

October 12, 1998

Stephen H. Kaiser
191 Hamilton Street
Cambridge, Mass. 02139

Robert R. Bersani, Commissioner
Department of Inspection Services
831 Massachusetts Avenue
Cambridge, Mass. 02139

**SUBJECT: Safety and Non-Conformity of Driveways at
784 Memorial Drive**

Dear Mr. Bersani,

I will not repeat in detail my arguments on the issue of driveway safety and nonconformity, since the attached letters to Traffic & Parking and the Law Department include more of the specifics. From my perspective, the developers are now in possession of a building permit based on a non-conforming driveway at Florence Street. Last Spring they initiated and then suspended efforts to seek relocation of the driveways. In the meantime they have insisted on asserting their rights to use both driveways in their letters of January 21 and February 5. This claim was reasserted by Mr. Haley at the BZA hearing last week. One of those driveways has been identified last February by the City and its traffic consultant as unsafe. As I see it, the City has neither the power nor the will to prevent the developers from opening up the Putnam Avenue driveway and using it at any time they wish.

City officials have gotten themselves in a very embarrassing situation by claiming the existing Pleasant Street driveway is in conformance with zoning. In order to avoid a BZA filing for a zoning variance, the attempted solution has been to craft an argument that says that a driveway at a T-intersection is not in an intersection, therefore the 25-foot rule does not apply and there is no violation of the zoning code. As I have explained to Mr. Drisdell, this logic is so tortured and lacking in credibility that it does more damage to city officials than it gives benefits to the developer. How can anyone logically claim that an intersection is at an intersection but not in it?

Mr. Drisdell does indeed mention that this interpretation has been made in the past so that this is not a new policy for the city. Any such claim does not make it right and simply suggests that the tortured logic was probably invented for another site, possibly by another attorney -- even a representative of developers. Since attorneys are paid good money to think like this, such a supposition is not unreasonable. However, I am not unaware of the extensive contribution of Mr. Drisdell to other issues in Cambridge during his tenure in the Law Department -- notably the cases over Scheme Z (and assorted progeny) as well as the parking freeze. In these matters his logic has always been much clearer and more persuasive, and utterly devoid of the illogical contortions of trying to distinguish between at and in. The only logical explanation I can find is that Mr. Drisdell himself does not believe in the tortured logic of at vs. in.

October 12, 1998

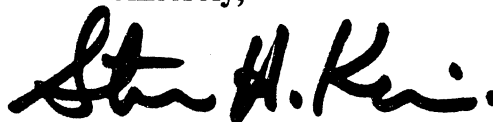
I believe that a logical interpretation of the zoning code says that the existing Pleasant Street driveway is at the intersection with Florence Street. It is in the intersection. It is within 25 feet of the intersection hence is non-conforming because it violates section 6.43.4 (b) that "No driveway curb cut shall be closer than twenty five (25) feet to a street intersection..." Therefore the driveway is not in compliance with the Zoning Code, thereby becoming non-conforming. Any use of this driveway for development would require an approval from the Board of Zoning Appeal, prior to the issuance of any building permit. Clearly, this logic and procedure have not been followed.

The best resolution to this situation is for the developer to read the handwriting on the wall about safety and non-conformance and to voluntarily agree to void the building permit. A new permit should be sought with driveways in safer locations, with a proper notification process of the abutters. Because the driveway permit process was subject to procedural flaws -- causing it to be suspended or postponed -- the best response is to do it right with a new application, proper notification to all abutters and an open process.

Such a voiding of the building permit would allow for a measured realignment of city policies relative to driveway safety and zoning compliance, as well as avoiding undue harm or blame against the Inspectional Services Department or any other City department. We could achieve a quiet resolution of the BZA appeal. We would resolve the valid question offered by one BZA member as to why the safer driveway design could not have been included in the building permit in the first place.

I hope that the City and the neighborhood can make significant progress on these elements prior to the resumption of the BZA hearing on November 19.

