

CRIME BEAT

Assaults

On Sept. 1, a Lincoln street resident reported a man who had asked him for change yelled at him and punched him.

On Sept. 2, an employee at a store on Mass. avenue reported a man punched her in the face when she tried to stop him from shoplifting.

On Sept. 3, a Boston couple reported they were attacked by six or seven youths on Garden street.

On Sept. 4, a Norfolk street resident reported six men hit and tried to rob him on Broadway.

On Sept. 5, a Windsor street resident reported someone attacked him on Columbia street with a blunt object and tried to rob him.

On Sept. 5, a Mass. avenue resident walked into the police station bleeding profusely. He reported someone had hit him with an unknown object.

Break-ins

On Sept. 1, a Kenway street resident reported a break-in in which \$60 cash was stolen.

On Sept. 1, an Ashton place resident reported a break-in. Property worth \$7,000 was taken, including two handbags, coins and jewelry.

On Sept. 2, a break-in was reported at a Holden street residence in which a computer was taken.

On Sept. 2, an Inman street resident reported he returned from vacation to discover a break-in. A VCR worth \$1,200 was stolen.

On Sept. 4, a Mt. Auburn street resident reported a break-in in which a camera and VCR were stolen.

On Sept. 4, a Porter road resident reported a break-in in which \$1,400 worth of appliances were missing.

On Sept. 5, a break-in was reported at a Brattle street office in which \$30 cash was missing.

On Sept. 5, a Douglas street resident reported a break-in.

On Sept. 5, a break-in was reported at a Kendall Square office in which tools were stolen.

On Sept. 5, a Putnam avenue resident reported a break-in through his ceiling. Two handguns worth \$600 were missing.

On Sept. 5, a Brookford street resident reported a break-in. Over \$2,000 worth of property, including jewelry, two cameras and clothing, was stolen.

On Sept. 6, a Harvard street resident reported a break-in in which a television, VCR, jewelry, and credit cards were stolen.

On Sept. 7, a Third street resident reported a break-in in which a VCR was stolen.

Robberies

On Sept. 1, an employee at a Mass. avenue video store reported \$120 was stolen from the cash drawer while he was replacing tapes in a back room.

On Sept. 1, a Rindge avenue resident reported he was jumped from behind, choked and robbed of \$35.

On Sept. 5, a Rindge avenue resident reported he was robbed of \$50 in the hallway of his building.

On Sept. 5, a Somerville resident reported two men attacked and robbed him at a Cambridge street bus stop. The pair stole two gold chains worth \$150.

On Sept. 5, a Memorial drive resident reported he was robbed at a point of \$482, a jacket and sneakers. The incident took place on Brookline street.

On Sept. 6, an employee at a Harvard Square copy store reported someone reached over the register and stole \$700 cash and \$800 in checks.

On Sept. 6, a Dorchester resident reported he and a friend had a bracelet and ring stolen at gunpoint.

On Sept. 6, a Magazine street resident reported two men took a bag containing personal items from him at Russell Field.

On Sept. 7, a Winter street resident reported four men attacked him and stole his watch, ring and two gold chains at knife-point. The incident occurred at Washington and Windsor streets.

Arrests

On Sept. 1, Alice Caffras, 39, of 60 Brattle St. for shoplifting.

On Sept. 1, Irene Theresia Evaniek, 29, of Walden Square Rd. on warrant for selling heroin and shoplifting.

On Sept. 1, Isaac Crawford, 26, of 4 Woodrow Wilson Ct., for possession of a class B substance.

On Sept. 4, Jamal Ford of 7 Jackson Gardens on charges of assault and battery of a police officer and participating in an affray; and Brian Hooker of 31 Newtownton Ct. for participating in an affray and on outstanding warrant for assault with intent to rob.

Concert marks library branch debut

The Boudreau/Hill branch of the Cambridge Public Library announces a preschool concert and singing-along featuring musician Hugh Hanley.

The concert celebrating the opening of the new library will be at 245 Concord Ave. on September 22 at 10:30 am.

Senior center hosts talk on Medicare

On Friday, September 29 from 10 am to 12 noon, at the North Cambridge Senior Center, 2050 Massachusetts Avenue, a representative from the Department of Health will talk about the rights of Medicare patients in discharge planning and facts about DRG's (Diagnosis Related Groups).

Learn what you have a right to expect in a hospital stay and discharge. Limited transportation available. Call 495-0110.

Dante center flea market set

The Dante Alighieri Society, 41 Hampshire St., is planning a flea market on September 23 to raise funds for its library.

Hanley is known throughout the Boston area for his live musical performances and his local cable television program, "Songs from the Circle."

For more information about the concert and other library events call 495-9084.

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The Dante Alighieri Society, 41 Hampshire St., is planning a flea market on September 23 to raise funds for its library.

Anyone wishing to donate saleable items such as toys, books, furniture, bric-a-brac, lamps, prints, costume jewelry, etc. may call the center at 876-3160.

St. Anthony's annual dinner set

Saint Anthony Church, Cambridge, announces its annual parish banquet which is scheduled for Saturday, September 30 at St. Anthony's Parish Hall.

The banquet will start at 7 P.M. and continue to 1 A.M. Tickets, at \$25

per person, may be purchased by calling 547-5593.

At the banquet, Mayor Alfred E. Vuitch will be honored for his continuous support and promotion of the parish community.

YMCA sets golf classic

The Cambridge Family YMCA will host its Sixth Annual Golf Classic at the Blue Hill Country Club in Canton on Monday, October 24. The golf tournament is a special event to benefit the YMCA's Youth Campership Fund which enables central-city youngsters to attend YMCA camp in the summer months.

Highlighting this year's tournament is "Hole-in-One" Prize—a 1989 Volvo offered by Boston Volvo of Cambridge. The golfer who achieves this feat on a specified hole will be awarded this grand prize. Handsome crystal trophies for three categories of low gross and low net also will be featured. Door prizes will be awarded randomly at the Awards Banquet climaxing the day-long tournament. Golfers may register for the

Classic at the YMCA or by mail (820 Massachusetts Avenue, Cambridge, MA 02139). The Golf Classic fee is \$150 per golfer and includes the greens fee, cart, Awards Banquet, Buffet luncheon, tee gift and prizes. Foursome fee is \$600.

Corporate tee and green sponsors insure the success of the fund-raising event. Corporations wishing to support the YMCA Youth Campership Fund may enlist as sponsors with a gift of \$250. Each sponsor is entitled to a professionally-painted sign on a tee or green.

For information on the Classic, individuals may contact Wade Lindhorst, YMCA Program Director or Richard Foot, YMCA Executive Vice President at 661-YMCA.

Babe Ruth tryouts set

The Cambridge Babe Ruth League will be having their tryouts for people between the ages of 13-15 for the upcoming season. The tryouts will be Saturday,

September 16, at Donnelly Field at 10 am and Sunday, September 17 at Rindge Field at 1 pm. You must attend one of these tryouts to play next season.

Library forum on home schooling set

Home Schooling Night will be held at the Cambridge Public Library on Monday, September 18, at 7:00 PM. Parents who are currently home schooling as well as those who are interested in becoming home schoolers are invited to attend this program.

The program will begin with a discussion on some of the practicalities of home schooling. This talk will be led by staff members of Cambridge-based John Holt Associates which publishes "Growing Without Schooling," a national newsletter for home schoolers. Participants will then be given a chance to talk about ideas and questions they

have concerning home schooling. The evening has been planned to give parents the opportunity to learn from each other about what works best in home schooling situations. As many people involved in teaching at home are aware, the library is a logical place to find curriculum support materials.

More information about Home Schooling Night is available from the Cambridge Public Library Children's and Young Adult Services Department, 498-9080. Home Schooling Night is free and open to the public. The Cambridge Public Library is located at 449 Broadway.

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Ed Ver Planck

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Neighborhood Network

CHANNEL 3

PROGRAM SCHEDULE FOR CHANNEL 3 "YOUR NEIGHBORHOOD NETWORK"

Thursday, September 14

- 6:30pm Get the Picture
- 7:00pm Meet the Artist: Live Oak
- 7:30pm Now That We Are Here
- 8:00pm TBA

Friday, September 15

- 7:00pm Video Rhythms
- 8:00pm Your Mother's on the Roof

Monday, September 18

- 6:30 pm Generations
- 7:00pm Now That We're Here - documentary
- 7:30pm Health Research: Caring for Life
- 8:00pm Audiophiles: The Untouchables - concert

Tuesday, September 19

- 6:30pm Healthnet: Pelvic Inflammatory Disease
- 7:00pm FOR SELECTION: Insideout
- 8:00pm The Forum: Kerner Commission

Wednesday, September 20

- 6:30pm The Baseball Show
- 7:00pm Cambridge River Festival 1989: Semanya & Forteza
- 8:00pm Now That We Are Here
- 8:30pm TBA

Thursday, September 21

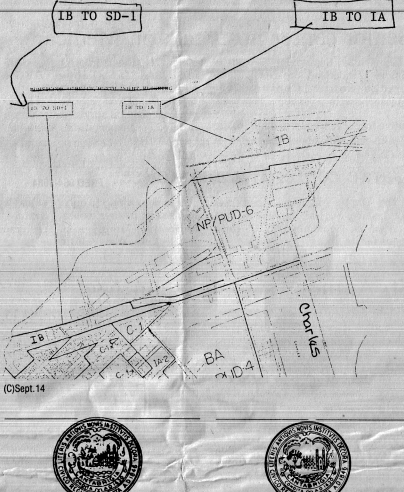
- 6:30pm The Computer As A Window into Dance
- 7:00pm Bridge to Writer: w/Mantha Collins
- 7:30pm Special Aids & Adolescents
- 8:30pm TBA

1.01 Premises located on Assessor's Plat numbered 1A: All or parts of lots numbered 67, 68, and 81, also known as the Boston Sand Gravel site and the Massachusetts Bay Transit Authority switching yard. In City Council September 11, 1989. Passed to be ordained by a ye a and nay vote: Yeas 8, Nays 0, Absent 1.

ATTEST:-

Robert W. Healy, City Manager Joseph E. Connaron City Clerk

MONSIGNOR O'BRIEN/NORTH POINT REZONING



PETITION OF City Council

re: Community Residences & Personal Care Lodging Houses
Petition filed with the City Clerk May 22, 1989

(all hearings to be completed 65 days from In City Council date)

9 days May
30 days June
26 days July
65 days = July 26, 1989 = all hearings

In City Council May 22, 1989

Referred to the Planning Board for report May 22, 1989

Planning Board Hearing July 18, 1989

(CITY COUNCIL must act within 90 days of the ORDINANCE COMMITTEE hearing which would be October 17, 1989.)

12 days July
31 days Aug
30 days Sept
17 days Oct
90 days = Oct. 17, 1989

City Council hearing published Chronicle on June 29, 1989
and July 6, 1989

Hearing before the Ordinance Committee July 19, 1989 at 5:30p.m.

Reported to the City Council August 7, 1989

Passed to a second reading on August 7, 1989

published in Chronicle on Aug 10, 1989

Planning Board report received on _____

Ready for ordination on August 21, 1989

Passed to be ordained on Sept. 11, 1989

published in Chronicle on Sept 14, 1989

COMPLETION DATE October 17, 1989

DCA, Inspectional Serv., City Solicitor, Community Development Dept + Ord. Committee, notified 9/14/89 (cc)



OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9017

JOSEPH E. CONNARTON
CITY CLERK

JOHN E. FLYNN
DEPUTY CITY CLERK

September 14, 1989

Department of Community Affairs
Commonwealth of Massachusetts
100 Cambridge Street
Room 904
Boston, MA 02202

Dear Sir:

Enclosed you will find three amendments to the Zoning Ordinances of the City of Cambridge which were passed to be ordained at the City Council meeting held on September 11, 1989 as follows:

1. Extension of the Cambridgeport Interim Overlay District to December 1, 1989.
2. Proposed amendment regulating Community Residences and Personal Care Lodging Houses.
3. Proposed amendment in the Monsignor O'Brien Highway area.

These amendments are being sent to you pursuant to the provisions of Chapter 808 of the Acts of 1975.

Your kind attention in this matter will be greatly appreciated.

Very truly yours,

A handwritten signature in cursive script that reads "Joseph E. Connarton".

Joseph E. Connarton
City Clerk.

JEC/d1

Encs. (3) Ordinance Numbers 1089, 1090, 1091.

c.c. Les Barber, Community Development Dept.



City of Cambridge

In the Year One Thousand, Nine Hundred Eighty - nine

AN ORDINANCE

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

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

Amend the text of the Zoning Ordinance by deleting paragraph 5, Section 3.14 and substituting therefor a new paragraph 5 to read as follows:

5. This Section 3.14 shall be in effect through December 1, 1989.

In City Council September 11, 1989.

Passed to be ordained by a yea and nay vote:- Yeas 8; Nays 0; Absent 1.

Robert W. Healy, City Manager.

ATTEST:- Joseph E. Connarton
City Clerk.



City of Cambridge

In the Year One Thousand, Nine Hundred Eighty-Nine

AN ORDINANCE

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

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

1. Article 11.20 of the Cambridge Zoning Ordinance entitled "Community Residences and Personal Care Lodging Houses" be, and hereby is, repealed in its entirety;
2. Article 4.30 of the Cambridge Zoning Ordinance, entitled "Table of Use Regulations," be, and hereby is amended by repealing and deleting Article 4.31(j)(3) and 4.31(k).
3. Footnote 51 to Article 4.30 be, and hereby is, repealed.
4. Article 4.56 of the Cambridge Zoning Ordinance, entitled "Institutional Use Regulation Table" be, and hereby is, amended by repealing and deleting sections 4.56(f)(3) and (4).
5. Article 2.000 of the Cambridge Zoning Ordinance be, and hereby is, amended by deleting in its entirety the definition of "Community Residence" and by deleting in its entirety the definition of "Personal Care Lodging House."
6. Article 2.000 of the Cambridge Zoning Ordinance be, and hereby is, further amended by inserting a new paragraph in the definition of "Family" which shall read as follows:

"Notwithstanding the definition in the preceding paragraph, a family shall be deemed to include four or more persons not within the second degree of kinship occupying a dwelling unit and living as a single, non-profit housekeeping unit, if said occupants are handicapped persons as defined in Title VIII of the Civil Rights Act of 1968, as amended by the "Fair Housing Amendments Act of 1988." Such unrelated individuals shall have the right to occupy a dwelling unit in the same manner and to the same extent as any family unit as defined in the first paragraph of this definition."

7. Article 4.30 of the Cambridge Zoning Ordinance, entitled "Table of Use Regulations" be, and hereby is amended by repealing and deleting Article 4.33 (e) (3) and (4).

In City Council September 11, 1989.

Passed to be ordained by a yea and nay vote:- Yeas 9; Nays 0; Absent 0.

Robert W. Healy, City Manager.

ATTEST:- Joseph E. Connarton
City Clerk.



City of Cambridge

In the Year One Thousand, Nine Hundred Eighty - nine

AN ORDINANCE

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

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

- A. Amend the Text of the Zoning Ordinance as follows:
1. In Section 3.11, insert the following line after the existing line "Industry A District..... Warehouse, storage and light manufacturing", and renumber accordingly:

Special Business, Office.....Various Uses governed
and Industrial Districts by the requirements of
Article 17.000
 2. In Subsection 10.48 and Subsection 11.202 add the following lines after the existing line "Article 13.000 -PUD Districts, all permits."

Section 17.131b - Additional FAR, Special District I
Section 17.17 - Transfer of Development Rights, Special
District I
 3. Create a new Article 17.000 - Special Business, Office and Industrial districts as follows:

Article 17.000 Special Business, Office and Industrial
Districts

17.10 Special District I

17.10 SPECIAL DISTRICT I

17.11 SCOPE - This Section 17.10 regulates development within the Special District I at Monsignor O'Brien Highway as shown on the Zoning Map of the City of Cambridge, as amended. Except as herein provided in this Section 17.10, all requirements of and regulations applicable to the Industry A-1 District shall apply equally to the Special District I.

17.12 PERMITTED USES - Uses permitted in the Industry A-1 District shall be equally allowed in the Special District I with the exception of the following:
 - a. The following uses shall be permitted by special permit from the Board of Zoning Appeal:
 1. Hotel and Motel Uses, Section 4.31 i (2)
 2. Car washing establishment using mechanical equipment for the purposes of cleaning automobiles and other vehicles, Section 5.36 h.
 - b. The following uses shall be prohibited:

Parking lot or parking garage for private passenger cars, Section 4.32b

17.13 DIMENSIONAL REGULATIONS

17.131 Maximum FAR

- a. The maximum FAR for any lot in the district shall not exceed 3.0 as of right;
- b. The maximum FAR for any lot northeasterly of Monsignor O'Brien Highway may be increased by special permit from the Planning Board to 3.5 provided the requirements and conditions of Section 17.17 d and e are met.

17.132 Building Height Limitation The maximum height permitted in the district shall be 85 feet except as modified below:

- a. For lots lying northeasterly of Monsignor O'Brien Highway, the maximum height may be increased to 120' provided no portion of the building rises above a 45 degree bulk control plane beginning at an elevation of 85' above the O'Brien Highway front lot line and rising thereafter in a northeasterly direction.
- b. Notwithstanding the provision of paragraphs a and b above no building may exceed 35' within fifty feet of the Special District I/Residence C-1 zoning district line, or where the zoning district line splits a lot, within 50' of the lot line located in the residential district.

17.133 Minimum Yard Requirements Only the following yard requirements shall apply in the Special District I.

- a. Front Yard - a minimum three feet, measured from the property line, shall be required at the Monsignor O'Brien Highway lot line; no front yard shall be required however for any structure in existence as of May 1, 1989.
- b. Side Yard - None
- c. Rear Yard - None
- d. Notwithstanding the requirements of paragraphs a-c above all buildings shall be set back a minimum of 20 feet from any Special District/Residence C-1 district line; said setback shall consist exclusively of landscaped green area as defined in

Article 2.000. Where the zoning district line splits a lot the setback shall be measured from the lot lines located in the residential district.

17.134 Residential Density The minimum lot area per dwelling unit shall be 300 square feet.

17.14 OFF STREET PARKING AND LOADING REQUIREMENTS

17.141 Minimum Parking Requirements Off-street parking and loading requirements shall be as specified in Article 6.000 for uses in Business B, Industry B and Residence C-3 zoning districts.

