



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
**JOSEPH A. CURTATONE**  
**MAYOR**

PLANNING DIVISION

***PLANNING BOARD MEMBERS***

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JOSEPH FAVALORO  
JAMES KIRYLO  
MICHAEL A. CAPUANO, ESQ.

**Case #: PB 2009-05-E1-6/2011**  
**Site: 133 Middlesex Avenue (ASQ Phase 1AA)**  
**Date of Decision: July 14, 2011**  
**Decision: *Petition Approved with Conditions***  
**Date Filed with City Clerk: July 28, 2011**

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**PLANNING BOARD DECISION**

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<b>Applicant Name:</b>	IKEA Property, Inc.
<b>Applicant Address:</b>	420 Alan Wood Road, Conshohocken, PA 19428
<b>Property Owner Name:</b>	IKEA Property, Inc.
<b>Property Owner Address:</b>	420 Alan Wood Road, Conshohocken, PA 19428
<b>Agent Name:</b>	Goulston & Storrs, PC
<b>Agent Address:</b>	400 Atlantic Avenue, Boston, MA 02110

**Legal Notice:** The Applicant, IKEA Property, Inc., and its Agent, Goulston & Storrs, PC seek a Special Permit (S.Z.O. §5.3.10) for a time extension of the Special Permit with Site Plan Review-A final level approval of a phase (“Phase 1AA”) of a planned unit development (S.Z.O. §16.8.3) including a store selling furniture, home furnishings, and carpets (IKEA) (S.Z.O. §7.11.9.7.c) and a restaurant (S.Z.O. §7.11.10.1.1.c), and roadways, infrastructure, and associated improvements serving Phase 1AA, and dedication of useable open space available to the public, all under the Planned Unit Development Preliminary Master Plan approved by the Planning Board on December 14, 2006 and revised on August 5, 2010 and a Special Permit for signage for Phase 1AA (S.Z.O. §6.4.14.C & §12.4), approved by the Planning Board on August 20, 2009 (PB2009-05) and revised through Planning Board approval December 3, 2009 (PB2009-05-R1109), with de minimis revisions approved by the Planning Director. The owners of the parcels subject to these applications are: FR Sturtevant Street, LLC – Parcels 99-A-2, 99-A-3, 99-A-4, 99-A-5, 99-A-7, 99-A-8, 99-A-6, 101-B-24 FR Assembly Square, LLC – Parcels 67-A-1, 86-A-1



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These parcels are also commonly known as 16-34 and 100 Assembly Square Drive (f/k/a Sturtevant Street), 123 and 147 Foley Street, the so-called "Yard 21 Parcel" and the proposed area of Assembly Square Drive.

Assembly Square Mixed Use District (ASMD); Planned Unit Development Overlay District - A (PUD-A).

Zoning District/Ward: Assembly Square Mixed Use District (ASMD); Planned Unit Development Overlay District - A (PUD-A).

Zoning Approval Sought: §5.3.10  
Date of Application: June 14, 2011  
Date(s) of Public Hearing: July 14, 2011  
Date of Decision: July 14, 2011  
Vote: 5-0

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Appeal #PB 2009-05-E1-6/2011 was opened before the Planning Board at the Visiting Nurses Association on July 14, 2011. 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 one hearing of deliberation, the Planning Board took a vote.

**DESCRIPTION:**

1. Subject Property:

The property comprising the proposed IKEA consists of approximately 11.9 acres of developed land, with varied historical use. The site proposed for the IKEA store has been home to for-profit recreational facilities (Good Times, Boston Paintball), industrial uses (Yard 21, Spaulding Brick, Amerigas Propane), and support buildings (sheds and garages). In Fall 2008, these buildings were demolished and the site is currently vacant. The site is adjacent to the realigned and extended Assembly Square Drive that covers vacant land east of and adjacent to the existing parking lot for the Assembly Square Marketplace.

