

Robert J. La Trémouille

60 Western Avenue
Cambridge, Massachusetts 02139-3751

Telephone
(617) 876-3362

RECEIVED
ATTORNEY AT LAW
OFFICE OF CITY CLERK

1989 FEB -2 AM 8:36

CAMBRIDGE MA.

February 2, 1989

Planning Board
City of Cambridge
57 Inman Street
Cambridge, MA 02139

RE: Graham Gund Application for 2-6 Arrow Street, 15-19 Mt. Auburn St.,
"Zero Arrow Street" project, first hearing: December 6, 1989

Ladies and Gentlemen:

This is a brief summary of my comments on the Zero Arrow Street project. The proponent also falsely claims a Massachusetts Avenue address for the sole purpose of obtaining a use variance through the label of a "Special Permit".

Enclosed is a true copy of relevant portions of the city council vote of January 22, 1979, defeating the original Harvard Square Overlay District proposal, and a copy of the city council's vote of February 20, 1979, to falsify city records, placing the so-called district on the city books in spite of its failure to pass.

These documents prove false the petitioners contention that he was hurt by the major 1986 upzoning which created the Harvard Square Overlay District.

In the actual application, the project is seeking "Special Permits" for (1) a variance from loading dock requirements, (2) a use variance, and (3) relaxation of yard requirements which amounts to multiplying allowed development by a factor of somewhere between 3 and 8.08.

1. It is my understanding that the "special permit" requesting a variance from loading dock requirements has either been withdrawn or the Planning Board has indicated that it will require alteration of the plans to make them conform. Elimination of this falsely labeled variance would appear to make the proposal significantly different and, as such should be grounds for denial and resubmittal and readvertising.

2. A "Special Permit" is also requested for a use variance to allow a nine store retail mall. It is my understanding that the planning board at its first January meeting indicated it would allow this "Special Permit" for a use variance, on grounds that its members found the use appropriate. My report indicates that the Planning Board at that meeting displayed total lack of concern with regard to the legal limitations on its power or its oath to uphold the law.

Please record me as opposed to such a lawless action.

As I stated in the December hearing, the only portion of the application in which the proponent claims a Massachusetts Avenue address is where the proponent is seeking the "Special Permit" for the use variance. All other references to location show the project fronting on Arrow Street and Mount Auburn Street. The project is consistently addressed throughout the proposal as the "Zero Arrow Street" project. No plan in front of the board shows the project as other than fronting on Arrow Street rather than the strange claim of Massachusetts Avenue. No plan can honestly show other than Arrow Street. The plans do not.

The relevant assessors map was entered into the record. The only errors in street address designation at all apparent on the assessors map in the record is in the stated address of the two and a half properties to the east of Zero Arrow Street on Arrow Street. These two and a half properties, constituting almost all of the row of townhouses abutting it, are clearly on Arrow Street, not on Massachusetts Avenue. The street corner is in front of the third property away from the Zero Arrow Street lot.

Thus the property is not only not fronting on Massachusetts Avenue; it is two and a half lots from Massachusetts Avenue.

Your attention is drawn to section 11.543 of the zoning ordinance, reading as relevant:

The Planning Board may allow by special permit the retail use of a lot or structure all or partially within the Harvard Square Overlay District and in a base residential or office-district where retail uses are not permitted . . .; provided, however, that the following conditions are met or findings made:

- a. For lots not fronting Massachusetts Avenue . . .
2. The use will be located in a structure in existence as of June 1, 1985 and will not involve significant new construction.

The developer has not only legally destroyed three such structures, his placing of one of them among three preexisting structures, apparently illegally, has caused severe visual damage to the other structures. Some of his victims are included among the opponents of the project.

Clearly the project is totally new construction.

3. Special Permit to increase the size of the building somewhere between three and eight times. The application requests the following destruction of yard requirements:

- a. Side yards: required by law: 34 feet to the right and 34 feet to the left, resulting in a building 32 feet wide. Requested: 0 feet, right and left, for a building 100 feet wide, more than a tripling of the building width and corresponding floor space.

b. Front yards: required by law: 26 feet on Arrow Street; 16 feet on Mount Auburn Street (calculation from midlines of each street, the Dimensional Form says 41 feet required, presumably from the midline). Requested: 0 feet.

The developer is required to provide a footprint not larger than 32 feet by 58.00 feet, for a footprint square footage of 1,856.00 . The square footage of the applied for footprint is 15,000.00 square feet. This is an 8.08-times increase in allowed footprint.

The size of this variance is incredible. When the Board of Zoning Appeals had this irresponsible application before it, it was only aware that the building size would be tripled, not a eight-fold increase in size. They found the increase flatly and simply inexcusable and unjustifiable.

