



**CITY OF CAMBRIDGE**  
**INTEROFFICE CORRESPONDENCE**

**To** Robert W. Healy  
Russell B. Higley, Esq.

**Date** November 30, 1984

**From** Birge Albright, Esq. BA

**Reference**

**Subject** William Fowler, et al. v. City, et al.  
(St. Peter's Parish)

Please see my memo of 11-5-84 stating that Judge Cashman upheld the rezoning on 5-23-83 by the City Council.

The plaintiffs have now appealed this decision to the Appeals Court.

BA/jl



**CITY OF CAMBRIDGE**  
**INTEROFFICE CORRESPONDENCE**

**To** Robert W. Healy  
Russell B. Higley, Esq.

**Date** November 5, 1984

**From** Birge Albright, Esq. BA

**Reference**

**Subject** William Fowler, et al. v. City of Cambridge, et al.

I attach copies of Judge Cashman's Order and Findings of Fact and Rulings of Law in the above case.

This case involves the rezoning by the City Council on May 23, 1983 of a parcel of land from C-1 to O-1. The parcel includes an abandoned school building owned by the Roman Catholic Church, which the Church wants to lease to the Intervenor, Cambridge Company, Inc. to be used as an office building.

The Intervenor moved for summary judgment which was granted by the Judge. This decision holds that the rezoning was proper.

BA/jl

Encs.

Rec- 10/15/84

# Commonwealth of Massachusetts

MIDDLESEX, SS.

23

SUPERIOR COURT

No. 83-3808

WILLIAM FOWLER, ET ALS

VS.

CITY OF CAMBRIDGE, ET ALS

\*\*\*\*\*

JUDGMENT (SUMMARY) (PURSUANT TO MASS. R. CIV. P. 56)

This action came on for hearing before the Court, Cashman, J. presiding, upon the motion of intervenor, The Cambridge Company, Inc. for summary judgment pursuant to Rule 56 of the Mass. R. Civ. P. and thereupon, upon consideration thereof, it is ORDERED and ADJUDGED:

That Judgment be and hereby is entered declaring that the challenging rezoning is valid and that the locus is validly classified as being and O-1 zoning district under the Cambridge Zoning Ordinance.

Dated at Cambridge, Massachusetts this second day of November, 1984.

Laura M. Kusnick  
Deputy Assistant Clerk

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT  
CIVIL ACTION  
NO. 83-3808

*22*

_____	)
WILLIAM FOWLER, ET AL.,	)
Plaintiffs	)
	)
v.	)
	)
CITY OF CAMBRIDGE, ET AL.,	)
Defendants	)
_____	)

FINDINGS OF FACT AND RULINGS OF LAW

This is an action seeking relief in the nature of Declaratory Judgment and Mandamus in which the Court is requested to declare invalid as "spot zoning" a rezoning by the City council of the City of Cambridge which changed the zoning classification of a number of parcels, including the Locus in controversy, from a former designation of residential C-1 to a new designation as an O-1 (office use) district. The area rezoned immediately abuts a Business-A district. Defendant argues that the new designation: (1) constitutes a logical extension of that district; (2) is situated in an area in which similar business, office and commercial uses are prevalent. None of the parties challenging the rezoning own property within the area zoned. Having taken a view, I find as a fact that none of the plaintiffs are abutters and, for the most part, the rezoned Locus is not

readily visible respective properties. Accordingly, the issues asserted in its motion for summary judgment by the intervenor, the Cambridge Company, Inc., which proposes to develop the Locus for office use, are as follows:

1. Have the plaintiffs sustained their "heavy burden of proving beyond reasonable doubt" that the rezoning in question constitutes impermissible "spot zoning?" and;

2. Do the plaintiffs, in any event, lack standing to challenge the validity of the rezoning?

The material facts comprising the record in support of the instant motion for summary judgment are derived for the most part from the accompanying affidavit of Robert L. Wolff, Jr. (the "Wolff Affidavit") or from matters admitted in the pleadings. In essence the facts are as follows.