17.142 Maximum Parking Requirements The maximum accessory parking permitted for all non-residential uses shall be 4.5 spaces for each 1,000 square feet of lot area. Notwithstanding the provisions of Section 6.313, accessory parking provided to meet the requirements of Section 17.14 shall not exceed that number permitted in this Section 17.142 under any circumstances.

17.15 SPECIAL DEVELOPMENT STANDARDS

All buildings constructed in the Special District I shall meet the following requirements.

17.151 Building Facades Building facades should be designed so as to enhance the visual quality of the district. The following standards shall apply:

- a. A principal building entrance shall face Monsignor O'Brien Highway;
- b. Building facades and rooflines shall be articulated and expanses of unbroken wall planes shall be limited to 35 linear feet for those facades facing public open spaces and/or public roadways;
- c. Ground floor levels shall include a minimum of 30% transparency (non-reflective glass) to enliven and enrich the public environment where such levels contain active gross floor area (i.e. habitable space occupied by persons throughout the day) as defined in Article 2.000.

17.152 Tree Planting At least one street tree, having a minimum caliper of 3", shall be located in the front yard provided along Monsignor O'Brien Highway, for each 25' of frontage on the Highway. Where sufficient front yard is not provided said trees may

be located within the public right of way consistent with the requirements for street tree planting established by the City of Cambridge.

- 17.153 Siting of Parking Areas Parking areas shall not be located in the front yard required for any lot in the district. Enclosed parking facilities are encouraged. On-grade open space parking areas shall be located behind the building or buildings served or arranged in such a way as to minimize their visibility from public ways. Where enclosed or structured parking is provided the structure shall be finished in materials equal in quality to that used on the principal structures on the site to which the parking facility is accessory.
- 17.154 Mechanical Equipment and Refuse Storage Areas:
- a. No refuse storage areas nor mechanical equipment areas shall be located in a front yard within the district. Where such areas are outside a building they shall be screened from view from street and parking areas, residential districts and open space areas, by a 6 foot high, durable non-living barrier (or earth berm) planted with at least one shrub or vine for each 10 feet of barrier towards the abutting property.
 - b. Mechanical equipment on the roof of any building shall be permanently screened from view from the ground.
- 17.16 Special District I shall be considered an area of special planning concern and shall be subject to the Development Consultation Procedure, Section 11.40.
- 17.17 Transfer of Development Rights - Notwithstanding the limitations of Article 2.000 with regard to the definition of "lot" and "owner", the Planning Board may by special permit authorize the transfer of some or all of the allowed gross floor area, as determined by Section 17.131 above, from one or more lots (donating lots) to one or more other lots (receiving lots) anywhere within the Special District I without regard to location of the lot or lots or their ownership, provided the following conditions are met or findings made:
- a. The receiving lot and donating lot in combination are at least 20,000 square feet in area.
 - b. The receiving lot is located northeasterly of Monsignor O'Brien Highway.

- c. The development plans for both the donating and receiving lots meet the intent and requirements of Section 17.10 as a whole and this sub-section 17.17 and are both subject to the special permit authorization and such conditions as may be attached thereto.
- d. The resulting development on both, or the several, lots provides a superior site and building design than might occur without the special permit authorization. Among the conditions which may be reviewed by the Planning Board in reaching such a finding are the following:
 - 1. Reduction in density of development is achieved on lots adjacent to residential uses or zoning districts;
 - 2. An increase in open space and green area is achieved adjacent to residential uses and zoning districts;
 - 3. Active gross floor area uses are located at the base and perimeter of the buildings are located at the base and perimeter of the buildings constructed on the site (sites) where visible from public streets or residential uses;
 - 4. Overall reduction in the bulk of the buildings(s) is achieved through location of some or all of the required parking below grade;
 - 5. Parking located above grade is screened from view from public streets and residential uses by active gross floor areas uses;
 - 6. Improved building design is achieved through the use of quality masonry materials and other quality details as well as an improved pedestrian environment along major public street.
- e. All site and building designs shall be subject to binding design review by the Planning Board.

B. Amend the Zoning Map of the City of Cambridge as follows:

- 1.0 Rezone an area currently zoned Industry B Special District I an area circumscribed by a line said line beginning at a point said point being the intersection of the centerline of Monsignor O'Brien Highway with the centerline of the

southwestern extension of the western side lot line of lot numbered 12 on Assessor's Plat numbered 1A,

- 1.1 Thence proceeding in a northwesterly direction along the centerline of Monsignor O'Brien Highway to a point of intersection with the northeastern extension of the centerline of Sciarappa Street,
- 1.2 Thence turning and proceeding in a southwestern direction along the centerline of Sciarappa Street to the southeastern extension of the northeastern side lot line of lot numbered 93 on Assessor's Plat numbered 22,
- 1.3 Thence turning and proceeding in a northwesterly direction along the southeastern extension of the northeastern side lot line and the northeastern side lot lines of lots numbered 93, 97A, 97, 22, 23, 224, 25, 26, and the northwestern extension of these lot lines to the northwestern side lot line of lot numbered 128 on Assessor's Plat numbered 22 for a distance of approximately 325 feet,
- 1.4 Thence turning and proceeding in a northeasterly direction and continuing in a generally northeasterly direction along the northwestern side lot line of lot number 128 and the Cambridge/Somerville City Limits to the northeastern side lot line of lot numbered 39 on Assessors Plat numbered 1A,
- 1.5 Thence turning and proceeding in a southeasterly direction along the northeastern rear lot lines of lots numbered 39, 40, 26, 29, 19, 18, 43, 25, 92, 31, 9, and 6 on Assessor's Plat number 1 A to the northeastern side lot line of lot numbered 6 on Assessor's Plat numbered 1A,
- 1.6 Thence turning and proceeding in a southwesterly direction along the southeastern side lot line of lot numbered 6 and the southwestern extension of the southeastern side line of lot numbered 6 on Assessor's Plat numbered 1A to the centerline of Monsignor O'Brien Highway, the point of origin.

1.01 Premises as shown on Assessor's Plat numbered 22:

All or parts of lots numbered 128, 109, 18, 17, 16, 15, and 14, odd numbers 5-9 Sciarappa Street and even numbers 240-262 Monsignor O'Brien Highway.

1.02 Premises as shown on Assessor's Plat number 1A:

All or parts of lots numbered 35, 39, 40, 37, 27, 26, 29, 19, 18, 43, 94, 95, 92, 31, 9, and 6, odd numbers 125-261 Monsignor O'Brien Highway.

C. AMEND THE TEXT OF THE ZONING ORDINANCE AS FOLLOWS:

1.0 In Article 4.000 - Use Regulations do the following:

1.1 In Section 4.38 - Heavy Industry, line e, delete the word "no" in the column headed "Ind A" and substitute therefor "SP (52)".

1.2 In Section 4.40 - Footnotes to the Table of Use Regulations add a new footnote 52 as follows:

52. Uses so permitted in existence as of July 1, 1988 may continue and expand, within the dimensional limits of Section 5.34, without the granting of a special permit.

2.0 In Article 5.000 - Dimensional Requirements do the following:

2.1 In Section 5.34 - Industrial District, do the following:

(a) In Table 5-4 delete the existing word "none" in column (6) - Maximum Height in Feet in the line beginning "Ind A" and substitute therefor the phrase "85(e)".

(b) In paragraph 2 - Footnotes, add a new footnote (e) to read as follows:

e. 130 feet by special permit for buildings related to storage and processing of materials permitted in Section 4.37m.

D. Amend the Zoning Map of the City of Cambridge as follows:

- 1.0 Rezone an area currently zoned Industry B to Industry A circumscribed by a line said line beginning at a point said point being the intersection of the Cambridge/Boston City Limits and the eastern extension of the northern side lot line of lot numbered 62 on Assessor's Plat numbered 1A,
- 1.1 Thence proceeding in a generally northeasterly direction, then, westerly direction and finally southwesterly direction along the Cambridge/Boston City Limits to a point of intersection with the western extension of the northern side lot line of lot numbered 63 on Assessor's Plat numbered 1A,
- 1.2 Thence turning and proceeding in an easterly direction along the western extension of the northern side lot line and the northern side lot lines of lots numbered 62 and 63 and the eastern extension of the northern lot line of lot numbered 63 on Assessor's Plat numbered 1A to the point of origin.
- 1.01 Premises located on Assessor's Plat numbered 1A:

All or parts of lots numbered 67, 68, and 81, also known as the Boston Sand and Gravel site and the Massachusetts Bay Transit Authority switching yard.

In City Council September 11, 1989.

Passed to be ordained by a yeas and nays vote:- Yeas 8; Nays 0; Absent 1.

Robert W. Healy, City Manager.

ATTEST:- Joseph E. Connarton
City Clerk.

MONSIGNOR O'BRIEN/NORTH POINT REZONING

IB TO SD-1

IB TO 1A





OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9017

JOSEPH E. CONNARTON
CITY CLERK

JOHN E. FLYNN
DEPUTY CITY CLERK

September 14, 1989

Mr. Russell B. Higley
City Solicitor
City Hall
Cambridge, MA 02139

Dear Sir:

Enclosed you will find three amendments to the Zoning Ordinances of the City of Cambridge which were passed to be ordained at the City Council meeting held on September 11, 1989 as follows:

1. Extension of the Cambridgeport Interim Overlay District to December 1, 1989.
2. Proposed amendment regulating Community Residences and Personal Care Lodging Houses.
3. Proposed amendment in the Monsignor O'Brien Highway area.

Would you kindly review these amendments and indicate your approval or disapproval on the bottom and return to this office.

Your kind attention in this matter will be greatly appreciated.

Very truly yours,

A handwritten signature in cursive script that reads "Joseph E. Connarton".

Joseph E. Connarton,
City Clerk

JEC/dl

Encs. (3) Ordinance Numbers 1089, 1090, 1091.

c.c. Councillor William Walsh, Chairman, Committee on Ordinances
Joseph Cellucci, Commissioner of Inspectional Services.



City of Cambridge

In the Year One Thousand, Nine Hundred Eighty - nine

AN ORDINANCE

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

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

Amend the text of the Zoning Ordinance by deleting paragraph 5, Section 3.14 and substituting therefor a new paragraph 5 to read as follows:

5. This Section 3.14 shall be in effect through December 1, 1989.

In City Council September 11, 1989.

Passed to be ordained by a yea and nay vote:- Yeas 8; Nays 0; Absent 1.

Robert W. Healy, City Manager.

ATTEST:- Joseph E. Connarton
City Clerk.



City of Cambridge

In the Year One Thousand, Nine Hundred Eighty-Nine

AN ORDINANCE

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

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

1. Article 11.20 of the Cambridge Zoning Ordinance entitled "Community Residences and Personal Care Lodging Houses" be, and hereby is, repealed in its entirety;
2. Article 4.30 of the Cambridge Zoning Ordinance, entitled "Table of Use Regulations," be, and hereby is amended by repealing and deleting Article 4.31(j)(3) and 4.31(k).
3. Footnote 51 to Article 4.30 be, and hereby is, repealed.
4. Article 4.56 of the Cambridge Zoning Ordinance, entitled "Institutional Use Regulation Table" be, and hereby is, amended by repealing and deleting sections 4.56(f)(3) and (4).
5. Article 2.000 of the Cambridge Zoning Ordinance be, and hereby is, amended by deleting in its entirety the definition of "Community Residence" and by deleting in its entirety the definition of "Personal Care Lodging House."
6. Article 2.000 of the Cambridge Zoning Ordinance be, and hereby is, further amended by inserting a new paragraph in the definition of "Family" which shall read as follows:

"Notwithstanding the definition in the preceding paragraph, a family shall be deemed to include four or more persons not within the second degree of kinship occupying a dwelling unit and living as a single, non-profit housekeeping unit, if said occupants are handicapped persons as defined in Title VIII of the Civil Rights Act of 1968, as amended by the "Fair Housing Amendments Act of 1988." Such unrelated individuals shall have the right to occupy a dwelling unit in the same manner and to the same extent as any family unit as defined in the first paragraph of this definition."

7. Article 4.30 of the Cambridge Zoning Ordinance, entitled "Table of Use Regulations" be, and hereby is amended by repealing and deleting Article 4.33 (e) (3) and (4).

In City Council September 11, 1989.

Passed to be ordained by a yea and nay vote:- Yeas 9; Nays 0; Absent 0.

Robert W. Healy, City Manager.

ATTEST:- Joseph E. Connarton
City Clerk.



City of Cambridge

In the Year One Thousand, Nine Hundred Eighty - nine

AN ORDINANCE

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

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

- A. Amend the Text of the Zoning Ordinance as follows:
 1. In Section 3.11, insert the following line after the existing line "Industry A District..... Warehouse, storage and light manufacturing", and renumber accordingly:

Special Business, Office.....Various Uses governed
and Industrial Districts by the requirements of
Article 17.000
 2. In Subsection 10.48 and Subsection 11.202 add the following lines after the existing line "Article 13.000 -PUD Districts, all permits."

Section 17.131b - Additional FAR, Special District I
Section 17.17 - Transfer of Development Rights, Special
District I
 3. Create a new Article 17.000 - Special Business, Office and Industrial districts as follows:

Article 17.000 Special Business, Office and Industrial
Districts

17.10 Special District I

17.10 SPECIAL DISTRICT I

17.11 SCOPE - This Section 17.10 regulates development within the Special District I at Monsignor O'Brien Highway as shown on the Zoning Map of the City of Cambridge, as amended. Except as herein provided in this Section 17.10, all requirements of and regulations applicable to the Industry A-1 District shall apply equally to the Special District I.

17.12 PERMITTED USES - Uses permitted in the Industry A-1 District shall be equally allowed in the Special District I with the exception of the following:

 - a. The following uses shall be permitted by special permit from the Board of Zoning Appeal:
 1. Hotel and Motel Uses, Section 4.31 i (2)
 2. Car-washing establishment using-mechanical equipment for the purposes of cleaning automobiles and other vehicles, Section 5.36 h.
 - b. The following uses shall be prohibited:

Parking lot or parking garage for private passenger cars, Section 4.32b

17.13 DIMENSIONAL REGULATIONS

17.131 Maximum FAR

- a. The maximum FAR for any lot in the district shall not exceed 3.0 as of right;
- b. The maximum FAR for any lot northeasterly of Monsignor O'Brien Highway may be increased by special permit from the Planning Board to 3.5 provided the requirements and conditions of Section 17.17 d and e are met.

17.132 Building Height Limitation The maximum height permitted in the district shall be 85 feet except as modified below:

- a. For lots lying northeasterly of Monsignor O'Brien Highway, the maximum height may be increased to 120' provided no portion of the building rises above a 45 degree bulk control plane beginning at an elevation of 85' above the O'Brien Highway front lot line and rising thereafter in a northeasterly direction.
- b. Notwithstanding the provision of paragraphs a and b above no building may exceed 35' within fifty feet of the Special District I/Residence C-1 zoning district line, or where the zoning district line splits a lot, within 50' of the lot line located in the residential district.

17.133 Minimum Yard Requirements Only the following yard requirements shall apply in the Special District I.

- a. Front Yard - a minimum three feet, measured from the property line, shall be required at the Monsignor O'Brien Highway lot line; no front yard shall be required however for any structure in existence as of May 1, 1989.
- b. Side Yard - None
- c. Rear Yard - None
- d. Notwithstanding the requirements of paragraphs a-c above all buildings shall be set back a minimum of 20 feet from any Special District/Residence C-1 district line; said setback shall consist exclusively of landscaped green area as defined in

Article 2.000. Where the zoning district line splits a lot the setback shall be measured from the lot lines located in the residential district.

17.134 Residential Density The minimum lot area per dwelling unit shall be 300 square feet.

17.14 OFF STREET PARKING AND LOADING REQUIREMENTS

17.141 Minimum Parking Requirements Off-street parking and loading requirements shall be as specified in Article 6.000 for uses in Business B, Industry B and Residence C-3 zoning districts.

17.142 Maximum Parking Requirements The maximum accessory parking permitted for all non-residential uses shall be 4.5 spaces for each 1,000 square feet of lot area. Notwithstanding the provisions of Section 6.313, accessory parking provided to meet the requirements of Section 17.14 shall not exceed that number permitted in this Section 17.142 under any circumstances.

17.15 SPECIAL DEVELOPMENT STANDARDS

All buildings constructed in the Special District I shall meet the following requirements.

17.151 Building Facades Building facades should be designed so as to enhance the visual quality of the district. The following standards shall apply:

- a. A principal building entrance shall face Monsignor O'Brien Highway;
- b. Building facades and rooflines shall be articulated and expanses of unbroken wall planes shall be limited to 35 linear feet for those facades facing public open spaces and/or public roadways;
- c. Ground floor levels shall include a minimum of 30% transparency (non-reflective glass) to enliven and enrich the public environment where such levels contain active gross floor area (i.e. habitable space occupied by persons throughout the day) as defined in Article 2.000.

17.152 Tree Planting At least one street tree, having a minimum caliper of 3", shall be located in the front yard provided along Monsignor O'Brien Highway, for each 25' of frontage on the Highway. Where sufficient front yard is not provided said trees may

be located within the public right of way consistent with the requirements for street tree planting established by the City of Cambridge.

- 17.153 Siting of Parking Areas Parking areas shall not be located in the front yard required for any lot in the district. Enclosed parking facilities are encouraged. On-grade open space parking areas shall be located behind the building or buildings served or arranged in such a way as to minimize their visibility from public ways. Where enclosed or structured parking is provided the structure shall be finished in materials equal in quality to that used on the principal structures on the site to which the parking facility is accessory.
- 17.154 Mechanical Equipment and Refuse Storage Areas:
- a. No refuse storage areas nor mechanical equipment areas shall be located in a front yard within the district. Where such areas are outside a building they shall be screened from view from street and parking areas, residential districts and open space areas, by a 6 foot high, durable non-living barrier (or earth berm) planted with at least one shrub or vine for each 10 feet of barrier towards the abutting property.
 - b. Mechanical equipment on the roof of any building shall be permanently screened from view from the ground.
- 17.16 Special District I shall be considered an area of special planning concern and shall be subject to the Development Consultation Procedure, Section 11.40.
- 17.17 Transfer of Development Rights - Notwithstanding the limitations of Article 2.000 with regard to the definition of "lot" and "owner", the Planning Board may by special permit authorize the transfer of some or all of the allowed gross floor area, as determined by Section 17.131 above, from one or more lots (donating lots) to one or more other lots (receiving lots) anywhere within the Special District I without regard to location of the lot or lots or their ownership, provided the following conditions are met or findings made:
- a. The receiving lot and donating lot in combination are at least 20,000 square feet in area.
 - b. The receiving lot is located northeasterly of Monsignor O'Brien Highway.