Sincerely,



Stephen H. Kaiser
Traffic and Transportation Engineer, CNI

- cc. S. Clippinger, Traffic and Parking
D. Drisdell, Law Department
B. Rubenstein, Community Development
C. Woodbury, Community Development
A. Daughaday, Public Works
C. Sullivan, Historic Commission
B. Barnes, License Commission
R. Norwood, Polaroid Corp.
D. Vickery, Spaulding & Slye
R. Dickey, Spaulding & Slye
J. Haley, Goodwin, Proctor & Hoar
K. Triantifillou, City Council
S. Horowitz, Cambridgeport Neighborhood Initiative
E. Yarden, Cambridgeport Neighborhood Initiative

October 12, 1998

Stephen H. Kaiser
191 Hamilton Street
Cambridge, Mass. 02139

Susan Clippinger, Director
Department of Traffic & Parking
57 Inman Street
Cambridge, Mass. 02139

SUBJECT: Driveways for 784 Memorial Drive

Dear Ms. Clippinger,

At last week's hearing before the Board of Zoning Appeals, the issue of the propriety of the driveways was discussed at some length. In the end, the matter of the city's recommendation on the issue of driveway location and safety was referred to your office for further clarification. As I understand Mr. Bersani's perspective, the goal is to achieve confirmation of your previous recommendations.

There is no question that the location of the existing driveways is not optimal. Your letter of June 8 clearly makes the case for driveway relocation. The City Manager, in his letter of February 9, states quite clearly the consensus view that moving the driveways would make them safer. I agree with this assessment. Moreover, the position of the City and its consultant, Rizzo Associates, is that the present location of the Putnam Avenue driveway is "unsafe."

In his February 5, 1998 letter to the City Manager, Mr. Vickery promised to apply for driveway relocation "to be both better and safer for traffic management." However, on March 31, Spaulding & Slye notified Inspectional Services that they were "postponing" the application to relocate the driveways. Other than your June 8 letter encouraging the developers to move the driveways, I have heard of no other actions or responses relative to driveway safety.

We should all think for a minute what is happening here in Cambridgeport with regard to safety. We have a large company (Polaroid) and a large developer (Spaulding and Slye) wishing to go forward with a project. They obtain and defend a building permit which includes a driveway that could be made safer if they simply moved it. They have plans showing such an improved design and have given these plans to the City. So why not do it now and make it safer? Why be so determined to defend a less-safe driveway -- especially one with more severe impacts on the neighborhood??

The situation is made even worse by the continued assertions of Polaroid/Spaulding & Slye that they reserve their "rights" to continued use of the existing driveways

October 12, 1998

regardless of what happens -- including the unsafe Putnam Avenue driveway. This position was reaffirmed by Mr. Haley, counsel for both entities, at the BZA hearing. Here we have the developers saying they wish to assert their right to use a driveway designated as unsafe by the City and its traffic consultant. How is it possible for anyone to legally, professionally, politically and morally defend such a posture? Are Polaroid and Spaulding & Slye saying they do not care about public safety?

The clear implication is that if the developers do not get what they want, they will build the garage and assert their right to use the Putnam Avenue driveway -- simply by opening the gates and using it. Who is going to stop them?

Clearly the City of Cambridge cannot be a party to an arrangement which allows for the use of unsafe driveways. Your past letters urging changes in driveways constitute a clear intent to persuade the developer to take a different and more responsible approach to the matter of driveway safety.

I have attached the section of my December 1997 traffic report dealing with driveway safety. The May 1997 City scope for the traffic study required that safety of driveways and intersections should be discussed, yet I could find no discussion in Polaroid's November 1997 report by Vanasse Associates that discussed the safety of the existing driveways after construction of the 577-car garage. The Rizzo review for the City concluded that the Polaroid report *"does not address the impact of the Polaroid project upon traffic safety and pedestrian safety."*

The consultant study did not discuss the implications of making a 135-degree hairpin turn out of the exit drive onto Pleasant Street in order to turn right towards Memorial Drive. This traffic flow should normally be encouraged and clearly is a City priority as a desirable movement. With the design shown in the approved building permit, the only vehicle that could conceivably make this right turn without swinging out into the opposing lane of traffic would be a motorcycle. I regard this as a totally unacceptable design as long as a safer alternative exists.

Regrettably, I have seen no City documentation which discussed the implications of this hairpin turn. If you were to submit such an analysis to Mr. Bersani and the BZA, the City's position would become much more definitive.

If the developer does not wish to follow your recommendations to move the driveways, you may wish to assert that all legal and moral responsibility for any safety problems associated with the driveways should be accepted in writing by the developer, and not by the City. I have the distinct sense that the developers and their attorney are basically asserting rights to use unsafe driveways without any acceptance of responsibility for so doing.

=====

Inspectional Services may also need your assistance on another matter -- the legal status of the driveway in terms of its consistency with Cambridge Zoning regulations. Clearly, Mr. Bersani has stated his belief that the Pleasant Street driveway is conforming. I contend that the driveway is non-conforming.