The Applicant has demolished previously existing structures on the site in order to erect a single building containing a 340,000 square-foot retail store (IKEA Home Furnishings), an accessory restaurant use, and two levels of structured parking.

The applicant received a special permit on August 20, 2009 approving the IKEA store (phase 1AA of the Assembly Square PUD) and a special permit for signage. These permits were modified by a series of de minimis change memoranda dated October 13, 2009, March 2, 2011, and April 15, 2011, a Planning Board decision dated December 3, 2009. Furthermore, the original PUD was modified by the Planning Board in the summer of 2010 and May of 2011 although the PUD amendments did not impact the design of this phase.

2. Nature of Application:

Section 5.3.10 of the Somerville Zoning Ordinance provides that:



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A special permit or a special permit with site plan review shall lapse two years from the granting thereof, or such shorter time as specified in said permit, if a substantial use thereof has not sooner commenced, except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause. Good cause shall be determined by the SPGA, and only upon a finding of demonstrated hardship (e.g. financing problems, labor strike, bad weather conditions, or act of God) and that there has been good faith effort to overcome the hardship and expedite progress. The period of extension of the life of a special permit or special permit with site plan review shall be, at minimum, the time required to pursue or await determination of an appeal, but the maximum extension shall not exceed one (1) year beyond the original permit life.

A permit extension act was passed on November of 2010 that allowed for the automatic extension of development permits in effect or existence between August 15, 2008 and August 15, 2010. Permit Extension Act was created by Section 173 of Chapter 240 of the Acts of 2010 and automatically extend permits for two years beyond its otherwise applicable expiration date. The Permit Extension Act was amended by Section 42 of Chapter 9 of the Acts of 2011. This amendment specifically excluded certain projects approved under the state's I-cubed program from the extended timeframes within the Permit Extension Act. The April 2011 amendment exempted IKEA from the ability to be granted an automatic extension. Therefore, the IKEA SPSR-A expires on August 20, 2011. The applicant is seeking an extension to August 20, 2012.

### **FINDINGS FOR SPECIAL PERMIT EXTENSIONS:**

#### **Demonstration of Hardship**

SZO §5.3.10 cites four examples of "hardship": financing problems, labor strike, bad weather conditions, and act of God.

IKEA indicates that they have not been immune from the macroeconomic forces impacting the state and the nation. The proponent has been committed to working with the city on the considerable physical progress that has been made in constructing infrastructure which, when complete, will allow substantial use of the new road network benefiting both regional traffic and access to existing and proposed development around Assembly Square. The lead-time necessary to build these improvements meant their construction had to begin before construction on the store. Furthermore, the addition of a second headhouse at the MBTA station required further refinement to the IKEA site plan. These circumstances necessitate sequencing construction such that construction of the IKEA store itself has been unable to begin.

Based upon this information, the Board finds that the Applicant encountered issues that constitute hardship which prevented the commencement of construction under the permit.

#### **Good Faith Effort to Overcome Hardship and Expedite Progress**

The Applicant took the following steps to address the issues listed above.

IKEA indicates that they have reaffirmed their commitment to proceed with development of the store. Despite the hardship arising from difficult financial conditions, IKEA has continued to work diligently to advance the project and to modify plans and designs to accommodate further public benefits. IKEA has worked with Federal Realty in seeking out public improvements that will assist both projects. Furthermore, IKEA has collaborated to make the Assembly Square project work, including participating in the land-swap to provide IKEA an inland location to accommodate the Assembly Square master plan. IKEA has been involved in addressing the site for the second MBTA headhouse, and IKEA recently donated property to allow construction of the headhouse. IKEA responded by adjusting the design in the location around the headhouse, and providing further design improvements to meet city conditions of the first amendment.



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Based on the above, the Board finds that the Applicant has made good faith efforts to overcome the demonstrated hardships.

