ORDINANCE NO. 908.

Final Publication No. 1972. First Publication in the Chronicle-Sun on December 21, 1978.

City of Cambridge

In the Year One Thousand, Nine Hundred Seventy-Nine

AN ORDINANCE

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

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

The Zoning Map accompanying the ordinance passed to be ordained September 26, 1977 entitled: "The Zoning Ordinances of the City of Cambridge" is hereby amended as follows:-

Amend the Zoning Map by establishing an overlay zone designated "Harvard Square Overlay District" over the existing district designations for the following described area of land:

Beginning at a point, said point being the intersection of the centerline of Massachusetts Avenue and the centerline of Church Street;

Thence, running westerly along the centerline of Church Street 240 feet more or less to a point, said point being the intersection of the center-line of Church Street and the extension of the western lot line of lot 79 of Assessors' Plat #169;

Thence running northerly along the western lot line of lot 79 of Assessors Plat #169, 70 feet more or less to a point said point being the intersection with the northern lot line of lots 8, 67 and 68 of Assessors' Plat #169;

Thence running westerly along the northern lot line of lots 8, 67, and 68 on Assessors" Plat #169, 147 feet more or less to a point, said point being the intersection of the northern lot line of lots 8, 67 and 68 of Assessors' Plat #169 and the eastern lot line of lot 10 on Assessors' Plat #169;

Thence, running northerly along the eastern lot line of lot 10 of Assessors' Plat #169, 127 feet more or less to a point, said point being the intersection of the eastern lot line of lot 10, Assessors' Plat #169 and the southern lot line of lots 19, 18, 17, 16, 15, and 14 of Assessors' Plat #169;

Thence running westerlya long the southern lot line of lots 19, 18, 17, 16, 15, and 14 of Assessors' Plat #169, 290 feet more or less to a point said poing being the intersection with a line parallel to and 100 feet from the northeastern street line of Brattle Street;

Thence, running northerly along a line parallel to and 100 feet from the northeastern street line of Brattle Street, 95 feet more or less to a point, said point being the intersection with the centerline of Farwell Place;

Thence, running southwesterly along the centerline of Farwell Place, 135 feet more or less to a point, said point being the intersection of the centerline of Farwell Place and the centerlire of Brattle Street;

Thence, running northwesterly along the centerline of Brattle Street, 55 feet more or less to a point, said point being the intersection of the centerline of Brattle Street and a line parallel to and 100 feet from the northwestern street line of Story Street;

Thence, running westerly along a line parallel to and 100 feet from the northwestern street line of Story Street, 130 feet more or less to a point, said point being the intersection of a line parallel to and 100 feet from the northwestern street line of Story Street and a line parallel to and 100 feet from the southwestern street line of Brattle Street;

Thence, running southerly along a line parallel to and 100 feet from the southwestern street line of Brattle Street, 115 feet more or less to a point, said point being the intersection with the centerline of Story Street;

Thence, running southwesterly along the centerline of Story Street, 235 feet more or less to a point, said point being the intersection of the centerline of Story Street and a line parallel to and 100 feet from the northeast street line of Mt. Auburn Street;

Thence, running northwesterly along a line parallel to and 100 feet northeasterly of the northeast street line of Mt. Auburn Street, 255 feet more or less to a point, said point being at the intersection of the above line and the centerline of Hilliard Street;

Thence, running southwesterly along the centerline of Hilliard Street, 120 feet more or less to a point, said point being the intersection of the centerline of Hilliard Street and the centerline of Mt. Auburn Street;

Thence, running northwesterly along the centerline of Mt. Auburn Street, 50 feet more or less to a point, said point being the intersection of the centerline of Mt. Auburn Street and the centerline of Gerry Street;

Thence, running southwesterly along the centerline of Gerry Street, 193 feet more or less to a point, said point being the intersection of the centerline of Gerry Street and the centerline of Revere Street;

Thence, running southeasterly along the centerline of Revere Street and an extension thereof, 135 feet more or less to a point, said point being the intersection of the extension of the centerline of Revere Street and the southeastern lot line of lot 41 as shown on Assessors' Plat #166;

Thence, running southwesterly along the southeastern lot lines of lots 41, 43, 44, 61, and an extension thereof, as shown on Assessors' Plat #166, 446 feet more or less to a point, said point being the intersection of the extension of the southwestern lot line of lot 61 as shown on Assessors' Plat #166 and the centerline of Memorial Drive;

Thence, running southerly along the centerline of Memorial Drive 805 feet more or less to a point, said point being the intersection of the centerline of Memorial Drive and the extension of the southeastern lot line of lot 47 on Assessors' Plat #165;

Thence, running northeasterly along the southeastern lot line of lot 47 and an extension thereof on Assessors' Plat #165, 830 feet more or less to a point, said point being the intersection of the extension of the southeastern lot line of lot 47 on Assessors' Plat #165 and the centerline of Bennett Street;

Thence, running southeasterly along the centerline of Bennett Street and an extension thereof 95 feet more or less to a point, said point being the intersection of the extension of the centerline of Bennett Street and the centerline of Eliot Street;

Thence, running southeasterly along the centerline of Eliot Street and an extension thereof, 370 feet more or less to a point, said point being the intersection of the centerline of Eliot Street and the centerline of Boylston Street;

Thence, running northeasterly along the centerline of Boylston Street 85 feet more or less to a point, said point being the intersection of the centerline of Boylston Street and the extension of the centerline of South Street;

Thence, running southeasterly along the centerline of South Street and an extension thereof 175 feet more or less to a point, said point being the intersection of the centerline of South Street and the extension of the southeastern lot line of lot 5 on Assessors' Plat #162;

Thence, running northeasterly along the southeastern lot line of lot 5 and an extension thereof on Assessors' Plat #162, 50 feet more or less to a point, said point being the intersection of the southeastern lot line of lot 5 on Assessors Plat #162 and the northeastern lot line of said lot;

Thence, running northwesterly along the northeastern lot line of lot 5 on Assessors' Plat #162, 15 feet more or less to a point, said point being the intersection of the northeastern lot line of lot 5 and the southeastern lot line of lot 36 on Assessors' Plat #162;

Thence, running northeasterly along the southeastern lot line of lot 36 on Assessors' Plat #162, 50 feet more or less to a point, said point being the intersection of the southeastern lot line of lot 36 and the northeastern lot line of said lot;

Thence, running northwesterly along the northeastern lot line of lot 36 on Assessors' Plat #162, 18 feet more or less to a point, said point being the intersection of the northeastern lot line of lot 36 and the southeastern lot line of lot 70 on Assessors' Plat #162;

Thence, running northeasterly along the southeastern lot lines of lots 71 and 47 and an extension thereof on Assessors' Plat #162, 195 feet more or less to a point, said point being the intersection of the southeastern lot line of lot 47 on Assessors Plat #162 and the northeastern lot line of said lot;

Thence, running southeasterly along the southwestern lot line of lot 68 on Assessors' Plat #162 29 feet more or less to a point said point being the intersection of the southwestern lot line of lot 68 and the northwestern lot line of lot 67 on Assessors' Plat #162;

Thence, running southwesterly along the northwestern lot line of lot 67 on Assessors' Plat #162 34 feet more or less to a point, said point being the intersection of the northwestern lot line of lot 67 on Assessors' Plat #162 and the southwestern lot line of said lot;

Thence, running southeasterly along the southwestern lot line of lot 67 on Assessors' Plat #162, 96 feet more or less to a point, said point being the intersection of the southwestern lot line of lot 67 and an extension thereof on Assessors' Plat #162 and the centerline of Dunster Street;

Thence, running northeasterly along the centerline of Dunster Street 20 feet more or less to a point said point being the intersection of the centerline of Dunster Street and the extension of the southwestern lot line of lot 10 on Assessors' Plat #162;

Thence, running northeasterly along the southwestern lot lines of lots 10, 11, 62 and an extension thereof on Assessors' Plat #162 and lots 1, 2, and 3 thereof on Assessors' Plat #161, 438 feet, more or less to a point, said point being the intersection of the extension of the southwestern lot line of lot 3 on Assessors' Plat #161 and the centerline of Holyoke Place;

Thence, running southwesterly along the centerline of Holyoke Place 15 feet more or less to a point, said point being the intersection of the centerline of Holyoke Place and a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street;

Thence, running southeasterly along a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street 245 feet more or less to a point, said point being the intersection of a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street and the centerline of Plympton Street;

Thence, running northeasterly along the centerline of Plympton Street 125 feet more or less to a point, said point being the intersection of the centerline of Plympton Street and the centerline of Mt. Auburn Street;

Thence, running southeasterly along the centerline of Mt. Auburn Street 789 feet more or less, to a point, said point being the intersection of the centerline of Mt. Auburn Street and the extension of the centerline of Banks Street;

Thence, running southwesterly along the centerline of Banks Street 125 feet more or less to a point, said point being the intersection of the centerline of Banks Street and a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street;

Thence, running southeasterly along a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street 337 feet, more or less to a point, said point being the intersection of a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street and the centerline of Putnam Avenue;

Thence, running southerly along the centerline of Putnam Avenue 40 feet more or less to a point, said point being the intersection of the centerline of Putnam Avenue and the extension of the southern lot line of lot 1 on Assessors' Plat #121;

Thence, running easterly along the southern lot line of lot 1 on Assessors' Plat #121 56 feet more or less to a point, said point being the intersection of the southern lot line of lot 1 and the eastern lot line of said lot on Assessors' Plat #121;

Thence, running northeasterly along the eastern lot line of lot 1 and an extension thereof on Assessors' Plat #121 172 feet more or less to a point, said point being the intersection of the eastern lot line of said lot and the centerline of Massachusetts Avenue;

Thence, running northwesterly along the centerline of Massachusetts Avenue 40 feet more or less to a point, said point being the intersection of the centerline of Massachusetts Avenue and the centerline of Trowbridge Street;

Thence, running northeaterly along the centerline of Trowbridge Street 160 feet more or less to a point, said point being the intersection of the centerline of Trowbridge Street and a line 100 feet from and parallel to the northerly sideline of Massachusetts Avenue;

Thence, running northwesterly along a line 100 feet from and parallel to the southerly sideline of Massachusetts Avenue 675 feet to a point, said point being the intersection of a line 100 feet from and parallel to the northerly sideline of Massachusetts Avenue and the southeastern lot line of lot 1 on Assessors Plat #134;

Thence, running northeasterly along the southeastern lot line of lot 1 on Assessors' Plat #134 120 feet more or less to a point, said point being the intersection of the southeastern lot line of lot 1 on said plat and the centerline of Harvard Street;

Thence, running northwesterly along the centerline of Harvard Street 367 feet more or less to a point, said point being the intersection of the centerline of Harvard Street and the centerline of Massachusetts Avenue;

Thence, running northwesterly along the centerline of Massachusetts Avenue 1338 feet more or less to a point, said point being the intersection of the centerline of Massachusetts Avenue and the centerline of Church Street, the point of origin.