On May 23, 1983, the Cambridge City Council adopted a vote rezoning a rectangular area of land (the "Locus") from a residential C-1 zone to a new designation as an O-1 (office use) district. The parcel thus rezoned contained properties owned by a number of parties, the largest parcel being owned by the Roman Catholic Archdiocese of Boston and containing a large, brick, 3-story school building with surrounding paved parking areas, no longer used by the Archdiocese for school purposes. The Locus, which is shown on Exhibit "A" to the Wolff Affidavit, is bounded on three sides by public ways of the City of Cambridge. The fourth side of the Locus abuts an adjoining Business "A" zoning district in which office use of the nature authorized in an O-1

district is permitted as a matter of right. The boundary line of the Business-A zoning district appears on Exhibit A to the Wolff Affidavit as dividing the "block" in which the locus is situated. It is alleged that the effect of the rezoning would be to extend to the end of that block the area in which one less intrusive aspect of the adjoining business zone (i.e. office use) would be permitted.

My view indicates that the rezoning is consistent with the business/office/institutional uses prevalent throughout the surrounding neighborhood, as graphically illustrated by the 34 photographs appended to the Wolff Affidavit, which provide a photographic record of the surrounding neighborhood. I find that the rezoning will permit a sensible alternative use for the large old school building, compatible with the present character of the surrounding area. As an area in which only office use, as opposed to general business use, is permitted, the Locus will serve in part as a natural "buffer" between the existing business zone and the other surrounding zoning districts.

Reference to Exhibit B to the Wolff Affidavit, <sup>which</sup> which shows the zoning districts throughout the City of Cambridge, reveals that this same approach has been utilized in a number of other instances in the City, in which O-1 districts are immediately contiguous to business districts. Exhibit B also demonstrates that the size of the rezoned area is consistent with other areas throughout the city which have been treated in a similar manner. The rezoning included a number of other properties abutting the school premises and was supported by the occupants of those

parcels, as well as other neighboring parcels, all as shown on Exhibit C to the Wolff Affidavit.

The instant action was commenced by a number of individuals residing at locations also shown (color-coded in tan) on Exhibit B to the Wolff Affidavit. That Exhibit, as well as the photographs taken from the vicinity of the properties of the two nearest plaintiffs (photographs numbered 29, 30 and 34) disclose that none of the plaintiffs is an abutter or even resides on the same street or streets as the Locus; none of the plaintiffs resides in the same zoning district as the Locus; and the Locus is not readily visible, and, in many instances, is invisible from the respective plaintiffs' properties.

This case involves a challenge to the action of the Cambridge City Council changing the Zoning Map to rezone a small parcel of land from residential to office use. Plaintiffs maintain that this rezoning constitutes impermissible "spot zoning", because it was not taken pursuant to any plan of uniform reclassification of property or any general revaluation or realignment of the Zoning Map as required by The Zoning Act, Mass.G.L. c.40A, §4. Instead, plaintiffs contend that the rezoning was done on an ad hoc basis for the sole purpose of enabling the Intervenor developer to convert a former school building into offices.

The Intervenor developer purports to support its motion for summary judgment with an affidavit of Robert L. Wolff, one of the limited partners of the Intervenor.

At Counsel's request I took a view of the locus and surrounding area.

There are a series of small shops located north of the locus along Concord and Huron Avenues. Southeast of the locus is the Smithsonian Observatory property. The Smithsonian Observatory office complex, according to the legend contained in C-2 of Exhibit "A", attracts a daily population of 310 to 345 people. Said complex comprises approximately nine (9) acres and at its nearest point to the locus is 220 ft. away.

The portion of Exhibit "A" carrying the legend "Remainder of church property - unchanged by rezoning" is separated from the locus (outlined in yellow) by what appears to be approximately 25 ft.

The Plaintiffs in this cause of action, all of whom were allegedly entitled to statutory notice of a proposed zoning change affecting the locus, live from a minimum of 200 feet to a maximum of 1200 feet from the locus. All of said Plaintiffs allege that they will be <sup>ADVERSLY</sup> advisedly affected by the zoning change if implemented.

There Is A Strong Presumption In Favor Of The Validity Of The Rezoning And The Plaintiffs Bear A Heavy Burden Of Establishing Beyond a Reasonable Doubt That The Rezoning Is Invalid.

