



CITY OF CAMBRIDGE
INTEROFFICE CORRESPONDENCE

RECEIVED
94 DEC -1 AM 9:26
OFFICE OF THE CITY MANAGER

November 28, 1994

To: Robert W. Healy, City Manager

From: Commissioner of Inspectional Services

Subject: Communication #04, dated 11/21/94 RE: Communication from Stephen Collins regarding the status of Massage Therapy Laws in Cambridge

On November 16, 1994, I met with Mr. Collins and advised him of the necessary steps he would have to follow in order to open a massage establishment in Cambridge under the current zoning ordinance and massage establishment provisions of the Municipal Code. Also, this Department subsequently received a letter from Mr. Collins. A copy of that letter and my response to him are attached.

Setting up a massage establishment is essentially a two step process with the first step being the granting of a either a special permit or a variance by the BZA depending on the proposed location. This is addressed in sections 4.35p and 11.90 of the Zoning Ordinance. The exception to the requirement for a special permit or variance would be for the situation where the massage function is accessory to the principle use . An accessory use is defined as "a use subordinate to the principal use and customarily incidental to the principal use". In this regard, the Law Department has recently issued an opinion and a copy is attached. This opinion was issued in connection with a BZA case where a massage service was being proposed as accessory to a health club. In this case, the massage use was allowed as an accessory use.

The next step, assuming approval from the BZA, is to obtain a massage facility license under the provisions of Chapter 5.40 of the Municipal Code. This Department administers this licensing program for the Commissioner of Health and Hospitals.

The Commissioner of Health and Hospitals has proposed a change to the Municipal Code that would exempt massage therapists from the current provisions of Chapter 5.40 of the Municipal Code essentially putting them in the same category as other medical professionals. To be considered a massage therapist, the individual would be required to meet extensive training and education requirements. This proposed change if passed by the Council would have a major impact on the way massage establishments are currently zoned and administered in Cambridge and could effectively obviate Chapter 5.40 of the Municipal Code. This proposed change was submitted to the City Manager by the Commissioner of Health and Hospitals on November 9, 1994.

In Mr. Collins' specific case, he would be required to obtain a variance from the Board of Zoning Appeal as his Massachusetts Avenue proposed location is in a zone where massage establishments are not allowed by special permit or otherwise. If he should obtain a variance, he would then be required to obtain a facility license and an individual license as required by Chapter 5.40 of the Municipal Code. An alternative for Mr. Collins would be for him to obtain an individual license and work for a business that already has a facility license.

Very truly yours,

A handwritten signature in cursive script, appearing to read "R. R. Bersani".

R. R. Bersani

cc

M. H. Chalfin, M.D., Commissioner of Health and Hospitals
Russell B. Higley, City Solicitor

Stephen Collins
31 Buena Vista Park
Cambridge, MA 02140

November 22, 1994

City of Cambridge
Inspectional Services Department
831 Massachusetts Avenue
Cambridge, Massachusetts 02139

Dear Zoning Commissioner:

My name is Stephen Collins. I request permission to practice therapeutic massage at Collage European Skin Care located at 1693 Massachusetts Avenue. At this time, my practice will consist of clients who have been recommended to my care by medical practitioners.

I am concurrently applying for my personal City of Cambridge Massagist's permit.

On October 15th, 1994, I graduated from the Bancroft School of Massage Therapy in Worcester, Massachusetts. Bancroft is a fully accredited school recognized and registered with the Massachusetts Department of Higher Education.

My training has been extensive; having completed 850 hours of Swedish, Shiatsu, Clinical and Sports Massage. On November 12th, 1994, I took the National Certification Examination administered by the American Psychological Corporation. I fully adhere to their code of ethics which I have enclosed for your review.

Thank you for your time and consideration regarding this matter.

Sincerely yours,



Stephen Collins

CITY OF CAMBRIDGE
INSPECTIONAL SERVICES

'94 NOV 23 PM 4 00

Bancroft School of Massage Therapy

50 Franklin Street

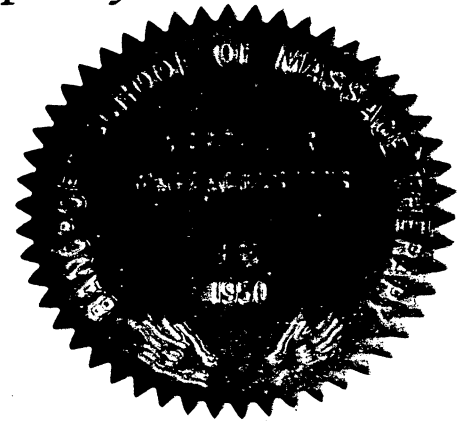
Worcester, Massachusetts

This is to certify that Stephen Collins
has completed the certificate course of training in Massage Therapy at this
School, comprising of the study of Anatomy, Physiology, Theory and Tech-
nique of Swedish Medical Gymnastics, Swedish Massage, Sports Massage,
Reflexology, Movement and Pathology, Clinical Massage Application,
Hydrotherapy, Business Practice, and Oriental Massage Application, and
through faithfulness and ability has secured the confidence and respect of the
officers of this institution.