- c. The development plans for both the donating and receiving lots meet the intent and requirements of Section 17.10 as a whole and this sub-section 17.17 and are both subject to the special permit authorization and such conditions as may be attached thereto.
- d. The resulting development on both, or the several, lots provides a superior site and building design than might occur without the special permit authorization. Among the conditions which may be reviewed by the Planning Board in reaching such a finding are the following:
 - 1. Reduction in density of development is achieved on lots adjacent to residential uses or zoning districts;
 - 2. An increase in open space and green area is achieved adjacent to residential uses and zoning districts;
 - 3. Active gross floor area uses are located at the base and perimeter of the buildings are located at the base and perimeter of the buildings constructed on the site (sites) where visible from public streets or residential uses;
 - 4. Overall reduction in the bulk of the buildings(s) is achieved through location of some or all of the required parking below grade;
 - 5. Parking located above grade is screened from view from public streets and residential uses by active gross floor areas uses;
 - 6. Improved building design is achieved through the use of quality masonry materials and other quality details as well as an improved pedestrian environment along major public street.
- e. All site and building designs shall be subject to binding design review by the Planning Board.

B. Amend the Zoning Map of the City of Cambridge as follows:

- 1.0 Rezone an area currently zoned Industry B Special District I an area circumscribed by a line said line beginning at a point said point being the intersection of the centerline of Monsignor O'Brien Highway with the centerline of the

southwestern extension of the western side lot line of lot numbered 12 on Assessor's Plat numbered 1A,

- 1.1 Thence proceeding in a northwesterly direction along the centerline of Monsignor O'Brien Highway to a point of intersection with the northeastern extension of the centerline of Sciarappa Street,
- 1.2 Thence turning and proceeding in a southwestern direction along the centerline of Sciarappa Street to the southeastern extension of the northeastern side lot line of lot numbered 93 on Assessor's Plat numbered 22,
- 1.3 Thence turning and proceeding in a northwesterly direction along the southeastern extension of the northeastern side lot line and the northeastern side lot lines of lots numbered 93, 97A, 97, 22, 23, 224, 25, 26, and the northwestern extension of these lot lines to the northwestern side lot line of lot numbered 128 on Assessor's Plat numbered 22 for a distance of approximately 325 feet,
- 1.4 Thence turning and proceeding in a northeasterly direction and continuing in a generally northeasterly direction along the northwestern side lot line of lot number 128 and the Cambridge/Somerville City Limits to the northeastern side lot line of lot numbered 39 on Assessors Plat numbered 1A,
- 1.5 Thence turning and proceeding in a southeasterly direction along the northeastern rear lot lines of lots numbered 39, 40, 26, 29, 19, 18, 43, 25, 92, 31, 9, and 6 on Assessor's Plat number 1 A to the northeastern side lot line of lot numbered 6 on Assessor's Plat numbered 1A,
- 1.6 Thence turning and proceeding in a southwesterly direction along the southeastern side lot line of lot numbered 6 and the southwestern extension of the southeastern side line of lot numbered 6 on Assessor's Plat numbered 1A to the centerline of Monsignor O'Brien Highway, the point of origin.

1.01 Premises as shown on Assessor's Plat numbered 22:

All or parts of lots numbered 128, 109, 18, 17, 16, 15, and 14, odd numbers 5-9 Sciarappa Street and even numbers 240-262 Monsignor O'Brien Highway.

1.02 Premises as shown on Assessor's Plat number 1A:

All or parts of lots numbered 35, 39, 40, 37, 27, 26, 29, 19, 18, 43, 94, 95, 92, 31, 9, and 6, odd numbers 125-261 Monsignor O'Brien Highway.



C. AMEND THE TEXT OF THE ZONING ORDINANCE AS FOLLOWS:

1.0 In Article 4.000 - Use Regulations do the following:

1.1 In Section 4.38 - Heavy Industry, line e, delete the word "no" in the column headed "Ind A" and substitute therefor "SP (52)".

1.2 In Section 4.40 - Footnotes to the Table of Use Regulations add a new footnote 52 as follows:

52. Uses so permitted in existence as of July 1, 1988 may continue and expand, within the dimensional limits of Section 5.34, without the granting of a special permit.

2.0 In Article 5.000 - Dimensional Requirements do the following:

2.1 In Section 5.34 - Industrial District, do the following:

(a) In Table 5-4 delete the existing word "none" in column (6) - Maximum Height in Feet in the line beginning "Ind A" and substitute therefor the phrase "85(e)".

(b) In paragraph 2 - Footnotes, add a new footnote (e) to read as follows:

e. 130 feet by special permit for buildings related to storage and processing of materials permitted in Section 4.37m.

D. Amend the Zoning Map of the City of Cambridge as follows:

- 1.0 Rezone an area currently zoned Industry B to Industry A circumscribed by a line said line beginning at a point said point being the intersection of the Cambridge/Boston City Limits and the eastern extension of the northern side lot line of lot numbered 62 on Assessor's Plat numbered 1A,
- 1.1 Thence proceeding in a generally northeasterly direction, then, westerly direction and finally southwesterly direction along the Cambridge/Boston City Limits to a point of intersection with the western extension of the northern side lot line of lot numbered 63 on Assessor's Plat numbered 1A,
- 1.2 Thence turning and proceeding in an easterly direction along the western extension of the northern side lot line and the northern side lot lines of lots numbered 62 and 63 and the eastern extension of the northern lot line of lot numbered 63 on Assessor's Plat numbered 1A to the point of origin.
- 1.01 Premises located on Assessor's Plat numbered 1A:

All or parts of lots numbered 67, 68, and 81, also known as the Boston Sand and Gravel site and the Massachusetts Bay Transit Authority switching yard.

In City Council September 11, 1989.

Passed to be ordained by a yeas and nays vote:- Yeas 8; Nays 0;
Absent 1.

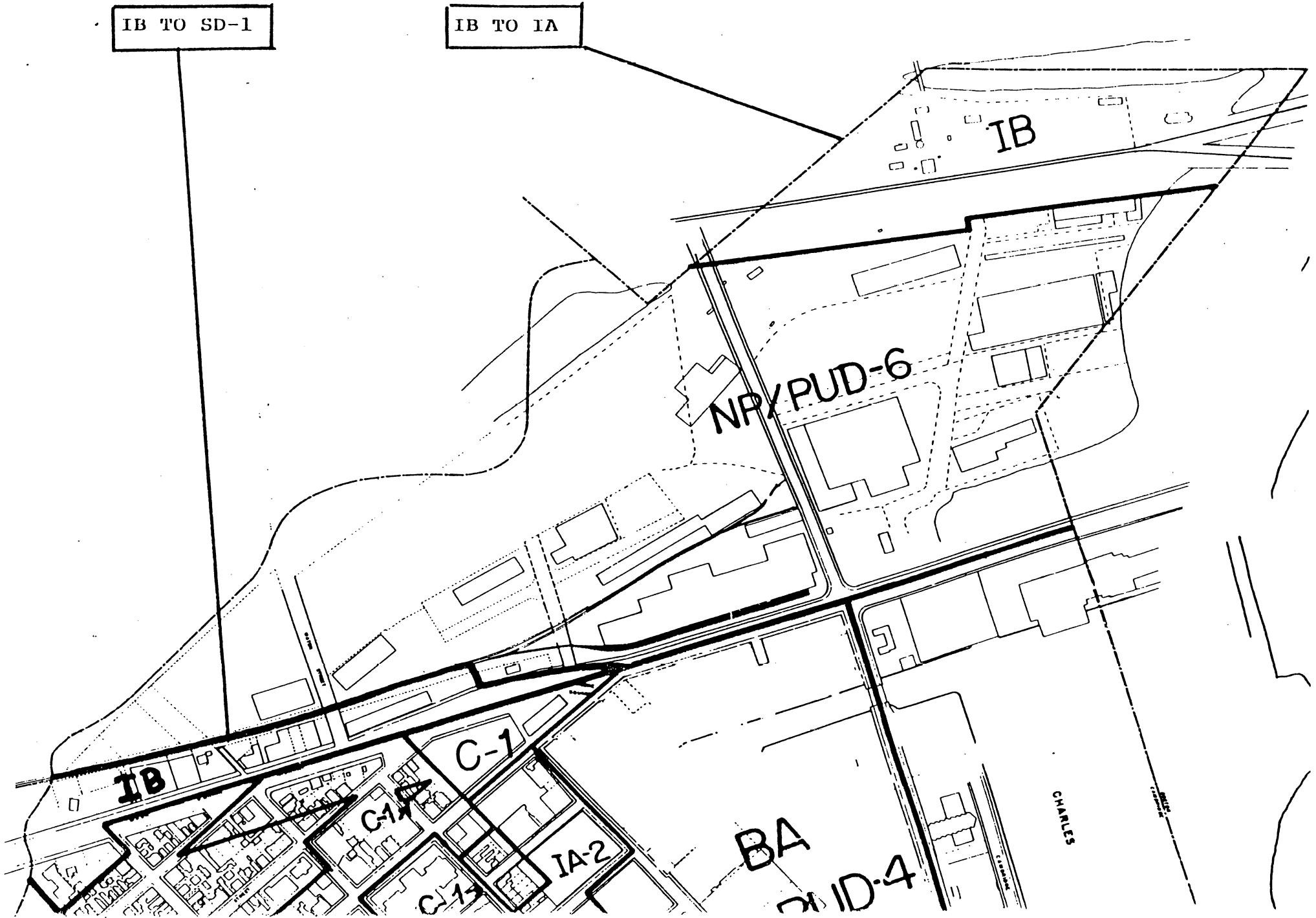
Robert W. Healy, City Manager.

ATTEST:- Joseph E. Connarton
City Clerk.

MONSIGNOR O'BRIEN/NORTH POINT REZONING

IB TO SD-1

IB TO 1A



City of Cambridge

MASSACHUSETTS

Community Residences

In City Council

Sept 11 1987

C. Walsh - Unfinished Business #5 - Question Comes on Passing to be Ordained

	YEA	NAY	ABSENT	PRESENT
Mr. Thomas W. Danehy	✓			
Mr. Francis H. Duehay	✓			
Ms. Sandra Graham	✓			
Mrs. Sheila T. Russell	✓			
Mr. David E. Sullivan	✓			
Mr. Walter J. Sullivan	✓			
Mr. William H. Walsh	✓			
Ms. Alice K. Wolf	✓			
Mayor Alfred E. Vellucci	✓			

9

0

C.D.S.
MS
M



City of Cambridge

In the Year One Thousand, Nine Hundred Eighty-Nine

AN ORDINANCE

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

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

1. Article 11.20 of the Cambridge Zoning Ordinance entitled "Community Residences and Personal Care Lodging Houses" be, and hereby is, repealed in its entirety;
2. Article 4.30 of the Cambridge Zoning Ordinance, entitled "Table of Use Regulations," be, and hereby is amended by repealing and deleting Article 4.31(j)(3) and 4.31(k).
3. Footnote 51 to Article 4.30 be, and hereby is, repealed.
4. Article 4.56 of the Cambridge Zoning Ordinance, entitled "Institutional Use Regulation Table" be, and hereby is, amended by repealing and deleting sections 4.56(f)(3) and (4).
5. Article 2.000 of the Cambridge Zoning Ordinance be, and hereby is, amended by deleting in its entirety the definition of "Community Residence" and by deleting in its entirety the definition of "Personal Care Lodging House."
6. Article 2.000 of the Cambridge Zoning Ordinance be, and hereby is, further amended by inserting a new paragraph in the definition of "Family" which shall read as follows:

"Notwithstanding the definition in the preceding paragraph, a family shall be deemed to include four or more persons not within the second degree of kinship occupying a dwelling unit and living as a single, non-profit housekeeping unit, if said occupants are handicapped persons as defined in Title VIII of the Civil Rights Act of 1968, as amended by the "Fair Housing Amendments Act of 1988." Such unrelated individuals shall have the right to occupy a dwelling unit in the same manner and to the same extent as any family unit as defined in the first paragraph of this definition."

7. Article 4.30 of the Cambridge Zoning Ordinance, entitled "Table of Use Regulations" be, and hereby is amended by repealing and deleting Article 4.33 (e) (3) and (4).

In City Council September 11, 1989.

Passed to be ordained by a yea and nay vote:- Yeas 9; Nays 0; Absent 0.

Robert W. Healy, City Manager.

ATTEST:- Joseph E. Connarton
City Clerk.



City of Cambridge

In the Year One Thousand, Nine Hundred Eighty-Nine

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Robert W. Healy, City Manager.

ATTEST:- Joseph E. Connarton
City Clerk.



City of Cambridge

In the Year One Thousand, Nine Hundred Eighty-Nine

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In City Council September 11, 1989.

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Robert W. Healy, City Manager.

ATTEST:- Joseph E. Connarton
City Clerk.



City of Cambridge

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In the Year One Thousand, Nine Hundred Eighty-Nine

AN ORDINANCE

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

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

1. Article 11.20 of the Cambridge Zoning Ordinance entitled "Community Residences and Personal Care Lodging Houses" be, and hereby is, repealed in its entirety;
2. Article 4.30 of the Cambridge Zoning Ordinance, entitled "Table of Use Regulations," be, and hereby is amended by repealing and deleting Article 4.31(j)(3) and 4.31(k).
3. Footnote 51 to Article 4.30 be, and hereby is, repealed.
4. Article 4.56 of the Cambridge Zoning Ordinance, entitled "Institutional Use Regulation Table" be, and hereby is, amended by repealing and deleting sections 4.56(f)(3) and (4).
5. Article 2.000 of the Cambridge Zoning Ordinance be, and hereby is, amended by deleting in its entirety the definition of "Community Residence" and by deleting in its entirety the definition of "Personal Care Lodging House."
6. Article 2.000 of the Cambridge Zoning Ordinance be, and hereby is, further amended by inserting a new paragraph in the definition of "Family" which shall read as follows:

"Notwithstanding the definition in the preceding paragraph, a family shall be deemed to include four or more persons not within the second degree of kinship occupying a dwelling unit and living as a single, non-profit housekeeping unit, if said occupants are handicapped persons as defined in Title VIII of the Civil Rights Act of 1968, as amended by the "Fair Housing Amendments Act of 1988." Such unrelated individuals shall have the right to occupy a dwelling unit in the same manner and to the same extent as any family unit as defined in the first paragraph of this definition."

7. Article 4.30 of the Cambridge Zoning Ordinance, entitled "Table of Use Regulations" be, and hereby is amended by repealing and deleting Article 4.33 (e) (3) and (4).

In City Council September 11, 1989.

Passed to be ordained by a yea and nay vote:- Yeas 9; Nays 0; Absent 0.

Robert W. Healy, City Manager.

ATTEST:- Joseph E. Connarton
City Clerk.

In City Council August 7, 1989

The Committee on Ordinances, comprised of the entire membership of the City Council, conducted a public hearing on Wednesday, July 19, 1989 beginning at 5:39 p.m. in the Sullivan Chamber, City Hall, for the purpose of discussing petition of the City Council to amend the Zoning Ordinances as they relate to Article 11.20 entitled "Community Residences and Personal Care Lodging Houses."

Councillor William Walsh, Chairman of the Committee, opened the hearing by stating the purpose of the petition was to address concerns raised in a memorandum of law issued by the City Solicitor outlining the problems with the current zoning ordinance created by the adoption of a recent amendment to the Federal Fair Housing Act adopted by the 100th Congress.

Councillor Walsh further stated the office of the Attorney General of the Commonwealth had also communicated on this issue and it is the considered opinion of both the City Solicitor and Attorney General that the Cambridge ordinance needs to be repealed and a new paragraph inserted in Article 2.000 entitled "Definitions".

At this time, Councillor Walsh requested all those in favor of the petition to come forward.

No one appeared in favor.

Councillor Walsh requested all those in opposition to come forward.

No one appeared in opposition.

At this time, Vice-Mayor Alice Wolf moved the petition be referred to the full City Council with a favorable recommendation.

The motion - prevailed.

Councillor David Sullivan moved the memorandum of law, offered by the City Solicitor be incorporated within the recommendation.

The motion - prevailed.

The hearing was adjourned at 5:43 p.m.

For the Committee,

Councillor William H. Walsh
Chairman.

0

Comm. from Joseph E. Connarton, City Clerk,
transmitting the report of Councillor William
H. Walsh, Chairman, Committee on Ordinances,
with a favorable recommendation Re: petition of
the Council to amend the Zoning Ordinances
in Article 11.20 entitled "Community Residences
& Personal Care Lodging Houses"; said recommen-
dation also incorporates the memorandum of law
issued by the City Solicitor.

In City Council,

August 7, 1989

8-7-89

Report Accepted.

Petition As Amended

Passed to a 2nd Reading

In City Council August 7, 1989

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For the Committee,

Councillor William H. Walsh
Chairman.



THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF THE ATTORNEY GENERAL

JOHN W. MCCORMACK STATE OFFICE BUILDING
ONE ASHBURTON PLACE, BOSTON 02106-1698

April 20, 1989

JAMES M. SHANNON
ATTORNEY GENERAL

Robert Healy
City Manager
Cambridge City Hall
Cambridge, MA 02138

Re: Cambridge Zoning Ordinance

Dear Mr. Healy:

We appreciated the opportunity to meet with you, Mr. Drisdell and Ms. Gabriel on Thursday, April 13, 1989. The meeting was a productive exchange of views regarding the Cambridge Zoning Ordinance ("the Ordinance") as it applies to housing for people with disabilities. This letter sets forth the essential legal basis for our concerns and the changes which we believe will be necessary in order for the ordinance to comply with the law.

The primary legal problem with the ordinance is that it violates federal fair housing law. As we discussed, in September of 1988 President Reagan signed into law the Fair Housing Amendments Act of 1988. This legislation, which went into effect on March 12, 1989, prohibits discrimination on the basis of handicap in housing. In particular, the Act states that it shall be unlawful for any person, including a municipality, to "make unavailable or deny, a dwelling to any buyer or renter because of a handicap of" the buyer, renter or anyone intending to reside in the dwelling. 42 U.S.C. sec. 3604 (f)(1). The legislative history of the Act makes clear that it was the intent of the Congress that the Act invalidate zoning ordinances, practices, and decisions that exclude persons with disabilities from communities of their choice.

The Act is intended to prohibit the application of special requirements through land-use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community.