Said area includes all or parts of parcels of land as designated on Assessors' Plat #133: Even numbers 1086 through 1096, 1100 through 1124, 1130 through 1134, 1154 through 1162, 1170 through 1174, 1208, 1210, 1218 and 1230 through 1256 Massachusetts Avenue; even numbers 6, 8 and 12, odd numbers 3 through 39 Bow Street; even numbers 4 through 10 and 24, odd numbers 17 through 25 Arrow Street; even numbers 4 through 44 Plympton Street; odd numbers 1 through 19, 23 through 27 and 35 through 53 Mt. Auburn Street, and which includes all or parts of lots numbered 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56 as shown on Assessors' Plat #133;

Premises of the following parcels as designated on Assessors' Plat #132; Even numbers 2 through 10 Mt. Auburn Street; even number 18 Bank Street; odd numbers 3 and 11, even number 6 Putnam Avenue and which includes all or parts of lots numbered 97, 122, 131, 135 and 138 as shown on Assessors' Plat #132;

Premises of the following parcels as designated on Assessors' Plat #121; odd number 9 and even number 12 Putnam Avenue and even numbers 1050 through 1056 Massachusetts Avenue and which includes all or parts of lot numbered 1: as shown on Assessors Plat #121;

Premises of the following parcels as designated on Assessors' Plat #134: Odd numbers 1075, 1091, 1095, 1097, 1099, 1105, 1115, 1131, 1137, 1145, 1171, 1173, 1191 and 1201, and even number 1096 Massachusetts Avenue; odd number 5, even number 6 Remington Street and which includes all or parts of lots numbered 1, 2, 7, 8, 50 and 56 as shown on Assessors' Plat #124;

Premises of the following parcels as designated on Assessors' Plat #160; even number 1268 through 1392 Massachusetts Avenue; odd numbers 1 through 35 Plympton Street; even numbers 8 through 10 Linden Street; odd numbers 3 through 9 Linden Street, even numbers 2 through 26 Holyoke Street; odd numbers 11 through 23 Holyoke Street; even numbers 2 through 36 Dunster Street; odd numbers 5 through 35 Dunster Street; even numbers 2 through 42 Boylston Street; odd numbers 1 through 41 Boylston Street; even numbers 10 through 36 Brattle Street; odd numbers 57 through 101 Mt. Auburn Street; odd numbers 47 through 57 Bow Street; and which includes all of lots numbered 11, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 30, 36, 37, 38, 46, 48, 51, 52, 53, 54, 55, 57, 58, 59, 60, 61, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84 as shown on Assessors Plat #160;

Premises of the following parcels as designated on Assessors' Plat #161; odd numbers 57 and 59 Plympton Street; even numbers 52 through 72 Mt. Auburn Street; even numbers 2 and 8 Holyoke Place; odd numbers 1 and 7 Holyoke Place; even number 28 Holyoke Street; and which includes all or parts of lots numbered 1, 2, 3, 81, and 82 as shown on Assessors' Plat #161;

Premises of the following parcels as designated on Assessors' Plat #162; even numbers 74 through 104 Mt. Auburn Street; even numbers 2 through 28 Eliot Street; odd numbers 53 through 65 Boylston Street; even numbers 44 through 60 Boylston Street; odd number 43 Dunster Street; even numbers 44 and 50 Dunster Street; odd numbers 25 and 27 Holyoke Street; odd numbers 67 through 107 Winthrop Street; even numbers 70 through 106 Winthrop Street; odd numbers 9 through 21 South Street; and which includes all of lots numbered 4, 5, 9, 10, 11, 17, 18, 19, 26, 29, 35, 36, 47, 51, 52, 54, 57, 58, 59, 62, 64, 65, 66, 67, 68, 69, 71, 72, 73, 74, 75 as shown on Assessors' Plat #162;

Premises of the following parcels as designated on Assessors' Plat #169; even numbers 1394 through 1442 Massachusetts Avenue; even numbers 2 through 8 Brattle Street; odd numbers 1 through 51 Brattle Street; odd numbers 1 through 35 Palmer Street; even numbers 2 through 32 Palmer Street; even numbers 2 through 66 Church Street; odd numbers 21 through 57 Church Street; even number 2 Farwell Place; and which includes all of lots numbered 7, 8, 10, 11, 12, 14, 17, 39, 40, 41, 42, 43, 44, 45, 46, 47, 50, 67, 68, 80, 81, 82, 83, 84, 85, 86, 89, 96; as shown on Assessors' Plat #169;

Premises of the following parcels as designated on Assessors' Plat #168; even numbers 38 through 54 Brattle Street; odd numbers 109 through 125 Mt. Auburn Street; even numbers 8 through 20 Mifflin Place; odd numbers 5 through 19 Mifflin Place; even numbers 4 through 18 Story Street; odd number 5 Story Street; and which includes all or part of lots numbered 4, 5, 13, 16, 17, 20, 21, 22, 23, 24, 25, 30, 31, 32, 33, 36, 37, 55, 56, 57, 60 as shown on Assessors' Plat #168;

Premises of the following parcels as designated on Assessors' Plat #165; even numbers 108 through 128 Mt. Auburn Street; even numbers 2 through 44 University Road; odd numbers 1 through 43 University Road; odd numbers 1 through 7 Nutting Road, even numbers 976 through 982 Memorial Drive; and which includes all or part of lots numbered 7, 15, 23, 24, 26, 28, 29, 34, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 as shown on Assessors' Plat #165;

Premises of the following parcels as designated on Assessors' Plat #166; even numbers 132 through 138 Mt. Auburn Street; even numbers 2 through 16 Nutting Road; odd numbers 1 through 7 and even numbers 2 through 10 Revere Street; all numbers on Mt. Auburn Place; even numbers 2 through 8 Gerry Street; and which includes all or parts of lots numbered 33, 34, 35, 37, 38, 41, 42, 50, 51, 73, 74, 75, as shown on Assessors' Plat #166;

Premises of the following parcels as designated on Assessors' Plat #168; odd numbers 127 through 133 Mt. Auburn Street; 15 through 17 Story Street; 18 through 22 Hilliard Street; and which includes all or part of lots numbered 40, 41, 48, 49, 53, 54, as shown on Assessors' Plat #166.

B. Amend the text of the Zoning Ordinance as follows:

1. In Section 3.10, Division of the City Into Zoning Districts, add the following new subsection:

"3.12 In addition to the districts established under subsection 3.11, overlay districts may be established from time to time. As specified elsewhere in this Ordinance, each overlay district shall have special regulations which shall be applicable in lieu of or in addition to the regularly applicable regulations for the base zoning district."

2. In Article 11.000, Special Regulations, add the following new section:

"11.40 HARVARD SQUARE OVERLAY DISTRICT

11.41 Establishment and Scope. There is hereby established the Harvard Square Overlay District which shall be governed by the regulations and procedures specified in this Section 11.40. It is the intent of this section that these regulations will apply to a single area described generally as the Harvard Square business district and certain abutting portions of the neighborhoods around it.

11.42 Purpose. It is the purpose of this Section 11.40 to augment existing zoning regulations to respond to the unique problems and pressures for change particular to the Harvard Square area. The regulations contained in said section provide for more careful public scrutiny of development proposals that may alter the established urban form of the Harvard Square area. These regulations are intended to channel the extreme development pressures in ways which will preserve and enhance the unique functional environment and visual character of Harvard Square; to mitigate the functional impacts of new development; and to reduce the visual impact of Harvard Square development on adjacent residential neighborhoods.

11.43 Applicability. The Square Overlay District shall be an overlay district on the Zoning Map established by Section 3.20.

11.431 The use of land within said district shall be controlled by the pertinent regulations within the base zoning districts, except as modified by the requirements of this Section 11.40 which shall apply in addition to regulations imposed by the base zoning map designations.

11.432 The requirements of this Section 11.40 shall not apply to planned unit development proposals filed, reviewed and regulated by Article 12.000; however, said requirements shall apply to other development proposals in a PUD district.

11.44 Building Height Limitations. The maximum height of buildings in the Harvard Square Overlay District shall be governed by the requirements of this Section 11.44; however, at locations where the base zoning district establishes a more restrictive height limitation, the more restrictive shall apply.

11.441 As-of-Right Height Limitations. The maximum height of any building at the street line shall be sixty (60) feet. Portions of buildings may extend to eighty (80) feet in height provided that those portions in excess of 60 feet are set back from the street line at least 10 feet, that those portions are also set back from one or more 45° sky exposure planes and that the building will provide the minimum required amenities specified in subsection 11.442. A 45° sky exposure plane shall be an imaginary inclined plane beginning 60 feet above any street line in the district and rising over one or more lots at a 45° angle.

11.442 Required Amenities for Taller Buildings. Any building in the district exceeding 60 feet in height shall provide at least 10 points worth of amenities according to the following schedule:

(1) Off-street parking in excess of the requirements specified in Section 6.30 -- 1 point for each 4 spaces.

(2) Split level commercial frontage -- 1 point for each 10 linear feet along the street line.

(3) Shopping arcade, as defined by Sec. 13.452(5) -- 1 point for each 10 linear feet along the street line.

(4) Through-block arcade, as defined by Sec. 13.452(7) -- 10 points.

(5) Other open space at or within 10 feet of street level designed to be generally accessible to the public including parks, plazas, courtyards, landscaped area open to the sky, and galleries -- 2 points for each 225 square feet of open space in excess of the minimum usable open requirements for the lot specified in Section 5.30.

11.443 Special Permit for Additional Height. The maximum allowable height in the district may be increased up to 110 feet upon issuance of a special permit by the Planning Board. In granting a special permit for increased height, the Planning Board shall find that provision of any of the following amenities provides substantial public benefits.

(1) open space or recreational facilities dedicated to public use;

(2) walkways or similar facilities which enable the public to have access through the building to existing areas of unique natural or man-made value;

(3) development design, which enhances any unique natural or man-made features of the site or abutting areas;

(4) pedestrian malls, arcades, decks, bridges, or similar facilities within the interior of the building which are designed to appeal to the general public;

and any parties listed in Section 11.465 who express interest in participating in the consultation. Within five (5) days of the consultation session, the Community Development Department shall issue to the applicant written comments on the development proposal and a consultation compliance certificate.

11.464 Large Project Submittal Requirements. Development proposals submitted for review in accordance with subsection 11.463 shall include such written and graphic materials necessary to give a reasonably complete indication of the nature and scope of the development proposal. Each of the following shall be submitted as appropriate to the proposal:

(1) A site plan indicating the general location and boundaries of the lot, major anticipated changes in natural features, existing and proposed buildings, existing and proposed curb cuts, off-street parking areas, loading and service facilities, and generalized landscaping scheme or other anticipated treatment of open spaces.

(2) Cross section(s), generalized floor plans or other diagram(s) indicating the anticipated locations of various land uses and major pedestrian pathways.

(3) Architectural elevations or sketches indicating anticipated facade treatment along public ways including the proposed entrances, fenestration, and signage.

11.465 Large Project Review Participants. Abuttors and representatives of various agencies and interest groups shall be invited to participate in the consultation sessions for large scale development proposals submitted for review in accordance with subsection 11.463. The Community Development Department shall give notification of any scheduled development consultation to each abutting property owner and to any individual or organization who each year files with the Community Development Department a written request for such notification.

11.466 In reviewing each development application, the Community Development Department shall have the following powers and duties:

(1) The Department shall evaluate the proposal for compliance with zoning requirements, for appropriateness in terms of other planned or programmed public or private development activities in the vicinity. The Department shall consider the proposal in

terms of the specific and general impact of the use and/or dimensions proposed therein on the Harvard Square Overlay District and adjoining areas where applicable. Such evaluation shall be conducted in light of the purposes of the Harvard Square Overlay District and adjoining areas where applicable. Such evaluation shall be conducted in light of the purposes of the Harvard Square Overlay District hereinbefore stated and shall further take account of the following considerations: scale, bulk, density, aesthetic qualities, land use, functional characteristics, parking, loading, and impact on public services and facilities.

(2) In its written report the Department shall make recommendations to the applicant including general approval or disapproval of the proposal and in connection therewith may suggest specific project adjustments and alterations to further the purposes of this Section 11.40.

11.467 The Community Development Department may seek the advice and assistance of other city departments and of the organizations given notice in subsection 11.465 in reviewing a development proposal..

Passed to be ordained by a yea and nay vote:- Yeas 6; Nays 2; Absent 0; Present 1 on January 22, 1979 by authorization of an order adopted by the City Council on February 12, 1979.

ATTEST:- Paul E. Healy, City Clerk.

(5) other amenities that the developer may propose which the Planning Board feels provide unique advantages to the general public or which contribute to achieving city development goals;

In evaluating a Development Proposal providing building height in excess of 80 feet, the Planning Board shall give consideration to evidence presented on the following:

a. that increased height will not cast shadows or alter air currents in ways that will unreasonably limit the amount of light and air reaching other buildings in the vicinity to a significantly greater extent than if the building height did not exceed 80 feet;

b. that increased height would mitigate detrimental environmental impacts such as excessive ground coverage, diminution of open space, and monotonous development;

c. that increased height would not adversely affect and would result in increased sensitivity to the visual and physical characteristics of the particular location through more harmonious relationships to the terrain and to proposed and existing buildings in the vicinity that have functional or visual relationships to the proposed building;

d. that increased height would result from actions taken to lessen the impact of traffic and parking on the surrounding area; and

e. that the orientation and location of the proposed structure shall not otherwise diminish the health and safety of the Harvard Square area.

11.45 Streetwalls and Building Setback Reduction. Maintenance of existing streetwalls is encouraged within the district. This may be accomplished by principal front wall plane setbacks and cornice lines which are consistent with existing buildings on the same block face. In order to enable this and to provide greater design flexibility, buildings within the district shall be exempt from any minimum yard requirements specified in Section 5.30 except for cases in which such reduced yard would abut a lot (but not a public way) outside the district.

11.46 Development Consultation Procedure. It is the purpose of this Section 11.46 to provide for city professional staff review of and comment on development proposals in the district prior to the formulation of final plans. This development consultation procedure is intended to enable discussion of potential changes in Harvard Square which could alter the physical environment of the area. It will provide an informal mechanism for reviewing potential projects and, when appropriate, suggesting ways in whichs such projects might better comply with various public plans and policies for Harvard Square. Each application for a building permit for one of the categories of development specified in subsection 11.461 shall be accompanied by a written certification from the Cambridge Com-

munity Development Department indicating that the applicant has, within the previous six month period, participated in the development consultation procedure specified in this section 11.46, for the proposal for which the permit is being sought. At the development consultation session, members of the staff of the Community Development Department will review the proposal and discuss the opportunities and problems it presents.