In testimony whereof, this

Certificate

is awarded at Worcester, Massachusetts, this 15th day
of October 19 94



Steven Tunkanon

President

HealthCare Therapies

ETHICS OF THE NATIONAL CERTIFICATION BOARD OF MASSAGE THERAPISTS

Ethical Practice: Massage therapists shall act in a manner that justifies public trust and competence, enhances the reputation of the profession, and safeguards the interest of individual clients.

- 1. Accurately inform clients, other health care practitioners, and the public of the scope and limitations of their discipline and have a sincere commitment to provide the highest quality of care to those who seek their professional service.**
- 2. Provide treatment only when there is reasonable expectation that it will be advantageous to the client. The therapist will acknowledge the limitations of and contraindications for massage and refer clients to appropriate health professionals. Certificants will abide by all laws governing the practice of massage and act only within their legal scope of practice.**
- 3. Represent their qualifications honestly, including education and professional affiliations, and will provide only those services which they are qualified to perform.**
- 4. Represent their qualifications honestly, including education and professional affiliations, and will provide only those services which they are qualified to perform.**
- 5. Safeguard the confidentiality of all client information, unless disclosure is required by law, court order, or absolutely necessary to the protection of the public. Client rights will be respected. Certificants will respect the inherent worth of all persons and refuse to unjustly discriminate against clients or other ethical health professionals.**
- 6. Respect the clients right to refuse, modify, or terminate treatment, regardless of prior consent given.**
- 7. Provide draping and treatment in a way that ensures the safety, comfort and privacy of the client.**
- 8. Exercise the right to refuse to treat any person or part of the body for just and reasonable cause.**
- 9. Respect the contribution and expertise of colleagues in massage therapy and other disciplines as essential to excellent health care.**
- 10. Respect the client's choices between alternative and traditional health care.**
- 11. Always be responsible not to engage in sexualizing behavior. The therapist will respect the boundaries and integrity of each person and therefore not engage in any sexual conduct or activities, even if the client attempts to sexualize the relationship.**
- 12. Avoid any interest, activities, or influences which might conflict with their obligation to act in the best interest of their clients and the profession.**
- 13. Avoid any interest, activities or influences which might conflict with their obligation to act in the best interest of their clients and the profession.**
- 14. Respect the client's boundaries with regard to privacy, disclosure, exposure, emotional expression, beliefs, and reasonable expectations of professional behavior.**
- 15. Follow all policies, guidelines, regulations, codes and requirements promulgated by the National Certification Board for Therapeutic Massage.**



CITY OF CAMBRIDGE

INSPECTIONAL SERVICES DEPARTMENT 831 MASS. AVE.
CAMBRIDGE, MASSACHUSETTS 02139 (617) 349-6100

ROBERT R. BERSANI
Managing Director/
Acting Commissioner

November 29, 1994

Mr. Stephen Collins
31 Buena Vista Park
Cambridge, MA 02140

Dear Mr. Collins:

This letter is in response to your request to practice therapeutic massage at 1693 Massachusetts Avenue.

As I outlined to you during our meeting on November 16, before you can apply for a massage establishment license and a massagist's business permit, you must first obtain approval in the form of a special permit or variance from the Board of Zoning Appeal in accordance with the City of Cambridge Zoning Ordinance. Since the site you are proposing is in a location where massage establishments are not allowed by special permit, you must obtain a variance from this Board. An application form is attached should you desire to pursue a variance.

If you decide to pursue a variance and should you obtain one, you can then apply for the massage establishment license and business permit as provided for under Chapter 5.40 of the Cambridge Municipal code. Mr. Joseph Nicoloro, the Senior Sanitary Inspector in this Department, is available to assist you in this application process.

An alternative is for you to obtain a massagist's business permit and work for an establishment that already has the required establishment license. In the event you may want to pursue this, I am enclosing an application form and the applicable section from the Municipal Code that addresses the massagist's business permit. Again, Mr. Nicoloro can assist you here.

I hope this information has been helpful to you. If I can be of further assistance, please don't hesitate to contact me.