My report of the Planning Board meeting in January indicates to me that the planning board had no difficulties with this monstrous increase in building size, except for a concession on one side which would hardly dent this irresponsible application.

The Planning Board is reminded of section 10.43 of the Ordinance, Special Permits, Criteria, reading as follows (emphasis added):

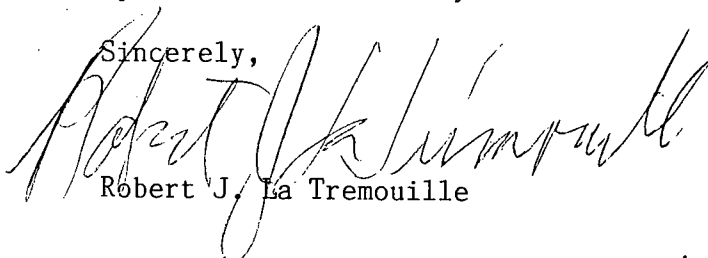
Criteria. Special permits will normally be granted where specific provisions of the Ordinance are met, EXCEPT WHEN PARTICULARS OF THE LOCATION or use, NOT GENERALLY TRUE OF THE DISTRICT or of the uses permitted in it, would cause granting of such permit to be the detriment of the public interest because:

[(b) through (e) apply].

PARTICULARS OF THE LOCATION NOT GENERALLY TRUE OF THE DISTRICT are such that the building's increase in allowed size is somewhere between a tripling and an eight-fold multiple, using the applicant's figures. The language of the zoning talks of design criteria, NOT VERY MAJOR VARIANCES IN ALLOWED BUILDING SIZE.

For all of the above reasons, it is rather clear that granting the requested relief would be grossly irresponsible and a clearly lawless act.

Sincerely,



Robert J. La Tremouille

Encl: Letter to the City Council



City of Cambridge

In the Year One Thousand, Nine Hundred Seventy-Nine

AN ORDINANCE

In amendment to an ordinance entitled: "The Zoning Ordinances of the City of Cambridge".

Be it ordained by the City Council of the City of Cambridge as follows:

The Zoning Map accompanying the ordinance passed to be ordained September 26, 1977 entitled: "The Zoning Ordinances of the City of Cambridge" is hereby amended as follows:-

Amend the Zoning Map by establishing an overlay zone designated "Harvard Square Overlay District" over the existing district designations for the following described area of land:

Beginning at a point, said point being the intersection of the centerline of Massachusetts Avenue and the centerline of Church Street;

Thence, running westerly along the centerline of Church Street 240 feet more or less to a point, said point being the intersection of the centerline of Church Street and the extension of the western lot line of lot 79 of Assessors' Plat #169;

Thence running northerly along the western lot line of lot 79 of Assessors' Plat #169, 70 feet more or less to a point said point being the intersection with the northern lot line of lots 8, 67 and 68 of Assessors' Plat #169;

Thence running westerly along the northern lot line of lots 8, 67, and 68 on Assessors' Plat #169, 147 feet more or less to a point, said point being the intersection of the northern lot line of lots 8, 67 and 68 of Assessors' Plat #169 and the eastern lot line of lot 10 on Assessors' Plat #169;

Thence, running northerly along the eastern lot line of lot 10 of Assessors' Plat #169, 127 feet more or less to a point, said point being the intersection of the eastern lot line of lot 10, Assessors' Plat #169 and the southern lot line of lots 19, 18, 17, 16, 15, and 14 of Assessors' Plat #169;

Thence running westerly along the southern lot line of lots 19, 18, 17, 16, 15, and 14 of Assessors' Plat #169, 290 feet more or less to a point said point being the intersection with a line parallel to and 100 feet from the northeastern street line of Brattle Street;

Thence, running northerly along a line parallel to and 100 feet from the northeastern street line of Brattle Street, 95 feet more or less to a point, said point being the intersection with the centerline of Farwell Place;

Thence, running southwesterly along the centerline of Farwell Place, 135 feet more or less to a point, said point being the intersection of the centerline of Farwell Place and the centerline of Brattle Street;

terms of the specific and general impact of the use and/or dimensions proposed therein on the Harvard Square Overlay District and adjoining areas where applicable. Such evaluation shall be conducted in light of the purposes of the Harvard Square Overlay District and adjoining areas where applicable. Such evaluation shall be conducted in light of the purposes of the Harvard Square Overlay District hereinbefore stated and shall further take account of the following considerations: scale, bulk, density, aesthetic qualities, land use, functional characteristics, parking, loading, and impact on public services and facilities.

- (2) In its written report the Department shall make recommendations to the applicant including general approval or disapproval of the proposal and in connection therewith may suggest specific project adjustments and alterations to further the purposes of this Section 11.40.

