



City of Cambridge

~~Consent Communication #17~~
~~Amended by Substitution~~
Calendar #2

IN CITY COUNCIL

~~June 23, 1997~~

August 4, 1997

VICE MAYOR BORN

ORDERED: That the City Council encourage the Holmes Realty Trust and its agents to continue discussions with concerned community members and provide opportunities for further community review of their proposal.

In City Council August 4, 1997.

Adopted by the affirmative vote of nine members.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

A handwritten signature in black ink, reading "D. Margaret Drury". The signature is written in a cursive style with a large, looped "D" and "M".

ATTEST:-

D. Margaret Drury
City Clerk



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Cum ~~#17~~ #17
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That the City Council encourage
Halme Realty Trust and its agents to
delay submitting an application for a
special permit to allow time for
further community review of their
proposal.



CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139
Tel. (617) 349-4121
Fax. (617) 349-4134

Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Michael C. Costello
Assistant City Solicitor

Legal Counsel

Birge Albright
Gail S. Gabriel
Arthur J. Goldberg
Linda A. Stamper
Deborah R. Cautela
Nancy E. Glowa

July 30, 1997

Robert W. Healy,
City Manager
City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Communication #017, dated 6/16/97
Re: Report on How Many People Were Granted Variances
Before the Pitkin Petition Was Advertised
and
City Council Order Item No. 77 adopted June 23, 1997

Dear Mr. Healy:

1. In response to the above referenced matters, please find enclosed a memorandum from Commissioner Bersani relative to the number of people who were granted variances before the Pitkin Petition (otherwise known as the Cambridge Residents For Growth Management (or "CRGM") Petition) was advertised, but did not obtain building permits before the Pitkin Petition was advertised.

2. We have reviewed the applicable provisions of M.G.L. Chapter 40A, Section 6 and other legal authorities to determine if the Pitkin Petition can be amended "to alleviate the situation in which those who were granted variances prior to the date of publication and were granted building permits after the date of advertising".

Section 6 of Chapter 40A provides that "a zoning ordinance ... shall not apply ... to a building or special permit issued before the first publication of notice of the public hearing on such ordinance or by-law...." There is no caselaw which applies this protection to property owners with variances who have not yet obtained a building permit prior to the first advertisement. Accordingly, in the absence of actual statutory authority or relevant caselaw, the Massachusetts Zoning Manual is the most persuasive authority on this issue.

In this treatise, which is widely used and respected, the authors have stated unequivocally that because the statute does not include variances in the list of exclusions, variances are subject to amendments of the zoning ordinance, even if the variance is issued before the first publication of notice of the hearing. Massachusetts Zoning Manual, Healy, et al, pp. 11-9 - 11-10. Absent any legal authority afforded by Chapter 40A or the caselaw decided thereunder, we have no power pursuant to the Cambridge Zoning Ordinance or other local regulations to provide the protections of a zoning freeze to those with variances in these circumstances.

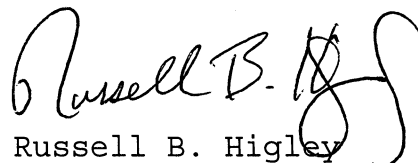
3. The final question is as to whether the Pitkin Petition could be withdrawn and refiled without detrimental impact.

Article 1.000, § 1.52 of the Cambridge Zoning Ordinance provides:

No proposed amendment to this Ordinance which has been unfavorably acted upon by the City Council shall be considered on its merits within two years after the date of such unfavorable action unless such an amendment is recommended in the report which the Planning Board is required to make to the City Council. The granting of "leave to withdraw" after a proposed amendment has been advertised for a hearing before the City Council shall be considered as constituting unfavorable action.

The answer to the above question is thus that there would be detrimental impact if the petition were withdrawn, unless there had been a favorable report on the Petition by the Planning Board prior to its withdrawal, in which case it could be refiled within two years.

Very truly yours,


Russell B. Higley



CITY OF CAMBRIDGE
INTEROFFICE CORRESPONDENCE

TO: ROBERT W. HEALY, CITY MANAGER

FROM: ROBERT BERSANI, *102 7/31/97*

SUBJECT: COMMUNICATION #017, DATED 6/16/97

RE: REPORT ON HOW MANY PEOPLE WERE GRANTED VARIANCES BEFORE
THE PITKIN PETITION WAS ADVERTISED.

