

CITY OF CAMBRIDGE, MASSACHUSETTS
PLANNING BOARD
CITY HALL ANNEX, 57 INMAN STREET, CAMBRIDGE 02139

Notice of Decision - Amended

Case #12

Address: Charles Square (formerly known as Kennedy Square Mixed Use Development)

Zoning District Residence C-3/PUD 1

Date of PUD Planning Board Decision: June 23, 1981

Date of Extension of Decision: April 20, 1982

Date of First Amendment: April 5, 1983

Date of Second Amendment: October 4, 1983

Date of Third Amendment: May 1, 1984

Date of Fourth Amendment: July 9, 1987

Date of Minor Amendment #5: January 4, 1994

Date of Minor Amendment #6: November 1, 1994

Date of Minor Amendment #7: June 4, 1996

Date of Minor Amendment #8: April 1, 2003

Decision: **GRANTED with conditions**

Documents Submitted

A request for approval of a Minor Amendment submitted in a letter, with attachments, to the Planning Board from Andrew H. Cohn, of Hale and Dorr LLP, the owner's attorney, dated 3/14/03. The letter outlines the background of the development, the adjustments requested, and the reasons for them. Attached were (1) drawings by the Neimetz Design Group dated 2/03 showing the proposed Legal Seafoods Restaurant changes at both the central Plaza and the lower plaza and (2) a copy of a letter addressed to Richard Friedman, Carpenter & Company, from Gary

Johnson, dated March 12, 2003 describing the floor area changes proposed and their relationship to the GFA permitted by the permit.

Other Documents Submitted

1. Letter to the Planning Board from Thomas B. Bracken, dated 4/1/03, objecting to the Planning Board action without a public hearing.
2. Copy of a letter to Richard Friedman, Carpenter & Co., from Gary Johnson, Cambridge Seven Associates, dated 3/27/03, commenting on the Legal Seafoods proposal and a site plan labeled A-1, dated 4/1/03 and Courtyard Plan A-2 dated 4/1/03.

The Petition

The request is to extend the enclosed restaurant space on the upper courtyard by 480 square feet in that area under the awning structure (which surrounds the entire courtyard) adjacent to the restaurant and to create a seasonal raw bar and seating facility in the lower courtyard. The applicant requests that:

- 1) The Planning Board make the determination that the proposed changes are a Minor Amendment consistent with the Permit as originally granted and subsequently amended;
- 2) The Planning Board allow the glass enclosure of a portion of the central courtyard; and
- 3) The Planning Board allow a seasonal outdoor seating area with chairs, table and a bar in the lower courtyard with a small bench-like structure remaining in the off-season.

Discussion

James Rafferty, of Adams & Rafferty, the applicant's attorney, presented the proposal for the enclosure of space in the upper courtyard and for the seasonal facility in the lower courtyard area. It was represented that the changes would not be in conflict with the Special Permit as originally granted, would in fact add life and activity to areas that were so intended to be used when the permit was first granted, and would not significantly diminish the public use and enjoyment of the two open spaces within the development. Mr. Andrew Cohn indicated that there remains about 1500 square feet of Gross Floor Area authorized in the Special Permit that has not been used. In addition, over time, an additional 424 square feet that

was originally constructed as Gross Floor Area has been converted to mechanical uses, which are not calculated as Gross Floor Area. Therefore the new enclosure, at 480 square feet, can be accommodated without exceeding the total amount of development authorized for the site.

At the discretion of the Planning Board, members of the general public were permitted to comment on the Minor Amendment request. They expressed concern about the steady erosion of the open space in the development over time and the increasing restriction of public access to portions of that open space, particularly as small changes are proposed and approved. In this particular instance Mr. Cohn indicated that the license granted for the service to be provided at the lower courtyard facility will mandate that the public be allowed to sit at the tables and chairs provided without a requirement that food be purchased. Signs will be posted indicating that policy.

The Planning Board found that the proposed changes are, in scope and character, consistent with the standards usually employed by the Board in granting a Minor Amendment to a special permit.

It was the Board's view that it is desirable to be flexible with regard to adjustments to the features of a building or complex of buildings authorized by special permit in order to assure a project's long term success as time passes, economic circumstances change, and experience with its operation is gained. At Charles Square, the large component of retail within the complex and around the courtyards originally approved and envisioned by the Special Permit has been replaced by office and other less dynamic uses as retail activity has proven not to be economically viable. The Legal Seafoods restaurant that will be accommodated by the proposed changes will introduce a well know, successful restaurant chain likely to have the staying power and customer draw necessary to ensure an active retail presence at this location.

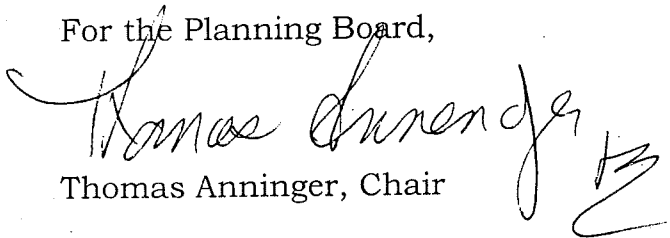
The changes proposed to accommodate this new restaurant are small and within the Gross Floor Area allowed by the Special Permit. Nevertheless, the Board did express concern about the incremental changes being proposed over time and the need to adequately track them in the future. Therefore, the Board does want to be kept informed of the cumulative changes that have been approved whenever future changes to uses and building design are proposed.

Decision

Based on the material presented and the discussion with the Permittee, the Planning Board voted to find that the requested modifications to the project's courtyards constituted a Minor Amendment. The Board then granted the Minor Amendment relief requested to allow the enclosure of space in the upper courtyard principally in clear glass and the creation of a seasonal food service facility in the lower courtyard, in substantial conformance with the plans submitted and referenced above. The Amendment is granted on the condition that any change in the restaurant tenancy shall require that the proposal be reviewed and reconsidered again by the Planning Board at that time. In reaching its determination the Planning Board relied on the applicant's representation that, as a condition of the license issued by the Cambridge License Commission for the premises on May 3, 2001, there is a requirement (Condition #2) that the lower courtyard seating area will be open to the general public and so identified.

Voting in favor of this minor amendment were: T. Anninger; B. Shaw, L. Brown, F. Darwin, H. Russell and P. Winters.

For the Planning Board,


Thomas Anninger, Chair