H.R. Rep. No. 711, 100th Cong., 2d Sess. 22, at 24 (1988).


Applying the mandates of the Act to the Ordinance, it is evident that Cambridge may not maintain a zoning ordinance that treats community residences for people with disabilities differently from residences for other families of similar size. More specifically, the ordinance may not require a special permit for community residences, may not set quotas for the number of community residences on a citywide or neighborhood basis, and may not require house committees which are involved in the operation of community residences. In short, the city may not impose greater requirements upon community residences than are imposed upon other similar uses.

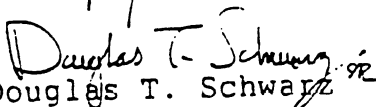
Specifically, to remedy the Ordinance, the city should repeal section 11.20, "Community Residences and Personal Care Lodging Houses." It should also repeal lines F3 and F4 of section 4.56, the "Table of Institutional Uses." Lastly, the definition of "Family" in Article 2 of the ordinance should be amended to clarify that it may not be used to prohibit the establishment of community residences for people with disabilities.

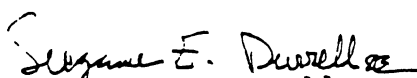
We hope these issues can be resolved by the city voluntarily bringing its zoning ordinance into compliance with the law. If, however, the Ordinance is not repealed or amended in a timely manner to address the above described legal infirmities, the Department of the Attorney General is prepared to seek judicial relief. The action would seek to enjoin further enforcement of the zoning ordinance as being violative of federal and state constitutional and statutory protections, including the amendments to the federal Fair Housing Act.

Thank you for your attention to these concerns. We look forward to resolving these issues in a cooperative and timely manner.

Sincerely,


Stanley J. Eichner


Douglas T. Schwarz


Suzanne E. Durrell
Assistant Attorneys General
(617) 727-2200

cc: Don Drisdell, Esq.
Gail Gabriel, Esq
Office of the City Solicitor

PUBLIC NOTICE
RELATIVE TO ZONING

City of Cambridge

MASSACHUSETTS

Office of the City Clerk

Notice is hereby given that in accordance with the provisions of Chapter 40A, Section 5 of the General laws, Tercentenary Edition and amendments thereto, that the Committee on Ordinances, comprised of the entire membership of the City Council, will hold a public hearing on Wednesday, July, 19, 1989 at 5:30 p. m. in the Sullivan Chamber, City Hall, Cambridge, Massachusetts on a petition by the City Council to amend the Zoning Ordinance of the City of Cambridge by deleting the existing Article 11.20 entitled "Community Residences and Personal Care Lodging Houses", and all references to Community Residences and Personal Care Lodging Houses in the Zoning Ordinances. In Article 2.000, definitions, insert a new paragraph which shall read as follows:

"Notwithstanding the definition in the preceding paragraph, a family shall be deemed to include four or more persons not within the second degree of kinship occupying a dwelling unit and living as a single, non-profit house-keeping unit, if said occupants are handicapped persons as defined in Title VIII of the Civil Rights Act of 1988." Such unrelated individuals shall have the right to occupy a dwelling unit in the same manner and to the same extent as any family unit as defined in the first paragraph of this definition."

Copies of this petition are on file in the Office of the City Clerk, City Hall, Cambridge, Massachusetts.

All persons interested in this matter may appear at this time and be heard.

For the Committee,

Councillor William H. Walsh
Chairman.



CITY OF CAMBRIDGE, MASSACHUSETTS
PLANNING BOARD

CITY HALL ANNEX, 57 INMAN STREET, CAMBRIDGE 02139

NOTICE OF PUBLIC HEARING

The Planning Board of the City of Cambridge will hold a public hearing on Tuesday, July 18, 1989, at 8:30 p.m. at the Community Development Conference Room, third floor, City Hall Annex, 57 Inman Street, Cambridge, Massachusetts on a petition by the Cambridge City Council to amend the Zoning Ordinance of the City of Cambridge by deleting the existing Article 11.20 entitled "Community Residences and Personal Care Lodging Houses", and all references to Community Residences and Personal Care Lodging Houses in the Zoning Ordinance. In Article 2.000, definitions, insert a new paragraph which shall read as follows:

"Notwithstanding the definition in the preceding paragraph, a family shall be deemed to include four or more persons not within the second degree of kinship occupying a dwelling unit and living as a single, non-profit housekeeping unit, if said occupants are handicapped persons as defined in Title VIII of the Civil Rights Act of 1988." Such unrelated individuals shall have the right to occupy a dwelling unit in the same manner and to the same extent as any family unit as defined in the first paragraph of this definition."

Copies of this petition are on file in the Office of the City Clerk, City Hall, Cambridge, Massachusetts. Questions concerning the petition may be addressed to Lester Barber or Liza Malenfant at 498-9034.

RECEIVED BY
OFFICE OF CITY CLERK
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CAMBRIDGE MA.

1989 JUL 12 12

CAMBRIDGE



CAMBRIDGE CITY COUNCIL

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9094

William H. Walsh
City Councillor

July 11, 1989

Stanley J. Eichner
Assistant Attorney General
Department of the Attorney General
John W. McCormack State Office Building
ONE Ashburton Place
Boston, MA. 02108-1698

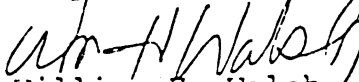
RE: Amendment to " The Zoning Ordinance of
the City of Cambridge, MA. "

Dear Mr. Eichner:

As you are aware from prior correspondence, the Hearing before the Ordinance Committee on the above referenced Amendment is scheduled for Wednesday, July 19, 1989 at 5:30 P.M. in the Council Chamber at Cambridge City Hall.

I am enclosing a copy of the proposed Amendment. Any comments from you relative thereto are most welcome. In addition, should you wish to address the Council during the Hearing, you are most welcome to do so. Should you so wish, I will appreciate it if you will apprise me of your desire prior to the day of the Hearing.

Very truly yours,


William H. Walsh

(enclosure)

WHW/dn



CAMBRIDGE CITY COUNCIL

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9094


William H. Walsh
City Councillor

BY HAND

July 12, 1989

MEMORANDUM:

TO: Joseph E. Connarton
City Clerk

FROM: David Noonan, for 
Councillor Walsh

RE: Ordinance Committee Hearing
July 19, 1989

Councillor Walsh wanted you to be aware that he sent the enclosed letter to the Office of the Attorney General.

(enclosure)



OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9017

JOSEPH E. CONNARTON
CITY CLERK

JOHN E. FLYNN
DEPUTY CITY CLERK

TO: Russell B. Higley, City Solicitor
Donald A. Drisdell, Deputy City Solicitor
Gail S. Gabriel, Legal Counsel

FROM: Joseph E. Connarton
City Clerk

DATE: July 10, 1989

SUBJECT: Committee on Ordinances meeting—July 19, 1989.

Pursuant to the request of Councillor William H. Walsh, Chairman of the above referenced committee, would you or your designee please arrange to attend the Ordinance Committee meeting beginning at 5:30 p. m. in the Sullivan Chamber, City Hall in order to discuss the Community Residences and Personal Care Lodging House Ordinance.

As you know, the existing ordinance has been recommended for repeal and the Chairman is concerned with the void such repeal would create, specifically, he would like to know what, if any, recommendation could be offered in substitution for Article 11.20 entitled "Community Residences and Personal Care Lodging Houses.

Thank you for your cooperation in this matter.

If you have any questions please feel free to contact me.



OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9017

JOSEPH E. CONNARTON
CITY CLERK

JOHN E. FLYNN
DEPUTY CITY CLERK

TO: Michael Rosenberg,
Assistant City Manager for Community Development.

FROM: Joseph E. Connarton,
City Clerk

DATE: July 10, 1989

SUBJECT: Committee on Ordinance meeting — July 19, 1989.

Pursuant to the request of Councillor William H. Walsh, Chairman of the above referenced committee, would you or your designee please arrange to attend the Ordinance Committee meeting beginning at 5:30 p. m. in the Sullivan Chamber, City Hall in order to discuss the Community Residences and Personal Care Lodging House Ordinance.

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City of Cambridge

In the Year One Thousand, Nine Hundred Eighty-Nine

AN ORDINANCE

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

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

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3. Footnote 51 to Article 4.30 be, and hereby is, repealed.
4. Article 4.56 of the Cambridge Zoning Ordinance, entitled "Institutional Use Regulation Table" be, and hereby is, amended by repealing and deleting sections 4.56(f)(3) and (4).
5. Article 2.000 of the Cambridge Zoning Ordinance be, and hereby is, amended by deleting in its entirety the definition of "Community Residence" and by deleting in its entirety the definition of "Personal Care Lodging House."
6. Article 2.000 of the Cambridge Zoning Ordinance be, and hereby is, further amended by inserting a new paragraph in the definition of "Family" which shall read as follows:

"Notwithstanding the definition in the preceding paragraph, a family shall be deemed to include four or more persons not within the second degree of kinship occupying a dwelling unit and living as a single, non-profit housekeeping unit, if said occupants are handicapped persons as defined in Title VIII of the Civil Rights Act of 1968, as amended by the "Fair Housing Amendments Act of 1988." Such unrelated individuals shall have the right to occupy a dwelling unit in the same manner and to the same extent as any family unit as defined in the first paragraph of this definition."

7. Article 4.30 of the Cambridge Zoning Ordinance, entitled "Table of Use Regulations" be, and hereby is amended by repealing and deleting Article 4.33 (e) (3) and (4).

Passed to a second reading as amended at the City Council meeting held on August 7, 1989 and on or after August 21, 1989 the question comes on passing to be ordained.

ATTEST:- Joseph E. Connarton
City Clerk.



City of Cambridge

In the Year One Thousand, Nine Hundred Eighty-Nine

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Passed to a second reading as amended at the City Council meeting held on August 7, 1989 and on or after August 21, 1989 the question comes on passing to be ordained.

ATTEST:- Joseph E. Connarton
City Clerk.



City of Cambridge

In the Year One Thousand, Nine Hundred Eighty-Nine

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ATTEST:- Joseph E. Connarton
City Clerk.

RE: COMMUNITY
RESIDENCES

DOU:



Amend Amendment to zoning Ordinance
to include deletion as follows:

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Zoning Ordinance, entitled
'Table of Use Regulations,' be, and
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deleting Article 4.33 (e) (3) & (4). "

DW



City of Cambridge

In the Year One Thousand, Nine Hundred Eighty-Nine

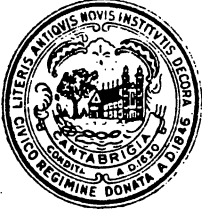
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OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9017

JOSEPH E. CONNARTON
CITY CLERK

JOHN E. FLYNN
DEPUTY CITY CLERK

TO: Michael Rosenberg,
Assistant City Manager for Community Development.

FROM: Joseph E. Connarton,
City Clerk

DATE: July 10, 1989

SUBJECT: Committee on Ordinance meeting — July 19, 1989.

Pursuant to the request of Councillor William H. Walsh, Chairman of the above referenced committee, would you or your designee please arrange to attend the Ordinance Committee meeting beginning at 5:30 p. m. in the Sullivan Chamber, City Hall in order to discuss the Community Residences and Personal Care Lodging House Ordinance.

As you know, the existing ordinance has been recommended for repeal and the Chairman is concerned with the void such repeal would create, specifically, he would like to know what, if any, recommendation could be offered in substitution for Article 11.20 entitled "Community Residences and Personal Care Lodging Houses.

Thank you for your cooperation in this matter.

If you have any questions please feel free to contact me.



City of Cambridge

COUNCILLOR WALSH

(Amended Order No. 16)

IN CITY COUNCIL

June 5, 1989

WHEREAS: The Law Department of the City of Cambridge has presented to the City Manager and the City Council in a communication dated May 19, 1989 its review of the impact on the Community Residences and Personal Care Lodging Houses regulations under the Cambridge Zoning Ordinance of the " Fair Housing Amendments Act of 1988 " (amending title VIII of the Civil Rights Act of 1968), enacted by th 100th Congress on September 13, 1988 and became law effective on March 12, 1989; and

WHEREAS: Substantive to its review, the Law Department recommends " that the city forthwith begin the process of repeal, in its entirety, of Article 11.20 of the Cambridge Zoning Ordinance, entitled " Community Residences and Personal Care Lodging Houses ", that Article 4.30 of the Cambridge Zoning Ordinance entitled " Table of Use Regulations ", be amended to eliminate reference to Community Residences and Personal Lodging Houses, and that footnote no. 51 be deleted from said Table of Uses...that the references to Community Residences and Personal Care Lodging Houses found in the Institutional Use Regulation Table at Article 4.56(f) (3) and (4) be deleted...that the Cambridge Zoning definition of family be amended in such a way as to specifically include Community Residences and Personal Care Lodging Houses in its definition of family ".; and

WHEREAS: To insure compliance with the law, the Law Department proposed an Amendment to an ordinance formerly entitled " The Zoning Ordinances of the City of Cambridge " (copy attached); now therefore be it

ORDERED: That this City Council go on record recording its intent to repeal and adopt an ordinance at the earliest possible time that will be in conformity and compliance with the mandates of the " Fair Housing Amendments Act of 1988 ".

(ATTACHMENT)

In City Council June 5, 1989.
Adopted by the affirmative vote of 7 members.
Attest:-Joseph E. Connarton, City Clerk.

A true copy;

ATTEST:- *Joseph E. Connarton*
Joseph E. Connarton, City Clerk..

(COUNCILLOR DUEHAY RECORDED AS VOTING PRESENT IN THIS MATTER)



City of Cambridge

COUNCILLOR WALSH

(Original Order No. 16)

IN CITY COUNCIL

June 5, 1989

WHEREAS: The Law Department of the City of Cambridge has presented to the City Manager and the City Council in a communication dated May 19, 1989 its review of the impact on the Community Residences and Personal Care Lodging Houses regulations under the Cambridge Zoning Ordinance of the " Fair Housing Amendments Act of 1988 " (amending title VIII of the Civil Rights Act of 1968), enacted by th 100th Congress on September 13, 1988 and became law effective on March 12, 1989; and

WHEREAS: Substantive to its review, the Law Department recommends " that the city forthwith begin the process of repeal, in its entirety, of Article 11.20 of the Cambridge Zoning Ordinance, entitled " Community Residences and Personal Care Lodging Houses ", that Article 4.30 of the Cambridge Zoning Ordinance entitled " Table of Use Regulations ", be amended to eliminate reference to Community Residences and Personal Lodging Houses, and that footnote no. 51 be deleted from said Table of Uses...that the references to Community Residences and Personal Care Lodging Houses found in the Institutional Use Regulation Table at Article 4.56(f) (3) and (4) be deleted...that the Cambridge Zoning definition of family be amended in such a way as to specifically include Community Residences and Personal Care Lodging Houses in its definition of family ".; and

WHEREAS: To insure compliance with the law, the Law Department proposed an Amendment to an ordinance formerly entitled " The Zoning Ordinances of the City of Cambridge " (copy attached); now therefore be it

ORDERED: That this proposed Amendment be adopted forthwith to insure that, with all deliberate speed, the Cambridge Zoning Ordinance will be in conformity and compliance with the mandates of the " Fair Housing Amendments Act of 1988 ".

(ATTACHMENT)



City of Cambridge

1989-2 11 0 30

CAMBRIDGE, MA

In the Year One Thousand, Nine Hundred Eighty-Nine

AN ORDINANCE

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

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

1. Article 11.20 of the Cambridge Zoning Ordinance entitled "Community Residences and Personal Care Lodging Houses" be, and hereby is, repealed in its entirety;
2. Article 4.30 of the Cambridge Zoning Ordinance, entitled "Table of Use Regulations," be, and hereby is amended by repealing and deleting Article 4.31(j)(3) and 4.31(k).
3. Footnote 51 to Article 4.30 be, and hereby is, repealed.
4. Article 4.56 of the Cambridge Zoning Ordinance, entitled "Institutional Use Regulation Table" be, and hereby is, amended by repealing and deleting sections 4.56(f)(3) and (4).
5. Article 2.000 of the Cambridge Zoning Ordinance be, and hereby is, amended by deleting in its entirety the definition of "Community Residence" and by deleting in its entirety the definition of "Personal Care Lodging House."
6. Article 2.000 of the Cambridge Zoning Ordinance be, and hereby is, further amended by inserting a new paragraph in the definition of "Family" which shall read as follows:

"Notwithstanding the definition in the preceding paragraph, a family shall be deemed to include four or more persons not within the second degree of kinship occupying a dwelling unit and living as a single, non-profit housekeeping unit, if said occupants are handicapped persons as defined in Title VIII of the Civil Rights Act of 1968, as amended by the "Fair Housing Amendments Act of 1988." Such unrelated individuals shall have the right to occupy a dwelling unit in the same manner and to the same extent as any family unit as defined in the first paragraph of this definition."



City of Cambridge

COUNCILLOR WALSH

(Amended Order No. 16)

IN CITY COUNCIL

June 5, 1989

WHEREAS: The Law Department of the City of Cambridge has presented to the City Manager and the City Council in a communication dated May 19, 1989 its review of the impact on the Community Residences and Personal Care Lodging Houses regulations under the Cambridge Zoning Ordinance of the " Fair Housing Amendments Act of 1988 " (amending title VIII of the Civil Rights Act of 1968), enacted by th 100th Congress on September 13, 1988 and became law effective on March 12, 1989; and

WHEREAS: Substantive to its review, the Law Department recommends " that the city forthwith begin the process of repeal, in its entirety, of Article 11.20 of the Cambridge Zoning Ordinance, entitled " Community Residences and Personal Care Lodging Houses ", that Article 4.30 of the Cambridge Zoning Ordinance entitled " Table of Use Regulations ", be amended to eliminate reference to Community Residences and Personal Lodging Houses, and that footnote no. 51 be deleted from said Table of Uses...that the references to Community Residences and Personal Care Lodging Houses found in the Institutional Use Regulation Table at Article 4.56(f) (3) and (4) be deleted...that the Cambridge Zoning definition of family be amended in such a way as to specifically include Community Residences and Personal Care Lodging Houses in its definition of family ".; and

WHEREAS: To insure compliance with the law, the Law Department proposed an Amendment to an ordinance formerly entitled " The Zoning Ordinances of the City of Cambridge " (copy attached); now therefore be it

ORDERED: That this City Council go on record recording its intent to repeal and adopt an ordinance at the earliest possible time that will be in conformity and compliance with the mandates of the " Fair Housing Amendments Act of 1988 ".

