

City of Cambridge

The Ordinance Committee held a public hearing on December 18, 1996, beginning at 6:30 p.m. in the Sullivan Chamber for the purpose of considering a proposed amendment to add Section 3.13 to the Zoning Ordinances to provide for a temporary building moratorium in Industry C and Planned Unit Development in IC Districts.

Present at the hearing were Councillor Francis H. Duehay, Chair of the Committee, Vice Mayor Kathleen L. Born, Councillor Henrietta Davis, Councillor Michael A. Sullivan, Councillor Timothy J. Toomey, Jr., Councillor Katherine Triantafillou and City Clerk D. Margaret Drury. Also present were Deputy City Solicitor Donald Drisdell and Stuart Dash, Director of Community and Planning, Community Development Department.

Councillor Duehay convened the hearing and explained the purpose. He invited Stuart Dash to explain the proposal. Mr. Dash said that the Planning Board is presently considering a permanent re-zoning of this area, and the staff has begun the zoning study work. This amendment is designed to provide the time for a comprehensive analysis of whether the present zoning needs adjustment.

Mr. Dash noted that there are two purposes to the proposal, one is to keep small additions to existing structures at a restrictive level of no more than 40,000 square feet, while still allowing the owners some flexibility, and the other purpose is to prohibit major new development until the entire issue of appropriate zoning for the area is considered in a comprehensive way.

Councillor Duehay asked why a complete moratorium was not proposed. Mr. Drisdell said that the law of land use regulation has been influenced by recent court cases regarding circumstances in which governmental action or regulation deprived owners of all use of their property. It is prudent to proceed with a measure that does not restrict all use. While a moratorium is still a viable tool available to land use planners, it is advisable to be less restrictive if possible. That is the balance this proposal tries to achieve, with its provision to allow 40,000 square feet additions to existing structures and renovations to existing structures.

Councillor Sullivan asked how big 40,000 Square Feet. Mr. Dash replied that it is the size of the Star Market at Porter Square. Councillor Sullivan observed that this is two times the size of the new Osco drugstore at the corner of Putnam Avenue and River Street.

Vice Mayor Born asked whether all four options which the Planning Board originally sent to the City Council had the same time restrictions. Mr. Drisdell stated that he believes that they were all time limited.

Vice Mayor Born asked whether this proposed amendment, if enacted, could be extended for another year. Mr. Drisdell said that procedurally a new petition would be required and substantively, there is a tension between how long a "temporary" moratorium can exist before there is a determination that it is no longer reasonably related to the stated purpose. The City must show a genuine ongoing process to resolve the issues and move to permanent zoning.

Vice Mayor Born asked whether the Cambridge City Council has even voted an IPOD before. Mr. Drisdell said that there have been several.

Councillor Sullivan said that a number were continued two or three times.

Vice Mayor Born asked if they were the subject of any legal challenge. Mr. Drisdell said they were not.

Vice Mayor Born said that in a PUD district one can either develop according to the underlying zoning or in accordance with the PUD, and asked if that were the case in the earlier IPOD's.

Councillor Henrietta Davis asked whether the proposed amendment would replace the 400 square feet "buffer zone" zoning ordinance enacted by the City Council.

Vice Mayor Born asked whether any proposed building must comply with the buffer zone ordinance as well as the moratorium ordinance, if it is enacted.

Mr. Drisdell said that the buffer zone will expire six months from the date the Council enacted voted it, and if this amendment is enacted, both will apply until the time the buffer zone ordinance expires.

Councillor Sullivan asked whether this means that there is no building allowed until expiration of the buffer zone. Mr. Drisdell said that he could not say whether that would be the case without looking at the issue more closely.

Vice Mayor Born asked Robert Bersani, Commissioner of Inspectional Services, whether renovation of existing space could go forward even with the six month buffer ordinance. Commissioner Bersani said that interior renovations can be done.

Councillor Sullivan asked for clarification of the 400 square foot buffer zone. If everything is within the buffer zone, how can you build an addition?

Mr. Drisdell said that there will be some overlap, but not for long, because the buffer zone expires shortly.

Councillor Duehay requested that the City Clerk summarize the letter from W.R. Grace

(Attachment 2) protesting the proposed amendment.

Councillor Duehay then invited testimony in favor of the petition.

Peter Cignetti, Theriault Court, stated that the petition actually covers at least four owners. There is a concern with the new construction allowed under the proposal. A new petition has been filed by the neighborhood which would not allow new construction and would extend the moratorium until February 1998. It was filed to ensure compliance with the zoning law requirement for advertising. There was a concern that amendments to the present proposal which had the effect of making the ordinance more restrictive would require re-advertising at any rate, so the most time-efficient way to propose the changes was through a new petition.