11.461 The following types of development proposals within the Harvard Square Overlay District shall be subject to development consultation:

(1) construction of any new building;

(2) construction of any other new structure;

(3) any exterior building alteration increasing gross floor area by 100 square feet or more;

(4) construction of five or more parking spaces, whether on grade or in a structure;

(5) erection of a sign;

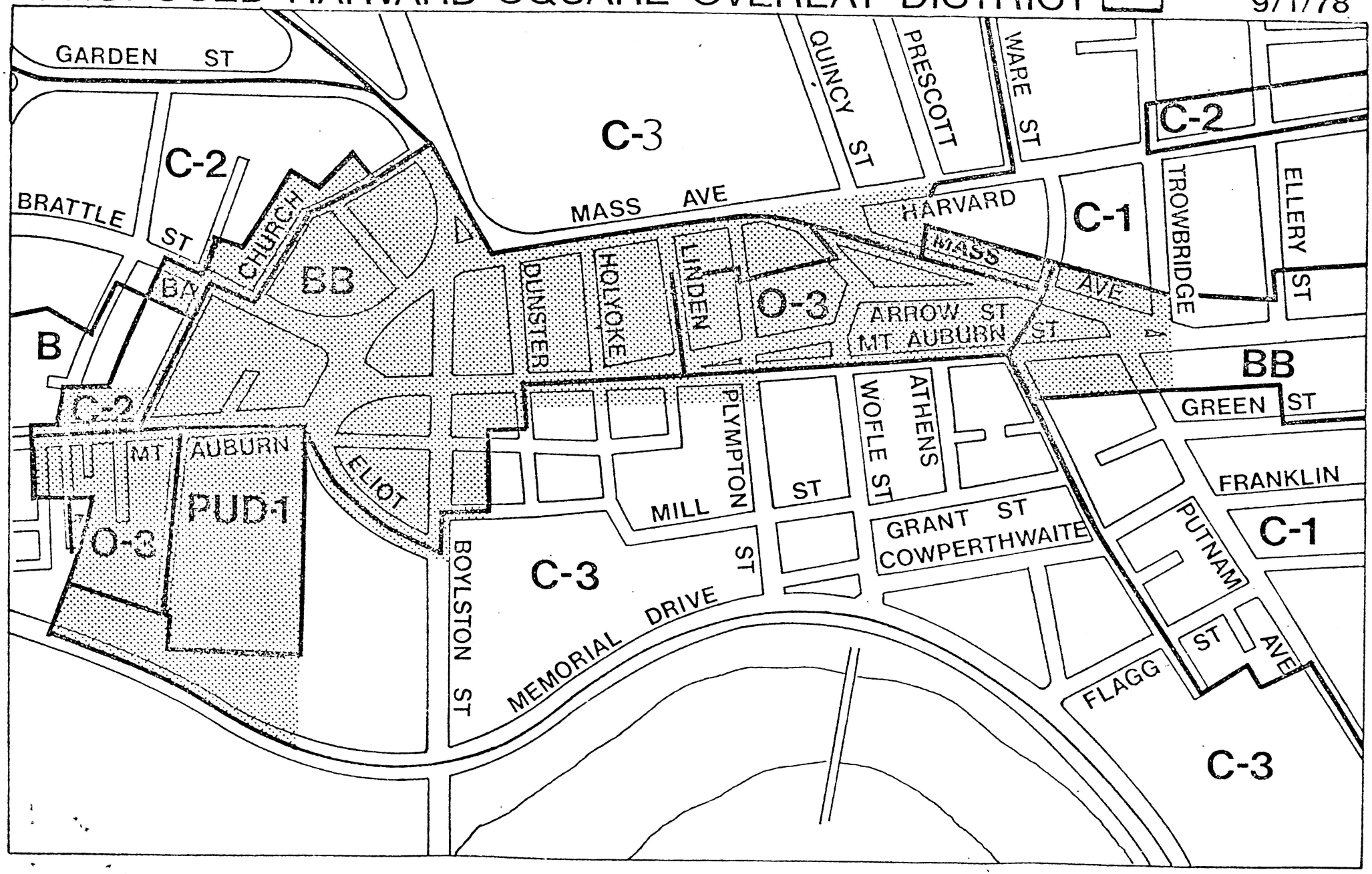
(6) any other exterior alteration facing a street but not painting, brick repointing or masonry repairs, building cleaning, gutter replacement or similar routine maintenance.

11.462 Small Project Procedure. Prior to formal permit application, the applicant for a building permit for a development project, except those specified in subsection 11.463 shall contact the Community Development Department and request a development consultation session. Upon making such a request, the applicant shall present for review such written or graphic materials necessary to give a reasonably complete, though not necessarily detailed, indication of the nature and scope of the development proposal. In most cases the Community Development Department staff person will complete the review and issue the certification of compliance with this section 11.46 at the end of the consultation session. However, if questions arise during the session suggesting the need for advice and assistance of other city departments or others, the development proposal materials may be kept for further review. However, the final staff comments and compliance certification shall be made within two business days of the consultation session.

11.463 Large Project Procedure. Any development proposal involving the construction of a new building or an alteration increasing the gross floor area of an existing building by 2000 square feet or more shall follow the review procedure specified in this subsection 11.463. Prior to application for a building permit, the applicant shall submit the materials specified in subsection 11.464 to the Community Development Department for its review. Within five (5) business days of such submittal, the Department will schedule and hold a consultation session with the applicant or his designee

PROPOSED HARVARD SQUARE OVERLAY DISTRICT ▭

9/1/78



City of Cambridge

In City Council October 23, 1978

The City Council *Committee* on Ordinances

to which was referred the petition of Councillor Mary Ellen Preusser, et al, to amend the text of the Zoning Ordinance of the City of Cambridge by creating a Special Overlay District for the Harvard Square business area as shown on an attached map. The amendment would provide that existing zoning controls would remain unchanged with the exceptions that the building height would be limited to 80 feet but could be increased to 80 feet for projects granted a special permit by the Planning Board and that most new construction in the district be subject to a review process by the Planning Board and further that the development proposal covered by a planned unit development review would be exempt from the process established by this petition.

The Committee heard from David Vickery, Assistant City Manager for Community Development, who outlined the provisions of the proposed ordinance.

Councillor Frisoli announced that he had received a communication from the President and Fellows of Harvard College indicating their ownership of 20% of the land proposed to be inclused in the change and recorded their opposition to the proposed amendment.

A second communication was received from Louis D. Giovanni recording his opposition to the proposed change and indicating his ownership of 20% of the land area in the proposed change. *Reports,*

Hugh Russell, 1 Hollis Place, a petitioner and member of the Harvard Square Task Force, recorded himself in favor of the proposed amendment.

In the close of the hearing, the proposed amendment was referred to the City Council without recommendation.

For the Committee,

Councillor Lawrence W. Frisoli
Chairman

C. C. 106

709PM Motion of Councillor Preusser

1) to Suspend Rules in order to proceed to Calendar Item #5

City of Cambridge

MASSACHUSETTS

In City Council 2/12 1979

Motion Carried - Rules Suspended

	YEA	NAY	ABSENT	PRESENT
Mr. Crane		✓		
Mr. Duehay	✓			
Mr. Frisoli	✓			
Ms. Graham	✓ (2)		✓ (1)	
Ms. Preusser	✓			
Mr. Sullivan		✓		
Mr. Vellucci	✓			
Mr. Wylie	✓			
Mayor Danehy			✓	
	5	2	2	
	6	2	1	

On the initial ballot the result was 5-2-2 and the Clerk announced that the rules were not suspended At this point Councillor Sullivan entered the Chamber and requested to be informed as to how he was recorded. When informed as recorded ABSENT he requested in the affirmative making the vote 6-2-1

C. C. 106

Motion By Councillor Sullivan -

2

City of Cambridge

MASSACHUSETTS

In City Council February 12 1979

Ruling of Chair not sustained

	YEA	NAY	ABSENT	PRESENT
Mr. Crane	✓			
Mr. Duehay		✓		
Mr. Frisoli	✓			
Ms. Graham		✓		
Ms. Preusser		✓		
Mr. Sullivan	✓			
Mr. Vellucci		✓		
Mr. Wylie		✓		
Mayor Danehy	✓			

4 5 0

- Councillor Sullivan motion to make "out of order" Ruling of Mayor Thomas M. Danehy that the order by C. Preusser was out of order

Ruling not sustained

958

C. C. 106 3

City of Cambridge

MASSACHUSETTS

In City Council February 12, 1979

L. Crane Amendment Carried

	YEA	NAY	ABSENT	PRESENT
Mr. Crane	✓			
Mr. Duehay		✓		
Mr. Frisoli	✓			
Ms. Graham		✓		
Ms. Preusser		✓		
Mr. Sullivan	✓			
Mr. Vellucci	✓			
Mr. Wylie		✓		
Mayor Danehy	✓			
	5	4	0	

L. Crane Amendment Carried "to include proxy by an individual property owner as well as corporate land owners" where there appears in the order introduced by C Preusser

C. C. 106

4

City of Cambridge

MASSACHUSETTS

In City Council February 12, 1979

Councillor Vellucci MOTION to amend

	YEA	NAY	ABSENT	PRESENT
Mr. Crane		✓		
Mr. Duehay	✓			
Mr. Frisoli		✓		
Ms. Graham	✓			
Ms. Preusser	✓			
Mr. Sullivan		✓		
Mr. Vellucci	✓			
Mr. Wylie	✓			
Mayor Danehy	✓			
	6	3	0	0

Motion to amend the first order on Page 2 in the sixth paragraph By striking out in the first line of said paragraph the words "last the following order"

Amendment adopted 6-3-0-0

C. C. 106

5.

City of Cambridge

MASSACHUSETTS

In City Council February 12 1979

	YEA	NAY	ABSENT	PRESENT
Mr. Crane		✓		
Mr. Duehay	✓			
Mr. Frisoli	✓			
Ms. Graham	✓			
Ms. Preusser	✓			
Mr. Sullivan	✓			
Mr. Vellucci	✓			
Mr. Wylie	✓			
Mayor Danehy	✓			
	8	1	0	0

Motion By Councillor Vellucci to add two paragraphs at the beginning of the order which reads as follows

C. C. 106

6

City of Cambridge

MASSACHUSETTS

In City Council February 12 1979

Order By Councillor Preusser

	YEA	NAY	ABSENT	PRESENT
Mr. Crane		✓		
Mr. Duehay	✓			
Mr. Frisoli		✓		
Ms. Graham	✓			
Ms. Preusser	✓			
Mr. Sullivan		✓		
Mr. Vellucci	✓			
Mr. Wylie	✓			
Mayor Danehy		✓		
	5	4	0	0

Vote of City Council on Adoption of the Order introduced by Councillor Preusser as amended by Councillors Crane and Vellucci

Order Adopted 5-4-0

C. C. 106

11

City of Cambridge

MASSACHUSETTS

In City Council February 12 1979

	YEA	NAY	ABSENT	PRESENT
Mr. Crane		✓		
Mr. Duehay	✓			
Mr. Frisoli		✓		
Ms. Graham	✓			
Ms. Preusser	✓			
Mr. Sullivan		✓		
Mr. Vellucci	✓			
Mr. Wylie	✓			
Mayor Danehy		✓		
	5	4	0	0

Councillor Preusser moved suspension of the Rules in order to move reconsideration - hoping she somewhat prevail - The question came on suspension and on a roll call vote the Rules were not suspended -

C. C. 106

Order #5 introduced by C. Preusser

5/

City of Cambridge

MASSACHUSETTS

In City Council February 5 1979

- Ruling of the Chair NOT SUSTAINED -

	YEA	NAY	ABSENT	PRESENT
Mr. Crane	✓			
Mr. Duehay		✓		
Mr. Frisoli	✓			
Ms. Graham		✓		
Ms. Preusser		✓		
Mr. Sullivan	✓			
Mr. Vellucci		✓		
Mr. Wylie		✓		
Mayor Danehy	✓			
	4	5	0	0

Councillor Sullivan moved that this order be declared illegal and therefore out of order

Mayor Danehy on the motion of Councillor Sullivan ruled the order "out of order" The ruling of the Chair was appealed and on the Roll Call vote, the Ruling of the Chair was NOT sustained 5-4-0

C. C. 106

#45

D

City of Cambridge

MASSACHUSETTS

In City Council February 5, 1979

Motion to Councillor to declare order illegal and out of order

	YEA	NAY	ABSENT	PRESENT
Mr. Crane	✓			
Mr. Duehay		✓		
Mr. Frisoli	✓			
Ms. Graham		✓		
Ms. Preusser		✓		
Mr. Sullivan	✓			
Mr. Vellucci		✓		
Mr. Wylie		✓		
Mayor Danehy	✓			

4 5 0

"Chair ruling out of order"

— Ruling not sustained — AT 11:58

P. O. BOX 212 - HARVARD SQUARE
CAMBRIDGE, MASSACHUSETTS 02138

January 22, 1979

The Honorable Thomas Danehy
Mayor and Chairman, City Council
City Hall
Cambridge, Massachusetts 02139

Re: Harvard Square Overlay District Petition
By Mary Ellen Preusser, et. al.

