



CITY OF CAMBRIDGE, MASSACHUSETTS

P L A N N I N G B O A R D

CITY HALL ANNEX, 344 BROADWAY, CAMBRIDGE, MA 02139

Date: July 16, 2013

Subject: Teague, et al. Zoning Petition (Lighting Standards)

Recommendation: The Planning Board recommends **NOT ADOPTING** the petition, but suggests alternative approaches to address lighting issues.

To the Honorable, the City Council,

The Planning Board supports the effort to protect residents from intrusive lighting emitted from adjacent properties. The public, the Board and the Community Development Department have noted instances where offensive outdoor lighting has not been adequately addressed by application of the current zoning regulations. Moreover, the City has an interest in promoting efficient use of lighting for broader environmental reasons.

In recent years, many other local jurisdictions have revised their lighting regulations (through zoning or other ordinances) to address concerns about light trespass, glare, light pollution or energy conservation. Public testimony on this matter has indicated that there is a strong public health interest in having effective lighting controls. Protection of the night sky from light pollution is also a serious issue of environmental concern. The Board believes that it is an appropriate time to update the lighting regulations for Cambridge.

However, the Board does not support adoption of the proposed zoning amendment. Along with specific concerns about the impacts of the proposed amendment, which are discussed in the following pages, the Board is concerned that any zoning change would not adequately address the issues raised in public testimony. Because of the legal limitations of zoning, a zoning change would not provide relief to residents who have suffered from intrusive lighting that was legally installed before the change was advertised.

Therefore, the Board advises that the City Council direct the creation of a comprehensive lighting ordinance that would be incorporated into the Municipal Code separate from zoning. This could provide a process for addressing concerns about existing lighting, and could work in concert with carefully crafted zoning regulations to ensure that new development meets the desired standards as well.

Municipal Code Approach

Zoning ordinances are limited by the enabling legislation set forth in Chapter 40A of the Massachusetts General Laws. Section 6 of Chapter 40A states, in essence, that zoning

regulations only apply to the future establishment of buildings and uses on a property, or to significant alterations to those buildings or uses. Buildings or uses that were permissible under the zoning regulations in place at the time they were established are allowed to continue, even if the zoning requirements are amended at a later time.

If this Petition were adopted, existing light fixtures that were legally installed before the adoption (in 1961) of the current lighting regulations in Section 7.20 of the Zoning Ordinance, or installed since that time in conformance with the current lighting regulations, would be considered “legal nonconformities” and would continue to exist, just as a house that was built prior to the enactment of the Zoning Ordinance is not forced to be altered or demolished simply because it does not conform to the newer regulations. Fixtures installed in violation of 7.20 between 1961 and the present would not enjoy such protection. However, the Board heard testimony that the limitations in the scope of the current rules have in many cases prevented the City from requiring property owners to take mitigating measures when there are offensive fixtures spilling light on adjacent properties.

Cambridge’s Municipal Code regulates, in addition to zoning, matters including business licensing, animals, use of public parks, vehicle trips and noise. Other municipalities in Massachusetts and elsewhere regulate lighting through non-zoning codes, sometimes in addition to complementary zoning codes. The Board’s view is that enacting a comprehensive lighting ordinance, with clear standards and processes for enforcement, would be the best and most direct way to address the concerns raised by members of the public regarding intrusive light.

In developing such a lighting ordinance, the Board suggests that the City engage the services of a qualified lighting expert to consult with the various departments that would be responsible for drafting, applying and enforcing such a code and to assist in developing standards that are well suited to Cambridge.

