, Convenience and Health

Somerville Regulations for the Removal or Transportation of Garbage, Rule 4.4 requires that "Dumpsters shall be located at a sufficient distance from the lot line to avoid interference with the safety, convenience or health of abutters and other residents." A

Office of Strategic Planning and Community Development
City Hall 3rd Floor . 93 Highland Ave . Somerville, MA 02143
617.625.6600 ext. 2500
M-W 8:30am-4:30pm, Th 8:30am-7:30pm, F 8:30am-12:30pm

APPLICATION
For Planning Board and Zoning Board of Appeals Approval

dumpster and recycling receptacles at the lot line is not a sufficient distance, particularly where the line divides a Neighborhood Business Zone from a Residential Zone. While the Somerville ordinance does not outline what distance would be deemed sufficient, it is instructive that other municipalities have. (See for example, Randolph, 50 feet from lot line, <http://www.randolphboardofhealth.com/regs-dumpster.pdf>; Easton, five feet from lot line, http://www.easton.ma.us/Directory/board_of_health/Documents/Dumpster%20Regs.pdf; North Andover, each dumpster shall be located a minimum of twenty (20) feet from any industrial, commercial or residential building; http://www.townofnorthandover.com/Pages/NAndoverMA_Health/dumpsterregs.pdf). By placing a dumpster closer to the fence on a lot line the proprietor will clearly diminish our quality of life by limiting the use of our patio. The special permit also imposes a Condition 7 requiring that, "There shall only be one dumpster for trash on-site. There may be recycling receptacles within the fencing enclosure for the dumpster." According to Section 1 of the Somerville Regulations for the Removal or Transportation of Garbage, "Dumpster" means "any receptacle of 75 gallons capacity or more which is used for the collection, storage or transportation of household or commercial trash, rubbish, garbage, offal, scrap or other material for discard, disposal or recycling by a private trash collection service...." The proprietor currently has approximately five dumpsters (a "truck load" trash dumpster, "truck load" recycling dumpster, a used cooking oil dumpster, a linen dumpster, and a green barrel (trash) dumpster) and a wood pile within dumpster the enclosure. The dumpsters defeat the spirit of Condition 7, and interfere with the quality of life available to my abutting property.

Because the existing fence (1) does not totally enclose and block views of receptacles, (2) places the dumpster(s) in a different, closer to the property line, location than contemplated by the Somerville Planning Board and Somerville Zoning Board of Appeals, and (3) is not located at a sufficient distance from the lot line to avoid interference with the safety, convenience or health of abutters and other residents, I respectfully request that the Somerville Planning Board direct the proprietor to include a section of fence on its own property that moves the dumpsters a minimum of six feet from the property line and blocks my view of the dumpsters as outlined in Condition 7 of its Special Permit. I also ask that the Somerville Inspection department revoke occupancy and dumpster permits until this condition is met.

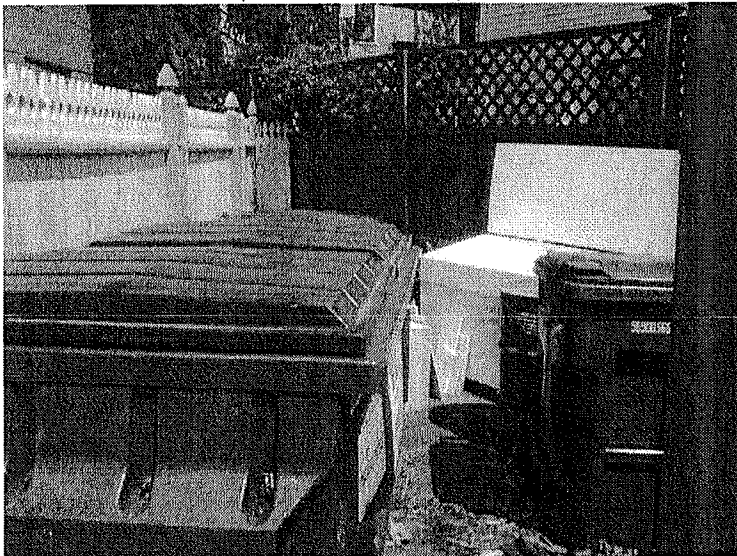
Appeal: Certificate of Occupancy on ZBA 2009-48, Site: 187 Elm Street



Above - View of Dumpster from Staff Report (2009)



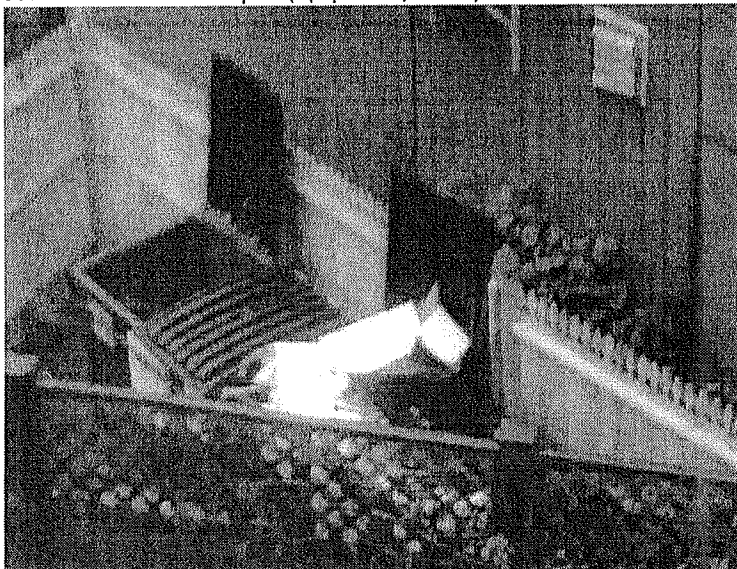
Current Dumpster Area (April 22, 2010)



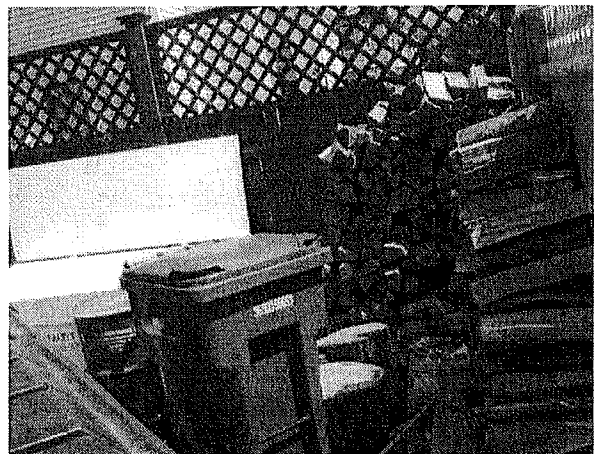
Current View of Dumpster (April 22, 2010)



Current Dumpster Area (April 22, 2010)



Current View of Dumpster (April 17 2010)



Current Dumpster Area (April 22, 2010)

Landscape Plan
September 11, 1996

BLINDING EASTERN: 2790 0

LANDSCAPE DONE BY: APPROX. 5486

PLANNING DEPT.
200 NOV 10 PM 4:05

91-5249
Northern
County

RECEIVED
O.H.C.D. AND
PLANNING DEPT.
96 NOV 20 AM 11 06