A Note About the Legal Advertisement:

The legal advertisement listed on page 1, as published in the Somerville News incorporates the ownership information about various properties that, while accurate at the time of publication of the original legal notice for this project, has changed.

The legal advertisement is more than sufficient to warn landowners of the proposed action on this site. But the applicant noted to the Staff, and Staff was unable to correct the notice prior to publication, that:

- a. Coler and Colantonio Inc. is listed as an agent engineer on the application
- b. The PUD PMP was further amended on May 13, 2011
- c. The owners of the parcels have changed, and are now are as follows:
  - IKEA Property, Inc. – Parcels 99-A-6, 99-A-7 and portions of Parcels 99-A-4, 99-A-5, 99-A-8 and 101-B-24 (Parcels 2B, 3B, 4B, 6B, 11A and 11B)
  - Street Retail, Inc., FR Sturtevant Street LLC, SRI Assembly Row B2, LLC, SRI Assembly Row B3, LLC, SRI Assembly Row B4, LLC, SRI Assembly Row B5, LLC, SRI Assembly Row B6, LLC, SRI Assembly Row B7, LLC and SRI Assembly Row B8, LLC – Parcels 99-A-2, 99-A-3 and portions of 99-A-4, 99-A-5, 99-A-8 and 101-B-24 (Parcels 2C, 2D, 2E, 4C, 5A and 10A)
  - FR Assembly Square, LLC – Parcels 67-A-2, 86-A-1

As noted in the application, these parcels are also commonly known as 16-34 and 100 Assembly Square Drive (f/k/a Sturtevant Street), 123 and 147 Foley Street, the so-called “Yard 21 Parcel” and the proposed area of Assembly Square Drive. The locations of these parcels is commonly known, and staff remains confident that the notice, by identifying the common addresses as well as the map, lot and block numbers of these parcels, has been clear about the location in question.

July 13, 2011 Letter to the Mayor

Attached to the decision is a letter from IKEA to the Mayor dated July 13, 2011. This letter specifically reiterates IKEA’s commitment to build in Somerville, and includes an offer to release any claim that the Permit Extension Act applies to IKEA and to accelerate a mitigation payment that had previously not been due until the start of construction. Condition #2 confirms the acceptance of the terms of this letter.



**DECISION:**

Present and sitting were Members Kevin Prior, Elizabeth Moroney, Joseph Favaloro, James Kirylo and Michael Capuano. Upon making the above findings, Kevin Prior made a motion to approve the request for the extension of the conditional special permit with site plan review A and special permit for signage, with all original conditions, until August 20, 2012. Elizabeth Moroney seconded the motion. Wherefore the Planning Board voted **5-0** to **APPROVE** the request.

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
1	Approval is for the extension of the special permit for Case 2009-05 as approved, amended and modified. This approval is based upon the application submitted June 14, 2011 and all previously submitted plans, documents and supplemental information.  Any additional changes to the approved SPSR-A that are not <i>de minimis</i> must receive SPGA approval.	BP	Png.	
2	The applicant shall remain in compliance with the commitments in the letter to the Mayor dated July 13, 2011.	Compliance: Continuous/ Mitigation: As outlined in 7/13/11 letter	Png.	



Attest, by the Planning Board:



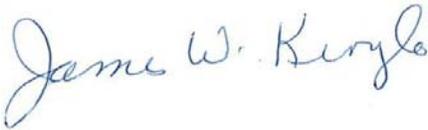
Kevin Prior, Chairman



Elizabeth Moroney



Joseph Favaloro



James Kirlyo



Michael A. Capuano, Esq.

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.



**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 \_\_\_\_\_ in the Office of the City Clerk, and twenty days have elapsed, and

FOR VARIANCE(S) WITHIN

\_\_\_\_\_ there have been no appeals filed in the Office of the City Clerk, or  
\_\_\_\_\_ any appeals that were filed have been finally dismissed or denied.