Sincerely,

R. R. Bersani
Commissioner



CITY OF CAMBRIDGE

Office of the City Solicitor

City Hall

795 Massachusetts Avenue
Cambridge, Massachusetts 02139

Tel. (617) 349-4121

Fax. (617) 349-4307 x 4134

Russell B. Higley
City Solicitor

Donald A. Driscoll
Deputy City Solicitor

Michael C. Costello
Assistant City Solicitor

Birge Albright
Legal Counsel

Gail S. Gabriel
Legal Counsel

Diane Wynshaw-Boris
Legal Counsel

Laura H. Yager
Legal Counsel

Linda A. Stamper
Legal Counsel

Arthur J. Goldberg
Legal Counsel

December 21, 1992

Robert W. Healy
City Manager
795 Massachusetts Avenue
Cambridge, MA 02139

RE : 163 Harvard Street \ Board of Zoning Appeal No. 6591

Dear Mr. Healy,

The following is provided in response to a request for an opinion by Ranjit Singanayagam relative to the property located at 163 Harvard Street. The owners of the property appeared before the Board of Zoning Appeal seeking a variance to construct a health club on the site, and a special permit to provide "muscular therapy" service in the health club. The question posed by Mr. Singanayagam on behalf of the BZA, is whether the proposed muscular therapy use may be considered accessory to the principal use of the health club, or whether it must be considered a principal use.

The owners of the property represented to the BZA through their attorney that the facility would be established to serve mainly the Asian community in the neighborhood. The club, however, would be available to the general public for membership. The club would provide a massage therapy service in designated areas in the facility. According to the plans submitted to the BZA by the

owners, two rooms, each measuring eighty four square feet, have been designated for this use. The entire floor area of the facility measures two thousand seven hundred and twenty square feet.

It was stated to the BZA that art of massage therapy is traditionally practiced in Asian cultures. It was further represented to the Board that the massage service will only be provided to members of the club. Also, payment for the service is included in the total membership fee.

Massage establishment is defined as follows under Article 2.000, Definitions, of the Zoning Ordinance :

"Any establishment having a source of income or compensation derived from the practice of massage as defined in subsection (c), of the General Ordinance, massage establishments, and which has a fixed place of business where any person, firm, association, or corporation engages in or carries on any activities as defined in subsection (c)."

Chapter 5.40 of the Cambridge Municipal Code, subsections C and D define massage and massage establishment respectively, as follows:

"Massage" means any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of the external parts of the human body with the hands or with the aid of any mechanical electrical apparatus or appliances with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointment or other such similar preparations commonly used in the practice of massage under such circumstances that it is reasonably expected that the person to whom the treatment is provided or some third person on his or her behalf will pay money or give any other consideration or any gratuity therefor."

"Massage establishment" means any establishment having a source of income or compensation derived from the practice of massage as defined in subsection C of this section, and which has a fixed place of business where any person, firm, association or corporation engages in or carries on any of the activities defined in subsection C of this section."

The application submitted by the owners of the property

indicates that the special permit requested for the massage therapy service falls under section 4.35 (p) of the Zoning Ordinance. Section 4.35 (p) applies to "Massage Establishments", and indicates that they are permissible as a principal use in the district in which this property is located only upon the issuance of a special permit. However, footnote 49, referenced in § 4.35 (p), conditions the issuance of a special permit in this regard upon compliance with the requirements of section 11.90 of the Ordinance.

Section 11.90, et seq., states as follows in relevant part :

"11.90 MESSAGE SERVICE ESTABLISHMENT

11.91 Statement of Purpose. This section 11.90 has been adopted to regulate the regulation and location of massage establishments in the City of Cambridge in order to prevent the concentration of such establishments in any one area of Cambridge and to prevent any nuisance or negative effects on established residential and business areas in the City.

11.92 Permits. No massage establishment shall be established or maintained in Cambridge unless such massage establishment has obtained a Special Permit from the Board of Zoning Appeal, but any such special permit shall be for a term not in excess of two (2) years. Such Special Permit must be reviewed upon the expiration of the initial Special Permit, and every two years thereafter, after hearing in accordance with the criteria stated below.

11.93 Criteria.

(1) The massage establishment and employees shall be duly licensed by the City of Cambridge in accordance with the General Ordinances, Chapter 12, entitled Board of License Commission, Article Massage Service Regulations.

(2) A massage establishment shall not be located within three hundred (300) feet of a residential district line or within

one thousand (1000) feet of an existing
massage establishment....."

If the massage service provided in the establishment is considered a principal use, as it is designated in the owner's application to the BZA, the use does not conform to the requirements of Section 11.93, subsection 2, of the Ordinance, as it will be located within three hundred feet of a residential district. Therefore, if the proposed muscular therapy use is considered a principal use, a variance from the BZA would be required to allow that use.

The definitions of massage contained in the Municipal Code, and that of massage establishment contained in both the Municipal Code and the Ordinance are broad. Encompassed in these definitions are a variety of massage techniques, and the requirement that any establishment which derives a source of income from the practice of any of the techniques be licensed and comply with the requirements of section 11.90 of the Ordinance. The practice of massage proposed to be undertaken on the premises in question falls within the definition provided in the Code. Furthermore, the derivation of income from the practice, even if only a portion of the total membership fee, also falls under the definitions contained in the Ordinance and the Code. Therefore, if the owner seeks to operate a massage service establishment on the premises as a principal use, he would be required to obtain a variance.