It is well established that, in reviewing the validity of a zoning amendment of this sort:

"Every presumption is to be made in favor of the amendment and its validity will be upheld unless it is shown beyond reasonable doubt that it conflicts with the Enabling Act." Vagts v. Superintendent and Inspector of Buildings of

Cambridge, 355 Mass. 711, 713 (1969), quoting Lanner v. Board of Appeal of Tewksbury, 348 Mass. 220, 228.

In the case of Raymond v. Building Inspector of Brimfield reported in 3 Mass. App. Ct. 38 - a case which in my view bears a substantial similarity to the instant case - the Appeals Court found and held:

GOODMAN, J. This is a petition for a writ of mandamus brought by owners of property abutting or in the vicinity of the locus (hereinafter described) alleging that an amendment to the zoning by-law of the town of Brimfield, adopted on December 29, 1971, is invalid as spot zoning and praying that the respondent building inspector be ordered to enforce the by-law as it existed prior to the amendment and that the town clerk be ordered to expunge the amendment from the town's records and zoning map. The trial judge made "Findings, Rulings, and [an] Order for Judgment" based on a stipulation, documents, and a view (see LaCroix v. Zoning Bd. of Appeals of Methuen, 344 Mass. 489, 490 [1962]; Mahoney v. Commissioner of Pub. Works of Lowell, 351 Mass. 697 [1966]). The order for judgment dismissed the petition, and the petitioners have appealed.

The petitioners point to the various factors which have entered, to a greater or lesser degree, into decisions of the Supreme Judicial Court in the "seemingly unending line of cases which have...reach[ed] that court]" (Crall v. Leominster, 362 Mass. 95, 100 [1972]) attacking the validity of zoning regulations and their amendments as spot zoning. For each case (generally less recent) which finds spot zoning and in which one of those factors occurs, there may be found a case which upholds the zoning regulation, although the same factor is present. We do not pause to classify and analyze the numerous cases. The overriding "test is whether there has been shown any substantial relation between the amendment and the furtherance of any of the general objects of enabling act.... The promotion of the public welfare, as that term is fairly broadly construed, is chief among the purposes of the enabling statute." Lanner v. Board of Appeal of Tewksbury, 348 Mass. 220, 228 (1964). See G.L. c.40A, §2.

It is clear that the petitioners have not sustained the heavy burden of proof placed upon one attempting to invalidate a zoning by-law as spot zoning. As was emphasized in Crall v. Leominster, 362 Mass. 95, 103 (1972): "To sustain that burden they must prove facts which compel a conclusion that the question whether the amendment falls within the enabling statute is not even fairly debatable." See also the cases cited in fns. 4 and 5 of the Crall case at 101-102 and Martin v. Rockland, 1 Mass. App. Ct. 167, 169 (1973).

Consistent with this principle the courts of the Commonwealth have frequently referred to a plaintiff's:

"...heavy burden of proving beyond reasonable doubt that the amendment is invalid because it conflicts with a constitutional provision or does not fall within the scope of The Zoning Enabling Act." Wallace v. Bulding Inspector of Woburn, 5 Mass. App. Ct. 764, 787 (1977) and cases cited.

The combination of the heavy burden borne by a plaintiff in such a case and the relatively few instances in which that burden can conceivably be sustained, led the Supreme Judicial Court in Crall v. Leominster, 362 Mass. 95, 100-101 (1972) to express its frustration with such claims in the following language:

"This is another in a seemingly unending line of cases which have been reaching this Court since shortly after the enactment of St. 1920, c.602 (see now G.L. c.40A), authorizing municipalities to adopt zoning regulations, and in which we have been asked to declare such regulations or amendments thereto invalid as beyond the scope of the Enabling Statute. The number of such cases seems disproportionately large in relation to the very narrow scope of the review available before this Court on matters other than compliance with the statutory procedural requirements for municipal adoption or amendment of such regulations."

The Court in Crall further emphasized that:

"We have said repeatedly if the reasonableness of a zoning by-law or ordinance is fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained." 362 Mass. at 101.