11.467 The Community Development Department may seek the advice and assistance of other city departments and of the organizations given notice in subsection 11.465 in reviewing a development proposal..

Passed to be ordained by a yeá and nay vote:- Yeas 6; Nays 2; Absent 0; Present 1 on January 22, 1979 by authorization of an order adopted by the City Council on February 12, 1979.

ATTEST:- Paul E. Healy, City Clerk.

Calendar #5

0-11

C. Preusser re: recording the zoning amendment creating a Harvard Square Overlay District as "passed to be ordained".

2/5/1979
CHARTER RIGHT
BY
COUNCILLOR BRANC

In City Council,

February 5, 1979

2/12/79
ORDER AS AMENDED

ADOPTED 5-4-0

2/12/79 RECOMMENDATION

FILED BY E. FULFORD

2/26/79 RECOMMENDATION

MOVED BY E. FULFORD

MOTION FAILED 4-5-0



City of Cambridge

AMENDED ORDER

5.

IN CITY COUNCIL
February 5, 1979

COUNCILLOR PREUSSER

WHEREAS: Douglas Randall, Attorney at Law, retained by David Vickery, Assistant City Manager for Community Development for the City of Cambridge, with the approval of the City Solicitor and the City Manager, drafted the following order which includes advice to the City Council regarding what action should be taken by the City Council relative to the petition by Councillor Preusser, et al as it relates to the Harvard Square Overlay, and

WHEREAS: Councillor Preusser had on February 5, 1979 submitted this order for which said Attorney Douglas Randall was paid to prepare by the city with the approval of the City Manager, and

WHEREAS: The vote of the City Council taken on January 22, 1979, on the final adoption of the proposed zoning ordinance amendment, creating a Harvard Square Overlay District, was recorded as six in favor, two opposed and one "present", and

WHEREAS: The presiding officer declared that the proposed ordinance failed of passage, presumably due to the filing of objections by certain landowners and the provisions of General Laws Chapter 40A Section 5, and

WHEREAS: The legal effect of such vote is in doubt by reason that:-

1. The vote of "present" may satisfy the requirement of Section 5 which reads in part as follows:-

"No zoning ordinance or by-law shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are two branches, or by a two-thirds vote of a town meeting; provided that if in a city or town with a council of fewer than twenty-five members there is filed with the clerk prior to final action by the council a written protest against such change, stating the reasons duly signed by owners of twenty per cent or more of the area of the land proposed to be included in such change, or of the area of the land immediately adjacent extending three hundred feet therefrom, no such change of any such ordinance shall be adopted except by a three-fourths vote of all members."

City of Cambridge

2. The recorded vote was sufficient for enactment, for reason that the portion of said section permitting protests and thereby requiring a three-fourths vote is unconstitutional under the Fourteenth Amendment to the United States Constitution in that it denies certain inhabitants of the City of Cambridge their right to the equal protection of the laws by:-
- (a) permitting certain corporate property owners and individual property owners who own substantial areas of land to exercise a greater influence upon legislative enactment of the zoning regulation of their land and lands lying adjacent thereto than is accorded to the inhabitants of Cambridge at large;
 - (b) allowing the corporate owners and individual owners to protest the proposed legislation and thereby precipitate the alleged necessity of a three-fourths vote instead of the normal two-thirds vote, which corporations are substantially exempt from real estate taxation, the major source of support of municipal services supplied equally to all land owners;
 - (c) requiring the change in the quantum of vote necessary for such legislative enactment from two-thirds to three-fourths solely as the result of a protest of landowners and not the protest of inhabitants who alone are entitled to equal representation on the city council and to the equality of opportunity to effect legislation;
 - (d) predicating the power to change the legislative quantum for passage of zoning ordinances solely upon property ownership and not upon habitation within the community; and
 - (e) imposing upon this and other proposed zoning amendments (e.g. the Riverfront District Zone, submitted to the Cambridge City Council, Spring and Summer 1973) the unique and arbitrary requirement of a three-fourths vote instead of the traditional majority vote necessary for all other regulatory legislation under the police power of States and their subdivisions, and the traditional two-thirds vote only for long term borrowings, zoning enactments, Constitutional or Charter amendments, the overriding of vetoes and other matters of extreme gravity; and

WHEREAS: The importance of this zoning enactment is such that such doubts should be resolved in favor of its passage, now therefore be it

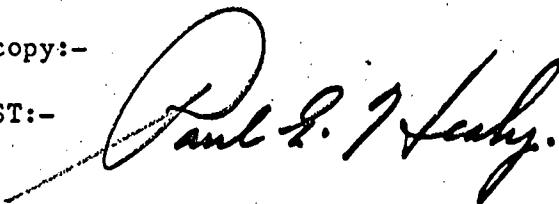
City of Cambridge

- ORDERED: That the recorded vote on the final enactment of the proposed zoning amendment creating a Harvard Square Overlay District, as taken on January 22, 1979, be now recorded as "passed to be ordained", and be it further
- ORDERED: That the City Clerk is directed to correct his records accordingly and publish the ordinance as adopted in the usual course, and be it further
- ORDERED: That it is the policy of the City Council to defend against this possible infringement of the rights of the inhabitants of the City of Cambridge to the equal protection of the laws by such legal action as may be deemed necessary and appropriate, and be it further
- ORDERED: That the City Manager be and hereby is requested to petition the courts for a declaratory judgment affirming the validity of the enactment of said zoning amendment.

