



CITY OF CAMBRIDGE

678 MASSACHUSETTS AVENUE
CAMBRIDGE, MASSACHUSETTS 02139

TEL 498-9077

RECEIVED

88 SEP 30 AM 9:42

OFFICE OF THE CITY MANAGER

RENT CONTROL BOARD

D. MARGARET DRURY, EXECUTIVE DIRECTOR

To: Robert Healy,
City Manager

From: D. Margaret Drury,
Executive Director

Date: September 27, 1988

Re: Council Order #35, 9/12/88: Status of Premises at 63-65 Cedar Street

Attached is a copy of the Board's notice of ruling and the hearing report for the most recent Rent Control Board case concerning this property.

In this case, the newest owner, Sunvich Kongruengkit, who has resided next door for four years and who brought 63-65 R Cedar St. in May 1986, sought a removal permit to demolish the two two-unit rent-controlled buildings and build ten two-bedroom condominiums, nine of which would be sold at market rate, and one of which would be sold or leased to the Cambridge Housing Authority. Evidence presented at the factfinding hearing included a Board of Survey report in which the property is declared uninhabitable and the owner is ordered to repair, not demolish, the property immediately.

The Board denied the removal permits because the owner's proposal did not provide sufficient benefit to low and moderate income persons to justify granting the permit. See finding no. 25, page 9 and recommendation, page 9. The Board ruled that the owner may reapply under the distressed building regulations.

At the same time the Board heard a full occupancy case concerning these buildings and ruled that the owner had violated the Removal Permit Ordinance by leaving the units vacant for more than 120 days without good cause. The full occupancy violation was referred to the Board's general counsel to consider and recommend appropriate legal action.

If you have any questions about this matter, please feel free to contact me.



CITY OF CAMBRIDGE

678 MASSACHUSETTS AVENUE
CAMBRIDGE, MASSACHUSETTS 02139

TEL 498-9077



RENT CONTROL BOARD

D. MARGARET DRURY, EXECUTIVE DIRECTOR

Date: August 11, 1988

Address: 63-63R Cedar Street

Case No: RPZ 87 034 SCX 87 194

Notice of Ruling

(Please see Notice of Appeal Rights)

The Board at its meeting of August 10, 1988 voted by a margin of 4-1 to affirm and adopt the findings and recommendation of Assistant Counsel Jeanne Medeiros. Therefore removal permits for demolition of the units are hereby denied. The Board further rules that the owner has violated Sec. 1(b)(4)(v) of Ordinance 966, as amended, and refers the full occupancy case to its general counsel for consideration of appropriate legal action. The Board ruled that the owner may re apply under the distressed building regulations.

Per Order of the Board

D. Margaret Drury
D. Margaret Drury,
Executive Director

DMD/deb

cc: case, reg. files
computer, docket
Cheryl Forzley Donohue
Carol Wagner

Hearing Report

Case No: RPZ-87-034
SCX-87-194

Address: 63-63R Cedar Street

Hearing Dates: December 23, 1987
January 25, 1988

Owner: Cedar Court Realty Trust

Purpose of Hearing: Whether owner should be granted removal permit in order to demolish building; and whether owner violated removal permit ordinance by causing units to be vacant for more than 120 days without good cause.

Examiner: Jeanne M. Medeiros

Persons Present:

Survich Kongruengkit - Trustee of Cedar Court
Realty Trust

Malcolm Kaufman - Complainant in SCX-87-194

Frederick Hayes - Owner's Attorney

Exhibits:

Landlord's:

- #1 - Letter of Joseph Cellucci dated 12-18-87, with attached Board of Survey reports dated 11-16-87 and 5-31-85 (five pages)
- #2 - letter of Ralph Louis LeBlanc, dated 11-25-87 (two pages)
- #3 - Proposal from Kim-Shel Construction, dated 12-21-87
- #4 - 32 - Photographs of building
- #33 - Inspectional Services Report and order, No. 15152

#34 - Inspectional Services Report
and Order, No. 15242.

#35 - Inspectional Services Report
and Order, No. 15243

#36 - Inspectional Services Report
and Order, No. 15244

Complaint's

#1 - Letter of Lynn Weissberg, dated 5-6-87

Examiner's

#1 - Hearing Report concerning Case # SCX-86-063

#2 - Notice of Ruling, Case # SCX-86-063,
dated 12-18-86

I. PROCEDURE

The hearing was conducted pursuant to the Administrative Procedure Act (Massachusetts General Laws Chapter 30A). I explained to the parties that this hearing would be their only opportunity to present evidence; that appeal of the decision would be limited to a review of the Rent Control record; and that all parties had a right to legal representation, to call witnesses, introduce exhibits, and cross-examine the other party's witnesses.