In support of its comments the Court included in its decision a lengthy footnote (footnote no. 4) summarizing the numerous instances in which claims of invalidity of municipal ordinances or by-laws have been rejected by the Supreme Judicial Court.

This Court determines that the challenged zoning amendment is clearly within the authority of the Cambridge City Council under the applicable legal standards.

There are numerous decisions upholding amendments to zoning ordinances or by-laws on facts strikingly similar to those presented in this case. As an example, in Peters v. City of Westfield, 353 Mass. 635 (1968) the plaintiffs sought to have declared invalid an amendment to the Westfield Zoning Ordinance the effect of which was to move a zoning district boundary line which had formerly run through the middle of a block to the end of the block, so as to include a single additional parcel in contrast to the several parcels involved in this case. The case was also similar to the instant case in that the parcel in question included a large building which was not practically adaptable to single family residential use. Similarly, by way of analogy to the instant case, the City in the Peters case, reclassified the locus into a zoning district which was not as permissive as the immediately adjoining business zone, with the thought that it would also be able to function as a "buffer lot" between the more permissive business zone and nearby residential zones.

In an observation particularly applicable to the circumstances presented in this case, the Court noted that both the nature of the structure on the parcel in question and the character of uses of nearby properties clearly operated to distinguish the locus from other residential parcels in the area. 353 Mass. at 639.

Similarly, in Halko v. Board of Appeals of Billerica, 349 Mass. 465 (1965) the Court upheld the rezoning of a small parcel whose borders were logically defined by adjacent public ways and where, as here, similar uses also prevailed throughout the neighborhood.

The courts have also recognized on a number of occasions that the concept of "promotion of the public welfare," is a sufficient basis for upholding a rezoning measure when such an objective can be reasonably implied in the municipality's actions. In Raymond v. Building Inspector of Brimfield, 3 Mass. App. Ct. 38, 41 (1975) the need to provide additional space for a significant industrial enterprise within the community was deemed sufficient to uphold the rezoning in question.

Similarly, as in this case, the need to preserve and "recycle" a substantial nonconforming school structure, no longer suitable for its original use, would suffice as a more than sufficient basis to sustain the action of the Cambridge City Council in permitting alternative office use of the premises through the exercise of its zoning powers. As noted earlier, even if that issue were "fairly debatable," the plaintiffs, by definition, would have failed to sustain their "heavy burden."

Having reached a decision to the effect that the City Council's action did not constitute "spot zoning", this court finds no need to address the question of whether or not the Plaintiffs have standing to challenge the validity of the rezoning.

On all of the evidence before me, I find that:

1. The challenged rezoning is Not solely for the benefit of a single owner;
2. That the general area containing the Locus is substantially commercialized - a substantial portion of which, according to my view and the map attached, attract traffic;
3. That the rezoning has introduced a desirable element of symmetry into the zoning pattern in the area (based upon the view and the Planning Board report before the Court);
4. That the rezoning will operate as a natural "buffer" between the business and residential zoning districts (a physical fact readily observable);
5. That numerous public purposes underlie the zoning amendment (based upon the Planning Board Report);
6. That similar "buffer" zones exist throughout the City (based upon the zoning map itself); and
7. That the purposes underlying the rezoning are consistent with the purposes of the Zoning Enabling Act and do not constitute spot zoning (the ultimate legal conclusion which the Court is entitled to draw based upon the undisputed facts).

In summary, there is not a single fact material to the issue of "spot zoning" which is not before the Court in a factually undisputed form. All that remains is the application of the governing law to those facts.

The City of Cambridge, through its legal counsel, Birge Albright, has addressed a letter to me, (copies of which were forwarded to all counsel of record) a copy of which is appended to this decision and adopted by the Court and incorporated herein as a part of its decision.

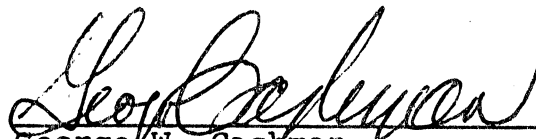
A map showing the locus of various businesses contiguous to, or in the immediate vicinity of, said locus is appended hereto and made a part hereof.

Motion for Summary Judgment of the Cambridge Company, Inc., is Granted.