Concerns with Proposed Zoning Amendment

The Board has the following specific concerns about the amendments proposed in the Teague, et al. Petition:

- Scope of Regulations. The Board finds the proposed zoning amendment to be overly broad in its scope. It would effectively ban direct light “entering the eye” from any abutting property or street as much as 300 feet away. This standard could be violated not just by floodlighting but by all types of lighting, including small porch lights, historic fixtures, some city street lighting, park lighting and possibly indoor light fixtures near windows. In many cases, lighting that is desired by community members, or is at least not objectionable, could be in violation. Even when neighbors do not object, zoning nonconformities may be problematic for property owners if they are seeking to sell their properties or to make alterations.
- Burden on Homeowners. Although the concerns raised in public testimony seem to focus on the impact of lighting emitted by commercial properties, large residential buildings or parking lots, the Board is concerned that the proposed regulations would create

complications for many homeowners. Given that houses tend to be close together in many neighborhoods, it may become especially difficult for homeowners to install even modest lighting for security purposes, which is important to many Cambridge residents and is often beneficial to neighbors as well.

- Enforcement. The Petitioner's testimony suggests that the proposed regulation will be "complaint driven" and that a daytime photograph of a light fixture will be sufficient to prove that a zoning violation has occurred. While it is important to provide opportunities for neighbors to report violations, this standard could lead to a proliferation of complaints that could make the City party to protracted neighbor-to-neighbor disputes.

Moreover, enforcement may be complicated when issuing building permits or certificates of occupancy. For example, if an existing building changes its use without altering the exterior of the building, it is not clear if the City would be able to issue an occupancy permit if the lighting does not comply. If compliance were required, the owner would need to demonstrate that no direct light is visible from any point on an abutting property within 300 feet, which could be onerous and could add to the cost of converting a property even where there are no residential neighbors affected by the light. Moreover, it may be difficult to prove whether or not an existing lighting fixture is legally nonconforming.

Given these difficulties, enforcement would rely heavily on the discretion of the Building Commissioner and the Inspectional Services Department staff. This could in turn lead to a proliferation of issues requiring resolution by the Board of Zoning Appeal or in courts. The Board feels it would be preferable to have a set of regulations that can be enforced without relying too heavily on discretionary standards or legal action.

- Unintended Consequences. Despite the apparent simplicity of the zoning text, the impacts could be very open-ended. It would affect virtually any new project from a large office building to a small home renovation, and could encompass many different types of lighting whether it is indoor or outdoor, temporary or permanent. The effects could extend far beyond those that the Board has discussed.

Possible Zoning Remedies

The Community Development Department staff suggested alternate zoning text that attempted to provide clarity to certain aspects of the proposed amendment, particularly in its applicability and enforcement. The Board found that this text mitigated some of the concerns related to the expansive scope and enforcement challenges of the proposed amendment. However, the alternate text still raises the same general concerns as the petition text, because it would not be able to remedy the existing problems of intrusive light, and could potentially create more problems for properties whose lighting is not necessarily offensive to neighbors. Therefore the Board does not recommend pursuing this alternative.

The Board also found that the existing lighting regulations in Section 7.20 of the Zoning Ordinance are very reasonably stated, even though application and enforcement of those

regulations has been found to be unsatisfactory. The current Section 7.20 contains common-sense rules that limit residential lighting to functions related to safety and security and require lighting to be “installed in a manner that will prevent direct light from shining onto any street or adjacent property.” The enforcement difficulties seem to derive, at least in part, from the fact that it is applied in Residence A, B, C and C-1 districts only, and may not address light cast onto neighbors from nearby commercial buildings, larger-scale residential buildings or parking lots. Expanding the existing regulations to address these specific problems could better protect neighbors from new intrusive lighting without creating new complications for small property owners.

This approach would require minimal further study from Community Development Department staff, but would benefit from a new set of public hearings in order to hear from property owners that would be most impacted, including commercial property owners. If the Council wishes to pursue this option, the Planning Board would prepare and submit a rezoning petition when the Council resumes meeting in September, to be heard and possibly voted on before the end of the calendar year.

Respectfully submitted for the Planning Board,

A handwritten signature in black ink, appearing to read 'Hb R', with a stylized flourish at the end.

Hugh Russell, Chair.