Dear Sir:

The undersigned owner of land in the area of land proposed to be included in the change of the Zoning Ordinance of the City of Cambridge sought by the captioned petition, or on the land immediately adjacent to such area of land and extending 300 feet therefrom, hereby protest against such changes pursuant to G.L. c. 40A, paragraph 5, as amended, for the reasons, among others, that such change would: significantly and impermissibly impair and restrict the use of land for proper purposes without sufficient planning justification; violate G.L. c. 40A, paragraph 4, as amended, by creating a zoning district within which there are not uniform requirements for each class or kind of structures or uses permitted; constitute an improper delegation of the zoning power to a non-legislative body without adequate strictness for its exercise.

Very truly yours,

Louis F. DiGiovanni

Louis F. DiGiovanni, Trustee
Trinity Realty Trust

LFD:bc

cc: Lawrence W. Frisoli
Chairman, Ordinance Committee

City of Cambridge

Motion of Councillor Vellucci to amend Councillor Preusser order by adding a new first paragraph which reads as follows:-

WHEREAS:

Douglas Randall, Attorney at Law, retained by David Vickery, Assitant City Manager for Community Development for the City of Cambridge, with the approval of the City Solicitor and the City Manager, drafted the following order which includes advice to the City Council regarding what action should be taken by the City Council relative to the petition by Councillor Preusser, et al as it relates to the Harvard Square Overlay, and

WHEREAS:

Councillor Preusser had on February 5, 1979 submitted this order for which said Attorney Douglas Randall was paid to prepare by the city with the approval of the City Manager.

City of Cambridge

AMENDED ORDER
5.
IN CITY COUNCIL
February 5, 1979

COUNCILLOR PREUSSER

WHEREAS: Douglas Randall, Attorney at Law, retained by David Vickery, Assistant City Manager for Community Development for the City of Cambridge, with the approval of the City Solicitor and the City Manager, drafted the following order which includes advice to the City Council regarding what action should be taken by the City Council relative to the petition by Councillor Preusser, et al as it relates to the Harvard Square Overlay, and

WHEREAS: Councillor Preusser had on February 5, 1979 submitted this order for which said Attorney Douglas Randall was paid to prepare by the city with the approval of the City Manager, and

WHEREAS: The vote of the City Council taken on January 22, 1979, on the final adoption of the proposed zoning ordinance amendment, creating a Harvard Square Overlay District, was recorded as six in favor, two opposed and one "present", and

WHEREAS: The presiding officer declared that the proposed ordinance failed of passage, presumably due to the filing of objections by certain landowners and the provisions of General Laws Chapter 40A Section 5, and

WHEREAS: The legal effect of such vote is in doubt by reason that:-

1. The vote of "present" may satisfy the requirement of Section 5 which reads in part as follows:-

   "No zoning ordinance or by-law shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are two branches, or by a two-thirds vote of a town meeting; provided that if in a city or town with a council of fewer than twenty-five members there is filed with the clerk prior to final action by the council a written protest against such change, stating the reasons duly signed by owners of twenty per cent or more of the area of the land proposed to be included in such change, or of the area of the land immediately adjacent extending three hundred feet therefrom, no such change of any such ordinance shall be adopted except by a three-fourths vote of all members."

City of Cambridge

2. The recorded vote was sufficient for enactment, for reason that the portion of said section permitting protests and thereby requiring a three-fourths vote is unconstitutional under the Fourteenth Amendment to the United States Constitution in that it denies certain inhabitants of the City of Cambridge their right to the equal protection of the laws by:-

(a) permitting certain corporate property owners and individual property owners who own substantial areas of land to exercise a greater influence upon legislative enactment of the zoning regulation of their land and lands lying adjacent thereto than is accorded to the inhabitants of Cambridge at large;

(b) allowing the corporate owners and individual owners to protest the proposed legislation and thereby precipitate the alleged necessity of a three-fourths vote instead of the normal two-thirds vote, which corporations are substantially exempt from real estate taxation, the major source of support of municipal services supplied equally to all land owners;

(c) requiring the change in the quantum of vote necessary for such legislative enactment from two-thirds to three-fourths solely as the result of a protest of landowners and not the protest of inhabitants who alone are entitled to equal representation on the city council and to the equality of opportunity to effect legislation;

(d) predicating the power to change the legislative quantum for passage of zoning ordinances solely upon property ownership and not upon habitation within the community; and

(e) imposing upon this and other proposed zoning amendments (e.g. the Riverfront District Zone, submitted to the Cambridge City Council, Spring and Summer 1973) the unique and arbitrary requirement of a three-fourths vote instead of the traditional majority vote necessary for all other regulatory legislation under the police power of States and their subdivisions, and the traditional two-thirds vote only for long term borrowings, zoning enactments, Constitutional or Charter amendments, the overriding of vetoes and other matters of extreme gravity; and

WHEREAS: The importance of this zoning enactment is such that such doubts should be resolved in favor of its passage, now therefore be it

C. C. 106

City of Cambridge

ORDERED: That the recorded vote on the final enactment of the proposed zoning amendment creating a Harvard Square Overlay District, as taken on January 22, 1979, be now recorded as "passed to be ordained", and be it further

ORDERED: That the City Clerk is directed to correct his records accordingly and publish the ordinance as adopted in the usual course, and be it further

ORDERED: That it is the policy of the City Council to defend against this possible infringement of the rights of the inhabitants of the City of Cambridge to the equal protection of the laws by such legal action as may be deemed necessary and appropriate, and be it further

ORDERED: That the City Manager be and hereby is requested to petition the courts for a declaratory judgment affirming the validity of the enactment of said zoning amendment.

In City Council February 12, 1979.
Adopted as amendment by a yea and nay vote:-
Yeas 5; Nays 4; Absent 0.
Attest:- Paul E. Healy, City Clerk.

A true copy:-

ATTEST:- Paul E. Healy

Councillor Sullivan has filed reconsideration on this matter.

C. C. 108

City of Cambridge

MASSACHUSETTS

In City Council February 26 1979

Councillor Frisoli moved reconsideration on Calendar Item Number Five.

	YEA	NAY	ABSENT	PRESENT
Mr. Crane	X			
Mr. Duehay		X		
Mr. Frisoli	X			
Ms. Graham		X		
Ms. Preusser		X		
Mr. Sullivan	X			
Mr. Vellucci		X		
Mr. Wylie		X		
Mayor Danehy	X			
	4	5	0	

Councillor Frisoli moved reconsideration of the vote of the City Council on February 12, 1979 adopting the order introduced by Councillor Preusser relative to recording the Harvard Square Overlay District as "passed to be ordained" and further requesting that the record be corrected to show that the ordinance was ordained.

Motion for reconsideration - fails.

United States Court of Appeals
For the First Circuit

No. 78-1258

ISADORE LUDWIN, ETC.,

PLAINTIFF, APPELLANT,

v.

CITY OF CAMBRIDGE, ET AL.,

DEFENDANTS, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
[Hon. JOSEPH L. TAURO, *U.S. District Judge*]

Before COFFIN, *Chief Judge*,
CAMPBELL AND BOWNES, *Circuit Judges*.

Isadore Ludwin on brief pro se.
Francis X. Bellotti, Attorney General, and *E. Michael Sloman*, Assistant Attorney General, on brief for State appellees.
Douglas A. Randall for Municipal appellees.

February 16, 1979

CAMPBELL, *Circuit Judge*. Plaintiff's complaint, brought under 28 U.S.C. § 1343 and 42 U.S.C. § 1983, against the City of Cambridge, the assessors thereof, and the Appellate Tax Board, seeks, in substance, (1) a declaration that Massachusetts G.L. c.59, § 64 requiring payment of assessed real estate taxes as a precondition to review of the validity of the assessment is a denial of procedural due process and (2) damages against the City and its assessors for knowingly placing a capricious, exorbitant and discriminatory assessment on his property and against the Appellate Tax Board for denying him a hearing.

In December of 1967 plaintiff's building was destroyed by fire. The assessed value of the property upon which the building had been located was maintained at the same level after the fire and was increased in 1976. The plaintiff's application for abatement to the defendant assessors was denied, and plaintiff's appeal therefrom to defendant Appellate Tax Board was dismissed for lack of jurisdiction under Mass. G.L. c.59, § 64 as plaintiff had admittedly not complied with a condition of obtaining review — payment of the disputed tax. The plaintiff did not appeal this decision although appeals as to matters of law may be taken to the Massachusetts Supreme Judicial Court under Mass. G.L. c.58A, § 13. Plaintiff thereafter filed the instant complaint. Defendants' motions to dismiss for lack of jurisdiction and failure to state a claim upon which relief may be granted were referred to a magistrate who recommended dismissal. The magistrate's report relied upon federal policy which precludes interference with state tax collection except where there is an adequate state remedy. He concluded that the statutory abatement procedure, Mass. G.L. c. 59, § 64, provided plaintiff an adequate opportunity to present his challenge to the tax assessment as plaintiff had not alleged he was without resources to pay the tax. (In fact, in paragraph 36 of his complaint plaintiff states he is unable to pay the tax.) With respect to the damages actions, the magistrate concluded plaintiff's conclusory allegations were insufficient to state a cause of action. The defendants' motion to dismiss were granted for the reasons stated in the magistrate's recommendations, and plaintiff appealed. Plaintiff is proceeding pro se.

If plaintiff had merely sought a declaration of the invalidity of the tax assessment, federal declaratory relief would be appropriate only if no adequate state procedures were available to plaintiff for presenting his federal

challenges to the tax. *Great Lakes Dredge & Dock Co.* v. *Huffman,* 319 U.S. 293 (1943); *United States* v. *State Tax Commission,* 481 F.2d 963 (1st Cir. 1973). Here, while plaintiff ostensibly seeks a declaration not of the validity of the assessment itself but of the procedure requiring prepayment as a condition to review of the assessment, plaintiff's declaratory action as well as his damages claim is predicated upon the invalidity of the assessment itself and is, in essence, an attack upon the tax assessment. Thus, the federal policy of non-interference with a state's collection of its revenue except where an asserted federal right might otherwise be lost governs the disposition of this declaratory action. *Horn* v. *O'Cheskey,* 378 F. Supp. 1280 (D.N.M. 1974). This policy is applicable even where, as here, the complaint is based on 42 U.S.C. § 1983. *Miller* v. *Bauer,* 517 F.2d 27 (7th Cir. 1975); *Hickman* v. *Wujick,* 488 F.2d 875 (2d Cir. 1973); *Bland* v. *McHann,* 463 F.2d 21 (5th Cir. 1972), *cert. denied,* 410 U.S. 966 (1973). Federal courts must, therefore, abstain unless adequate state procedures do not exist for raising plaintiff's federal claims.

A refund procedure has been considered an adequate state remedy which must be exhausted before involving federal jurisdiction. *Great Lakes Dredge & Dock Co.* v. *Huffman,* 319 U.S. 293 (1943); *Matthews* v. *Rodgers,* 284 U.S. 521 (1932); *Aluminum Co. of America* v. *Dept. of the Treasury,* 522 F.2d 1120 (6th Cir. 1975); *Non-Resident Taxpayers Association* v. *Philadelphia,* 478 F.2d 456 (3d Cir. 1973); *Helmsley* v. *Detroit,* 320 F.2d 476 (6th Cir. 1963). However, in none of the above cases was a claim of denial of procedural due process made because of plaintiff's alleged inability to pay and thus to invoke the refund procedure. Where a refund procedure is not available to a taxpayer due to insufficient funds, the dispositive consideration whether a federal court will entertain the suit is the availability of other avenues in the state

court to present the taxpayer's federal claims and obtain relief. *Tully* v. *Griffin, Inc.*, 429 U.S. 68 (1976); *28 East Jackson Enterprises, Inc.* v. *Cullerton*, 523 F.2d 439 (7th Cir. 1975), *cert. denied*, 423 U.S. 1073, *reh. denied*, 424 U.S. 959; *Green* v. *Klinkofe*, 422 F. Supp. 1021 (N.D. Ind. 1976).

