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December 28, 1984

Mr. Hugh Russell, Chairman
Board of Zoning Appeals
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

Re: Application for Special Permit and
Application for a Variance
6 Walnut Avenue
Case No. 5134

Dear Mr. Chairman:

This will respond briefly to Mr. Padnos' letter of December 19 in which he opposes my request that the Board be reconvened to rehear the above-captioned case. Mr. Padnos has taken the position that Mr. Colannino and I (and the other objecting abutters) had adequate notice that the Board's meeting of December 6 would involve consideration of Mr. Padnos' amended application for certain zoning variances. I respectfully disagree. Without responding to all of the details in Mr. Padnos' letter, I note the following basic points:

1. The only reason that I did not attend the December 6 meeting is because I did not expect it to involve consideration of an amended application for variances since I was unaware that Mr. Padnos had even filed such a petition. Mr. Padnos' response to this lack of notice is that he offered me a chance to learn of his plans. What he overlooks is that when Mr. Padnos and I talked two or three days before the hearing it was apparent to me that the hearing could not be a consideration of any requests for variances since Mr. Padnos had clearly committed (before the Board) to provide me with notice of his argument at least a week before returning to the Board. I do not believe that under such circumstances the alleged opportunity to learn of Mr. Padnos' plans is a fair substitute for the

notice he had specifically agreed to provide. Certainly it is extremely surprising to me, given what transpired at the August 16 hearing, that Mr. Padnos did not deem it appropriate to provide notice of his amended petition either to me or to my client.

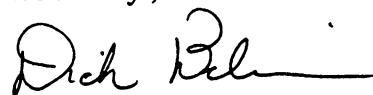
2. Mr. Padnos' claims that the abutters were informed of his plans through the Board's Notice of November 21 is incorrect. The November 21 notice referred to "Deliberations." It is my understanding that pursuant to Section 7 of the Board's Practice and Procedure, deliberation meetings are authorized to be held after a public hearing for the purpose of voting on petitions presented at the hearing. In this case, however, the Board did not vote on the petition which it had heard presented on August 16. Instead, the Board voted on an amended petition which had not been the subject of any prior hearing or prior notice. There was no notice of the existence of an amended petition, much less of the possibility that the Board would vote on such a petition on December 6.
3. Mr. Padnos claims that my client had obtained a copy of his November 14 letter to the Board which included his amended petition. This statement is true. Mr. Colannino obtained a copy of this letter on December 5, the day before the hearing. Surely Mr. Padnos cannot claim that this was sufficient notice.

Mr. Padnos states in his letter that my client's remedy for inadequate notice lies with the Superior Court. Indeed, Mr. Colannino fully expects to file an appropriate appeal pursuant to the provisions of Chapter 40A. Nevertheless, it is important that our claim of inadequate notice is founded to a significant extent on Mr. Padnos' breach of a special notice condition stipulated to orally before the Board. This condition is not reflected in the minutes of the Board's August 16 meeting. Under such circumstances I believe it is appropriate to request that the Board rehear the amended petition after notice.

Mr. Hugh Russell, Chairman
Page 3.
December 28, 1984

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dick Belin".

Richard d'A. Belin

RDAB/df

cc: Mr. Edward Goode
Mr. Melvin Gadd
Mr. Brendan Sullivan
Vincent Panico, Esquire
Mr. Joseph Szulewski
~~Mr. Paul Healey~~
Michael Padnos, Esquire

S-17

Comm. from Richard d'A. Belin, Foley, Hoag &
Eliot Re: application for a special permit
& variance at 6 Walnut Avenue, Board of
Zoning Appeal Case No. 5134.

In City Council,

January 7, 1985

1/7/1985

- Placed on File -