The only descriptive discussion of the issue I have found is the March 16 testimony of Mr. Drisdell before City Council. I quoted from it at the BZA hearing, as

October 12, 1998

did Mr. Haley. I have attached the most pertinent sections of his testimony, and it warrants careful reading, since the issue can be confusing.

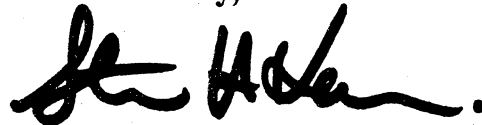
Last Spring a member of your staff told me that the Pleasant and Florence Street intersection is not an intersection, but by the end of the conversation concluded, "Of course, we all know it is an intersection." From my initial reading, I too thought Mr. Drisdell was trying to make a claim that a T-intersection was not an intersection. In actuality, the Drisdell testimony says something different.

A closer reading shows he admits that the existing driveway is "at" the intersection, but in the previous sentence he says that the driveway is not "in" the intersection "for zoning purposes." This may sound like hairsplitting, and it most probably is indeed. How can a driveway be "at" an intersection and not "in" it?? Surely, Cambridge Traffic and Parking can offer some professional advice to Mr. Drisdell & Mr. Bersani on this matter so that the City's final conclusion actually makes logical sense.

The specific reference in the Zoning Code is 6.43.4 (b) that "*No driveway curb cut shall be closer than twenty five (25) feet to a street intersection...*" At no point in the discussion to date -- even at last week's hearing -- did any representative from the City or the developer specifically discuss the matter of the 25-feet with respect to the Pleasant Street driveway at Florence Street. Traffic & Parking should bring this matter to the attention of the Law Department and Inspection Services.

Clearly, the best final solution is for the developer to void the existing building permit based on using the single non-conforming driveway on Pleasant Street. They should seek a new building permit with relocated, conforming driveways.

Sincerely,



Stephen H. Kaiser
Traffic and Transportation Engineer

- cc. R. Bersani, Inspectional Services
B. Rubenstein, Community Development
C. Woodbury, Community Development
A. Daughaday, Public Works
C. Sullivan, Historic Commission
B. Barnes, License Commission
B. Pell, Rizzo Associates
R. Norwood, Polaroid Corp.
D. Vickery, Spaulding & Slye
R. Dickey, Spaulding & Slye
J. Haley, Goodwin, Proctor & Hoar
R. Vanasse, Vanasse & Associates
K. Triantifillou, City Council
S. Horowitz, Cambridgeport Neighborhood Initiative
E. Yarden, Cambridgeport Neighborhood Initiative

of Putnam and Western is even more puzzling. I could find no evidence of any accidents occurring at Putnam/Western and I wonder whether the data is being recorded in another district or zone. Both intersections on Putnam Avenue are on school routes, so the information can be significant.

..... 6.1 Safety of Driveways

The City's May 30 scope identified the task to "evaluate operations and safety at site entrances/driveways" and to "consider pedestrian safety, especially children, at school crossings." CNI has consistently raised the issues of driveway safety. In my letter to CCD on May 27, I noted that "the location of driveways should be assessed, including the desirable relocation of the existing Putnam Avenue and Pleasant Street driveways." Figure 3 of the Polaroid Report shows the problems with both of these driveways. On pleasant Street, cars leaving the Polaroid site for Memorial Drive must make a 135-degree right turn -- and do so into an existing 9-foot travel lane. I know of no vehicle which can make this turn (except a motorcycle) without swinging into the opposite lane of Pleasant Street. The angle of the existing driveway is so acute that it makes no sense whatsoever. A proper driveway would meet Pleasant Street with a right-angle intersection, as would be achieved if the driveway were relocated 70 feet towards Memorial Drive. Such an alignment would also reduce the tendency to use Florence Street as a bypass to and from the Polaroid site.

The Putnam Avenue driveway shown in Figure 3 has been changed from the original alignment shown on the summer 1997 site plan prepared by the architect, Cannon Associates. The Putnam Avenue driveway as proposed has a kink in it and joins Putnam Avenue at a 60-degree angle, on a curve, only 30 feet away from the Pleasant Street intersection.

The obvious question for any traffic engineer is how could either of these driveway arrangements be rationally proposed as safe or in the public interest. Their use appears to be directly related to the desire of the project proponent to avoid any state or local permits. Under the circumstances, the best solution will be to ask the appropriate City Engineer whether he would be willing to put his professional stamp on any such driveway plan. Indeed, the consultants for Spaulding and Slye should be asked the same question.