(ATTACHMENT)

In City Council June 5, 1989.
Adopted by the affirmative vote of 7 members.
Attest:-Joseph E. Connarton, City Clerk.

A true copy;

ATTEST:-

Joseph E. Connarton
Joseph E. Connarton, City Clerk..

(COUNCILLOR DUEHAY RECORDED AS VOTING PRESENT IN THIS MATTER)

The Committee on Ordinances conducted a public hearing on Wednesday, July 19, 1989 beginning at 5:39 P.M. in the Sullivan Chamber, City Hall, for the purpose of discussing a petition of the City Council to amend the Zoning Ordinances as they relate to Article 11.20 entitled "Community Residences and Personal Care Lodging Houses".

Mr. Councillor William Walsh, chairman of the Committee opened the hearing by stating the purpose of the petition was to address concerns raised in a memorandum of law issued by the City

Solutor outlining the problems with the current zoning ordinance created by the adoption of a recent amendment to the Federal Fair Housing Act adopted by the 100th Congress.

Councillor Walsh further stated the office of the Attorney General of the Commonwealth had also communicated on this issue and it is the considered opinion of both the City Solutor and Attorney General that the Cambridge ordinance needs to be repealed and a new paragraph inserted in Article 2.000 entitled

(3)

"Defendants"

At this time Councilor Walsh
requested all those in favor of the petition
come forward.

No one appeared in favor.

Councilor Walsh requested all those
in opposition to come forward.

No one appeared in opposition.

At this time Vice Mayor Alice Wolf
moved the petition be referred to the
full City Council with a favorable recommendation.

The motion prevailed.

Councillor David Sullivan moved the
repeal of law offered by the
City Solicitor be incorporated under
the recommendation.

The motion prevailed.

The hearing was adjourned at 5:43 P.M.

For the Committee

Councillor William Walsh
Chairman

PUBLIC NOTICE
RELATIVE TO ZONING

City of Cambridge

MASSACHUSETTS

Office of the City Clerk

Notice is hereby given that in accordance with the provisions of Chapter 40A, Section 5 of the General laws, Tercentenary Edition and amendments thereto, that the Committee on Ordinances, comprised of the entire membership of the City Council, will hold a public hearing on Wednesday, July, 19, 1989 at 5:30 p. m. in the Sullivan Chamber, City Hall, Cambridge, Massachusetts on a petition by the City Council to amend the Zoning Ordinance of the City of Cambridge by deleting the existing Article 11.20 entitled "Community Residences and Personal Care Lodging Houses", and all references to Community Residences and Personal Care Lodging Houses in the Zoning Ordinances. In Article 2.000, definitions, insert a new paragraph which shall read as follows:

"Notwithstanding the definition in the preceding paragraph, a family shall be deemed to include four or more persons not within the second degree of kinship occupying a dwelling unit and living as a single, non-profit house-keeping unit, if said occupants are handicapped persons as defined in Title VIII of the Civil Rights Act of 1988." Such unrelated individuals shall have the right to occupy a dwelling unit in the same manner and to the same extent as any family unit as defined in the first paragraph of this definition."

Copies of this petition are on file in the Office of the City Clerk, City Hall, Cambridge, Massachusetts.

All persons interested in this matter may appear at this time and be heard.

For the Committee,

Councillor William H. Walsh
Chairman.

RECEIVED BY
MR. DEE OLMSTEAD
JUN 29 21 3 42
CAMBRIDGE MA.

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All persons interested in this matter may appear at this time and be heard.

For the Committee,

Councillor William H. Walsh
Chairman.



CITY OF CAMBRIDGE

Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Michael C. Costello
Assistant City Solicitor

Office of the City Solicitor
City Hall
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

(617) 498-9020

Birge Albright
Legal Counsel

Gail S. Gabriel
Legal Counsel

Joseph M. Kaigler
Legal Counsel

May 19, 1989

To: Robert W. Healy, City Manager

From: Russell B. Higley *RBH*
Donald A. Drisdell *DAD*
Gail S. Gabriel *GS*

Subject: Cambridge Zoning Ordinance Article 11.20 entitled "Community Residences and Personal Care Lodging Houses"

1. INTRODUCTION

As you know, the Law Department has been reviewing the impact of a recent amendment to the Federal Fair Housing Act on the Community Residences and Personal Care Lodging Houses regulations under the Cambridge Zoning Ordinance.

The amended Act is entitled the "Fair Housing Amendments Act of 1988" and amends title VIII of the Civil Rights Act of 1968. It was enacted by the 100th Congress on September 13, 1988 (Public Law 100-430) and became effective on March 12, 1989.

Essentially, the Amendment now explicitly prohibits housing discrimination based on handicap and familial status.

2. DEFINITIONS UNDER THE FAIR HOUSING AMENDMENTS ACT OF 1988

Section 802(h) of the Act defines handicap, as it relates to an individual, as

- "(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,
- (2) a record of having such an impairment, or

- (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in Section 102 of the Controlled Substances Act) 21 U.S. c. 802))."

3. PROTECTIONS EXTENDED TO HANDICAPPED PERSONS UNDER THE ACT

In pertinent part, s. 804 of the Act is further amended by prohibiting the discrimination against handicapped persons as follows:

- "(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of -
- (A) that buyer or renter;
 - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - (C) any person associated with that buyer or renter.
- (2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of -
- (A) that person; or
 - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - (C) any person associated with that person.
- (3) For purposes of this subsection, discrimination includes -
- ... (B) a refusal to make reasonable accommodations in rules, practices, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; ...
- (7) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals.

4. REPORT OF CONGRESSIONAL COMMITTEE RELATIVE TO HANDICAPPED PERSONS

In its report recommending the passage of this Amendment the House Committee on the Judiciary explained the rationale for including handicapped persons as a protected class under the Act as follows:

Prohibiting discrimination against individuals with handicaps is a major step in changing the stereotypes that have served to exclude them from American life. These persons have been denied housing because of misperceptions, ignorance, and outright prejudice.

The Fair Housing Amendments Act, like Section 504 of the Rehabilitation Act of 1973, as amended, is a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream. It repudiates the use of stereotypes and ignorance, and mandates that persons with handicaps be considered as individuals. Generalized perceptions about disabilities and unfounded speculations about threats to safety are specifically rejected as grounds to justify exclusion.

For example, people who use wheelchairs have been denied the right to build simple ramps to provide access, or have been perceived as posing some threat to property maintenance. People with visual and hearing impairments have been perceived as dangers because of erroneous beliefs about their abilities. People with mental retardation have been excluded because of stereotypes about their capacity to live safely and independently. People with Acquired Immune Deficiency Syndrome (AIDS) and people who test positive for the AIDS virus have been evicted because of an erroneous belief that they pose a health risk to others.

All of these groups have experienced discrimination because of prejudice and aversion - because they make non-handicapped people uncomfortable. H.R. 1158 clearly prohibits the use of stereotypes and prejudice to deny critically needed housing to handicapped persons. The right to be free from housing discrimination is essential to the goal of independent living.

The Committee further explained its definition of handicapped persons as follows:

Handicap. Provides a definition of handicap to be used under this Act. This language is substantially similar to the definition under the primary federal law prohibiting discrimination against the handicapped, the Rehabilitation Act of 1973. The Committee intends that the definition be interpreted consistent with regulations clarifying the meaning of the similar provision found in Section 504 of the Rehabilitation Act.

The definition adopted by the Committee makes it clear that current illegal users of or addicts to controlled substances, as defined by the Controlled Substances Act, are not considered to be handicapped persons under the Fair Housing Act. This amendment is intended to exclude current abusers and current addicts of illegal drugs from protection under this Act. The definition of handicap is not intended to be used to condone or protect illegal activity.

This exclusion does not eliminate protection for individuals who take drugs defined in the Controlled Substances Act for a medical condition under the care of, or by prescription from, a physician. Use of a medically prescribed drug clearly does not constitute illegal use of a controlled substance.

Similarly, individuals who have a record of drug use or addiction but who do not currently use illegal drugs would continue to be protected if they fell under the definition of handicap. The Committee does not intend to exclude individuals who have recovered from an addiction or are participating in a treatment program or a self-help group such as Narcotics Anonymous. Just like any other person with a disability, such as cancer or tuberculosis, former drug-dependent persons do not pose a threat to a dwelling or its inhabitants simply on the basis of status. Depriving such individuals of housing, or evicting them, would constitute irrational discrimination that may seriously jeopardize their continued recovery.

Individuals who have been perceived as being a drug user or an addict are covered under the definition of handicap if they can demonstrate that they are being regarded as having an impairment and that they are not currently using an illegal drug.

The exception for current illegal drug users does not affect their coverage in the Rehabilitation Act or other statutes. The World Health Organization and the American Psychiatric Association both classify substance abuse and drug dependence as a mental disorder, and most medical authorities agree that drug dependence is a disease. Indeed, Congress has defined the term "handicap" in the Rehabilitation Act to include drug addiction and to require that federal employers as well as recipients of federal financial assistance recognize drug addiction as a handicap.

5. REPORT OF HOUSE COMMITTEE RELATIVE TO ADDITIONAL DISCRIMINATORY HOUSING PRACTICES

The Committee further made it clear in its report that the law is intended to apply to congregate living arrangements, (such as community residences as defined by the Cambridge Ordinance), and applies also to attempts by local governments to regulate the existence of such congregate living arrangements in any way or ways that are different from regulation of

These new subsections would also apply to state or local land use and health and safety laws, regulations, practices or decisions which discriminate against individuals with handicaps. While state and local governments have authority to protect safety and health, and to regulate use of land, that authority has sometimes been used to restrict the ability of the individuals with handicaps to live in communities. This has been accomplished by such means as the enactment of imposition of health, safety or land-use requirements on congregate living arrangements among non-related persons with disabilities. Since these requirements are not imposed on families and groups of similar size of other unrelated people, these requirements have the effect of discriminating against persons with disabilities.

The Committee intends that the prohibition against discrimination against those with handicaps apply to zoning decisions and practices. The Act is intended to prohibit the application of special requirements through land-use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community. Under H.R. 1158, land use and zoning cases are to be litigated in court by the Department of Justice. They would not go through the administrative process.

Another method of making housing unavailable to people with disabilities has been the application or enforcement of otherwise neutral rules and regulations on health, safety and land-use in a manner which discriminates against people with disabilities. Such discrimination often results from false or over-protective assumptions about the needs of handicapped people, as well as unfounded fears of difficulties about the problems that their tenancies may pose. These and similar practices would be prohibited.

New subsection 804(f)(3) sets out specific requirements to augment the general prohibitions under (f)(1) and (2). These include provisions regarding reasonable modifications to existing premises, "reasonable accomodation" and accessibility features in new multifamily housing construction.

* * *

New Subsection 804(f)(3)(B) makes it illegal to refuse to make reasonable accomodation in rules, policies, practices, or services if necessary to permit a person with handicaps equal opportunity to use and enjoy a dwelling. The concept of "reasonable accommodation" has a long history in regulations and case law dealing with

discrimination on the basis of handicap. A discriminatory rule, policy, practice or service is not defensible simply because that is the manner in which such rule or practice has traditionally been constituted. This section would require that changes be made to such traditional rules or practices if necessary to permit a person with handicaps an equal opportunity to use and enjoy a dwelling.

* * *

The Committee understands that housing discrimination against handicapped persons is not limited to blatant, intentional acts of discrimination. Acts that have the effect of causing discrimination can be just as devastating as intentional discrimination. A person using a wheelchair is just as effectively excluded from the opportunity to live in a particular dwelling by the lack of access into a unit and by too narrow doorways as by a posted sign saying "No Handicapped People Allowed." In *Alexander v. Choate*, the Supreme Court observed that discrimination on the basis of handicap is "most often the product not of invidious animus, but rather of thoughtlessness and indifference - of benign neglect" and mentioned "architectural barriers" as one factor that can have discriminatory effect.

6. DEFINITIONS PURSUANT TO CAMBRIDGE ZONING ORDINANCE

Article 2 of the Cambridge Zoning Ordinance defines a community residence as follows:

1. A dwelling in which
 - a. the sponsor or caretaker provides, or arranges for the provision of varying degrees of personal supervision, personal care and personal relationship, in a residential environment, to persons residing therein, with mental, physical, or social problems, such as alcoholism, drug dependence, mental disorders, juvenile delinquency, or other problems in which the resident has special needs or requires special care; and
 - b. the sponsor or caretaker is acting in collaboration with and under regulation, licensure, or certification of one or more of the agencies of the Commonwealth, including but not limited to, the departments of Public Health, Mental Health, Corrections, Youth Services, or the Division of Alcoholism, or the Committee on Law Enforcement or the Office for Children, or the Commission for the Blind.

2. A Community Residence may include a facility referred to as a Halfway House, a Personal Care Residence, a Group facility, a Group Home, a Community Transitional Facility, or by any other terminology, provided the conditions described above in paragraph a. are satisfied.

Article 2 further defines a Personal Care Lodging House as:

[a] dwelling where lodgings are let to four or more persons not within the second degree of kinship to the person conducting it, and where the person conducting it provides varying degrees of personal supervision, personal care and personal relationship, in a residential environment, to persons residing therein, with mental, physical, or social problems, such as alcoholism, drug dependence, mental disorders, juvenile delinquency, or other problems in which the resident has special needs or requires special care.

Thus, by definition, a Community Residence and a Personal Care Lodging House fall within the congregate living arrangements addressed by the Fair Housing Amendments Act of 1988.

7. SPECIAL PERMIT REQUIREMENT PURSUANT TO CAMBRIDGE ZONING ORDINANCE

Article 11.20 of the Cambridge Zoning Ordinance requires a special permit by the Board of Zoning Appeal prior to the establishment of either a Community Residence or a Personal Care Lodging House. If issued, the permit must be renewed every two years.

Only one Community Residence or Personal Care Lodging House may exist in any given neighborhood for every 5,000 population in a given neighborhood.

A Community Residence or Personal Care Lodging House may not exist within 300 feet of an existing Community Residence or Personal Care Lodging House.

A House Committee is required to be established to coordinate the programs and activities of the Community Residence or Personal Care Lodging House with the needs of the community as a whole and with the neighborhood wherein it exists. The Committee consists of members of the neighborhood.

The Board of Zoning Appeal, in its discretion, may condition a special permit on standards of repair, maintenance, landscaping, etc., as it may deem appropriate.

8. RESTRICTIONS PURSUANT TO TABLE OF USE REGULATIONS OF ZONING ORDINANCE

The thrust of the Fair Housing Amendments Act seems clearly to prohibit restrictions placed on such congregate living arrangements, if the same restrictions are not placed on other residential uses. Thus where Community Residences and Personal Care Lodging Houses are allowed by special permit in residential areas and other residential uses are permitted as a matter of right, (i.e., single and multi-family dwellings), it appears that the requirement of a special permit is the type of restrictive zoning explicitly prohibited by the Act.

This appears to be the case pursuant to Article 4.30 of the Cambridge Zoning Ordinance, Table of Use Regulations, where Community Residences and Personal Care Lodging Houses are permitted in the same zones as other residential uses. The difference is that these congregate living arrangements are allowed by special permit only, where the other residential uses are permitted as a matter of right.

9. CASE LAW PRIOR TO THE ENACTMENT OF THE FAIR HOUSING AMENDMENTS ACT.

Prior to the enactment of the Fair Housing Amendments Act, the U.S. Supreme Court had an opportunity to address the issue of an ordinance similar to that of Cambridge. In City of Cleburne, Texas v. Cleburne Living Center, 473 US 432, 87 L. Ed. 2d 313, 105 S. Ct. 3249 (1985), the Supreme Court held a city ordinance which required a special permit for a group home

for mentally retarded persons to be invalid as applied to such a facility. Deciding the case based on the claim that such an ordinance violated the Equal Protection Clause of the Fourteenth Amendment, the Court found no " ... rational basis for believing that [a group home of mentally retarded persons] would pose any special threat to the City's legitimate interests" Cleburne, supra, at 473 US 448.

In arriving at its conclusion, the Court wrote " ... that requiring the permit in this case appears to us to rest on an irrational prejudice against the mentally retarded, including those who would occupy the ... facility and who would live under the closely supervised and highly regulated conditions expressly provided for by state and federal law." Id. at 450.

Thus we see the constitutional analysis evolving in this country's highest court even before Congress enacted its federal legislation. It then becomes highly questionable whether Article 11.20 of the Cambridge Zoning Ordinance could withstand a challenge against violations of equal protection.

10. COMMUNICATIONS WITH THE OFFICE OF THE ATTORNEY GENERAL

Since learning of the new federal amendments and their impact on the Cambridge Ordinance, the Law Department has had several meetings with attorneys from the Attorney General's Office, Cambridge & Somerville Legal Services and the Massachusetts Law Reform Institute. We have talked to members of our Human Rights Commission, Community Development Department, and Division of Inspectional Services. We have been in contact also with persons from the various state agencies including the Departments of Mental Health and Mental Retardation.

The Attorney General's Office has shared with us its analysis of the Cambridge Zoning Ordinance in light of both the new amendment and state and federal constitutional provisions. Attached you will find a copy of their communication to the city which briefly discusses their conclusions.

It is clearly the conclusion of these attorneys that the Cambridge ordinance violates federal law. Unless the City is prepared to remedy this violation forthwith, it is equally clear that the Attorney General's Office is prepared to litigate the continued use of the ordinance on grounds that include violations of federal statutory protections as well as state and federal constitutional violations.

11. DEFINITION OF FAMILY

The Cambridge Zoning Ordinance, Article 2, defines family as "[o]ne or more persons occupying a dwelling unit and living as a single non-profit housekeeping unit; provided that a group of four or more persons who are not within the second degree of kinship shall not be deemed to constitute a family."

You will note in the attached letter from the Attorney General's Office, that recommendation is further made to amend the Cambridge definition of family so that it may not be used to prohibit the establishment of Community Residences and Personal Care Lodging Houses.

In our discussions with the Attorney General's Office, we were informed of their pending litigation with other cities and towns indirectly relating to definitions of family which are different from the Cambridge definition. However, those pending cases do involve the use of the particular definitions of family to restrict the otherwise permitted residential use by Community Residences.

We have further analyzed cases from across the country which have had occasion to look at the establishment of congregate living arrangements in terms of whether or not they fit the various local definitions of family. The clear trend is to recognize the function of such group residences as a family. We did find one case decided by the courts in Delaware which held that a home for 10 emotionally disturbed juveniles is not permitted in a single family residential district under the local definition of family. See, Hayward v. Gaston, 542 A.2d 760 (1988).