We believe that an adequate state remedy was available to plaintiff. Massachusetts courts may entertain a declaratory action under Mass. G.L. c.231A, § 1 in the tax field even though a taxpayer has not pursued his administrative remedy. *First Federal Savings & Loan Association* v. *State Tax Commission*, 79 Mass. Adv. Sh. 895, 363 N.E. 2d 474 (1977), *aff'd*, —— U.S. ——, 57 L.Ed.2d 187; *S. J. Groves & Sons Co.* v. *State Tax Commission*, 77 Mass. Adv. Sh. 451, 360 N.E. 2d 895 (1977); *Sydney* v. *Commissioner of Corporations and Taxation*, 76 Mass. Adv. Sh. 2538, 356 N.E. 2d 460 (1976). While normally a taxpayer is remitted to his administrative remedy, a declaratory action is appropriate when the administrative remedy is seriously inadequate under all the conditions of the case. *Sydney, supra*, at 463. Thus, plaintiff could have invoked the state declaratory procedure to challenge his tax assessment arguing that the administrative remedy, Mass. G.L. c.59, § 64, was constitutionally inadequate as applied to him as he lacked the ability to comply with the prepayment requirement. We accordingly uphold the dismissal of plaintiff's district court complaint insofar as it sought a declaratory judgment.

While the federal declaratory action is barred by the policy of non-interference in state tax collection, the damages action is not necessarily so barred. *Fulton Market Cold Storage Co.* v. *Cullerton*, 582 F.2d 1071 (7th Cir. 1978), *petition for cert. filed*, 47 U.S.L.W. 3447 (U.S. Jan. 2, 1979) (No. 78-748). To the extent however, it is maintained against the members of the Appellate Tax Board, it is clearly defective. Plaintiff's allegations indicate that

the Board did no more than comply with Mass. G.L. c.59, § 64 by dismissing his complaint for failure to comply with the prepayment terms of the statute. It is hard to see any other option open to it. We therefore affirm the dismissal as to the members of that Board.

Plaintiff also sought damages from the assessors and the City of Cambridge. The most concrete of plaintiff's voluminous allegations in his damages action against the assessors is that they "entered into a conspiracy and . . . deliberately made an arbitrary and capricious assessment which discriminated against the plaintiff and unreasonably more than doubled the assessment on [plaintiff's property] over prior years, without making any such increase upon any other nearby land parcels . . . ." The lower court found plaintiff's allegations against the assessors to be of the conclusory nature held insufficient in *Kadar Corp.* v. *Milbury,* 549 F.2d 31 (1st Cir. 1977) and *Slotnick* v. *Stavisky,* 560 F.2d 230 (1st Cir. 1977), *cert. denied,* 434 U.S. 1077. They certainly border on this type of insubstantiality, reflecting plaintiff's dissatisfaction with his tax assessment and a subjective characterization of the assessors' actions without setting forth much in the way of supportive facts. Assuming, without deciding, that the misconduct alleged would implicate federal due process or equal protection rights as well as rights under state law, we believe a court would ordinarily find it difficult or impossible to decide whether illegal practices had occurred of such gravity as to render the local officials answerable in damages without first ascertaining the correctness of the assessment, a question which both comity and common sense indicate is for the state tribunals. *Perez* v. *Ledesma,* 401 U.S. 82, 127-28 n.17 (1971) (Brennan, J., concurring). While conceivably a district court could abstain in a situation like this — retaining jurisdiction and awaiting the

outcome of state proceedings brought to review the assessment — we are disposed to consider the absence of any allegation of a prior state adjudication to be a fatal deficiency in plaintiff's case. At least we think so in the absence of any allegations of special facts which would make it likely that a federal court could pass on the question of the assessors' misconduct without first determining, on its own, the correctness of the assessment — a matter properly reserved for state adjudication.[1] Under present circumstances, therefore, and in the absence of any allegation of a prior adjudication of the lack of correctness or unfairness of the assessment, we agree that a cause of action is not stated. However, in view of the less stringent standards applicable to the pleadings of pro se litigants, *Estelle* v. *Gamble,* 429 U.S. 97, 106 (1976); *Guerro* v. *Mulhearn,* 498 F.2d 1249, 1256 (1st Cir. 1974), we think the dismissal should not be with prejudice. Depending on the outcome of state court proceedings for determining the correctness of his tax assessment which plaintiff may

[1] On the other hand, the Seventh Circuit has upheld a § 1983 case based upon somewhat similar, if more specific, allegations. *Fulton Market Cold Storage* v. *Cullerton,* 582 F.2d 1071 (7th Cir. 1978). While emphasizing the rule that a tax official's liability in damages would turn upon a finding of intentional wrongdoing, not mere inadvertence or negligence, the Seventh Circuit did not address the question of how to establish the wrongful conduct of the official without first determining the correctness of the tax assessment. Conceivably such determinations were not central to the damages action under the particular circumstances of the *Fulton* case, and thus prior state determination thereof was not necessary. Perhaps, for example, the illegality was so flagrant as to be patent (but if that is so, it would seem easy for plaintiff to secure a favorable state ruling as a predicate for a later or simultaneous damages action, which could be brought in either state or federal court). We think it would be the exceptional case where a taxpayer could, in federal court, state a damages action under § 1983 against state or local officials without alleging the existence of a prior state or at least administrative adjudication that the tax assessment was incorrect. Ordinarily, the later allegation would be necessary to overcome the qualified immunity of the state official.

pursue, it is at least conceivable that plaintiff's complaint could be amended at some future date to state a cause of action in damages. This could be so, for example, if the assessment issue were to be decided in plaintiff's favor, a finding which would lay the groundwork for a claim of intentional misconduct by the officials.

Plaintiff's damages action against the City of Cambridge is based on the City's petitioning the Massachusetts Land Court to foreclose its tax lien knowing "that the Cambridge Assessors . . . acted arbitrarily, capriciously, and unreasonably." These allegations against the City are subject to the same infirmities as those against the assessors. By the same token, however, the present failure to state a cause of action might later be cured in light or favorable state court proceedings. Thus the dismissal should likewise be without prejudice to bringing a later damages action if circumstances should warrant.

Affirmed, except dismissal of the damages action is without prejudice to the extent indicated.

Adm. Office, U. S. Courts — Blanchard Press, Inc., Boston, Mass.

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

DANA H. GALLUP
CLERK

1606 JOHN W. McCORMACK
POST OFFICE AND COURTHOUSE
BOSTON, MASS. 02109
(617) 223-2888

February 21, 1979

To: Mr. Ludwin, Counsel, West Publishing Company, Commerce Clearing House, National Center for Automated Information Retrieval, and Mass. Lawyers Weekly

Re: No. 78-1258. Isadore Ludwin, Etc. v. City of Cambridge, et al.

Dear Sirs:

Please make the following corrections in the above captioned opinion which is dated February 16, 1979:

Page 2, line 19 from the top, delete the word except.

Page 2, line 28, add an s to motion.

Page 3, line 22, the word involving should be corrected to read invoking.

Page 4, line 11, 79 should be changed to read 77.

Page 4, line 33, a comma should be added after the word extent.

Page 7, line 12, the word are should be added after the word as.

Page 7, line 15, the word or should be deleted and the word of inserted.

Very truly yours,

DANA H. GALLUP, Clerk.

By: Francis P. Sullivan
Chief Deputy Clerk.

FPS:lac

Mr. Isadore Ludwin, 1073 Centre St., Newton, MA 02159
Douglas A. Randall, Esquire, 1372 Hancock St., Quincy, MA 02169
Francis X. Bellotti, Attorney General, One Ashburton Place, Boston, MA
West Publishing Company, 50 W. Kellogg Blvd., St. Paul, Minnesota 55165
Commerce Clearing House, 4025 W. Peterson Ave., Chicago, IL 60646
National Center for Automated Information Retrieval, 330 Madison Ave., New York, New York
Mass. Lawyers Weekly, P.O. Box 474, Boston, MA 02102

City of Cambridge

5.
IN CITY COUNCIL
February 2, 1979

WHEREAS, the vote of the City Council taken on January 22, 1979, on the final adoption of the proposed zoning ordinance amendment, creating a Harvard Square Overlay District, was recorded as 6 in favor, 2 opposed and 1 "present"; and

WHEREAS, the presiding officer declared that the proposed ordinance failed of passage, presumably due to the filing of objections by certain landowners and the provisions of G.L. C 40 A Section 5; and

WHEREAS, the legal effect of such vote is in doubt by reason that:

1. The vote of "present" may satisfy the requirement of Section 5 which reads in part as follows:

   "No zoning ordinance or by-law shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are two branches, or by a two-thirds vote of a town meeting; provided that if in a city or town with a council of fewer than twenty-five members there is filed with the clerk prior to final action by the council a written protest against such change, stating the reasons duly signed by owners of twenty per cent or more of the area of the land proposed to be included in such change, or of the area of the land immediately adjacent extending three hundred feet therefrom, no such change of any such ordinance shall be adopted except by a three-fourths vote of all members."

AND

2. The recorded vote was sufficient for enactment, for reason that the portion of said section permitting protests and thereby requiring a three-fourths vote is unconstitutional under the 14th Amendment to the U.S Constitution in that it denies certain inhabitants of the City of Cambridge their right to the equal protection of the laws by:

   (a) permitting certain corporate property owners who own substantial areas of land to exercise a greater influence upon legislative enactment of the zoning regulation of their land and lands lying adjacent thereto than is accorded to the inhabitants of Cambridge at large;

(b) allowing the corporate owners to protest the proposed legislation and thereby precipitate the alleged necessity of a three-fourths vote instead of the normal two-thirds vote, which corporations are substantially exempt from real estate taxation, the major source of support of municipal services supplied equally to all land owners;

(c) requiring the change in the quantum of vote necessary for such legislative enactment from two-thirds to three-fourths solely as the result of a protest of landowners and not the protest of inhabitants who alone are entitled to equal representation on the city council and to the equality of opportunity to effect legislation;

(d) predicating the power to change the legislative quantum for passage of zoning ordinances solely upon property ownership and not upon habitation within the community; and

(e) imposing upon this and other proposed zoning amendments (e.g. the Riverfront District Zone, submitted to the Cambridge City Council, Spring and Summer 1973) the unique and arbitrary requirement of a three-fourths vote instead of the traditional majority vote necessary for all other regulatory legislation under the police power of States and their subdivisions, and the traditional two-thirds vote only for long term borrowings, zoning enactments, Constitutional or Charter amendments, the overriding of vetoes and other matters of extreme gravity; and

WHEREAS, the importance of this zoning enactment is such that such doubts should be resolved in favor of its passage;

NOW THEREFORE BE IT ORDERED that the chairman order that the recorded vote on the final enactment of the proposed zoning amendment creating a Harvard Square Overlay District, as taken on January 22, 1979, be now recorded as "passed to be ordained"; and

BE IT FURTHER ORDERED that the City Clerk is directed to correct his records accordingly and publish the ordinance as adopted in the usual course; and

BE IT FURTHER ORDERED that it is the policy of the City Council to defend against this possible infringement of the rights of the inhabitants of the City of Cambridge to the equal protection of the laws by such legal action as may be deemed necessary and appropriate; and

BE IT FURTHER ORDERED that the City Manager be and is hereby requested to petition the courts for a declaratory judgment affirming the validity of the enactment of said zoning amendment.

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • (617) 876-6800

LAW DEPARTMENT

RUSSELL B. HIGLEY
CITY SOLICITOR

EDWARD A. CUNNINGHAM
ANDREW T. TRODDEN
LEGAL COUNSEL

CHARLES A. WATSON
LEGISLATIVE AGENT

RUSSELL B. HIGLEY

January 25, 1979

Mr. Paul E. Healy
City Clerk
City Hall
Cambridge, Massachusetts

Dear Mr. Healy:

I am in receipt of your request for an opinion dated January 24, 1979 relative to the petition for the Overlay in the Harvard Square Area. Your question presented was "Does 'final action' mean that the City Council should have exhausted all of its Paliamentary Procedures prior to January 22, 1979?"

General Laws, Chapter 40A sets forth the time procedure which must be followed in order that the petition become law and final action means that the City Council should have exhausted all of its Paliamentary Procedures prior to January 22, 1979.

Very truly yours,

Russell B. Higley

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City Solicitor

RBH:jl

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • (617) 876-6800

LAW DEPARTMENT

RUSSELL B. HIGLEY

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CITY SOLICITOR

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CHARLES A. WATSON
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January 19, 1979

To The Honorable City Council
City Hall
Cambridge, Massachusetts

Dear Councillors:

You have requested my opinion relative to any liability coverage that is afforded to the City Council and School Committee Members in the event a judgment in a lawsuit is rendered against them as a result of any action or vote cast in their official capacities.