Joe Joseph, 20 Columbus Avenue, North Cambridge, recommended looking at recommendation number three of W R Grace study committee report. He stated that there is multiple ownership of the property. Mr. Joseph stated that he disagrees with Mr. Drisdell regarding the interpretation of recent court cases. He said that the City Council shouldn't include the complication of 40,000 square foot exception. He added that this proposal is not for an IPOD and need not be compared with an IPOD.

Mr. Joseph also stated that the Planning Board is not handling this matter adequately. He said that he found in the library an April 16, 1965 document that contradicts the City's claim that the development of Alewife One was never contemplated as part of the master plan.

Councillor Duehay requested that Mr. Joseph submit a copy of this document for the record, and he agreed to do so. He concluded that a moratorium is an excellent idea, but allowing a 40,000 square foot exception is not.

Vice Mayor Born asked whether there was a site plan available at the hearing, and there was not.

Lewis Weitzman, 124 Montgomery Street, started to read from a leaflet sent to the neighborhood, and thanked the City Council for its involvement and for "taking over the process." He urged a complete moratorium without a 40,000 square foot exception for additions to existing structures.

Councillor Davis stated that it is her understanding that the Planning Board will be coming up with the final plan for the area.

Councillor Duehay said that the process is set out so that the Planning Board proposes and the City Council disposes. The City Council can of course make its changes to the plan. The hope is that the Planning Board will do its work carefully and completely with full opportunity for neighborhood impact.

Aram Holman, Clifton Street, expressed support for the moratorium, especially for a

moratorium without a 40,000 square foot exemption. He said that he believes that the flood plan has risen. These things take time, and there are only eleven months left to complete the study under this proposed moratorium. If the City Council wants an ordinance with an exception for additions, he suggests a 10,000 square foot exemption rather than 40,000 square feet.

Kurt Plozinski, Clifton Street, said that he is favor of the moratorium but not the 40,000 square feet exemption because that will undermine the process. He stated his appreciation for the time the City Council has spend on the issue.

Lisa Burke, 24 Columbus Avenue, thanked the City Council for its time and attention to this issue and spoke in support of a moratorium without the 40,000 square foot exemption. The 40,000 square foot exemption is required to be attached to an existing building, so that means it has to be right up against either the Whittemore neighborhood or the Harvey/Clifton neighborhood.

Wyn Flynn, 111 Clifton Street, stated that he is concerned about the water. His pump is going now; it goes summer and winter. The City Engineer says it is ground water, but it gets worse every time another building goes up.

Ann Goodwin, Clifton Street, said she is in favor of a moratorium without the 40,000 square foot exemption for additions.

Mitch Valentine Rosen, Clifton Street, said that neighbors are here because they allowed the developer to come forward with a disrespectful petition. He is embarrassed that he has been required to know these details. He urged a moratorium without 40,000 square foot exception for additions.

Vickie Perry, 142 Montgomery Street, spoke in support of a moratorium without a 40,000 square foot exception.

Joel Nogie, Clifton Street, spoke in support of a moratorium and said that he is more in favor a moratorium without the 40,000 square foot exception. He said that he also favors an expiration date that truly allows the community a year to work on it.

Susan Maguire, 25 Jackson Street, quoted from an article about South Africa's Constitution to explain why she is here. This is an important part of the rights and responsibilities of democracy. She stated her support for moratorium without a 40,000 square foot exception.

Councillor Duehay then invited testimony in opposition.

Joseph Haley, attorney representing W.R. Grace, stated that all of the buildings that currently exist on the site are located within the 400 square foot buffer zone. Thus while the buffer zone is in existence, there can be no building at all. Mr. Haley said that ownership of the site is in three forms; the first is a separately owned two-family dwelling, the rest is controlled by W.R. Grace in two ownership entities.

Mr. Haley stated that this is not really an IPOD; it does not require the Planning Board to enter a process and deliver back a proposal. W.R. Grace looks at this proposal in the aggregate. There is no building at all allowed during an extended period of time and as such, it is an illegal taking.

Peter Cignetti, 5 Theriault Court, stated that the new petition filed by the neighborhood will allow for renovations of existing structures where the renovations do not extend beyond the building footprint and the present height.

Councillor Duehay stated his recommendation that the petition remain in committee pending consideration of the new petition submitted by the neighborhood. The Ordinance Committee agreed without objection that the proposal would remain in committee.

Councillor Duehay thanked all those in attendance for their participation, and the meeting was adjourned at 7:53 p.m.

For the Committee,

Francis H. Duehay Dmp

Councillor Francis H. Duehay,
Chair

Committee Report #4

S-135

A report was received for a meeting held on December 8, 1996 for the purpose of considering a proposed amendment to the Zoning Ordinances of the City of Cambridge to add Section 3.13 to the Zoning Ordinances which would provide for a temporary building moratorium in Industry C and Planned Unit development in IC Districts.

In City Council January 6, 1997

Report accepted
Placed on file