DATE: JULY 31, 1997

The following addresses have been granted variances by the Board of Zoning Appeal, from hearing dates of May 30, 1996 to June 5, 1997, and have not been issued a Building Permit from the Inspectional Services Department. All these cases have been filed with the City Clerk.

<u>LOCATION</u>	<u>CASE #</u>	<u>DATE FILED WITH CITY CLERK</u>
9-11 Gardner Road	#7298	August 26, 1996
166A Elm Street - North	#7303	August 26, 1996
17-22 Gray Street	#7253	September 9, 1996
79 Hampshire Street - #3	#7330	October 17, 1996
239 Monsignor O'Brien Highway	#7288 (Appealed)	November 7, 1996
2 Waterman Road	#7355	November 7, 1996
35 Brewster Street	#7356	November 7, 1996
93 Third Street	#7371	December 10, 1996
174 Putnam Avenue #3	#7377	February 6, 1997
58 Grozier Road	#7385	February 6, 1997
8 Clinton Street	#7388	February 13, 1997
127 Huron Avenue	#7397	March 13, 1997
165 Western Avenue	#7313	March 14, 1997
222 River Street	#7400	March 18, 1997
2472-2482 Massachusetts Avenue	#7387	March 26, 1997
15 Crescent Street	#7405	March 26, 1997
204 Erie Street	#7410	March 26, 1997
15 Ash Street	#7414	March 26, 1997
580 Massachusetts Avenue	#7372 (Appealed)	April 10, 1997
100 Otis Street	#7417	May 13, 1997
115-119 Hampshire Street	#7376	May 14, 1997
169 Monsignor O'Brien Highway	#7396	May 14, 1997
152 Columbia Street	#7422	May 14, 1997

146 Mount Auburn Street	#7428	May 14, 1997
71 Blanchard Road	#7434	May 16, 1997
141 Tremont Street	#7441	May 19, 1997
9 Channing Street	#7443	May 19, 1997
302 Harvard Street	#7401	May 20, 1997
37 Langdon Street	#7421	May 20, 1997
152 Pearl Street	#7429	May 20, 1997
114 Trowbridge Street	#7430	May 20, 1997
85 Putnam Avenue	#7439	May 20, 1997
52 Concord Avenue	#7431	May 21, 1997
127 Magazine Street	#7452	May 28, 1997.
10 Appleton Street	#7454	May 28, 1997
107 Fayerweather Street	#7424	June 6, 1997
10 Prentiss Street	#7459	June 6, 1997
336 Windsor Street	#7461	June 24, 1997
130 Oxford Street	#7437	June 25, 1997
4-6 West Street	#7462	June 24, 1997
36 Foster Street	#7448	June 26, 1997
362 Harvard Street	#7467	June 26, 1997
6 Gerry's Landing Road	#7468	June 26, 1997
110C Inman Street	#7470	June 26, 1997
199 Columbia Street	#7471	June 26, 1997
319-321-321A Western Avenue	#7469	July 3, 1997
174-176 Larch Road	#7474	July 14, 1997
5 Malcolm Road	#7475	July 14, 1997
55 Aberdeen Avenue	#7476	July 14, 1997
2 Canal Park	#7478	July 14, 1997



CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139

TEL. 349-4300
FAX. 349-4307



44.

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

August 4, 1997

To the Honorable, the City Council:

In response to Awaiting Reports #20 and #31 regarding the Growth Management Petition and the number of people granted variances before the Pitkin Petition was advertised, please find attached reports from Russell Higley, City Solicitor, and Robert Bersani, Commissioner of Inspectional Services.

Very truly yours,

Robert W. Healy
City Manager

Attachments

Consent Agenda #44

Relative to Awaiting Report Item
Numbers Twenty and Thirty-one,
regarding the Growth Management
Petition and the number of people
granted variances before the Pitkin
Petition was advertised.