Thus, with the repeal of Article 11.20 of the Cambridge Zoning Ordinance, any attempt to restrict or exclude the establishment of group residences pursuant to the current Cambridge definition of family, so long as the proposed use is essentially a family-like use, would also be likely to be held invalid and discriminatory.

12. INSTITUTIONAL USE

In our discussions with the Attorney General's Office, the issue of the Cambridge Institutional Use Table was raised. As you will note in their attached letter, the attorneys have also suggested a repeal of lines F3 and F4 of Article 4.56, which is the Institutional Use Table of the Cambridge Zoning Ordinance.

The attorneys have made it clear to us that in their opinion Community Residences and Personal Care Lodging Houses are not institutional uses, but are in fact housing for handicapped persons. It is further their opinion that the cases involving the definitions of educational uses pursuant to M.G.L. c. 40A, s. 3 suggest that such group living arrangements are in fact residential uses with an education component, thus barring them from regulation by municipalities. The cases cited are, Whitinsville Retirement Society, Inc. v. Northbridge, 394 Mass. 757 (1985), Fitchburg

Housing Authority v. Board of Zoning Appeal of Fitchburg, 380 Mass. 869 (1980), and Gardner-Athol Area Mental Health Association v. Zoning Board of Appeal of Gardner, 401 Mass. 12 (1987).

Since it is the opinion of the Attorney General's Office that Community Residences and Personal Care Lodging Houses are primarily residences, they have determined that any effort by Cambridge to limit the siting of these group homes under its Institutional Use Regulations would also violate the provisions of the Fair Housing Amendments Act of 1988. As such, they would also seek injunctive relief against the City for such regulation, should this and other issues raised above need to be litigated.

As you know, Cambridge has been exempted from the provisions of M.G.L. c. 40A, s. 3 by Special Act of the Massachusetts State Legislature. However, it is not clear that this state act would take precedence over federal legislation. Nor is it clear that it could withstand challenges of constitutional violations, where it is alleged that its use and effect is to discriminate against a class of persons which are now specifically protected by federal legislation. Nor is it clear that regulation as an institutional use could withstand challenges under the Massachusetts State Constitution, given its specific protection of handicapped persons and this state's historical commitment to the deinstitutionalization of such people. cf. Gardner-Athol v. Gardner, supra, footnote 5 at page 15 wherein the Massachusetts Supreme Court stated as follows: "[i]ndeed, at the time s. 3 took its present form in 1975 ... the existence of the Commonwealth's policy of continuing deinstitutionalization of mental health patients suggests that there was no legislative intention to increase the right of municipalities to restrict residential facilities for mentally handicapped people."

The Attorney General's Office also pointed out that Community Residences are treated as residential uses in the State Building Code. As we have stated in this opinion, while the Massachusetts Courts have identified an educational component to such facilities, the Courts have indicated a clear trend toward recognizing these facilities as residential uses. It is therefore our opinion that attempting to treat these uses as institutional and thereby leading to their exclusion from residential districts within the City would be unlikely to withstand judicial review.

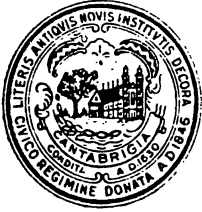
13. RECOMMENDATION

In light of the Law Department's own legal analysis of the Fair Housing Amendments Act of 1988, and the Supreme Court's ruling with respect to group homes, and the conclusions of the Attorney General's Office, it is recommended that the city forthwith begin the process of repeal, in its entirety, of Article 11.20 of the Cambridge Zoning Ordinance, entitled "Community Residences and Personal Care Lodging Houses," that Article 4.30 of the Cambridge Zoning Ordinance, entitled "Table of Use Regulations", be amended to eliminate reference to Community Residences and Personal Lodging Houses, and that footnote no. 51 be deleted from said Table of Uses. We also recommend that the references to Community Residences and Personal Care Lodging Houses found in the Institutional Use Regulation Table at Article 4.56(f)(3) and (4) be deleted.

It is also our recommendation that the Cambridge Zoning definition of family be amended in such a way as to specifically include Community Residences and Personal Care Lodging Houses in its definition of family.

RBH/DAD/GSG: jab/jml

Enclosures



City of Cambridge

In the Year One Thousand, Nine Hundred Eighty-Nine

AN ORDINANCE

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

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

1. Article 11.20 of the Cambridge Zoning Ordinance entitled "Community Residences and Personal Care Lodging Houses" be, and hereby is, repealed in its entirety;
2. Article 4.30 of the Cambridge Zoning Ordinance, entitled "Table of Use Regulations," be, and hereby is amended by repealing and deleting Article 4.31(j)(3) and 4.31(k).
3. Footnote 51 to Article 4.30 be, and hereby is, repealed.
4. Article 4.56 of the Cambridge Zoning Ordinance, entitled "Institutional Use Regulation Table" be, and hereby is, amended by repealing and deleting sections 4.56(f)(3) and (4).
5. Article 2.000 of the Cambridge Zoning Ordinance be, and hereby is, amended by deleting in its entirety the definition of "Community Residence" and by deleting in its entirety the definition of "Personal Care Lodging House."
6. Article 2.000 of the Cambridge Zoning Ordinance be, and hereby is, further amended by inserting a new paragraph in the definition of "Family" which shall read as follows:

"Notwithstanding the definition in the preceding paragraph, a family shall be deemed to include four or more persons not within the second degree of kinship occupying a dwelling unit and living as a single, non-profit housekeeping unit, if said occupants are handicapped persons as defined in Title VIII of the Civil Rights Act of 1968, as amended by the "Fair Housing Amendments Act of 1988." Such unrelated individuals shall have the right to occupy a dwelling unit in the same manner and to the same extent as any family unit as defined in the first paragraph of this definition."



THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF THE ATTORNEY GENERAL

JOHN W. McCORMACK STATE OFFICE BUILDING
ONE ASHBURTON PLACE, BOSTON 02106-1698

April 20, 1989

JAMES M. SHANNON
ATTORNEY GENERAL

Robert Healy
City Manager
Cambridge City Hall
Cambridge, MA 02138

Re: Cambridge Zoning Ordinance

Dear Mr. Healy:

We appreciated the opportunity to meet with you, Mr. Drisdell and Ms. Gabriel on Thursday, April 13, 1989. The meeting was a productive exchange of views regarding the Cambridge Zoning Ordinance ("the Ordinance") as it applies to housing for people with disabilities. This letter sets forth the essential legal basis for our concerns and the changes which we believe will be necessary in order for the ordinance to comply with the law.

The primary legal problem with the ordinance is that it violates federal fair housing law. As we discussed, in September of 1988 President Reagan signed into law the Fair Housing Amendments Act of 1988. This legislation, which went into effect on March 12, 1989, prohibits discrimination on the basis of handicap in housing. In particular, the Act states that it shall be unlawful for any person, including a municipality, to "make unavailable or deny, a dwelling to any buyer or renter because of a handicap of" the buyer, renter or anyone intending to reside in the dwelling. 42 U.S.C. sec. 3604 (f)(1). The legislative history of the Act makes clear that it was the intent of the Congress that the Act invalidate zoning ordinances, practices, and decisions that exclude persons with disabilities from communities of their choice.

The Act is intended to prohibit the application of special requirements through land-use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community.

H.R. Rep. No. 711, 100th Cong., 2d Sess. 22, at 24 (1988).

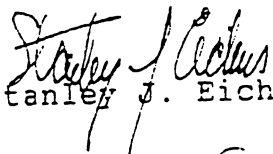
Applying the mandates of the Act to the Ordinance, it is evident that Cambridge may not maintain a zoning ordinance that treats community residences for people with disabilities differently from residences for other families of similar size. More specifically, the ordinance may not require a special permit for community residences, may not set quotas for the number of community residences on a citywide or neighborhood basis, and may not require house committees which are involved in the operation of community residences. In short, the city may not impose greater requirements upon community residences than are imposed upon other similar uses.

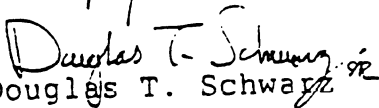
Specifically, to remedy the Ordinance, the city should repeal section 11.20, "Community Residences and Personal Care Lodging Houses." It should also repeal lines F3 and F4 of section 4.56, the "Table of Institutional Uses." Lastly, the definition of "Family" in Article 2 of the ordinance should be amended to clarify that it may not be used to prohibit the establishment of community residences for people with disabilities.

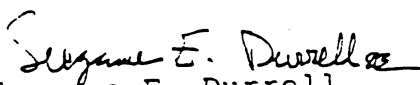
We hope these issues can be resolved by the city voluntarily bringing its zoning ordinance into compliance with the law. If, however, the Ordinance is not repealed or amended in a timely manner to address the above described legal infirmities, the Department of the Attorney General is prepared to seek judicial relief. The action would seek to enjoin further enforcement of the zoning ordinance as being violative of federal and state constitutional and statutory protections, including the amendments to the federal Fair Housing Act.

Thank you for your attention to these concerns. We look forward to resolving these issues in a cooperative and timely manner.

Sincerely,


Stanley J. Eichner


Douglas T. Schwarz


Suzanne E. Durrell
Assistant Attorneys General
(617) 727-2200

cc: Don Drisdell, Esq.
✓ Gail Gabriel, Esq
Office of the City Solicitor



OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9017

JOSEPH E. CONNARTON
CITY CLERK

JOHN E. FLYNN
DEPUTY CITY CLERK

August 8, 1989

Mr. Russell B. Higley
City Solicitor
City Hall
Cambridge, MA 02139

Dear Sir:

Enclosed you will find three amendments to the Zoning Ordinances of the City of Cambridge which were passed to a second reading at the City Council meeting held on August 7, 1989 as follows:

1. Proposed amendment regulating Community Residences and Personal Care Lodging Houses.
2. Proposed amendment in the Monsignor O'Brien Highway area.
3. Extension of the Cambridgeport Interim Overlay District to December 1, 1989.

Would you kindly review these amendments and indicate your approval or disapproval on the bottom and return to this office.

Your kind attention in this matter will be greatly appreciated.

Very truly yours,

Joseph E. Connarton
Joseph E. Connarton
City Clerk

JEC/dl

Encs. (3) First Publication Numbered 2456, 2457, 2458.

c.c. Councillor William Walsh, Chairman, Committee on Ordinances
Joseph Cellucci, Commissioner of Inspectional Services.



City of Cambridge

In the Year One Thousand, Nine Hundred Eighty-Nine

AN ORDINANCE

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

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

1. Article 11.20 of the Cambridge Zoning Ordinance entitled "Community Residences and Personal Care Lodging Houses" be, and hereby is, repealed in its entirety;
2. Article 4.30 of the Cambridge Zoning Ordinance, entitled "Table of Use Regulations," be, and hereby is amended by repealing and deleting Article 4.31(j)(3) and 4.31(k).
3. Footnote 51 to Article 4.30 be, and hereby is, repealed.
4. Article 4.56 of the Cambridge Zoning Ordinance, entitled "Institutional Use Regulation Table" be, and hereby is, amended by repealing and deleting sections 4.56(f)(3) and (4).
5. Article 2.000 of the Cambridge Zoning Ordinance be, and hereby is, amended by deleting in its entirety the definition of "Community Residence" and by deleting in its entirety the definition of "Personal Care Lodging House."
6. Article 2.000 of the Cambridge Zoning Ordinance be, and hereby is, further amended by inserting a new paragraph in the definition of "Family" which shall read as follows:

"Notwithstanding the definition in the preceding paragraph, a family shall be deemed to include four or more persons not within the second degree of kinship occupying a dwelling unit and living as a single, non-profit housekeeping unit, if said occupants are handicapped persons as defined in Title VIII of the Civil Rights Act of 1968, as amended by the "Fair Housing Amendments Act of 1988." Such unrelated individuals shall have the right to occupy a dwelling unit in the same manner and to the same extent as any family unit as defined in the first paragraph of this definition."

7. Article 4.30 of the Cambridge Zoning Ordinance, entitled "Table of Use Regulations" be, and hereby is amended by repealing and deleting Article 4.33 (e) (3) and (4).

Passed to a second reading as amended at the City Council meeting held on August 7, 1989 and on or after August 21, 1989 the question comes on passing to be ordained.

ATTEST:- Joseph E. Connarton
City Clerk.



City of Cambridge

In the Year One Thousand, Nine Hundred Eighty - nine

AN ORDINANCE

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

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

A. Amend the Text of the Zoning Ordinance as follows:

1. In Section 3.11, insert the following line after the existing line "Industry A District..... Warehouse, storage and light manufacturing", and renumber accordingly:

Special Business, Office.....Various Uses governed
and Industrial Districts by the requirements of
Article 17.000

2. In Subsection 10.48 and Subsection 11.202 add the following lines after the existing line "Article 13.000 -PUD Districts, all permits."

Section 17.131b - Additional FAR, Special District I
Section 17.17 - Transfer of Development Rights, Special
District I

3. Create a new Article 17.000 - Special Business, Office and Industrial districts as follows:

Article 17.000 Special Business, Office and Industrial
Districts

17.10 Special District I

17.10 SPECIAL DISTRICT I

17.11 SCOPE - This Section 17.10 regulates development within the Special District I at Monsignor O'Brien Highway as shown on the Zoning Map of the City of Cambridge, as amended. Except as herein provided in this Section 17.10, all requirements of and regulations applicable to the Industry A-1 District shall apply equally to the Special District I.

17.12 PERMITTED USES - Uses permitted in the Industry A-1 District shall be equally allowed in the Special District I with the exception of the following:

- a. The following uses shall be permitted by special permit from the Board of Zoning Appeal:

1. Hotel and Motel Uses, Section 4.31 i (2)

2. Car-washing establishment using mechanical equipment for the purposes of cleaning automobiles and other vehicles, Section 5.36 h.

- b. The following uses shall be prohibited:

Parking lot or parking garage for private passenger cars, Section 4.32b

17.13 DIMENSIONAL REGULATIONS

17.131 Maximum FAR

- a. The maximum FAR for any lot in the district shall not exceed 3.0 as of right;
- b. The maximum FAR for any lot northeasterly of Monsignor O'Brien Highway may be increased by special permit from the Planning Board to 3.5 provided the requirements and conditions of Section 17.17 d and e are met.

17.132 Building Height Limitation The maximum height permitted in the district shall be 85 feet except as modified below:

- a. For lots lying northeasterly of Monsignor O'Brien Highway, the maximum height may be increased to 120' provided no portion of the building rises above a 45 degree bulk control plane beginning at an elevation of 85' above the O'Brien Highway front lot line and rising thereafter in a northeasterly direction.
- b. Notwithstanding the provision of paragraphs a and b above no building may exceed 35' within fifty feet of the Special District I/Residence C-1 zoning district line, or where the zoning district line splits a lot, within 50' of the lot line located in the residential district.

17.133 Minimum Yard Requirements Only the following yard requirements shall apply in the Special District I.

- a. Front Yard - a minimum three feet, measured from the property line, shall be required at the Monsignor O'Brien Highway lot line; no front yard shall be required however for any structure in existence as of May 1, 1989.
- b. Side Yard - None
- c. Rear Yard - None
- d. Notwithstanding the requirements of paragraphs a-c above all buildings shall be set back a minimum of 20 feet from any Special District/Residence C-1 district lien; said setback shall consist exclusively of landscaped green area as defined in

Article 2.000. Where the zoning district line splits a lot the setback shall be measured from the lot lines located in the residential district.

17.134 Residential Density The minimum lot area per dwelling unit shall be 300 square feet.

17.14 OFF STREET PARKING AND LOADING REQUIREMENTS

17.141 Minimum Parking Requirements Off-street parking and loading requirements shall be as specified in Article 6.000 for uses in Business B, Industry B and Residence C-3 zoning districts.

17.142 Maximum Parking Requirements The maximum accessory parking permitted for all non-residential uses shall be 4.5 spaces for each 1,000 square feet of lot area. Notwithstanding the provisions of Section 6.313, accessory parking provided to meet the requirements of Section 17.14 shall not exceed that number permitted in this Section 17.142 under any circumstances.

17.15 SPECIAL DEVELOPMENT STANDARDS

All buildings constructed in the Special District I shall meet the following requirements.

17.151 Building Facades Building facades should be designed so as to enhance the visual quality of the district. The following standards shall apply:

- a. A principal building entrance shall face Monsignor O'Brien Highway;
- b. Building facades and rooflines shall be articulated and expanses of unbroken wall planes shall be limited to 35 linear feet for those facades facing public open spaces and/or public roadways;
- c. Ground floor levels shall include a minimum of 30% transparency (non-reflective glass) to enliven and enrich the public environment where such levels contain active gross floor area (i.e. habitable space occupied by persons throughout the day) as defined in Article 2.000.

17.152 Tree Planting At least one street tree, having a minimum caliper of 3", shall be located in the front yard provided along Monsignor O'Brien Highway, for each 25' of frontage on the Highway. Where sufficient front yard is not provided said trees may

be located within the public right of way consistent with the requirements for street tree planting established by the City of Cambridge.

17.153 Siting of Parking Areas Parking areas shall not be located in the front yard required for any lot in the district. Enclosed parking facilities are encouraged. On-grade open space parking areas shall be located behind the building or buildings served or arranged in such a way as to minimize their visibility from public ways. Where enclosed or structured parking is provided the structure shall be finished in materials equal in quality to that used on the principal structures on the site to which the parking facility is accessory.

17.154 Mechanical Equipment and Refuse Storage Areas:

- a. No refuse storage areas nor mechanical equipment areas shall be located in a front yard within the district. Where such areas are outside a building they shall be screened from view from street and parking areas, residential districts and open space areas, by a 6 foot high, durable non-living barrier (or earth berm) planted with at least one shrub or vine for each 10 feet of barrier towards the abutting property.
- b. Mechanical equipment on the roof of any building shall be permanently screened from view from the ground.

17.16 Special District I shall be considered an area of special planning concern and shall be subject to the Development Consultation Procedure, Section 11.40.

17.17 Transfer of Development Rights - Notwithstanding the limitations of Article 2.000 with regard to the definition of "lot" and "owner", the Planning Board may by special permit authorize the transfer of some or all of the allowed gross floor area, as determined by Section 17.131 above, from one or more lots (donating lots) to one or more other lots (receiving lots) anywhere within the Special District I without regard to location of the lot or lots or their ownership, provided the following conditions are met or findings made:

- a. The receiving lot and donating lot in combination are at least 20,000 square feet in area.
- b. The receiving lot is located northeasterly of Monsignor O'Brien Highway.