Judgment shall enter declaring that the challenging rezoning is valid and that the Locus is validly clasified as being an O-1 zoning district under the Cambridge Zoning Ordinance.

So ordered,

*October 31, 1984*

  
George W. Cashman  
Associate Justice  
by Statutory Authority

*Entered November 2, 1984*



# CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9020

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October 5, 1984

The Honorable George W. Cashman  
Middlesex Superior Court  
40 Thorndike Street  
Cambridge, Mass. 02141

Re: William Fowler, et al. v. City of Cambridge  
et al.  
C.A. No. 83-3808

Dear Judge Cashman:

I write to follow up on the hearing before you on October 3 on the Motion for Summary Judgment of the Cambridge Company, Inc. For the record, the City of Cambridge enthusiastically supports this motion.

We particularly wish to second the proponent's argument that there is a strong presumption in favor of the validity of the rezoning. Memorandum of the Cambridge Co., Inc., pp. 4, 5. As the Court stated in Grace v. Town of Brookline, 379 Mass. 43, 49-50 (1979):

... We have consistently stated that in the judicial review of municipal by-laws and ordinances "every presumption is to be made in favor of their validity, and that their enforcement will not be refused unless it is shown beyond reasonable doubt that they conflict with the applicable enabling act or the Constitution." Crall v. Leominster, 362 Mass. 95, 102 (1972), and cases cited....

To the same effect, see MacNeil v. Town of Avon, 386 Mass. 339, 435 NE2d 1043, 1045 (1982).


The Honorable George W. Cashman

-2-

October 5, 1984

I hope this material will be helpful to you. We are confident that, after viewing the site, you will agree that the City Council's action did not constitute "spot zoning."

Very truly yours,



Birge Albright  
Legal Counsel

BA/jl

cc: Thomas Bracken, Esq.  
F. Anthony Mooney, Esq.

