

CITY OF CAMBRIDGE

831 MASSACHUSETTS AVENUE
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OFFICE OF THE CITY MANAGER

RENT CONTROL BOARD

TERRENCE P. MORRIS, EXECUTIVE DIRECTOR

MEMORANDUM

To: Robert Healy, City Manager

From: Terrence Morris, Executive Director *gpm*

Re: Calendar Item # 2
Conflicts of Laws

Date: May 4, 1990

In response to the above-referenced item regarding the application of certain state statutes, I have enclosed a copy of a DRAFT report which is to be the prototype for analyzing the conflict cases. Should you choose to distribute this to the Council as part of your report to them, please note that the format which I am using provides for an evaluation of other applicable laws. These include MGL c. 40A s. 7 and Chapter 671 of the Acts of 1989 (the SRO statute), as well as relevant provisions of the Building and Zoning Codes.

I trust that this responds to the Council's concerns.

DRAFT

MEMORANDUM

To: The Rent Control Board

From: Terrence P. Morris, Executive Director

Re: 21 Nowhere Street
SCZ 00 000

Date: May 2, 1990

PROCEDURAL RECORD

In the fall of 1989 the City of Cambridge placed an advertisement in the local newspapers as a result of increasing public discussion about perceived conflicts among local laws relating to rent control, buildings, and zoning. The purpose of the ad was to solicit information from affected property owners as to the extent of the problem.

In response, owners of more than fifty properties submitted information to the Rent Control Board pertaining to alleged conflicts of law involving their properties. In most cases there was an assertion that the perceived conflict affected the property's rent-controlled status.

On October 26, 1989 the owner of the subject property completed an application for a removal permit in which he cited a "conflict" as the cause for removal. The conflict stemmed from the fact that:

1. he has five units in a building in which he believes that zoning would not allow more than two units;
2. four of the units have no second means of egress and have kitchens which were added illegally.

On December 26, 1989 the City Council passed an ordinance (Ordinance 1093) which attempted to resolve conflicts such as the one in the instant case. The Board then docketed a special case on each of the properties for which we received further information as a result of this legislation. Removal permit applications in process were temporarily suspended.

Ordinance 1093, on its face, established a procedure under the Removal Permit Ordinance for ultimately determining the rent-control status of certain properties, including the subject building. The properties had to meet at least one of the following criteria:

1. reconfiguration by rehabilitation or repair; or

2. change in the number of residential units by merger or division; or

3. change in use through owner-occupancy of more than one residential unit.

Additionally the activities described in these criteria had to have been completed prior to August 31, 1988. The specification of these criteria created a further predicate for obtaining a removal permit.

The Ordinance did nothing to alter or augment the procedural requirements set forth in the Board's regulations. A factual determination that each of the named properties met the established criteria had to be made. Only then could the Ordinance 1093 have afforded the relief provided therein.

Despite the fact that the Ordinance was repealed before the particular relief could be granted, the Board voted to process each of the cases as it would have done without Ordinance 1093. Accordingly each was docketed as a special case investigation: status determination. Pursuant to the Interim Notice of Ruling by the Board on March 30, 1990, this report recommends that the Board adopt and affirm that the status of the property for rent control purposes is as found below.

Where appropriate other applicable laws, codes, ordinances and/or regulations have been considered and found to be consistent with both the Board's laws and regulations and the Court's interpretation of same.

ZONING HISTORY

In 1924 the City of Cambridge adopted a zoning ordinance as an exercise of the municipality's general police powers. The Zoning Ordinance represented the first significant effort to delimit and otherwise circumscribe individual property rights which had been, theretofore, absolute. One characteristic of zoning was, and is, the segregation of property into districts with compatible uses. Typically, zoning districts run a continuum from most to least restrictive. Residential uses are placed in the most restrictive zones, with one-family use the most exclusive, followed by two-family and multi-family use.

The Zoning Ordinance of 1924 established four residence districts: R4, R3, R2 and R1. The R4 district permitted one- and two-family use. Multi-family use was allowed in the other three residence zones which also distinguished property use according to building height. The subject property was located in an R3 zone which permitted multi-family use.