- c. The development plans for both the donating and receiving lots meet the intent and requirements of Section 17.10 as a whole and this sub-section 17.17 and are both subject to the special permit authorization and such conditions as may be attached thereto.
- d. The resulting development on both, or the several, lots provides a superior site and building design than might occur without the special permit authorization. Among the conditions which may be reviewed by the Planning Board in reaching such a finding are the following:
 - 1. Reduction in density of development is achieved on lots adjacent to residential uses or zoning districts;
 - 2. An increase in open space and green area is achieved adjacent to residential uses and zoning districts;
 - 3. Active gross floor area uses are located at the base and perimeter of the buildings are located at the base and perimeter of the buildings constructed on the site (sites) where visible from public streets or residential uses;
 - 4. Overall reduction in the bulk of the buildings(s) is achieved through location of some or all of the required parking below grade;
 - 5. Parking located above grade is screened from view from public streets and residential uses by active gross floor areas uses;
 - 6. Improved building design is achieved through the use of quality masonry materials and other quality details as well as an improved pedestrian environment along major public street.
- e. All site and building designs shall be subject to binding design review by the Planning Board.

B. Amend the Zoning Map of the City of Cambridge as follows:

- 1.0 Rezone an area currently zoned Industry B Special District I an area circumscribed by a line said line beginning at a point said point being the intersection of the centerline of Monsignor O'Brien Highway with the centerline of the

southwestern extension of the western side lot line of lot numbered 12 on Assessor's Plat numbered 1A,

- 1.1 Thence proceeding in a northwesterly direction along the centerline of Monsignor O'Brien Highway to a point of intersection with the northeastern extension of the centerline of Sciarappa Street,
- 1.2 Thence turning and proceeding in a southwestern direction along the centerline of Sciarappa Street to the southeastern extension of the northeastern side lot line of lot numbered 93 on Assessor's Plat numbered 22,
- 1.3 Thence turning and proceeding in a northwesterly direction along the southeastern extension of the northeastern side lot line and the northeastern side lot lines of lots numbered 93, 97A, 97, 22, 23, 224, 25, 26, and the northwestern extension of these lot lines to the northwestern side lot line of lot numbered 128 on Assessor's Plat numbered 22 for a distance of approximately 325 feet,
- 1.4 Thence turning and proceeding in a northeasterly direction and continuing in a generally northeasterly direction along the northwestern side lot line of lot number 128 and the Cambridge/Somerville City Limits to the northeastern side lot line of lot numbered 39 on Assessors Plat numbered 1A,
- 1.5 Thence turning and proceeding in a southeasterly direction along the northeastern rear lot lines of lots numbered 39, 40, 26, 29, 19, 18, 43, 25, 92, 31, 9, and 6 on Assessor's Plat number 1-A to the northeastern side lot line of lot numbered 6 on Assessor's Plat numbered 1A,
- 1.6 Thence turning and proceeding in a southwesterly direction along the southeastern side lot line of lot numbered 6 and the southwestern extension of the southeastern side line of lot numbered 6 on Assessor's Plat numbered 1A to the centerline of Monsignor O'Brien Highway, the point of origin.

1.01 Premises as shown on Assessor's Plat numbered 22:

All or parts of lots numbered 128, 109, 18, 17, 16, 15, and 14, odd numbers 5-9 Sciarappa Street and even numbers 240-262 Monsignor O'Brien Highway.

1.02 Premises as shown on Assessor's Plat number 1A:

All or parts of lots numbered 35, 39, 40, 37, 27, 26, 29, 19, 18, 43, 94, 95, 92, 31, 9, and 6, odd numbers 125-261 Monsignor O'Brien Highway.

C. AMEND THE TEXT OF THE ZONING ORDINANCE AS FOLLOWS:

1.0 In Article 4.000 - Use Regulations do the following:

1.1 In Section 4.38 - Heavy Industry, line e, delete the word "no" in the column headed "Ind A" and substitute therefor "SP (52)".

1.2 In Section 4.40 - Footnotes to the Table of Use Regulations add a new footnote 52 as follows:

52. Uses so permitted in existence as of July 1, 1988 may continue and expand, within the dimensional limits of Section 5.34, without the granting of a special permit.

2.0 In Article 5.000 - Dimensional Requirements do the following:

2.1 In Section 5.34 - Industrial District, do the following:

(a) In Table 5-4 delete the existing word "none" in column (6) - Maximum Height in Feet in the line beginning "Ind A" and substitute therefor the phrase "85(e)".

(b) In paragraph 2 - Footnotes, add a new footnote (e) to read as follows:

e. 130 feet by special permit for buildings related to storage and processing of materials permitted in Section 4.37m.

D. Amend the Zoning Map of the City of Cambridge as follows:

- 1.0 Rezone an area currently zoned Industry B to Industry A circumscribed by a line said line beginning at a point said point being the intersection of the Cambridge/Boston City Limits and the eastern extension of the northern side lot line of lot numbered 62 on Assessor's Plat numbered 1A,
- 1.1 Thence proceeding in a generally northeasterly direction, then, westerly direction and finally southwesterly direction along the Cambridge/Boston City Limits to a point of intersection with the western extension of the northern side lot line of lot numbered 63 on Assessor's Plat numbered 1A,
- 1.2 Thence turning and proceeding in an easterly direction along the western extension of the northern side lot line and the northern side lot lines of lots numbered 62 and 63 and the eastern extension of the northern lot line of lot numbered 63 on Assessor's Plat numbered 1A to the point of origin.
- 1.01 Premises located on Assessor's Plat numbered 1A:

All or parts of lots numbered 67, 68, and 81, also known as the Boston Sand and Gravel site and the Massachusetts Bay Transit Authority switching yard.

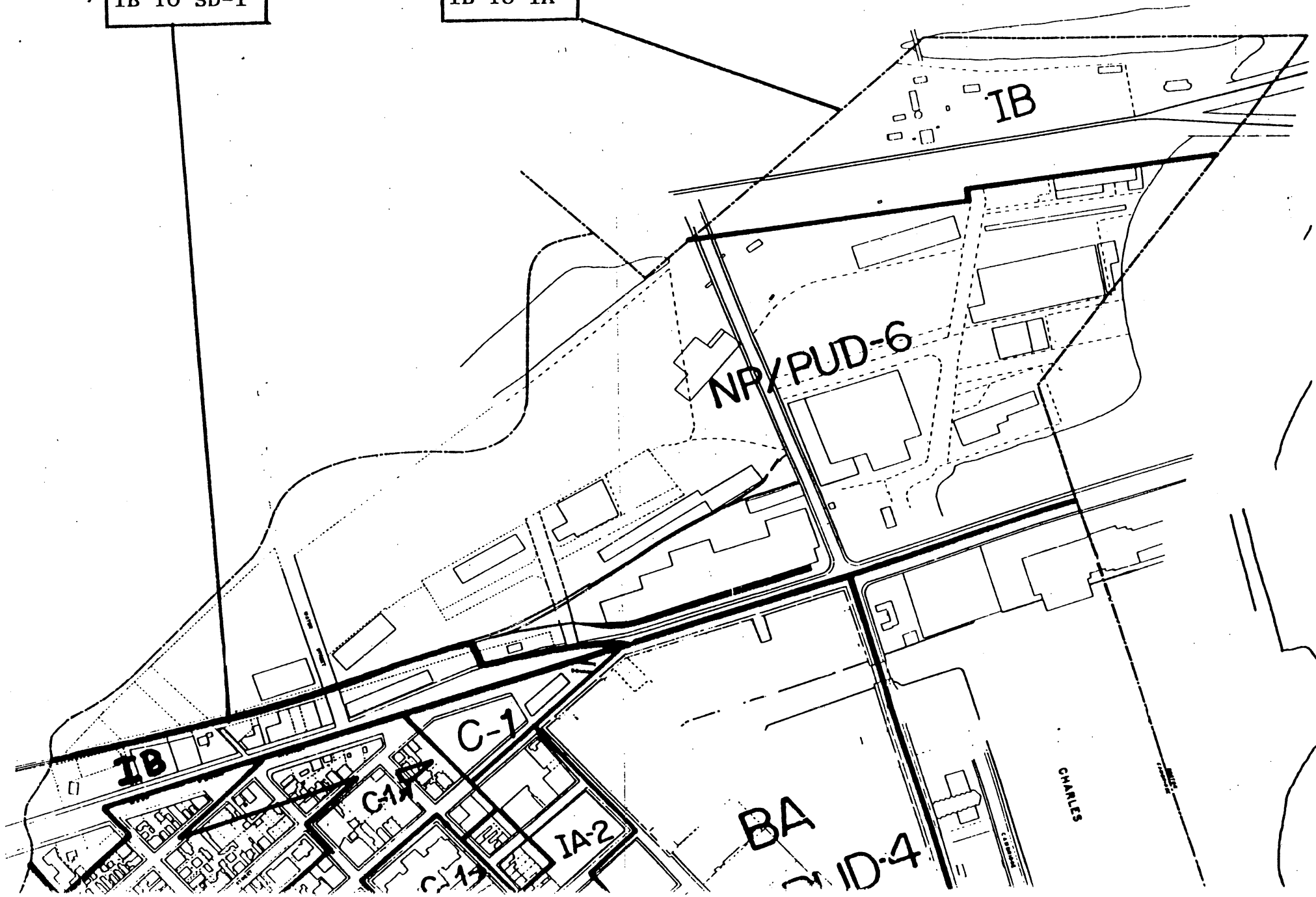
Passed to a second reading at the City Council meeting held on August 7, 1989 and on or after August 21, 1989 the question comes on passing to be ordained.

ATTEST:- Joseph E. Connarton
City Clerk

MONSIGNOR O'BRIEN/NORTH POINT REZONING

IB TO SD-1

IB TO IA





City of Cambridge

In the Year One Thousand, Nine Hundred Eighty - nine

AN ORDINANCE

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

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

Amend the text of the Zoning Ordinance by deleting paragraph 5, Section 3.14 and substituting therefor a new paragraph 5 to read as follows:

5. This Section 3.14 shall be in effect through December 1, 1989.

Passed to a second reading at the City Council meeting held on August 7, 1989 and on or after August 21, 1989 the question comes on passing to be ordained.

ATTEST:- Joseph E. Connarton
City Clerk



CITY OF CAMBRIDGE

Office of the City Solicitor
City Hall

795 Massachusetts Avenue
Cambridge, Massachusetts 02139

(617) 498-9020

Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Michael C. Costello
Assistant City Solicitor

Birge Albright
Legal Counsel

Gail S. Gabriel
Legal Counsel

Joseph M. Kaigler
Legal Counsel

May 19, 1989

To: Robert W. Healy, City Manager

From: Russell B. Higley
Donald A. Drisdell
Gail S. Gabriel

Subject: Cambridge Zoning Ordinance Article 11.20 entitled "Community Residences and Personal Care Lodging Houses"

1. INTRODUCTION

As you know, the Law Department has been reviewing the impact of a recent amendment to the Federal Fair Housing Act on the Community Residences and Personal Care Lodging Houses regulations under the Cambridge Zoning Ordinance.

The amended Act is entitled the "Fair Housing Amendments Act of 1988" and amends title VIII of the Civil Rights Act of 1968. It was enacted by the 100th Congress on September 13, 1988 (Public Law 100-430) and became effective on March 12, 1989.

Essentially, the Amendment now explicitly prohibits housing discrimination based on handicap and familial status.

2. DEFINITIONS UNDER THE FAIR HOUSING AMENDMENTS ACT OF 1988

Section 802(h) of the Act defines handicap, as it relates to an individual, as

- "(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,
- (2) a record of having such an impairment, or

- (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in Section 102 of the Controlled Substances Act) 21 U.S. c. 802))."

3. PROTECTIONS EXTENDED TO HANDICAPPED PERSONS UNDER THE ACT

In pertinent part, s. 804 of the Act is further amended by prohibiting the discrimination against handicapped persons as follows:

- "(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of -
- (A) that buyer or renter;
 - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - (C) any person associated with that buyer or renter.
- (2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of -
- (A) that person; or
 - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - (C) any person associated with that person.
- (3) For purposes of this subsection, discrimination includes -
- ... (B) a refusal to make reasonable accommodations in rules, practices, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; ...
- (7) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals.

4. REPORT OF CONGRESSIONAL COMMITTEE RELATIVE TO HANDICAPPED PERSONS

In its report recommending the passage of this Amendment the House Committee on the Judiciary explained the rationale for including handicapped persons as a protected class under the Act as follows:

Prohibiting discrimination against individuals with handicaps is a major step in changing the stereotypes that have served to exclude them from American life. These persons have been denied housing because of misperceptions, ignorance, and outright prejudice.

The Fair Housing Amendments Act, like Section 504 of the Rehabilitation Act of 1973, as amended, is a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream. It repudiates the use of stereotypes and ignorance, and mandates that persons with handicaps be considered as individuals. Generalized perceptions about disabilities and unfounded speculations about threats to safety are specifically rejected as grounds to justify exclusion.

For example, people who use wheelchairs have been denied the right to build simple ramps to provide access, or have been perceived as posing some threat to property maintenance. People with visual and hearing impairments have been perceived as dangers because of erroneous beliefs about their abilities. People with mental retardation have been excluded because of stereotypes about their capacity to live safely and independently. People with Acquired Immune Deficiency Syndrome (AIDS) and people who test positive for the AIDS virus have been evicted because of an erroneous belief that they pose a health risk to others.

All of these groups have experienced discrimination because of prejudice and aversion - because they make non-handicapped people uncomfortable. H.R. 1158 clearly prohibits the use of stereotypes and prejudice to deny critically needed housing to handicapped persons. The right to be free from housing discrimination is essential to the goal of independent living.

The Committee further explained its definition of handicapped persons as follows:

Handicap. Provides a definition of handicap to be used under this Act. This language is substantially similar to the definition under the primary federal law prohibiting discrimination against the handicapped, the Rehabilitation Act of 1973. The Committee intends that the definition be interpreted consistent with regulations clarifying the meaning of the similar provision found in Section 504 of the Rehabilitation Act.

The definition adopted by the Committee makes it clear that current illegal users of or addicts to controlled substances, as defined by the Controlled Substances Act, are not considered to be handicapped persons under the Fair Housing Act. This amendment is intended to exclude current abusers and current addicts of illegal drugs from protection under this Act. The definition of handicap is not intended to be used to condone or protect illegal activity.

This exclusion does not eliminate protection for individuals who take drugs defined in the Controlled Substances Act for a medical condition under the care of, or by prescription from, a physician. Use of a medically prescribed drug clearly does not constitute illegal use of a controlled substance.

Similarly, individuals who have a record of drug use or addiction but who do not currently use illegal drugs would continue to be protected if they fell under the definition of handicap. The Committee does not intend to exclude individuals who have recovered from an addiction or are participating in a treatment program or a self-help group such as Narcotics Anonymous. Just like any other person with a disability, such as cancer or tuberculosis, former drug-dependent persons do not pose a threat to a dwelling or its inhabitants simply on the basis of status. Depriving such individuals of housing, or evicting them, would constitute irrational discrimination that may seriously jeopardize their continued recovery.

Individuals who have been perceived as being a drug user or an addict are covered under the definition of handicap if they can demonstrate that they are being regarded as having an impairment and that they are not currently using an illegal drug.

The exception for current illegal drug users does not affect their coverage in the Rehabilitation Act or other statutes. The World Health Organization and the American Psychiatric Association both classify substance abuse and drug dependence as a mental disorder, and most medical authorities agree that drug dependence is a disease. Indeed, Congress has defined the term "handicap" in the Rehabilitation Act to include drug addiction and to require that federal employers as well as receipts of federal financial assistance recognize drug addiction as a handicap.

5. REPORT OF HOUSE COMMITTEE RELATIVE TO ADDITIONAL DISCRIMINATORY HOUSING PRACTICES

The Committee further made it clear in its report that the law is intended to apply to congregate living arrangements, (such as community residences as defined by the Cambridge Ordinance), and applies also to attempts by local governments to regulate the existence of such congregate living arrangements in any way or ways that are different from regulation of

families or other groups of unrelated persons. The report explicitly speaks to land use regulations, (such as the special use permit regulation under the Cambridge ordinance) and states that when the use of such a regulation has the effect of excluding handicapped persons, regardless of the intent of the regulation, then such regulation will be deemed to be prohibited as discriminatory.

The Committee's own language is instructive and is quoted as follows:

Section 6(a) amends the list of discriminatory housing practices to prohibit discrimination on the basis of handicap. New subsection 804(f)(1) would make it unlawful to discriminate or to otherwise make unavailable or deny a dwelling to any buyer or renter because of a handicap of that individual, someone associated with that individual, or of a resident or potential resident.

New subsection 804(f)(2) would similarly prohibit discrimination against the same persons in the terms, conditions, privileges, or provision of services or facilities. This provision is intended to prohibit special restrictive covenants or other terms or conditions, or denials of service because of an individual's handicap and which have the effect of excluding, for example, congregate living arrangements for persons with handicaps. It would guarantee, for example, that an individual could not be discriminatorily barred from access to recreation facilities, parking privileges, cleaning and janitorial services and other facilities, uses of premises, benefits and privileges made available to other tenants, residents, and owners. To the extent that terms, conditions, privileges, services or facilities operate to discriminate against a person because of a handicap, elimination of the discrimination would be required in order to comply with the requirements of this subsection.

The Committee intends these provisions to prohibit not only discrimination against the primary purchaser or named lessee, but also to prohibit denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities.

These new subsections would also apply to state or local land use and health and safety laws, regulations, practices or decisions which discriminate against individuals with handicaps. While state and local governments have authority to protect safety and health, and to regulate use of land, that authority has sometimes been used to restrict the ability of the individuals with handicaps to live in communities. This has been accomplished by such means as the enactment of imposition of health, safety or land-use requirements on congregate living arrangements among non-related persons with disabilities. Since these requirements are not imposed on families and groups of similar size of other unrelated people, these requirements have the effect of discriminating against persons with disabilities.

The Committee intends that the prohibition against discrimination against those with handicaps apply to zoning decisions and practices. The Act is intended to prohibit the application of special requirements through land-use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community. Under H.R. 1158, land use and zoning cases are to be litigated in court by the Department of Justice. They would not go through the administrative process.