I administered the oath and began the hearing at 9:20 a.m. The hearing was tape recorded.

II. SUMMARY OF THE TESTIMONY OF THE OWNER

Testimony of Sunvich Kongruengkit

1. He is the trustee of the Cedar Court Realty Trust, which purchased 63-63R Cedar Street in May, 1987. He is also the sole beneficiary.
2. 63-63R Cedar is a four-unit building. All of the apartments are vacant.
3. He has lived at 61 Cedar for about 3 1/2 years. To his knowledge, 63-63R Cedar has been vacant all that time.
4. He received a Board of Survey report yesterday (Landlord's Ex. 1). The building was found to be unfit for human habitation and in need of major repairs.

5. The previous owner, Santino, wanted to develop this property, renovating the four existing units and adding four more on the same lot.
6. Mr. Kongruengkit purchased the property from him for \$187,000. He plans to build 10 housing units, using the adjoining 61 Cedar Street lot, where he presently lives.
7. The units which he plans to build will be condominiums which he hopes to sell in the vicinity of from \$180,000 to \$210,000 per unit. All of the units will have two bedrooms, and 2 1/2 bathrooms.
8. He thinks that these units would be affordable to moderate-income people, people who earn \$40,000 to \$50,000 a year.
9. Inspectional Services has not been to the property since 1985. (Examiner's Note: An inspection was subsequently performed on January 19, 1988. See Landlord's Ex. 33 through 36).
10. An architect named Ralph Louis LeBlanc inspected the property and made a list of needed repairs in November, 1987. (Landlord's Ex. 2).
11. He asked a contractor to estimate the costs of the work detailed in Mr. LeBlanc's letter, and received an estimate of \$192,000 (Landlord's Ex. 3).
12. The front building, 63 Cedar, was damaged by fire sometime before 1983. Exhibits 4 through 13 show the fire damage to the roof and attic.
13. Pictures 14 through 22 show interior walls and stairs.
14. Pictures 23 through 27 show apartment interiors.
15. Picture 28 is a photo of the exterior foundation of 63R Cedar. Picture 29 shows the interior foundation of 63 Cedar.
16. Photo 31 shows the exterior of 63R Cedar, and 32 shows the exterior of 63 Cedar.
17. When he became interested in purchasing 63-63R Cedar, he contacted Mrs. Shapiro, who he thought was the owner. He found out that she had sold the property to Mr. Santino.
18. He then bought the property from Mr. Santino, paying him the full purchase price in cash. There is no mortgage on the property.
19. The only other property he owns is 61 Cedar, which he owns jointly with his wife.

20. If they are allowed to develop these units as planned, he and his wife will convey the 61 Cedar Street property to the trust for \$110,000.
21. Demolition of the existing units and garage will cost \$11,000. The ten new units will equal approximately 11,000 square feet, which will cost \$75 per square foot to build.
22. The estimated cost of the entire demolition/rebuilding is \$1,372,000, which includes a \$200,000 cost overrun.
23. At the projected selling price for the new units, the profit from the project would be about \$300,000. If some of these units were under rent control or dedicated to the C.H.A., that would drive up the selling price of the other units.
24. He was told that it would be more difficult to obtain financing to restore the four existing units to habitable condition.

Cross-examination of Sunvich Kongruengkit

1. He was aware of the rent-controlled status of these units when he purchased them.
2. He was aware of a hearing before the City Council in October 1986 regarding a demolition permit being sought for this property. Notice was sent to all abutters of 63-63R Cedar.
3. He did not attend the hearing. He just does not involve himself in such things. He thought that whatever was decided would be better than having the building remain in its present condition.
4. No action was taken regarding demolition permits because the owner, Mr. Ferranti, promised to rehabilitate the property and retain 4 rent-controlled units.
5. He is aware of the previous owner's commitment to retain 4 rent controlled units.
6. The two-bedroom condos he wants to develop will be reasonably priced in terms of condominiums. They would not be reasonably priced to moderate-income tenants.

Additional direct examination of Sunvich Kongruengkit

1. He does not feel that he is taking units away from the Rent Control. These units are so far gone and need so much that they would be high-rent or exempt once they were

restored to habitable condition.

2. He has his own business, which manufactures equipment, stoves, etc.

III. Summary of the Testimony and Evidence of Other Interested Parties

Testimony of Malcolm Kaufman

1. The units which the owner is proposing to develop would not be available, because of affordability to rent control tenants.
2. There would be a major shift in demographics of the neighborhood if this development is built.
3. The Board of Survey report does not recommend demolition of these units. It recommends repair.
4. The Rent Control Board should insist on maintenance of four rent-controlled units. The owner's proposal is not adequate in terms of retention of controlled units.