Chapter 512 of the Acts of 1978 was passed by the Legislature in July of that year, retroactive to August 16, 1977 and was entitled "An Act establishing a claims and indemnity procedure for the Commonwealth, its municipalities, counties and districts and the officers and employees thereof." This Act abolished governmental (sovereign) immunity in Massachusetts, making the Commonwealth, its counties, municipalities and districts liable for property damage, death or personal injury caused by the negligent or wrongful conduct of public employees who are acting within the scope of their employment. It also provides personal immunity to public employees, in many instances.

Chapter 512 is fairly lengthy, extremely broad and, due to its newness, has not been interpreted by the Appellate Courts of the Commonwealth. Therefore, the Act is open to various interpretations and all of its various sections will not be clarified and understood until either the Act is amended or numerous appellate cases have been decided.

With the above in mind, I will attempt to answer your inquiry.

Chapter 512 of the Acts of 1978 was enacted into the Massachusetts statutory scheme as Massachusetts General Laws, Chapter 258. All further section references are keyed to Chapter 258 rather than the Act (Chapter 512). Section 2 of Chapter 258 provides that the members of the City Council and School Committee are considered public employees and are not liable for

for their negligent or wrongful acts or omissions, but the public employer is liable up to the amount of one hundred thousand ($100,000.00) dollars.

The members of the Council and Committee are liable for intentional torts and for acts and omissions which constitute a violation of the civil rights of any person. However, Section 9 provides that the City may indemnify Council and Committee members in an amount not to exceed one million dollars provided he or she was acting within the scope of his or her official duties or employment. However, no such employee or official shall be indemnified for violations of any civil rights if he or she acted in a grossly negligent, willful or malicious manner.

Chapter 512 also repealed General Laws, Chapter 41, Sections 100I and J which were the mandatory one million dollar indemnification provisions relating to municipal employees and officials which had been accepted by the City Council. Therefore, at the present time, the City may indemnify members of the Council and Committee as described in the above paragraphs.

In addition to this indemnification procedure, Chapter 258, Section 10 provides exceptions to the liability of the municipality under certain circumstances. It is not clear whether the employee is immune from liability. However, for the purposes of this opinion, Section 10, paragraph 2 provides immunity to the employer for discretionary acts of its employees. This immunity extends to acts done within the scope of the employee's office or employment, whether or not the discretion is abused. Obviously, the liability of the employer and employee turns upon the interpretation of "discretionary". As I indicated earlier, the Appellate Courts of the Commonwealth have not interpreted this new statute and therefore a definitive answer is impossible to formulate.

A review of recent Supreme Judicial Court decisions gives some indication of the thinking of the Court in this area.

In Whitney v. City of Worcester, 366 N.E. 2nd 1210 (1977) the Court, in a discussion of this problem stated the following:

> We think that the appropriate dividing line (between liability and immunity) falls between those functions which rest on the exercise of judgment and discretion and represent planning and policymaking, and those functions which involve the implementation and execution of such governmental policy or planning....When the particular

> conduct which caused the injury is one characterized by a high degree of discretion and judgment involved in weighing alternatives and making choices with respect to public policy and planning, governmental entities should be immune from liability. To inquire into such decisions in a tort suit might jeopardize the quality and efficiency of government itself, and endanger the creative exercise of political discretion and judgment through the inhibiting influence of potential legal liability asserted with the advantage of hindsight.... On the other hand, when the particular conduct claimed to be tortious involves rather the carrying out of previously established policy or plans, such acts should be governed by the established standards of tort liability applicable to private individuals or entities, and the government entity in question held liable for the injuries resulting from such acts.

Whether a particular act is "discretionary" or not turns on several different areas of inquiry. In Whitney the Court asked the following questions:

> "Was the injury-producing conduct an integral part of governmental policy-making or planning? Might the imposition of tort liability jeopardize the quality and efficiency of the governmental process? Could a judge or jury review the conduct in question without usurping the power and responsibility of the legislative or executive branches? Is there an alternate remedy available to the injured individual other than an action for damages? (Page 1219)

A closer examination of the Whitney case reveals that, factually, it involved a grade-school student who was totally blind in one eye as a result of disease and was then blinded in the other eye after having been struck by a door at a public school. The student alleged that the school committee negligently adopted a policy of integrating handicapped children into the public schools and the committee and superintendent did not provide any special supervision to the handicapped children.

On the day of the incident the student was directed to go to the schoolyard by his teacher without any further supervision, even though the parent had informed the teacher that the student had hemorrhaged from one of his eyes earlier in the day. The door that struck the student was alleged to have been defective for some time and finally, neither the teacher nor assistant principal obtained immediate medical attention for the student.

The Court held that the members of the school committee would be immune from liability. It held further that the superintendent would also be immune from liability. However, the actions of the teacher by directing the student to go to the schoolyard unassisted and the assistant principal by not obtaining immediate medical assistance were ministerial and not discretionary in nature and, therefore would expose them to liability.

Therefore, in light of all of the above, it is my opinion that the members of the City Council and the School Committee would be immune from liability for the consequences of their discretionary acts done in their official capacities and for votes cast within the scope of their official duties and employment. If it is determined that the conduct of a member was such as to constitute an intentional tort and judgment was entered against the member, the member may be indemnified up to one million dollars, provided there were no violations of an individual's civil rights which were deemed to be grossly negligent, willful or malicious. Finally, as you are aware, the City does not have any liability coverage, as such, pursuant to any insurance company contract or agreement.

Very truly yours,

Russell B. Higley

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City Solicitor

RBH:jl

CITY OF CAMBRIDGE

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Russell B. Higley

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City Solicitor

RBH:jl

Copy
- 7/25/79 -

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 79-2777

CITY OF CAMBRIDGE

Plaintiff,

v.

PRESIDENT AND FELLOWS OF HARVARD COLLEGE and LOUIS DI GIOVANNI, individually and as Trustee of the Trinity Realty Trust,

Defendants.

AFFIDAVIT OF PAUL C. HEALY, CITY CLERK OF THE CITY OF CAMBRIDGE

I, Paul E. Healy, state on oath that:

1. I am the duly-appointed City Clerk of the City of Cambridge, in the Commonwealth of Massachusetts.

2. In my capacity as City Clerk, I have custody of certain documents and copies of notices which were appended to the Complaint in the above-entitled action and which are incorporated by reference here.

3. City of Cambridge Ordinance No. 908 is an amendment to the Cambridge Zoning Ordinance which establishes and defines the boundaries of a "Harvard Square Overlay District." The amendment further regulates development within the defined District, especially with respect to the height of buildings. (Complaint, paragraph 2).

4. To my best knowledge and information, the 14-page document appended to the Complaint in the above entitled matter and designated "Appendix E" is a true copy of Ordinance No. 908 as finally enacted, including amendments of December 11, 1978. (Complaint, paragraph 2).

5. Pursuant to Amended Order 5 of the Cambridge City Council, adopted February 12, 1979, a true copy of which was - to my best knowledge and information - appended to the Complaint as Appendix K, the City Manager, James L. Sullivan, is the duly authorized agent of the City for the purpose of petitioning the Court for a declaratory judgment in this matter. (Complaint, paragraph 3).

6. On September 5, 1978, a petition (hereinafter referred to as "the Overlay District petition", a true copy of which was to my best knowledge and information - appended to the Complaint as "Appendix A") was filed with my office by City Councillor Mary Ellen Preusser and others, proposing to amend the Zoning Ordinance of the City of Cambridge to establish a special overlay district for the Harvard Square business area, to be designated the "Harvard Square Overlay District." (Complaint, paragraph 10).

7. On or about September 11, 1978, by vote of the City Council, the Overlay District petition was referred to the Cambridge Planning Board. (Complaint, paragraph 11).

8. On September 28, 1978 and October 5, 1978, the City Council Ordinance Committee caused legal advertisements of a public hearing on the Overlay District petition to be published in the Cambridge Chronicle, a newspaper of general circulation in said city. A facsimile of said legal advertisements was - to my best knowledge and information - appended to the Complaint as "Appendix C". (Complaint, paragraph 15).

9. On October 19, 1978, the City Council Ordinance Committee held a public hearing to consider the Overlay District petition. (Complaint, paragraph 16).

10. At the meeting of the City Council held on October 23, 1978, the Overlay District petition was reported out of the Ordinance Committee without recommendation. (Complaint, paragraph 17).

11. On December 18, 1978, the Overlay District petition was moved to a second reading and vote in the City Council. (Complaint, paragraph 18).

12. On December 21, 1978, the proposed Harvard Square Overlay District zoning amendment was first published (First Publication No. 1970) in the Cambridge Chronicle, as required by G.L. c.43, §23. A facsimile of said publication was - to my best knowledge and information - appended to the Complaint as "Appendix H". (Complaint, paragraph 19).

13. On January 22, 1979, final action was taken on the Overlay District petition by the City Council. Upon the question whether the proposed zoning amendment should be passed to be ordained, the nine-member Council voted 6 Yea, 2 Nay, and 1 Present. (Complaint, paragraphs 24, 25).

14. On February 5, 1979, a resolution was submitted to the City Council by Councillor Preusser, seeking an Order that the vote taken January 22, 1979 on the final enactment of the Overlay District amendment should be recorded as "passed to be ordained." This resolution, as amended, was passed on February 12, 1979 by the vote of 5 Yea, 4 Nay. A motion for reconsideration of the resolution was defeated on February 26, 1979 by the vote of 4 Yea, 5 Nay. (Complaint, paragraph 26).

15. Ordinance No. 908 was published in the Cambridge Chronicle on March 1, 1979 as enacted. A facsimile of said publication was - to my best knowledge and information - appended to the Complaint as "Appendix M." (Complaint, paragraph 28).

16. Over one hundred and twenty (120) days have passed since the adoption of Ordinance No. 908 on January 22, 1979. No notice of the commencement of any legal action claiming the invalidity of the Harvard Square Overlay District amendment - specifying the court, parties and invalidity claimed, and filed together with a copy of the petition - has been filed with me or my office, either during the first 120 days (ending May 22, 1979) or at any time since.

Signed under the penalties of perjury, this day of , 1979.

Paul E. Healy
City Clerk

0-1979
10

C. C. 106 Unfinished Business Calendar #2

City of Cambridge

MASSACHUSETTS

In City Council January, 22 1979

	YEA	NAY	ABSENT	PRESENT
Mr. Crane		✓		
Mr. Duehay	✓			
Mr. Frisoli				✓
Ms. Graham	✓			
Ms. Preusser	✓			
Mr. Sullivan		✓		
Mr. Vellucci	✓			
Mr. Wylie	✓			
Mayor Danehy	✓			
	6	2	0	1

— Ordinance fails of ordination —

Councillors { Duehay, Preusser } Moved Reconsideration

CITY OF CAMBRIDGE

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LAW DEPARTMENT

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Dear Mr. Healy:

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General Laws, Chapter 40A sets forth the time procedure which must be followed in order that the petition become law and final action means that the City Council should have exhausted all of its Paliamentary Procedures prior to January 22, 1979.