# BUS-A

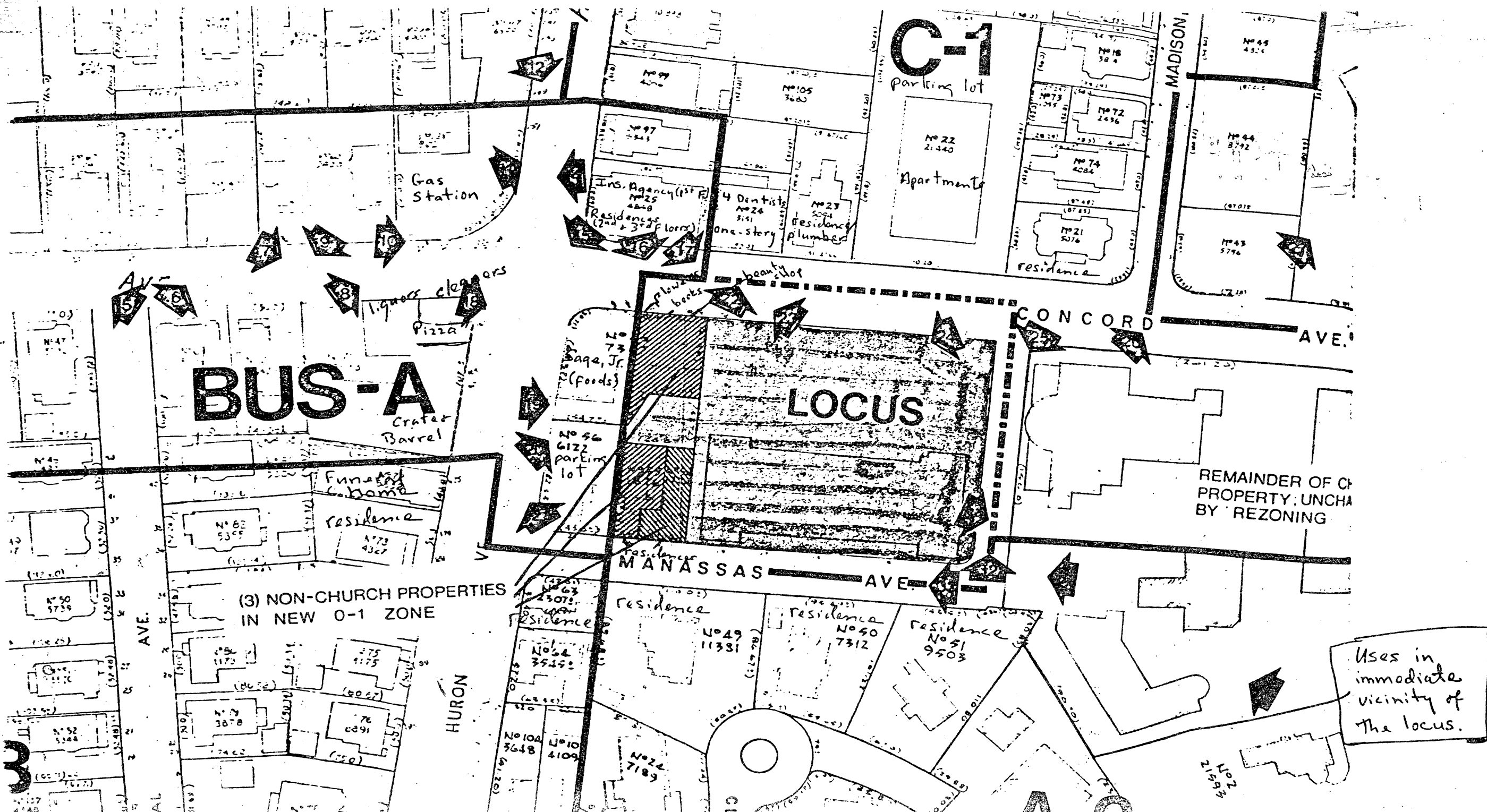
# LOCUS

C-1  
parking lot  
Apartment

(3) NON-CHURCH PROPERTIES  
IN NEW O-1 ZONE

REMAINDER OF C-1  
PROPERTY UNCHANGED  
BY REZONING

Uses in  
immediate  
vicinity of  
The locus.



Gas Station

Ins. Agency (1st Fl)  
No 25  
48-8  
Residences  
(2nd & 3rd floors)

4 Dentists  
No 24  
5151  
one-story

No 23  
5024  
residence  
plumber

No 22  
21440  
Apartment

No 73  
2455

No 72  
2456

No 74  
4084

No 21  
5076  
residence

No 44  
8792

No 43  
5796

liquor cleaners  
Pizza

Flower  
beats  
No 56  
6122  
parking  
lot

Funeral  
home  
residence  
No 62  
5309

residence  
No 50  
5736

residence  
No 58  
1173

residence  
No 52  
5348

residence  
No 63  
23075

residence  
No 64  
35450

No 104  
3648

residence  
No 49  
11331

residence  
No 50  
7312

residence  
No 51  
9503

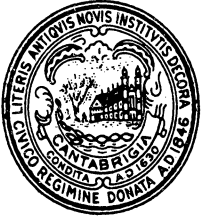
HURON

MANASSAS AVE

CONCORD AVE

MADISON

No 27  
21527



# CITY OF CAMBRIDGE

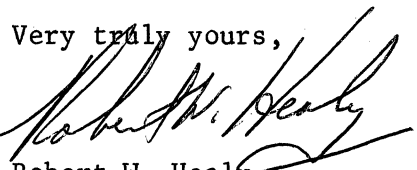
CAMBRIDGE, MASSACHUSETTS 02139  
Tel. 498-9011

EXECUTIVE DEPARTMENT  
ROBERT W. HEALY  
City Manager

December 3, 1984

To the Honorable, the City Council:

Enclosed for your information is a copy of Judge Cashman's Order and Findings of Fact and Rulings of Law in the case of William Fowler, et al, versus the City of Cambridge, et al, relative to the rezoning of a parcel of land from C-1 to O-1.

Very truly yours,  
  
Robert W. Healy  
City Manager

RWH/mbf  
Enc.

S-742

Re: copy of Judge Cashman's Order & Findings  
of Fact & Rulings of Law in the William Fowler  
et al v. City of Cambridge, et al case Re:  
rezoning of a parcel of land from C-1 to O-1.

In City Council,

December 3, 1984

12/3/1984  
Placed on File