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 \_\_\_\_\_ City Clerk Date \_\_\_\_\_



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Doug Greenholz  
Vice President Real Estate  
IKEA Property, Inc.  
420 Alan Wood Road  
Conshohocken, PA 19428  
610-834-0180

July 13, 2011

Hon. Joseph A. Curtatone, Mayor  
Somerville City Hall  
93 Highland Avenue  
Somerville, MA 02143

Re: IKEA Somerville, Assembly Square

Dear Mayor Curtatone:

As you are aware, IKEA received a letter dated May 17, 2011 from Lori Massa, City of Somerville Planner informing IKEA Property, Inc. ("IKEA") of the City's view that the two year extension of permits and approvals availed by the Permit Extension Act, Section 173 of Chapter 240 of the Acts of 2010 (the "Permit Extension Act") was not applicable to IKEA's Special Permits (defined below) pursuant to Section 42 of Chapter 9 of the Acts of 2011 of the Commonwealth of Massachusetts ("Extension Act Amendment"). Consequently, we have discussed this matter at length with you and representatives of your Office. Accordingly, IKEA has been requested to acknowledge its concurrence with the City's view that pursuant to the Extension Act Amendment, IKEA's Special Permits are not extended for two years.

For purposes of this Letter, "IKEA's Special Permits" shall, collectively, mean and include the Final Level Approval for Phase IAA of the Assembly Square Planned Unit Development and Special Permit for Signage, each approved by Planning Board Decision dated August 20, 2009, which approval was modified by Memorandum of De Minimis Change from the City's Planning Director dated October 13, 2009, Planning Board Decision dated December 3, 2009, Memorandum of De Minimis Change from the City's Planning Director dated March 2, 2011, and Memorandum of De Minimis Change from the City's Planning Director dated April 15, 2011. IKEA's Special Permits are for the development of the land and construction of an IKEA store at the subject land ("IKEA Project").

Therefore, contingent upon final, unappealed and unappealable duly effective approval of the one (1) year extension of IKEA's Special Permits currently pending before the Planning Board ("2011 One Year Extension"), IKEA will agree that it will not contest the City's view that pursuant to the Extension Act Amendment the two (2) year extension under the Permit Extension Act does not apply to IKEA's Special Permits. The foregoing is further subject to our understanding with the City of Somerville (the "City") that at the expiration of the 2011 One Year Extension, the Mayor, on behalf of the City, will support the approval of either (i) another one (1) year extension of IKEA's Special Permits or (ii) a new Final Level Approval for Phase IAA of the Assembly Square Planned Unit



Development and Special Permit for Signage for the IKEA Project, without further condition, as the same may be modified by IKEA to a de minimis extent, should IKEA need additional time due to internal approval procedures, allocation of funds and/or internal timing issues, so long as IKEA is then continuing to diligently seek all of its internal approvals for the IKEA Project.

This letter also presents the opportunity for IKEA to reiterate that at the time IKEA's Special Permits were obtained and IKEA acquired the subject land in Somerville in October of 2009, IKEA's intention was to develop that land for the construction of an IKEA store and not to land-bank the property. IKEA's present intention continues to be to develop the land and construct an IKEA store, **seek internal approvals therefor** and to extend IKEA's Special Permits for such purpose and not to land-bank the property.

Finally, this letter shall confirm that, at your request, IKEA will forward fund its financial commitments as outlined the Jobs/Hiring Agreement between IKEA and the City of Somerville, including (i) a one-time \$100,000 payment to establish a City-managed employment training program and (ii) six computers with internet access for public use. The \$100,000 payment and the delivery of the computers shall occur at the City's request after September 1, 2011.

Sincerely,  
IKEA Property, Inc.

By:  \_\_\_\_\_

cc: **Chair of Board of Aldermen**  
**Mr. Gary Ternes**  
**Bruce Ritter, Esq.**  
**Douglas Husid, Esq.**  
**City of Somerville Law Department**