

# CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 . TEL. 876-6800

LAW DEPARTMENT

PHILIP M. CRONIN  
CITY SOLICITOR

EDWARD D. MCCARTHY  
ROWENA E. TAYLOR  
ASSISTANT CITY SOLICITORS

JOHN A. SERINO  
LEGISLATIVE AGENT

January 21, 1972

Mr. John H. Corcoran  
City Manager  
City Hall  
Cambridge, Massachusetts

Dear Mr. Corcoran:

The City Council by order adopted January 17, 1972 requested me to challenge a decision of the Board of Zoning Appeals filed January 12, 1972 purporting to grant variances for the property at 808 Memorial Drive. On January 18, 1972, the Planning Board voted to authorize me to institute such proceedings in their behalf, seeking to annul the Board of Appeal's decision.

This is to advise you and the City Council that on January 21, 1972, I filed in behalf of the Planning Board a bill in equity with the Middlesex Superior Court challenging the decision. I regret that I will be unable to attend the next meeting of the City Council to discuss this matter further, but I have a long-standing commitment to be out of state at that time. However, by this letter, I believe I can answer most questions.

The first issue is the right of the Planning Board to challenge a decision of the Board of Zoning Appeals. General Laws, Chapter 40A, Sec. 21 specifically authorizes the Planning Board to appeal a decision of the Board of Zoning Appeals. The Planning Board previously recommended to the Board of Zoning Appeals that the petition be denied. There is no need for a defense in court of the Board of Zoning Appeals. The decision can be defended by the applicant for the variance.

Mr. John H. Corcoran  
City Manager

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January 21, 1972

The grounds for the appeal are numerous. It is my opinion that the decision of the Board of Zoning Appeals is invalid on its face. The decision contains insufficient findings of fact to warrant the conclusions contained in the decision of special conditions, hardship and lack of derogation from the policy of the Zoning Ordinance. The Board is required by law to make detailed and precise findings of each element necessary for a variance and this it has done.

The decision also contains so-called "conditions and provisions." Certain of these conditions and provisions are vague and advisory in nature. Their effect is to render the decision an advisory opinion which is a nullity.

On the merits, the facts as reviewed by me show no conditions especially affecting the parcels that do not affect other parcels in the same zoning district and no substantial hardship, both being essential criteria for variances.

The purported use of the variance power to authorize the demolition and reconstruction of non-conforming gasoline stations is improper. A non-conforming use under the zoning ordinance may be altered or enlarged by variance, but a variance cannot authorize demolition and reconstruction of a non-conforming use.

The Zoning Ordinance requests that a variance must be adopted by at least four members of the Board of Zoning Appeals. The decision in question purports to have been so adopted by four members. But the members of the Board must also be bona fide residents of Cambridge. One of the four members of the Board who signed the decision is a resident of Belmont. Therefore, the decision has only three valid votes and is therefore of no effect.

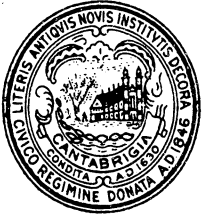
I will inform you and the City Council of further developments.

Very truly yours,

*Philip M. Cronin*

Philip M. Cronin  
City Solicitor

PMC:cas



## CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139  
Tel. 876-6800

EXECUTIVE DEPARTMENT  
JOHN H. CORCORAN  
City Manager

January 24, 1972

To the Honorable, the City Council,

I transmit herewith communication from Philip M. Cronin, City Solicitor, relative to council order of January 17, 1972 regarding a decision of the Board of Zoning Appeals filed January 12, 1972 for the property at 808 Memorial Drive.

Yours truly,

John H. Corcoran  
City Manager

JHC/mg

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COMMUNICATION

*from the City Manager trans-*

*mitting one from* Philip M. Cronin, City  
Solicitor, relative to council order of  
Jan. 17, 1972 regarding a decision of the  
Board of Zoning Appeals filed January  
12, 1972 for the property at 808 Memorial  
Drive

January 24, 1972.

*Filed*