Another method of making housing unavailable to people with disabilities has been the application or enforcement of otherwise neutral rules and regulations on health, safety and land-use in a manner which discriminates against people with disabilities. Such discrimination often results from false or over-protective assumptions about the needs of handicapped people, as well as unfounded fears of difficulties about the problems that their tenancies may pose. These and similar practices would be prohibited.

New subsection 804(f)(3) sets out specific requirements to augment the general prohibitions under (f)(1) and (2). These include provisions regarding reasonable modifications to existing premises, "reasonable accomodation" and accessibility features in new multifamily housing construction.

* * *

New Subsection 804(f)(3)(B) makes it illegal to refuse to make reasonable accomodation in rules, policies, practices, or services if necessary to permit a person with handicaps equal opportunity to use and enjoy a dwelling. The concept of "reasonable accomodation" has a long history in regulations and case law dealing with

discrimination on the basis of handicap. A discriminatory rule, policy, practice or service is not defensible simply because that is the manner in which such rule or practice has traditionally been constituted. This section would require that changes be made to such traditional rules or practices if necessary to permit a person with handicaps an equal opportunity to use and enjoy a dwelling.

* * *

The Committee understands that housing discrimination against handicapped persons is not limited to blatant, intentional acts of discrimination. Acts that have the effect of causing discrimination can be just as devastating as intentional discrimination. A person using a wheelchair is just as effectively excluded from the opportunity to live in a particular dwelling by the lack of access into a unit and by too narrow doorways as by a posted sign saying "No Handicapped People Allowed." In *Alexander v. Choate*, the Supreme Court observed that discrimination on the basis of handicap is "most often the product not of invidious animus, but rather of thoughtlessness and indifference - of benign neglect" and mentioned "architectural barriers" as one factor that can have discriminatory effect.

6. DEFINITIONS PURSUANT TO CAMBRIDGE ZONING ORDINANCE

Article 2 of the Cambridge Zoning Ordinance defines a community residence as follows:

1. A dwelling in which
 - a. the sponsor or caretaker provides, or arranges for the provision of varying degrees of personal supervision, personal care and personal relationship, in a residential environment, to persons residing therein, with mental, physical, or social problems, such as alcoholism, drug dependence, mental disorders, juvenile delinquency, or other problems in which the resident has special needs or requires special care; and
 - b. the sponsor or caretaker is acting in collaboration with and under regulation, licensure, or certification of one or more of the agencies of the Commonwealth, including but not limited to, the departments of Public Health, Mental Health, Corrections, Youth Services, or the Division of Alcoholism, or the Committee on Law Enforcement or the Office for Children, or the Commission for the Blind.

2. A Community Residence may include a facility referred to as a Halfway House, a Personal Care Residence, a Group facility, a Group Home, a Community Transitional Facility, or by any other terminology, provided the conditions described above in paragraph a. are satisfied.

Article 2 further defines a Personal Care Lodging House as:

[a] dwelling where lodgings are let to four or more persons not within the second degree of kinship to the person conducting it, and where the person conducting it provides varying degrees of personal supervision, personal care and personal relationship, in a residential environment, to persons residing therein, with mental, physical, or social problems, such as alcoholism, drug dependence, mental disorders, juvenile delinquency, or other problems in which the resident has special needs or requires special care.

Thus, by definition, a Community Residence and a Personal Care Lodging House fall within the congregate living arrangements addressed by the Fair Housing Amendments Act of 1988.

7. SPECIAL PERMIT REQUIREMENT PURSUANT TO CAMBRIDGE ZONING ORDINANCE

Article 11.20 of the Cambridge Zoning Ordinance requires a special permit by the Board of Zoning Appeal prior to the establishment of either a Community Residence or a Personal Care Lodging House. If issued, the permit must be renewed every two years.

Only one Community Residence or Personal Care Lodging House may exist in any given neighborhood for every 5,000 population in a given neighborhood.

A Community Residence or Personal Care Lodging House may not exist within 300 feet of an existing Community Residence or Personal Care Lodging House.

A House Committee is required to be established to coordinate the programs and activities of the Community Residence or Personal Care Lodging House with the needs of the community as a whole and with the neighborhood wherein it exists. The Committee consists of members of the neighborhood.

The Board of Zoning Appeal, in its discretion, may condition a special permit on standards of repair, maintenance, landscaping, etc., as it may deem appropriate.

8. RESTRICTIONS PURSUANT TO TABLE OF USE REGULATIONS OF ZONING ORDINANCE

The thrust of the Fair Housing Amendments Act seems clearly to prohibit restrictions placed on such congregate living arrangements, if the same restrictions are not placed on other residential uses. Thus where Community Residences and Personal Care Lodging Houses are allowed by special permit in residential areas and other residential uses are permitted as a matter of right, (i.e., single and multi-family dwellings), it appears that the requirement of a special permit is the type of restrictive zoning explicitly prohibited by the Act.

This appears to be the case pursuant to Article 4.30 of the Cambridge Zoning Ordinance, Table of Use Regulations, where Community Residences and Personal Care Lodging Houses are permitted in the same zones as other residential uses. The difference is that these congregate living arrangements are allowed by special permit only, where the other residential uses are permitted as a matter of right.

9. CASE LAW PRIOR TO THE ENACTMENT OF THE FAIR HOUSING AMENDMENTS ACT.

Prior to the enactment of the Fair Housing Amendments Act, the U.S. Supreme Court had an opportunity to address the issue of an ordinance similar to that of Cambridge. In City of Cleburne, Texas v. Cleburne Living Center, 473 US 432, 87 L. Ed. 2d 313, 105 S. Ct. 3249 (1985), the Supreme Court held a city ordinance which required a special permit for a group home

for mentally retarded persons to be invalid as applied to such a facility. Deciding the case based on the claim that such an ordinance violated the Equal Protection Clause of the Fourteenth Amendment, the Court found no " ... rational basis for believing that [a group home of mentally retarded persons] would pose any special threat to the City's legitimate interests" Cleburne, supra, at 473 US 448.

In arriving at its conclusion, the Court wrote " ... that requiring the permit in this case appears to us to rest on an irrational prejudice against the mentally retarded, including those who would occupy the ... facility and who would live under the closely supervised and highly regulated conditions expressly provided for by state and federal law." Id. at 450.

Thus we see the constitutional analysis evolving in this country's highest court even before Congress enacted its federal legislation. It then becomes highly questionable whether Article 11.20 of the Cambridge Zoning Ordinance could withstand a challenge against violations of equal protection.

10. COMMUNICATIONS WITH THE OFFICE OF THE ATTORNEY GENERAL

Since learning of the new federal amendments and their impact on the Cambridge Ordinance, the Law Department has had several meetings with attorneys from the Attorney General's Office, Cambridge & Somerville Legal Services and the Massachusetts Law Reform Institute. We have talked to members of our Human Rights Commission, Community Development Department, and Division of Inspectional Services. We have been in contact also with persons from the various state agencies including the Departments of Mental Health and Mental Retardation.

The Attorney General's Office has shared with us its analysis of the Cambridge Zoning Ordinance in light of both the new amendment and state and federal constitutional provisions. Attached you will find a copy of their communication to the city which briefly discusses their conclusions.

It is clearly the conclusion of these attorneys that the Cambridge ordinance violates federal law. Unless the City is prepared to remedy this violation forthwith, it is equally clear that the Attorney General's Office is prepared to litigate the continued use of the ordinance on grounds that include violations of federal statutory protections as well as state and federal constitutional violations.

11. DEFINITION OF FAMILY

The Cambridge Zoning Ordinance, Article 2, defines family as "[o]ne or more persons occupying a dwelling unit and living as a single non-profit housekeeping unit; provided that a group of four or more persons who are not within the second degree of kinship shall not be deemed to constitute a family."

You will note in the attached letter from the Attorney General's Office, that recommendation is further made to amend the Cambridge definition of family so that it may not be used to prohibit the establishment of Community Residences and Personal Care Lodging Houses.

In our discussions with the Attorney General's Office, we were informed of their pending litigation with other cities and towns indirectly relating to definitions of family which are different from the Cambridge definition. However, those pending cases do involve the use of the particular definitions of family to restrict the otherwise permitted residential use by Community Residences.

We have further analyzed cases from across the country which have had occasion to look at the establishment of congregate living arrangements in terms of whether or not they fit the various local definitions of family. The clear trend is to recognize the function of such group residences as a family. We did find one case decided by the courts in Delaware which held that a home for 10 emotionally disturbed juveniles is not permitted in a single family residential district under the local definition of family. See, Hayward v. Gaston, 542 A.2d 760 (1988).

Thus, with the repeal of Article 11.20 of the Cambridge Zoning Ordinance, any attempt to restrict or exclude the establishment of group residences pursuant to the current Cambridge definition of family, so long as the proposed use is essentially a family-like use, would also be likely to be held invalid and discriminatory.

12. INSTITUTIONAL USE

In our discussions with the Attorney General's Office, the issue of the Cambridge Institutional Use Table was raised. As you will note in their attached letter, the attorneys have also suggested a repeal of lines F3 and F4 of Article 4.56, which is the Institutional Use Table of the Cambridge Zoning Ordinance.

The attorneys have made it clear to us that in their opinion Community Residences and Personal Care Lodging Houses are not institutional uses, but are in fact housing for handicapped persons. It is further their opinion that the cases involving the definitions of educational uses pursuant to M.G.L. c. 40A, s. 3 suggest that such group living arrangements are in fact residential uses with an education component, thus barring them from regulation by municipalities. The cases cited are, Whitinsville Retirement Society, Inc. v. Northbridge, 394 Mass. 757 (1985), Fitchburg

Housing Authority v. Board of Zoning Appeal of Fitchburg, 380 Mass. 869 (1980), and Gardner-Athol Area Mental Health Association v. Zoning Board of Appeal of Gardner, 401 Mass. 12 (1987).

Since it is the opinion of the Attorney General's Office that Community Residences and Personal Care Lodging Houses are primarily residences, they have determined that any effort by Cambridge to limit the siting of these group homes under its Institutional Use Regulations would also violate the provisions of the Fair Housing Amendments Act of 1988. As such, they would also seek injunctive relief against the City for such regulation, should this and other issues raised above need to be litigated.

As you know, Cambridge has been exempted from the provisions of M.G.L. c. 40A, s. 3 by Special Act of the Massachusetts State Legislature. However, it is not clear that this state act would take precedence over federal legislation. Nor is it clear that it could withstand challenges of constitutional violations, where it is alleged that its use and effect is to discriminate against a class of persons which are now specifically protected by federal legislation. Nor is it clear that regulation as an institutional use could withstand challenges under the Massachusetts State Constitution, given its specific protection of handicapped persons and this state's historical commitment to the deinstitutionalization of such people. cf. Gardner-Athol v. Gardner, supra, footnote 5 at page 15 wherein the Massachusetts Supreme Court stated as follows: "[i]ndeed, at the time s. 3 took its present form in 1975 ... the existence of the Commonwealth's policy of continuing deinstitutionalization of mental health patients suggests that there was no legislative intention to increase the right of municipalities to restrict residential facilities for mentally handicapped people."

The Attorney General's Office also pointed out that Community Residences are treated as residential uses in the State Building Code. As we have stated in this opinion, while the Massachusetts Courts have identified an educational component to such facilities, the Courts have indicated a clear trend toward recognizing these facilities as residential uses. It is therefore our opinion that attempting to treat these uses as institutional and thereby leading to their exclusion from residential districts within the City would be unlikely to withstand judicial review.

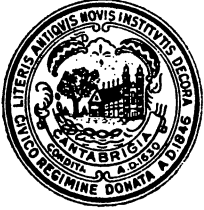
13. RECOMMENDATION

In light of the Law Department's own legal analysis of the Fair Housing Amendments Act of 1988, and the Supreme Court's ruling with respect to group homes, and the conclusions of the Attorney General's Office, it is recommended that the city forthwith begin the process of repeal, in its entirety, of Article 11.20 of the Cambridge Zoning Ordinance, entitled "Community Residences and Personal Care Lodging Houses," that Article 4.30 of the Cambridge Zoning Ordinance, entitled "Table of Use Regulations", be amended to eliminate reference to Community Residences and Personal Lodging Houses, and that footnote no. 51 be deleted from said Table of Uses. We also recommend that the references to Community Residences and Personal Care Lodging Houses found in the Institutional Use Regulation Table at Article 4.56(f)(3) and (4) be deleted.

It is also our recommendation that the Cambridge Zoning definition of family be amended in such a way as to specifically include Community Residences and Personal Care Lodging Houses in its definition of family.

RBH/DAD/GSG:jab/jml

Enclosures



City of Cambridge

In the Year One Thousand, Nine Hundred Eighty-Nine

AN ORDINANCE

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

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

1. Article 11.20 of the Cambridge Zoning Ordinance entitled "Community Residences and Personal Care Lodging Houses" be, and hereby is, repealed in its entirety;
2. Article 4.30 of the Cambridge Zoning Ordinance, entitled "Table of Use Regulations," be, and hereby is amended by repealing and deleting Article 4.31(j)(3) and 4.31(k).
3. Footnote 51 to Article 4.30 be, and hereby is, repealed.
4. Article 4.56 of the Cambridge Zoning Ordinance, entitled "Institutional Use Regulation Table" be, and hereby is, amended by repealing and deleting sections 4.56(f)(3) and (4).
5. Article 2.000 of the Cambridge Zoning Ordinance be, and hereby is, amended by deleting in its entirety the definition of "Community Residence" and by deleting in its entirety the definition of "Personal Care Lodging House."
6. Article 2.000 of the Cambridge Zoning Ordinance be, and hereby is, further amended by inserting a new paragraph in the definition of "Family" which shall read as follows:

"Notwithstanding the definition in the preceding paragraph, a family shall be deemed to include four or more persons not within the second degree of kinship occupying a dwelling unit and living as a single, non-profit housekeeping unit, if said occupants are handicapped persons as defined in Title VIII of the Civil Rights Act of 1968, as amended by the "Fair Housing Amendments Act of 1988." Such unrelated individuals shall have the right to occupy a dwelling unit in the same manner and to the same extent as any family unit as defined in the first paragraph of this definition."



THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF THE ATTORNEY GENERAL

JOHN W. McCORMACK STATE OFFICE BUILDING
ONE ASHBURTON PLACE, BOSTON 02108-1698

April 20, 1989

JAMES M. SHANNON
ATTORNEY GENERAL

Robert Healy
City Manager
Cambridge City Hall
Cambridge, MA 02138

Re: Cambridge Zoning Ordinance

Dear Mr. Healy:

We appreciated the opportunity to meet with you, Mr. Drisdell and Ms. Gabriel on Thursday, April 13, 1989. The meeting was a productive exchange of views regarding the Cambridge Zoning Ordinance ("the Ordinance") as it applies to housing for people with disabilities. This letter sets forth the essential legal basis for our concerns and the changes which we believe will be necessary in order for the ordinance to comply with the law.

The primary legal problem with the ordinance is that it violates federal fair housing law. As we discussed, in September of 1988 President Reagan signed into law the Fair Housing Amendments Act of 1988. This legislation, which went into effect on March 12, 1989, prohibits discrimination on the basis of handicap in housing. In particular, the Act states that it shall be unlawful for any person, including a municipality, to "make unavailable or deny, a dwelling to any buyer or renter because of a handicap of" the buyer, renter or anyone intending to reside in the dwelling. 42 U.S.C. sec. 3604 (f)(1). The legislative history of the Act makes clear that it was the intent of the Congress that the Act invalidate zoning ordinances, practices, and decisions that exclude persons with disabilities from communities of their choice.

The Act is intended to prohibit the application of special requirements through land-use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community.

H.R. Rep. No. 711, 100th Cong., 2d Sess. 22, at 24 (1988).

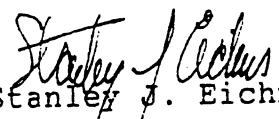
Applying the mandates of the Act to the Ordinance, it is evident that Cambridge may not maintain a zoning ordinance that treats community residences for people with disabilities differently from residences for other families of similar size. More specifically, the ordinance may not require a special permit for community residences, may not set quotas for the number of community residences on a citywide or neighborhood basis, and may not require house committees which are involved in the operation of community residences. In short, the city may not impose greater requirements upon community residences than are imposed upon other similar uses.

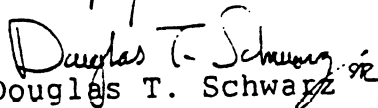
Specifically, to remedy the Ordinance, the city should repeal section 11.20, "Community Residences and Personal Care Lodging Houses." It should also repeal lines F3 and F4 of section 4.56, the "Table of Institutional Uses." Lastly, the definition of "Family" in Article 2 of the ordinance should be amended to clarify that it may not be used to prohibit the establishment of community residences for people with disabilities.

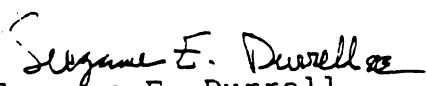
We hope these issues can be resolved by the city voluntarily bringing its zoning ordinance into compliance with the law. If, however, the Ordinance is not repealed or amended in a timely manner to address the above described legal infirmities, the Department of the Attorney General is prepared to seek judicial relief. The action would seek to enjoin further enforcement of the zoning ordinance as being violative of federal and state constitutional and statutory protections, including the amendments to the federal Fair Housing Act.

Thank you for your attention to these concerns. We look forward to resolving these issues in a cooperative and timely manner.

Sincerely,


Stanley J. Eichner


Douglas T. Schwarz


Suzanne E. Durrell
Assistant Attorneys General
(617) 727-2200

cc: Don Drisdell, Esq.
✓ Gail Gabriel, Esq.
Office of the City Solicitor



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
TEL. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

12.
May 22, 1989

To the Honorable, the City Council:

Enclosed please find copy of a report and a proposed amendment submitted by the Law Department relative to the Cambridge Zoning Ordinance Article 11.20 entitled "Community Residences and Personal Care Lodging Houses".

Very truly yours,

Robert W. Healy
City Manager

RWH/mbf
Enc.

Re: enclosed report from the Law Dept. & proposed amendment to the Zoning Ordinances in Article 11.20 entitled "Community Residences and Personal Care Lodging Houses".

9/11/89 Passed to be ordained
9-0-0

9/14/89 - Published - Chronicle

In City Council,

May 22, 1989

5/22/89 - Referred to the Planning
Board + Ordinance Committee.

Copy sent to Les Barber, Planning Board
on 5/24/89.

Copy to Councilor Walsh, Ordinance
Committee Chair 6/2/89 mlr