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RBH:jl

HARVARD SQUARE OVERLAY DISTRICT REZONING PETITION WITH PLANNING BOARD AMENDMENTS

Cambridge, August 24, 1978

Revised December 11, 1978

To the Honorable, the City Council of the City of Cambridge:

The undersigned respectfully pray that the Zoning Ordinance of the City of Cambridge be amended as follows:

A. Amend the Zoning Map by establishing an overlay zone designated "Harvard Square Overlay District" over the existing district designations for the following described area of land:

Beginning at a point, said point being the intersection of the centerline of Massachusetts Avenue and the centerline of Church Street;

Thence, running westerly along the centerline of Church Street 240 feet more or less to a point, said point being the intersection of the centerline of Church Street and the extension of the western lot line of lot 79 of Assessors' Plat #169;

Thence, running northerly along the western lot line of lot 79 of Assessors Plat #169, 70 feet more or less to a point said point being the intersection with the northern lot line of lots 8, 67 and 68 of Assessors' Plat #169;

Thence, running westerly along the northern lot line of lots 8, 67, and 68 of Assessors' Plat #169, 147 feet more or less to a point, said point being the intersection of the northern lot line of lots 8, 67, and 68 of Assessors' Plat #169 and the eastern lot line of lot 10 of Assessors' Plat #169;

Thence, running northerly along the eastern lot line of lot 10 of Assessors' Plat #169, 127 feet more or less to a point, said point being the intersection of the eastern lot line of lot 10, Assessors' Plat #169 and the southern lot line of lots 19, 18, 17, 16, 15, and 14 of Assessors' Plat #169;

Thence, running westerly along the southern lot line of lots 19, 18, 17, 16, 15 and 14 of Assessors' Plat #169, 290 feet more or less to a point said point being the intersection with a line parallel to and 100 feet from the northeastern street line of Brattle Street;

Thence, running northerly along a line parallel to and 100 feet from the northeastern street line of Brattle Street, 95 feet more or less to a point, said point being the intersection with the centerline of Farwell Place;

Thence, running southwesterly along the centerline of Farwell Place, 135 feet more or less to a point, said point being the intersection of the centerline of Farwell Place and the centerline of Brattle Street;

Thence, running northwesterly along the centerline of Brattle Street, 55 feet more or less to a point, said point being the intersection of the centerline of Brattle Street and a line parallel to and 100 feet from the northwestern street line of Story Street;

Thence, running westerly along a line parallel to and 100 feet from the northwestern street line of Story Street, 130 feet more or less to a point, said point being the intersection of a line parallel to and 100 feet from the northwestern street line of Story Street and a line parallel to and 100 feet from the southwestern street line of Brattle Street;

Thence, running southerly along a line parallel to and 100 feet from the southwestern street line of Brattle Street, 115 feet more or less to a point, said point being the intersection with the centerline of Story Street;

Thence, running southwesterly along the centerline of Story Street, 235 feet more or less to a point, said point being the intersection of the centerline of Story Street and a line parallel to and 100 feet from the northeast street line of Mt. Auburn Street;

Thence, running northwesterly along a line parallel to and 100 feet northeasterly of the northeast street line of Mt. Auburn Street, 255 feet more or less to a point, said point being at the intersection of the above line and the centerline of Hilliard Street;

Thence, running southwesterly along the centerline of Hilliard Street, 120 feet more or less to a point, said point being the intersection of the centerline of Hilliard Street and the centerline of Mt. Auburn Street;

Thence, running northwesterly along the centerline of Mt. Auburn Street, 50 feet more or less to a point, said point being the intersection of the centerline of Mt. Auburn Street and the centerline of Gerry Street;

Thence, running southwesterly along the centerline of Gerry Street, 193 feet more or less to a point, said point being the intersection of the centerline of Gerry Street and the centerline of Revere Street;

Thence, running southeasterly along the centerline of Revere Street and an extension thereof, 135 feet more or less to a point, said point being the intersection of the extension of the centerline of Revere Street and the southeastern lot line of lot 41 as shown on Assessors' Plat #166;

Thence, running southwesterly along the southeastern lot lines of lots 41, 43, 44, 61, and an extension thereof, as shown on Assessors' Plat #166, 446 feet more or less to a point, said point being the intersection of the extension of the southwestern lot line of lot 61 as shown on Assessors' Plat #166 and the centerline of Memorial Drive;

Thence, running southerly along the centerline of Memorial Drive 805 feet more or less to a point, said point being the intersection of th e centerline of Memorial Drive and the extension of the southeastern lot line of lot 47 on Assessors' Plat #165;

Thence, running northeasterly along the southeastern lot line of lot 47 and an extension thereof on Assessors' Plat #165, 830 feet more or less to a point, said point being the intersection of the extension of the southeastern lot line of lot 47 on Assessors' Plat #165 and the centerline of Bennett Street;

Thence, running southeasterly along the centerline of Bennett Street and an extension thereof 95 feet more or less to a point, said point being the intersection of the extension of the centerline of Bennett Street and the centerline of Eliot Street;

Thence, running southeasterly along the centerline of Eliot Street and an extension thereof, 370 feet more or less to a point, said point being the intersection of the centerline of Eliot Street and the centerline of Boylston Street;

Thence, running northeasterly along the centerline of Boylston Street 85 feet more or less to a point, said point being the intersection of the centerline of Boylston Street and the extension of the centerline of South Street;

Thence, running southeasterly along the centerline of South Street and an extension thereof 175 feet more or less to a point, said point being the intersection of the centerline of South Street and the extension of the southeastern lot line of lot 5 on Assessors' Plat #162;

Thence, running northeasterly along the southeastern lot line of lot 5 and an extension thereof on Assessors' Plat #162, 50 feet more or less to a point, said point being the intersection of the southeastern lot line of lot 5 on Assessors Plat #162 and the northeastern lot line of said lot;

Thence, running northwesterly along the northeastern lot line of lot 5 on Assessors' Plat #162, 15 feet more or less to a point, said point being the intersection of the northeastern lot line of lot 5 and the southeastern lot line of lot 36 on Assessors' Plat #162;

Thence, running northeasterly along the southeastern lot line of lot 36 on Assessors' Plat #162, 50 feet more or less to a point, said point being the intersection of the southeastern lot line of lot 36 and the northeastern lot line of said lot;

Thence, running northwesterly along the northeastern lot line of lot 36 on Assessors' Plat #162, 18 feet more or less to a point, said point being the intersection of the northeastern lot line of lot 36 and the southeastern lot line of lot 70 on Assessors' Plat #162;

Thence, running northeasterly along the southeastern lot lines of lots 71 and 47 and an extension thereof on Assessors' Plat #162, 195 feet more or less to a point, said point being the intersection of the southeastern lot line of lot 47 on Assessors Plat #162 and the northeastern lot line of said lot;

Thence, running southeasterly along the southwestern lot line of lot 68 on Assessors' Plat #162 29 feet more or less to a point said point being the intersection of the southwestern lot line of lot 68 and the northwestern lot line of lot 67 on Assessors' Plat #162;

Thence, running southwesterly along the northwestern lot line of lot 67 on Assessors' Plat #162 34 feet more or less to a point, said point being the intersection of the northwestern lot line of lot 67 on Assessors' Plat #162 and the southwestern lot line of said lot;

Thence, running southeasterly along the southwestern lot line of lot 67 on Assessors' Plat #162, 96 feet more or less to a point, said point being the intersection of the southwestern lot line of lot 67 and an extension thereof on Assessors' Plat #162 and the centerline of Dunster Street;

Thence, running northeasterly along the centerline of Dunster Street 20 feet more or less to a point said point being the intersection of the centerline of Dunster Street and the extension of the southwestern lot line of lot 10 on Assessors' Plat #162;

Thence, running northeasterly along the southwestern lot lines of lots 10, 11, 62 and an extension thereof on Assessors' Plat #162 and lots 1, 2, and 3 thereof on Assessors' Plat #161, 438 feet, more or less to a point, said point being the intersection of the extension of the southwestern lot line of lot 3 on Assessors' Plat #161 and the centerline of Holyoke Place;

Thence, running southwesterly along the centerline of Holyoke Place 15 feet more or less to a point, said point being the intersection of the centerline of Holyoke Place and a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street;

Thence, running southeasterly along a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street 245 feet more or less to a point, said point being the intersection of a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street and the centerline of Plympton Street;

Thence, running northeasterly along the centerline of Plympton Street 125 feet more or less to a point, said point being the intersection of the centerline of Plympton Street and the centerline of Mt. Auburn Street;

Thence, running southeasterly along the centerline of Mt. Auburn Street 789 feet more or less, to a point, said point being the intersection of the centerline of Mt. Auburn Street and the extension of the centerline of Banks Street;

Thence, running southwesterly along the centerline of Banks Street 125 feet more or less to a point, said point being the intersection of the centerline of Banks Street and a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street;

Thence, running southeasterly along a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street 337 feet, more or less to a point, said point being the intersection of a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street and the centerline of Putnam Avenue;

Thence, running southerly along the centerline of Putnam Avenue 40 feet more or less to a point, said point being the intersection of the centerline of Putnam Avenue and the extension of the southern lot line of lot 1 on Assessors' Plat #121;

Thence, running easterly along the southern lot line of lot 1 on Assessors' Plat #121 56 feet more or less to a point, said point being the intersection of the southern lot line of lot 1 and the eastern lot line of said lot on Assessors' Plat #121;

Thence, running northeasterly along the eastern lot line of lot 1 and an extension thereof on Assessors' Plat #121 172 feet more or less to a point, said point being the intersection of the eastern lot line of said lot and the centerline of Massachusetts Avenue;

Thence, running northwesterly along the centerline of Massachusetts Avenue 40 feet more or less to a point, said point being the intersection of the centerline of Massachusetts Avenue and the centerline of Trowbridge Street;

Thence, running northeaterly along the centerline of Trowbridge Street 160 feet more or less to a point, said point being the intersection of the centerline of Trowbridge Street and a line 100 feet from and parallel to the northerly sideline of Massachusetts Avenue;

Thence, running northwesterly along a line 100 feet from and parallel to the southerly sideline of Massachusetts Avenue 675 feet to a point, said point being the intersection of a line 100 feet from and parallel to the northerly sideline of Massachusetts Avenue and the southeastern lot line of lot 1 on Assessors Plat #134;

Thence, running northeasterly along the southeastern lot line of lot 1 on Assessors' Plat #134 120 feet more or less to a point, said point being the intersection of the southeastern lot line of lot 1 on said plat and the centerline of Harvard Street;

Thence, running northwesterly along the centerline of Harvard Street 367 feet more or less to a point, said point being the intersection of the centerline of Harvard Street and the centerline of Massachusetts Avenue;

Thence, running northwesterly along the centerline of Massachusetts Avenue 1338 feet more or less to a point, said point being the intersection of the centerline of Massachusetts Avenue and the centerline of Church Street, the point of origin.

Said area includes all or parts of parcels of land as designated on Assessors' Plat #133: Even numbers 1086 through 1096, 1100 through 1124, 1130 through 1134, 1154 through 1162, 1170 through 1174, 1208, 1210, 1218 and 1230 through 1256 Massachusetts Avenue; even numbers 6, 8 and 12, odd numbers 3 through 39 Bow Street; even numbers 4 through 10 and 24, odd numbers 17 through 25 Arrow Street; even numbers 4 through 44 Plympton Street; odd numbers 1 through 19, 23 through 27 and 35 through 53 Mt. Auburn Street, and which includes all or parts of lots numbered 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56 as shown on Assessors' Plat #133;

Premises of the following parcels as designated on Assessors' Plat #132; Even numbers 2 through 10 Mt. Auburn Street; even number 18 Bank Street; odd numbers 3 and 11, even number 6 Putnam Avenue and which includes all or parts of lots numbered 97, 122, 131, 135 and 138 as shown on Assessors' Plat #132;

Premises of the following parcels as designated on Assessors' Plat #121; odd number 9 and even number 12 Putnam Avenue and even numbers 1050 through 1056 Massachusetts Avenue and which includes all or parts of lot numbered 1; as shown on Assessors Plat #121;

Premises of the following parcels as designated on Assessors' Plat #134: Odd numbers 1075, 1091, 1095, 1097, 1099, 1105, 1115, 1131, 1137, 1145, 1171, 1173, 1191 and 1201, and even number 1096 Massachusetts Avenue; odd number 5, even number 6 Remington Street and which includes all or parts of lots numbered 1, 2, 7, 8, 50 and 56 as shown on Assessors' Plat #124;

Premises of the following parcels as designated on Assessors' Plat #160; even number 1268 through 1392 Massachusetts Avenue; odd numbers 1 through 35 Plympton Street; even numbers 8 through 10 Linden Street; odd numbers 3 through 9 Linden Street, even numbers 2 through 26 Holyoke Street; odd numbers 11 through 23 Holyoke Street; even numbers 2 through 36 Dunster Street; odd numbers 5 through 35 Dunster Street; even numbers 2 through 42 Boylston Street; odd numbers 1 through 41 Boylston Street; even numbers 10 through 36 Brattle Street; odd numbers 57 through 101 Mt. Auburn Street; odd numbers 47 through 57 Bow Street; and which includes all of lots numbered 11, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 30, 36, 37, 38, 46, 48, 51, 52, 53, 54, 55, 57, 58, 59, 60, 61, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84 as shown on Assessors Plat #160;

Premises of the following parcels as designated on Assessors' Plat #161; odd numbers 57 and 59 Plympton Street; even numbers 52 through 72 Mt. Auburn Street; even numbers 2 and 8 Holyoke Place; odd numbers 1 and 7 Holyoke Place; even number 28 Holyoke Street; and which includes all or parts of lots numbered 1, 2, 3, 81, and 82 as shown on Assessors' Plat #161;

Premises of the following parcels as designated on Assessors' Plat #162; even numbers 74 through 104 Mt. Auburn Street; even numbers 2 through 28 Eliot Street; odd numbers 53 through 65 Boylston Street; even numbers 44 through 60 Boylston Street; odd number 43 Dunster Street; even numbers 44 and 50 Dunster Street; odd numbers 25 and 27 Holyoke Street; odd numbers 67 through 107 Winthrop Street; even numbers 70 through 106 Winthrop Street; odd numbers 9 through 21 South Street; and which includes all of lots numbered 4, 5, 9, 10, 11, 17, 18, 19, 26, 29, 35, 36, 47, 51, 52, 54, 57, 58, 59, 62, 64, 65, 66, 67, 68, 69, 71, 72, 73, 74, 75 as shown on Assessors' Plat #162;

