



CITY OF CAMBRIDGE
COMMUNITY DEVELOPMENT DEPARTMENT

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To: Planning Board
From: Jeff Roberts, Land Use and Zoning Planner
Date: November 13, 2014
Re: **Teague, at al. Zoning Petition**

Overview

The zoning petition submitted by Charles Teague, et al. addresses some concerns that have been raised over the past year relating mainly to zoning and permitting procedures. Three specific changes are proposed (see attached petition), and each is briefly discussed below.

Where this petition raises specific questions regarding the application of state laws, it would be advisable for the Planning Board or City Council to seek an opinion from the City Solicitor. This memo focuses on planning issues and does not intend to provide legal guidance.

1. Amending the Timeline for Zoning Petition Review

This proposed amendment relates to a slight difference between the zoning amendment procedure set forth in the Cambridge Zoning Ordinance and the zoning amendment requirements set forth in the Massachusetts Zoning Act (M.G.L. Chapter 40A, Section 5), which reads in part (emphasis added):

*If a city council fails to vote to adopt any proposed ordinance within **ninety days after the city council hearing** or if a town meeting fails to vote to adopt any proposed by-law within six months after the planning board hearing, no action shall be taken thereon until after a subsequent public hearing is held with notice and report as provided.*

The current text of the Cambridge Zoning Ordinance effectively starts the 90-day review period on the date of the Planning Board hearing rather than the City Council hearing. In practice, to make sure the requirements of both the Cambridge Zoning Ordinance and state law are met, the City has counted the 90-day period beginning on the earlier of the two public hearing dates (Planning Board or City Council). However, this has sometimes resulted in confusion, and amending the Ordinance to be consistent with state law would help avoid such confusion in the future.

2. Amending the General Special Permit Criteria in Section 10.43

The text in Section 10.43 of the Zoning Ordinance stating that special permits “will normally be granted” for projects that conform to zoning standards has been the subject of much discussion in recent cases. The proposed text change to “may be granted” would likely make little practical difference, because most special permits are based on criteria that are specific to the special permits being sought as well as the general criteria. However, the proposal raises some issues regarding the nature of special permits.

Special permits are authorized by Section 9 of the Zoning Act, and there is a long record of judicial case law regarding special permit authority. As noted, specific legal questions should be directed to the City Solicitor. However, some of the basic planning principles that guide the application of special permit powers are discussed below.

- The Zoning Ordinance should clearly state what development may be authorized by special permit and what the reasons are for requiring a special permit. An “open-ended” special permit provision that is based only on the discretion of the granting authority would result in a great degree of uncertainty for property owners and the general public.
- If a special permit is authorized in the Zoning Ordinance, then a property owner has the right to apply for it, and having applied, has the right to a public hearing and a decision within 90 days of the hearing (unless that time is extended by mutual agreement). The granting authority must arrive at a decision on the case, either to grant or deny, and cannot simply decline to issue a permit through inaction (in which case, the special permit would effectively be granted automatically).
- The granting authority must file a written decision that states the reasons for its grant or denial. While the granting authority has discretion, the decision must be rational and based on the facts of the case. Therefore, it is important for the guidance provided in the Ordinance to be as clear as possible, which provides the granting authority with the rational basis for making its decision.

Changing the text of the Ordinance from stating that special permits “will normally be granted” under certain circumstances to stating that they “may be granted” under those same circumstances might not be helpful because it would provide less clarity to the permit granting authority in deciding whether a special permit should be granted or denied. If an alternative standard is desired, it would be preferable for that standard to set expectations that are as clear as possible.

3. Conformance with a Master Plan

This proposed change makes reference to a citywide master plan, which is defined in state law as “a statement, through text, maps, illustrations or other forms of communication, that is designed to provide a basis for decision making regarding the long-term physical development of the municipality” (M.G.L. Chapter 41, Section 81D). Cambridge will begin to undertake a citywide comprehensive planning process in order to refresh its master plan next year. As part of that process, it is reasonable to consider how the master plan will apply to project review and permitting.

While there is no current document titled “Master Plan for the City of Cambridge,” Cambridge’s current master planning framework includes a set of planning studies that address development in the city at

large as well as more focused studies conducted on specific areas or topics. Cambridge's most recent planning studies have been rooted in the Cambridge Growth Policy, *Toward a Sustainable Future*, established by the Planning Board and Community Development Department in 1993. The most recent citywide planning process studying general growth and development was undertaken in 1998-2001 and resulted in comprehensive revisions to the Zoning Ordinance.

Special Permits

One outcome of the 2001 citywide rezoning was the establishment of the Citywide Urban Design Objectives in Section 19.30 of the Ordinance. One of the criteria for any special permit is that the permit granting authority (Planning Board or BZA) must find that the proposal is in overall conformance with those objectives. Section 19.30 also states, "Further indicators of conformance with these policy objectives shall be found in planning documents and plans developed for specific areas of the city or the city as a whole, to the extent that they are not inconsistent with the objectives set forth in this Section 19.30." A new citywide master plan, when it is completed, would be incorporated into the Section 19.30 criteria either implicitly or explicitly. However, if explicit reference is made, it would be best to make that change after the plan is completed, so that it can be referenced more precisely.

Building Permits and Variances

While it is reasonable for special permits to be evaluated in accordance with citywide plans, it may be problematic to apply the same standard to building permits. A citywide master plan, which establishes broad policies and objectives for growth, is not the same as a Zoning Ordinance, which sets forth specific requirements and limitations for buildings and uses. When a building permit is issued, it is based on an administrative determination by the Superintendent of Buildings that the project meets the strict requirements of the Zoning Ordinance and other applicable codes and regulations. It would not be within the purview of the Superintendent of Buildings to make a discretionary finding of whether a proposed development is consistent with a citywide master plan if it otherwise meets the strict requirements of the Ordinance.

Variances are granted based on a different set of findings than special permits. State law provides that variances may be granted where "a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship" because of some unusual condition of the lot that is not generally true of other lots in the district (M.G.L. Chapter 40A, Section 10). Because variances are meant to apply to exceptional circumstances, it might be unreasonable to require that they conform to a general master plan. It may be reasonable for the granting authority (the BZA, in the case of all variances) to consider the planning objectives for the area as a factor in making a decision or imposing conditions on a variance, so long as the decision remains within legal parameters.