Transcript of City Council Testimony, March 16, 1998

Associate City Solicitor, Donald Drisdell
on Putnam Avenue & Pleasant street Driveways

"These two curbcuts comply with our Zoning Ordinance... The Pleasant Street curbcut is not in an intersection based upon the interpretation that has consistently been made - The Pleasant Street curbcut is not in an intersection for the purposes of a zoning analysis and that is consistent with the way in which the provisions of the Zoning Ordinance has been interpreted for some years.

"The Pleasant Street curbcut is at what is known as a T-Intersection where one street comes into another street but does not cross it. The curbcut on Pleasant Street is nearly directly across from the incoming street. And the rationale as I understand it for not concluding that such a curbcut is in an intersection is that the traffic engineering safety analysis would suggest that if you were going to have a curbcut at a T-Intersection, the safest place to have it would be directly across from the entering street.

"And in fact if you apply the zoning ordinance in the manner which has been suggested, it needed to be at least 25 feet away. You would be forcing that curbcut into what would probably be considered from a traffic engineering perspective the least safe position for it to be. On that basis and looking at the history of how such an application for a curbcut or review of a curbcut has been analyzed in the Inspectional Services Department in the past, curbcuts that enter a T-Intersection have not been deemed to be within an intersection.

"And so the Pleasant Street curbcut was deemed to be in compliance with current zoning. The Putnam Avenue curbcut as analyzed by the traffic director was deemed - even though compliant with our Zoning Ordinance - not in an optimal safety position. It should be further away from the intersection in accordance with traffic engineering safety analysis.

But the Pleasant Street curbcut was viewed in that analysis to in fact be safe where it is currently located. Even if it not in an optimal position, it operates safety. The analysis for the building commissioner was based upon the existing Pleasant Street curbcut.

"It is clear that many people, traffic engineers included, believe that the Pleasant Street curbcut would operate better if it were located differently on Pleasant Street Those are desirable goals, but as a strict legal analysis this is a landowner who has a curbcut, at a location which in accordance with our practice in the past, has deemed to be legal and in compliance with our Zoning Ordinance.... (we) could not deny a building permit. "

.....

"The Pleasant Street curbcut was not deemed to be unsafe by any of the traffic engineers who reviewed it - the City Traffic director or their consultant. "

CNI, p. 9 of 9
10-19-98

Boston Business Journal

October 9-15, 1998

Boston Business Journal

October 9-15, 1998 Volume 18, Number 35

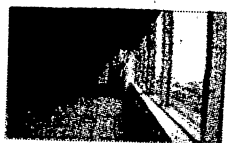
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OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

INSIDE

REAL ESTATE QUARTERLY



Cambridge clamps down on developers

BY SCOTT VAN VOORHIS
JOURNAL STAFF

CAMBRIDGE—A group of local activists may have succeeded in bringing to a grinding halt development in booming Cambridge, a city that has tried in recent years to shed its old image of being hostile to business interests.

Angry developers, some of whom have already started multimillion-dollar construction projects or gone through extensive build-

ing reviews, are now threatening legal action to overturn new development rules passed last week by the Cambridge City Council.

After some intense politicking by residents fighting proposals for an array of big office buildings and hotels, the council voted 8-1 to require all projects of any size to go through a new and much more rigorous regulatory process.

City officials point out that the new rules,

said he is simply a member of a "movement" of residents fighting to prevent their neighborhoods from being swamped by a wave of mega-projects—and inundated by commuter traffic from other towns coming to work in Cambridge.

"There is a general sense what is being built is too big and that there is too much going on," Pitkin said. "We are adding lots of jobs for people who don't live here, which is creating traffic problems."

But business leaders had harsh words for the tactics Pitkin's group used in its successful campaign to impose new development restrictions.

Cambridge Residents for Growth Management successfully pushed the city council to vote on its petition for a development crackdown a week before business officials were expecting council members to make a decision on the matter.

The quick vote headed off an effort by business officials to collect a stack of letters by developers and property owners objecting to the anti-growth proposal. Business officials said they were within days of garnering enough formal protests to perhaps sway councilors from adopting new rules.

Pitkin countered that his group's lobbying push came after the city had already held a number of meetings and public hearings on the new rules. He said his group was also racing against a

while tough, are only in effect for a year—a breathing space they say will give Cambridge time to complete a sweeping rezoning plan that will redefine the way future development is handled in the city. A group calling itself the Cambridge Residents for Growth Management pushed for the regulatory changes.

But business leaders contend the new regulations, coming in the middle of a major devel-

Please see **RULES**, Page 43

Rules: Ordinance chills growth

Continued from Page 1

opment boom, amount to a building moratorium that sets almost impossible standards for new projects to meet.