Closing Arguments - Owner's Attorney

These units have been vacant for over 3 years, but there has been good cause for the vacancy. Until receipt of the Board of Survey report, the owner did not know whether demolition or repair would be ordered. The units have not been habitable. There has been no intent on the owner's part to refuse to rent.

The only economically feasible alternative for these units is the one presented by the owner - to combine the adjoining lots, demolish the existing units, and build ten condominium units. The resulting units would be moderately - priced for Cambridge. There could be a beneficial effect for low and moderate income tenants, since it is possible that some people who are living in rent-controlled apartments may choose to purchase some of these units, freeing up rent-controlled apartments for people who need them.

The owner is proposing to sell or rent one unit to the Cambridge Housing Authority. The major work necessary to restore these units to habitable condition would probably result in a new construction exemption, so there is really no overall loss in the owner's proposal.

Closing Argument - Mr. Kaufman

The owner's proposal involves the loss of four rent-controlled units. The owner's attorney has offered only a very speculative theory about benefit to those sought to be protected by the Act and Ordinance.

The Board should insist on retention of four controlled units. Just because a private developer may not be able to develop this project at a profit and retain rent-controlled units, the Board should not water down its standards. There are other possibilities for this property. A non-profit development group might be able to rehabilitate the units and retain them as rent-controlled apartments.

IV. Findings of Fact

1. The Cedar Court Realty Trust has owned 63-63R Cedar Street since May, 1987. The trustee and sole beneficiary of the trust is Sunvich Kongruengkit.
2. The property consists of two two-family houses on one lot. There are four rental units.
3. The present rent structure and room counts are as follows:

<u>Unit</u>	<u>Rooms</u>	<u>Legal Maximum Rent</u>
63-1	3	137
63-2	6	137
63R-1	3	105
63R-2	3	145

4. The four rental units have been continuously vacant since about mid-1984.
5. The property has been uninhabitable since at least May 31, 1985.
6. The present owner purchased the property outright on May 8, 1987, for \$187,000. There is no mortgage on the property.
7. The present owner has undertaken no repairs at all since purchasing the property.
8. The present owner has made no efforts to obtain financing to repair the property since purchasing it in May, 1987 the only efforts he has made to obtain financing have been in relation to a plan to demolish these units and build ten condominium units on the site.
9. In May, 1985, and November, 1987, the Board of Survey recommended that the property be "repaired at once".

10. On November 18, 1987, the Building Commissioner ordered the owner to comply with the declaration of the Board of Survey.
11. The owner has failed to show "good cause" for his failure to restore these units to habitable condition.
12. The owner has been in violation of Ordinance 966, since 120 days from his purchase of the property, that is, since September 6, 1987.
13. The owner seeks a removal permit to demolish the four existing units and build ten 2-bedroom condominium units.
14. The owner plans to market 9 of the condominium units at \$180,000 - \$210,000, and to offer one for sale or lease to the Cambridge Housing Authority.

A. Findings Pursuant to Regulation 46-08

15. (46-08a): 63-63R Cedar Street consists of two wood-frame two-family houses on one lot. The front house, 63 Cedar was involved in a fire over 5 years ago. Approximately half the roof was destroyed, and there was water damage throughout the building. The roof has not been repaired. (Landlord's Ex. 35). The exterior fascia, soffits, gutters, downspouts, venting, clapboard and trim are in need of repair (Landlord's Ex. 35). The foundation needs masonry repair. (Landlord's Ex. 34). In the basement, there is minor dry rot of the sill. (Landlord's Ex. 1 and 35). Interior walls, floors and ceilings are in very poor condition (Landlord's Ex. 33). The bathrooms need new toilets, sinks, and tubs (Landlord's Ex. 33). The kitchens need new sinks and stoves (Landlord's Ex. 33). Wiring is in poor condition (Landlord's Ex. 33), and heat is inadequate (Landlord's Ex. 33).

The rear house, 63R Cedar, is in need of the same interior work outlined above with respect to 63 Cedar. (Landlord's Ex. 33). There is limited dry rot of the sill, and appears to be some failure of a joist on the back portion of the building (Landlord's Ex. 1 and 36). Portions of the foundation need repointing (Landlord's Ex. 36).

The property is uninhabitable in its present condition. Based on the owner's testimony, I find that he can obtain the capital necessary to restore the units to habitable condition. There was no evidence presented to indicate that the property could not be maintained as rental housing after restoration due to the unavailability of capital.

16. (46-08b:) The current legal maximum rents are noted above in finding No. 3. No services are included in the rents. No rent adjustment petitions have ever been filed concerning this

property. The owner has received an estimate of the costs for the work at 63R Cedar, \$76,800. Assuming a 15-year useful life at a 14% interest rate would result in increases of over \$500 per month for the units at 63R, and increases between \$500 - \$1000 per month for the units at 63 Cedar depending on the allocations of the improvements. As certain of the improvements would be capitalized over a useful life shorter than 15 years, the potential increase could be even greater.