However, if the use is considered accessory to the principal use, the owner would be required to seek only a variance from the BZA to allow for the health club use of the site under Section 4.35

(i) of the Ordinance. (The request for a special permit for the principal use of a massage establishment on the site would have to be withdrawn by the owner.) If the practice were considered accessory to the principal use the restrictions of the Ordinance, pertaining to a massage establishments as a principal use, are not applicable to this particular establishment.

An accessory use is defined as "a use subordinate to the principal use and customarily incidental to the principal use", under Article 2.00, Definitions, of the Zoning Ordinance. Pursuant to section 4.21 subsection (g) (1) of the Ordinance,

"The total area of uses accessory to the principal use may not occupy more than twenty five (25) percent of the gross floor area of the building in which the principal use is located...."

There is no definitive case law which states that massage therapy is customarily incidental to a health club use. However, it is common practice for many health clubs to make such services available to their members as part of their club membership. The massage therapy provided is one component of the total health and fitness service provided in these clubs. Therefore, under the definition of accessory use provided in the Ordinance, the massage therapy to be provided may be viewed as incidental to the principal health club use of the site. Furthermore, the use conforms to the requirements of section 4.21.g (1) as the two rooms designated by the owners of the property for use for massage therapy occupy less than twenty five percent of the gross floor area of the building in which the principal use is located.

It is my opinion that the massage service, which appears to be

only one amongst many services provided by the health club, may be designated as an accessory use. Therefore, the owner need obtain only a variance for the health club use of the site.

In this regard, the BZA has the power to impose conditions on the variance for a health club use which address the massage service provided therein. One such condition may be to limit the areas for such service to only those rooms designated on the plans submitted to the Board. Furthermore, by granting a variance for health club use, the use of the site in the future will be limited to a continuation of this use. If the owner were to obtain a variance for a massage establishment as a principal use of the site, as is required in this case, said principal use would run with the property and be available for the future use of the entire premises as a massage service establishment.

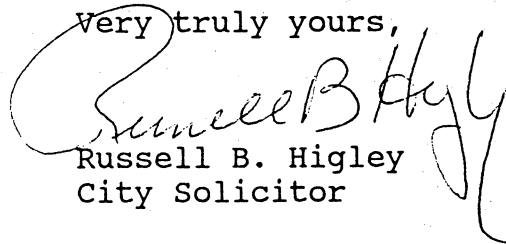
As a further condition, the variance may be subject to review by the BZA on an annual or bi-annual basis. Furthermore, the variance may be subject to review and revocation by the BZA in the event that complaints are lodged by interested neighborhood organizations, abutters to the property, and/or the Cambridge Police Department. In this way, the massage therapy provided on the site may be monitored, and subject to review by the BZA in the event that future problems arise from that use.

However, even if a portion of the premises is used for massage therapy, and is considered accessory to the principal health club use, compliance with the provisions of Article 5.40.010, et seq., of the Municipal Code is required. As previously stated, under the

Code "Any establishment having a source of income or compensation derived from the practice of massage" is governed by the applicable regulatory provisions. The proposed establishment in question falls squarely within this definition. The Code does not differentiate between accessory and principal uses, as does the Zoning Ordinance. Therefore, the owner must comply with all of the requirements relative to massage establishments under the Code even if the use is deemed to be accessory to the principal health club use of the premises.

Please contact me should you have any further questions.

Very truly yours,


Russell B. Higley
City Solicitor



CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139

TEL. 349-4300
FAX. 349-4307

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

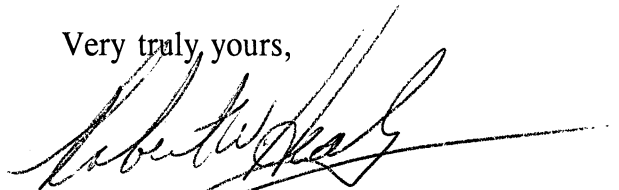
RICHARD C. ROSSI
Deputy City Manager

December 12, 1994

To The Honorable, The City Council:

Please find attached a response to Awaiting Report Item No. 46, regarding a communication from Stephen Collins concerning the status of massage therapy laws in Cambridge, received from Robert Bersani, Commissioner of Inspectional Services.

Very truly yours,



Robert W. Healy
City Manager

RWH/mev
attachment

Consent Agenda #11 S-571
Response to Awaiting Report Item Number
Forty-Six regarding a communication from
Stephen Collins concerning the status of
massage therapy laws in Cambridge.

*for original communication
see 1994 sundries #552.*

In City Council,

December 12, 1994

Placed on file