In City Council August 4, 1997

PLACED ON FILE



City of Cambridge

Original Order
Consent Communication #17

IN CITY COUNCIL

June 23, 1997

COUNCILLOR TRIANTAFILLOU

ORDERED: That the City Council encourage the Holmes Realty Trust and its agents to delay submitting an application for a Special Permit to allow time for further community review of their proposal.



City of Cambridge

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Amended by Substitution

IN CITY COUNCIL

June 23, 1997

VICE MAYOR BORN

ORDERED: That the City Council encourage the Holmes Realty Trust and its agents to continue discussions with concerned community members and provide opportunities for further community review of their proposal.

CHARTER RIGHT EXERCISED BY COUNCILLOR TOOMEY.

City of Cambridge

MASSACHUSETTS

Comm # 17

In City Council June 23, 1997

Resolved:

KT ~~Order~~

That the CC encourage the Holmes Realty Trust + its agents to delay submitting an application for a special permit to allow time for further community review of their proposal

	YEA	NAY	ABSENT	PRESENT
V.M. Kathleen L. Born				
Ms. Henrietta Davis				
Mr. Francis H. Duehay				
Mr. Anthony Galluccio				
Mr. Kenneth E. Reeves				
Mr. Michael A. Sullivan				
Mr. Timothy J. Toomey, Jr.				
Ms. Katherine Triantafillou				
Mayor Sheila T. Russell				

TT Chalk KT

KB:

That the CC encourage the
Holmes Realty Trust + its agents
to continue discussions w/
concerned community members and
provide opportunities for
further community review of their
proposal

Ch KT

TT

17
Cambridge, *Thursday, June 19, 1997*

To the Honorable, the City Council of the
City of Cambridge:

The undersigned respectfully pray

*that the members of the Council ~~review~~ review the attached
Resolutions and agree to support ^{and adopt} its recommendations.*

*respectfully,
James M. Williamson*

RECEIVED BY
OFFICE OF CITY CLERK
97 JUN 19 PM 4:49
CAMBRIDGE MA.

PETITION

of

for

No.

.....19

In City Council, 19

Referred to the Committee on

Attest:

City Clerk.

17
RECEIVED BY
OFFICE OF CITY CLERK
97 JUN 19 PM 4:40
CAMBRIDGE, MA.

whereas: The 'Central Square Overlay District' was developed by the Cambridge City Council over a period of several years to, in the words of the Overlay document: "...provide for more careful public scrutiny of development proposals that may alter...Central Square." (11.302 General Purpose)

whereas: Holmes Realty Trust are proposing a massive new building in Central Square which entails the demolition of important existing buildings, and exceeds the Overlay District 'Development Guidelines' by an average of DOUBLE the "as of right" allowable limits in several categories.

whereas: The Citizens of our Community (Central Square in particular) are only recently becoming EVEN AWARE OF the FACT of this proposal, and need TIME just to begin to UNDERSTAND the review process for the building; TIME to better understand the various relevant Planning and Zoning guidelines and requirements; TIME to EVALUATE the proposal as presently proposed; TIME to develop and formulate alternative proposals reflecting the needs and perspectives of important elements of our community; and, perhaps most importantly, TIME to discuss with the proponents any and all alterations or alternatives to the proposal as presently proposed deemed fitting.

and

whereas: Holmes Realty Trust are moving EXTREMELY RAPIDLY on this project -- planning to submit their 'Special Permit' Application "within two weeks" -- so rapidly, in fact, that many in our community feel we are being STAMPEDED by this project.

therefore,
be it resolved:

That the City Council encourages Holmes Realty Trust and its agents to agree to withhold any application for a 'Special Permit' until October 1, 1997, **to allow time for full and adequate consultation and community review of this proposal**, and encourages Holmes Realty Trust to continue and extend their community contacts and meetings so as to provide **for the best possible and most workable solutions regarding the issues raised by this project.**

respectfully submitted, (6/19/97)

James M. Williamson 6/19/97
17 Perry Street
Cambridge 02139

communication was received from James M. Williamson, transmitting a request that the members of the Council review the attached resolution and agree to support and adopt its recommendations regarding the "Central Square Overlay District."

5-413

In City Council June 23, 1997

Order submitted
Amended and
Clarified
exercised by
Councillor Bromley

August 4, 1997
Substitution
Order
Adopted