"If they try to enforce it on projects that have received building permits, I think there is no question they will end up in court and they will lose," said David Begelfer, executive director of the National Association of Industrial and Office Properties, a Newton-based trade group.

In effect, the recently enacted ordinance requires all developments to go through a new regulatory review process, even if they received prior approval to start construction. The rule is retroactive to development plans approved or proposed since July 1.

Caught in the regulatory vise, say business leaders, are a number of major proposals, from a new office complex behind Polaroid's new headquarters building on Memorial Drive to a new dorm proposed by the Massachusetts Institute of Technology.

In all, more than a million square feet of space—in the form of at least a half a dozen new office and hotel complexes—are now under way or on the drawing board for Cambridge.

Developers say they're frustrated about having spent months, or even

years, working their way through an already arduous city review process, only to find they have to start the process all over again.

Some of the hurdles imposed on developers—such as having to show no "adverse impact" on traffic—are subjective and could be hard to surmount, industry officials warn.

Another mandate states new developments can't "unreasonably disrupt the daily activities of the city's neighborhoods and residents or overburden the city's water and sewer infrastructure."

John Pitkin, one of the leaders of the Cambridge Residents for Growth Management blasted as "ridiculous" fears that his group's efforts will simply reinforce the old Cambridge stereotype as a city hostile to business.

Pointing to a number of new buildings and construction sites across Cambridge, Pitkin said, "The whole city is a development zone."

He said restrictions like the one enforcing an orderly pace to new development are necessary to prevent turning the streets of Cambridge into a maze of construction sites. Pitkin said the rules could prevent situations like two dueling construction projects taking place a couple hundred feet away from each other outside the door to his Cambridge office.

A 54-year-old demographer, Pitkin

**"There is a
general sense what is
being built is too big and
that there is too much going on.
We are adding lots of jobs
for people who don't live here,
which is creating traffic problems."**

John Pitkin

One of the leaders of the Cambridge
Residents for Growth
Management, which pushed for
new development restrictions.

deadline and was facing the danger that the petition on which its demands were based might expire.

But in the rush to pass its proposal, the Cambridge activists may have set their city up for a court case, developers warned.

"We are not bulldozing playing fields and we are not knocking down blocks of city residences to put up a development," said Gerald W. Oldach, president and chief executive officer of the Cambridge Chamber of Commerce.

"Sometimes common sense gets thrown out the window," he said.

To: The Honorable, the City Councillors

From: The Co-Chairs of the Cambridgeport Neighborhood Initiative (CNI):
Daphne Abeel, Gordie Fellman, Stash Horowitz, Anastasia Leotsakos,
Laurie Taymor-Berry, Maureen Van Stry, Elie Yarden

Page 1 of 9, 10-1998

Date: October 14, 1998 - for City Council meeting on Oct. 19, 1998

Re: Board of Zoning Appeal continuance to November 19 of
appeal of building permit issued February 5 for a 577-car
garage to 784 Memorial Drive LLC / Spaulding & Slye, and
Steve Kaiser letters to City Officials on safety & non-
conformity of driveways there

1. The BZA, at a hearing Thursday October 8 (from
11pm to 1:15am Friday morning), continued the appeal of
a building permit for a 577-car structural parking
garage at 784 Memorial Drive after hearing testimony
on possible violations of Cambridge Zoning Ordinance,
and requested Inspectional Services Dept (ISD) to gather
the information available from City Officials about
the safety of existing curb cuts to be used &/or
relocated.
2. Two letters from Mr. Stephen Kaiser, CNI's traffic
consultant, to the ISD Commissioner, & to
Director of Traffic & Parking, relating to the
above-mentioned hearing & curb cut safety &
conformity issues, are attached (see letters dated
Oct. 12)
3. An article from the Boston Business Journal issue of
Oct 9-15 is attached, as an example of a
misinterpretation of the new Planning Overlay Zoning
ordinance amendment (IPOP) as it applies to this
"Polaroid"/Spaulding & Slye site
4. Update on DEP (Dept. of Environmental Protection)
requests to, & responses from, Polaroid Corp.

Consent Communication #12 6605

A communication was received from the co-chairs of the Cambridgeport Neighborhood Initiative (CNI) regarding the Board of Zoning appeal's continuance of an appeal of a building permit issued for a 577 car garage to 784 Memorial Drive LLC/Spaulding & Slye.

In City Council October 19, 1998

PLACED ON FILE