The extent of the needed work is so great that it is also likely that these units could be granted a new construction exemption based on substantial rehabilitation. I note for the record that the owner's removal permit application was filed prior to February 1, 1988, and the "substantial rehabilitation" standard would therefore apply, pursuant to Reg. 13-01 (dd).

17. (46-08c): These units have been vacant since about mid-1984. The previous owner, Etta Shapiro, was found to be in violation of Ordinance 966 by a Notice of Ruling dated December 18, 1986, in Case No. SCX-86-063 (Examiner's Ex. 2).
18. (46-08d): The owner presently resides in an abutting property, 61 Cedar Street.
19. (46-08 e,f,g,h, and i): Not applicable as there are currently no tenants in the units for which the permit is sought.
20. (46-08j): No evidence was submitted at the hearing concerning this section of the regulation.
21. (46-08k): No other removal permit applications have ever been filed for this property.
22. (46-08l): Not applicable, as the owner is not seeking to combine rooms or units in a rooming or boarding house.

B. Considerations Pursuant to the Removal Permit Ordinance, Ch. 23 of the Cambridge City Code, Section 1(d):

23. A removal permit would not be required in this case if the owner were seeking to do the work necessary to restore these units to habitable condition. The work is required by law. (See Landlord's Exhibits 1, 33, 34, 35, 36). If these units were restored to habitable condition, there would be some limited benefit to tenants in general, because there would be four additional units of rental housing. There would really be no benefit, however, to tenants of low or moderate income, since these units would not be affordable to them. The resulting units would either be exempt, due to substantial rehabilitation, or would have rents in the range of \$700 - \$1100 pursuant to the Board's normal rent adjustment process.

The owner seeks permission to demolish these units and build a new 10-unit condominium development. He proposes to dedicate one unit to use by a low or moderate income family, through either sale or lease to the CHA. There would be some benefit to persons sought to be protected by the Act if one unit is designated for such use, but there are other options, not presented by the owner, which would be of much greater benefit, e.g. the dedication of more of the units to the CHA or to Rent Control.

24. There will be no hardship on tenants residing in the units since they are currently vacant.
25. The current state of these buildings aggravates the shortage of decent rental housing. The units have been uninhabitable for at least four years. The owner is legally obligated to restore these units to habitable condition and, as noted above, does not need a removal permit to do so. However, such a result would only continue to aggravate the shortage of decent rental housing, especially for families of low or moderate income, because the resulting units would be either exempt or unaffordable.

The issuance of a removal permit on the terms proposed by the owner would also continue to aggravate the shortage of decent rental housing, since he proposes to restore only one unit as affordable housing, and presented no evidence that the CHA would be interested in one of these units, or that the arrangement, if made, would be permanent. The reason advanced by the owner for proposing only one unit as affordable rental housing is his profit margin. This owner and the prior owner have violated the full occupancy ordinance. Four units have been removed from the rental market for four years. The owner should not be allowed to profit from his wrongdoing and that of the previous owner.

IV. Recommendation

Based on the foregoing Findings, I recommend that the Board find Sunvich Kongruengkit in violation of Ordinance 966, and refer the matter to the General Counsel to seek a criminal complaint for such violation.

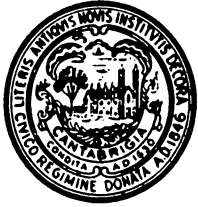
Based on the Findings, I further recommend that the Board refuse to issue a removal permit for these units based on the owner's present proposal. The owner may either restore these units to habitable condition, as ordered by the Inspectional Services Department, or he may submit a more appropriate proposal concerning future use of these units which adequately addresses the issue of affordable rental housing. The proposal submitted by the owner inadequately addresses the shortage of decent rental housing, a "serious public emergency" which Ordinance 966 is designed to

alleviate. (See Sec. 1[a] of Ordinance).

Respectfully Submitted, .

Jeanne Medeiros
Jeanne M. Medeiros
Assistant Counsel

JMM/cp



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139

TEL. 498-9011

EXECUTIVE DEPARTMENT

ROBERT W. HEALY

City Manager

RICHARD C. ROSSI

Deputy City Manager

October 3, 1988

To the Honorable, the City Council:

In response to Awaiting Report Item No. 28 relative to the status of the premises numbered 63-65 Cedar Street, enclosed please find copy of a report from D. Margaret Drury, Executive Director of Rent Control.

Very truly yours,

Robert W. Healy
City Manager

RWH/mbf

Agenda Item No. 4

Re: response to Awaiting Report Item 28 on
the status of the premises numbered 63-65
Cedar Street.

In City Council,

October 3, 1988

10-3-88

Placed on file.