In 1943 a major revision of the Zoning Ordinance established the following new nomenclature for residence districts: Residence A (one-family), B (two-family), C-1, C-2 and C-3 (multi-family). There was no distinction relevant to this analysis among the multi-family districts. The subject property was located in a Residence C-1 district in 1943 and remained so until at least 1981.

Until 1961 there were few, if any, zoning limitations on the number of units for which a property could be used. In 1961 the Zoning Ordinance was amended to include dimensional controls in the form of per unit lot area requirements: 1,200 square feet (sf) in C-1; 600 sf in C-2; and 300 sf in C-3. Properties which did not meet these new requirements at the time of adoption became non-conforming or pre-existing uses/buildings. They had legal status and were commonly referred to as "grandfathered" properties.

The subject properties may also have acquired legal status in another manner. Massachusetts General Laws, chapter 40A, section 7, as originally enacted in 1975 and more recently amended, prevents the city in effect from compelling the removal, alteration, relocation of any non-conforming structure that has existed as such, without a building permit, for more than ten years.

PROPERTY CHARACTERISTICS

In 1970 the state statute which authorized rent control in the City of Cambridge defined "rental units" as

any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes, including houses, apartments, rooming or boardinghouse units, and other properties used for living or dwelling purposes, together with all services connected with the use or occupancy of such property.

This definition has remained constant to this day.

On November 26, 1978 the owner registered the property as a five-unit rent-controlled building. According to the rent history listed on the completed registration form the property clearly had been used as such since at least July, 1973. The units consisted of the following:

- Unit #1 (1st floor): BR, LR, Kit & Bath
- Unit #2 F (2nd floor/front): one room w/ kitchenette
- Unit #2 M (2nd floor/middle): one room w/ kitchenette
- Unit #2 R (2nd floor/rear): one room w/ kitchenette
- Unit #3 (3rd floor): BR, LR, Kit & Bath

The three units on the second floor share a common bath.
Unit 2R is approximately 120 square feet in size.

OTHER APPLICABLE LAWS

The Cambridge Zoning ordinance defines a dwelling unit as:

a room or group of rooms occupied or capable of being occupied separate from any other such room or group of rooms by a family and equipped with cooking and sanitary facilities for the exclusive use of such family for living, sleeping, cooking and eating.

The State Building Code defines a dwelling unit as:

a single unit providing complete, independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

These definitions are essentially the same except that the latter inserts the word "permanent" to qualify the basic elements which are otherwise identical. This reading equates the phrase "exclusive use" with "independent living".

The question arises: how do you define a living space which does not meet the definition of dwelling unit? While the term "rooming unit" is used in the Rent Control Act it is not expressly defined in the Act, or the Zoning or Building codes. However, it should be noted that many municipalities do define the term. Furthermore the Single-Room Occupancy law recently enacted by Legislature defines the term "single room occupancy dwelling unit", in part, as:

the room or group of rooms...which is not equipped with both individual kitchen and individual bathroom facilities as defined in ...[the] State Sanitary Code...

Finally the State Sanitary Code defines both "dwelling unit" and "rooming unit". Its definition of "dwelling unit" is identical to that in the Building Code except that exclusive and separate sanitation facilities are not required.

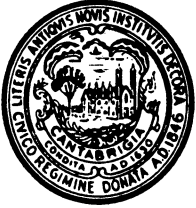
"Rooming unit" is defined in part as:

the room or group of rooms let to an individual or household for use as living and sleeping quarters but not for cooking...

The latter definition was amended by Chapter 859 of the Acts of 1970 to permit rooming units in lodging houses to have individual cooking facilities under certain conditions.

STATUS DETERMINATION

(Note: this space is reserved for an analysis of the facts of the property and application of the relevant statutes, ordinances and regulations)



CITY OF CAMBRIDGE

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EXECUTIVE DEPARTMENT

ROBERT W. HEALY

City Manager

RICHARD C. ROSSI

Deputy City Manager

May 7, 1990

To The Honorable, The City Council:

In response Awaiting Report Item No. 27, relative to conflicts of laws issues for property under rent control, attached is a report from Terrence Morris, Executive Director of Rent Control.

Very truly yours,

Robert W. Healy
City Manager

RWH/mev
enclosure

Agenda # 10

S-475

Awaiting Report Item Number 27, regarding
Conflicts of Laws issues for property under
rent control.

In City Council,

May 7, 1990

Placed on file