In City Council February 12, 1979.
Adopted as amended by a ye and nay vote:-
Yeas 5; Nays 4; Absent 0.
Attest:- Paul E. Healy, City Clerk.

A true copy:-

ATTEST:-

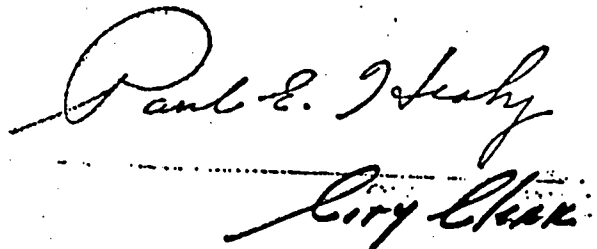


Councillor Sullivan has filed reconsideration on this matter.

DATE:

February 29, 1979

A TRUE COPY ATTEST:


City Clerk

Robert J. La Tremouille

February 2, 1989

RECEIVED BY
OFFICE OF CITY CLERK

1989 FEB -2 AM 8:36

CAMBRIDGE MA.

Residence: 348 Franklin Street
Cambridge, MA 02139-3731
Telephone (617) 491-7181

Office: Sixty Western Avenue
Cambridge, MA 02139-3751
Telephone (617) 876-3362

TO THE HONORABLE, THE CAMBRIDGE CITY COUNCIL:

Enclosed, for your information, is a copy of my memorandum to the Planning Board concerning Brattle Street resident Graham Gund's Zero Arrow Street project, proposed for 2 to 6 Arrow Street and 15 to 19 Mount Auburn Street.

I understand, from a report by an individual present at the first January meeting of the Planning Board, that the Planning Board saw next to no difficulty with granting the "Special Permit" for a use variance, nor with granting the special permit to increase building size. I understand that some talk was given to a minor relaxation of the yard gift so than some yard would be required on the east side of the structure. This change is nominal.

This use variance in the name of a special permit would pretend to allow a nine store retail mall in an extremely residential area where the public words of the city council indicated that the city council claimed to be concerned about protection.

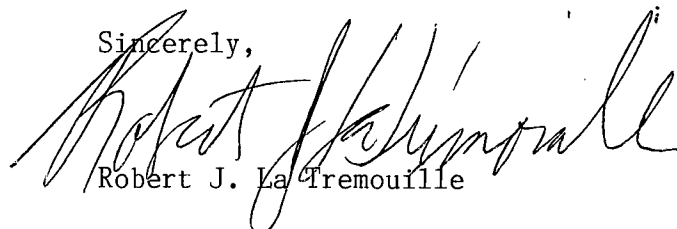
The reduction in yard requirements is ^{also} lawless and severely damaging to the City of Cambridge. The ordinance base district allows between one-third and one eighth the size demanded. Translated, the developer is asking for a building with an FAR of approximately 3.5 in a district where base zoning allows 3.0 IF YARD REQUIREMENTS ARE SATISFIED.

Mr. Gund, using his figures, is allowed as of right, before the 1986 changes, an FAR of somewhere between 0.44 and 1.17, neither of which would have given him financial incentive to do the irresponsible destruction which he has inflicted on East Harvard Square.

Initial indications, from the first January meeting, indicate a near total lack of concern for the good of the city of Cambridge on the part of the Planning Board.

This attitude indicates an agency whose responsibilities should be stripped to the minimum, not expanded. Massive expansion of Planning Board powers has been the custom of the city council in recent years. These apparently planned actions are completely in character with past performance. The planning board demonstrates itself unworthy of your confidence. Past and future expansion of this agency's responsibilities is clearly destructive to the interests of the city of Cambridge.

Sincerely,



Robert J. La Tremouille

2.

0-19

Comm. from Robert J. LaTremouille, Esq.,
transmitting for informational purposes a
copy of his letter to the Planning Board
Re: Zero Arrow St. project proposed for
2 to 6 Arrow St. & 15 to 19 Mt. Auburn St.

In City Council,

February 6, 1989

2-6-89

Placed on file.