Premises of the following parcels as designated on Assessors' Plat #169; even numbers 1394 through 1442 Massachusetts Avenue; even numbers 2 through 8 Brattle Street; odd numbers 1 through 51 Brattle Street; odd numbers 1 through 35 Palmer Street; even numbers 2 through 32 Palmer Street; even numbers 2 through 66 Church Street; odd numbers 21 through 67 Church Street; even number 2 Farwell Place; and which includes all of lots numbered 7, 8, 10, 11, 12, 14, 17, 39, 40, 41, 42, 43, 44, 45, 46, 47, 50, 67, 68, 80, 81, 82, 83, 84, 85, 86, 89, 96; as shown on Assessors' Plat #169;

Premises of the following parcels as designated on Assessors' Plat #168; even numbers 38 through 54 Brattle Street; odd numbers 109 through 125 Mt. Auburn Street; even numbers 8 through 20 Mifflin Place; odd numbers 5 through 19 Mifflin Place; even numbers 4 through 18 Story Street; odd number 5 Story Street; and which includes all or part of lots numbered 4, 5, 13, 16, 17, 20, 21, 22, 23, 24, 25, 30, 31, 32, 33, 36, 37, 55, 56, 57, 60 as shown on Assessors' Plat #168;

Premises of the following parcels as designated on Assessors' Plat #165; even numbers 108 through 128 Mt. Auburn Street; even numbers 2 through 44 University Road; odd numbers 1 through 43 University Road; odd numbers 1 through 7 Nutting Road; even numbers 976 through 982 Memorial Drive; and which includes all or part of lots numbered 7, 15, 23, 24, 26, 28, 29, 34, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 as shown on Assessors' Plat #165;

Premises of the following parcels as designated on Assessors' Plat #166; even numbers 132 through 138 Mt. Auburn Street; even numbers 2 through 16 Nutting Road; odd numbers 1 through 7 and even numbers 2 through 10 Revere Street; all numbers on Mt. Auburn Place; even numbers 2 through 8 Gerry Street; and which includes all or parts of lots numbered 33, 34, 35, 37, 38, 41, 42, 50, 51, 73, 74, 75, as shown on Assessors' Plat #166;

Premises of the following parcels as designated on Assessors' Plat #168; odd numbers 127 through 133 Mt. Auburn Street; 15 through 17 Story Street; 18 through 22 Hilliard Street; and which includes all or part of lots numbered 40, 41, 48, 49, 53, 54, as shown on Assessors' Plat #166.

B. Amend the text of the Zoning Ordinance as follows:

1. In Section 3.10, Division of the City Into Zoning Districts, add the following new subsection:

"3.12 In addition to the districts established under subsection 3.11, overlay districts may be established from time to time. As specified elsewhere in this Ordinance, each overlay district shall have special regulations which shall be applicable in lieu of or in addition to the regularly applicable regulations for the base zoning district."

2. In Article 11.000, Special Regulations, add the following new section:

"11.40 HARVARD SQUARE OVERLAY DISTRICT

11.41 Establishment and Scope. There is hereby established the Harvard Square Overlay District which shall be governed by the regulations and procedures specified in this Section 11.40. It is the intent of this section that these regulations will apply to a single area described generally as the Harvard Square business district and certain abutting portions of the neighborhoods around it.

11.42 Purpose. It is the purpose of this Section 11.40 to augment existing zoning regulations to respond to the unique problems and pressures for change particular to the Harvard Square area. The regulations contained in said section provide for more careful public scrutiny of development proposals that may alter the established urban form of the Harvard Square area. These regulations are intended to channel the extreme development pressures in ways which will preserve and enhance the unique functional environment and visual character of Harvard Square; to mitigate the functional impacts of new development; and to reduce the visual impact of Harvard Square development on adjacent residential neighborhoods.

11.43 Applicability. The Square Overlay District shall be an overlay district on the Zoning Map established by Section 3.20.

11.431 The use of land within said district shall be controlled by the pertinent regulations within the base zoning districts, except as modified by the requirements of this Section 11.40 which shall apply in addition to regulations imposed by the base zoning map designations.

11.432 The requirements of this Section 11.40 shall not apply to planned unit development proposals filed, reviewed and regulated by Article 12.000; however, said requirements shall apply to other development proposals in a PUD district.

11.44 Building Height Limitations. The maximum height of buildings in the Harvard Square Overlay District shall be governed by the requirements of this Section 11.44; however, at locations where the base zoning district establishes a more restrictive height limitation, the more restrictive shall apply.

11.441 As-of-Right Height Limitations. The maximum height of any building at the street line shall be sixty (60) feet. Portions of buildings may extend to eighty (80) feet in height provided that those portions in excess of 60 feet are set back from the street line at least 10 feet, that those portions are also set back from one or more 45° sky exposure planes and that the building will provide the minimum required amenities specified in subsection 11.442. A 45° sky exposure plane shall be an imaginary inclined plane beginning 60 feet above any street line in the district and rising over one or more lots at a 45° angle.

11.442 Required Amenities for Taller Buildings. Any building in the district exceeding 60 feet in height shall provide at least 10 points worth of amenities according to the following schedule:

(1) Off-street parking in excess of the requirements specified in Section 6.30 -- 1 point for each 4 spaces.

(2) Split level commercial frontage -- 1 point for each 10 linear feet along the street line.

(3) Shopping arcade, as defined by Sec. 13.452(5) -- 1 point for each 10 linear feet along the street line.

(4) Through-block arcade, as defined by Sec. 13.452(7) -- 10 points.

(5) Other open space at or within 10 feet of street level designed to be generally accessible to the public including parks, plazas, courtyards, landscaped area open to the sky, and galleries -- 2 points for each 225 square feet of open space in excess of the minimum usable open requirements for the lot specified in Section 5.30.

11.443 Special Permit for Additional Height. The maximum allowable height in the district may be increased up to 110 feet upon issuance of a special permit by the Planning Board. In granting a special permit for increased height, the Planning Board shall find that provision of any of the following amenities provides substantial public benefits.

(1) open space or recreational facilities dedicated to public use;

(2) walkways or similar facilities which enable the public to have access through the building to existing areas of unique natural or man-made value;

(3) development design, which enhances any unique natural or man-made features of the site or abutting areas;

(4) pedestrian malls, arcades, decks, bridges, or similar facilities within the interior of the building which are designed to appeal to the general public;

(5) other amenities that the developer may propose which the Planning Board feels provide unique advantages to the general public or which contribute to achieving city development goals;

In evaluating a Development Proposal providing building height in excess of 80 feet, the Planning Board shall give consideration to evidence presented on the following:

a. that increased height will not cast shadows or alter air currents in ways that will unreasonably limit the amount of light and air reaching other buildings in the vicinity to a significantly greater extent than if the building height did not exceed 80 feet;

b. that increased height would mitigate detrimental environmental impacts such as excessive ground coverage, diminution of open space, and monotonous development;

c. that increased height would not adversely affect and would result in increased sensitivity to the visual and physical characteristics of the particular location through more harmonious relationships to the terrain and to proposed and existing buildings in the vicinity that have functional or visual relationships to the proposed building;

d. that increased height would result from actions taken to lessen the impact of traffic and parking on the surrounding area; and

e. that the orientation and location of the proposed structure shall not otherwise diminish the health and safety of the Harvard Square area.

11.45 Streetwalls and Building Setback Reduction. Maintenance of existing streetwalls is encouraged within the district. This may be accomplished by principal front wall plane setbacks and cornice lines which are consistent with existing buildings on the same block face. In order to enable this and to provide greater design flexibility, buildings within the district shall be exempt from any minimum yard requirements specified in Section 5.30 except for cases in which such reduced yard would abut a lot (but not a public way) outside the district.

11.46 Development Consultation Procedure. It is the purpose of this Section 11.46 to provide for city professional staff review of and comment on development proposals in the district prior to the formulation of final plans. This development consultation procedure is intended to enable discussion of potential changes in Harvard Square which could alter the physical environment of the area. It will provide an informal mechanism for reviewing potential projects and, when appropriate, suggesting ways in whichs such projects might better comply with various public plans and policies for Harvard Square. Each application for a building permit for one of the categories of development specified in subsection 11.461 shall be accompanied by a written certification from the Cambridge Com-

munity Development Department indicating that the applicant has, within the previous six month period, participated in the development consultation procedure specified in this section 11.46, for the proposal for which the permit is being sought. At the development consultation session, members of the staff of the Community Development Department will review the proposal and discuss the opportunities and problems it presents.

11.461 The following types of development proposals within the Harvard Square Overlay District shall be subject to development consultation:

(1) construction of any new building;

(2) construction of any other new structure;

(3) any exterior building alteration increasing gross floor area by 100 square feet or more;

(4) construction of five or more parking spaces, whether on grade or in a structure;

(5) erection of a sign;

(6) any other exterior alteration facing a street but not painting, brick repointing or masonry repairs, building cleaning, gutter replacement or similar routine maintenance.

11.462 Small Project Procedure. Prior to formal permit application, the applicant for a building permit for a development project, except those specified in subsection 11.463 shall contact the Community Development Department and request a development consultation session. Upon making such a request, the applicant shall present for review such written or graphic materials necessary to give a reasonably complete, though not necessarily detailed, indication of the nature and scope of the development proposal. In most cases the Community Development Department staff person will complete the review and issue the certification of compliance with this section 11.46 at the end of the consultation session. However, if questions arise during the session suggesting the need for advice and assistance of other city departments or others, the development proposal materials may be kept for further review. However, the final staff comments and compliance certification shall be made within two business days of the consultation session.

11.463 Large Project Procedure. Any development proposal involving the construction of a new building or an alteration increasing the gross floor area of an existing building by 2000 square feet or more shall follow the review procedure specified in this subsection 11.463. Prior to application for a building permit, the applicant shall submit the materials specified in subsection 11.464 to the Community Development Department for its review. Within five (5) business days of such submittal, the Department will schedule and hold a consultation session with the applicant or his designee

and any parties listed in Section 11.465 who express interest in participating in the consultation. Within five (5) days of the consultation session, the Community Development Department shall issue to the applicant written comments on the development proposal and a consultation compliance certificate.

11.464 Large Project Submittal Requirements. Development proposals submitted for review in accordance with subsection 11.463 shall include such written and graphic materials necessary to give a reasonably complete indication of the nature and scope of the development proposal. Each of the following shall be submitted as appropriate to the proposal:

(1) A site plan indicating the general location and boundaries of the lot, major anticipated changes in natural features, existing and proposed buildings, existing and proposed curb cuts, off-street parking areas, loading and service facilities, and generalized landscaping scheme or other anticipated treatment of open spaces.

(2) Cross section(s), generalized floor plans or other diagram(s) indicating the anticipated locations of various land uses and major pedestrian pathways.

(3) Architectural elevations or sketches indicating anticipated facade treatment along public ways including the proposed entrances, fenestration, and signage.

11.465 Large Project Review Participants. Abuttors and representatives of various agencies and interest groups shall be invited to participate in the consultation sessions for large scale development proposals submitted for review in accordance with subsection 11.463. The Community Development Department shall give notification of any scheduled development consultation to each abutting property owner and to any individual or organization who each year files with the Community Development Department a written request for such notification.

11.466 In reviewing each development application, the Community Development Department shall have the following powers and duties:

(1) The Department shall evaluate the proposal for compliance with zoning requirements, for appropriateness in terms of other planned or programmed public or private development activities in the vicinity. The Department shall consider the proposal in

terms of the specific and general impact of the use and/or dimensions proposed therein on the Harvard Square Overlay District and adjoining areas where applicable. Such evaluation shall be conducted in light of the purposes of the Harvard Square Overlay District and adjoining areas where applicable. Such evaluation shall be conducted in light of the purposes of the Harvard Square Overlay District hereinbefore stated and shall further take account of the following considerations: scale, bulk, density, aesthetic qualities, land use, functional characteristics, parking, loading, and impact on public services and facilities.

(2) In its written report the Department shall make recommendations to the applicant including general approval or disapproval of the proposal and in connection therewith may suggest specific project adjustments and alterations to further the purposes of this Section 11.40.

11.467 The Community Development Department may seek the advice and assistance of other city departments and of the organizations given notice in subsection 11.465 in reviewing a development proposal..

Comm. from Arthur C. Parris, Chairman, Planning Board, transmitting the Planning Board's recommendation on the petition of Councillor Mary Ellen Preusser providing for a Special Overlay in the Harvard Square business area.

In City Council,

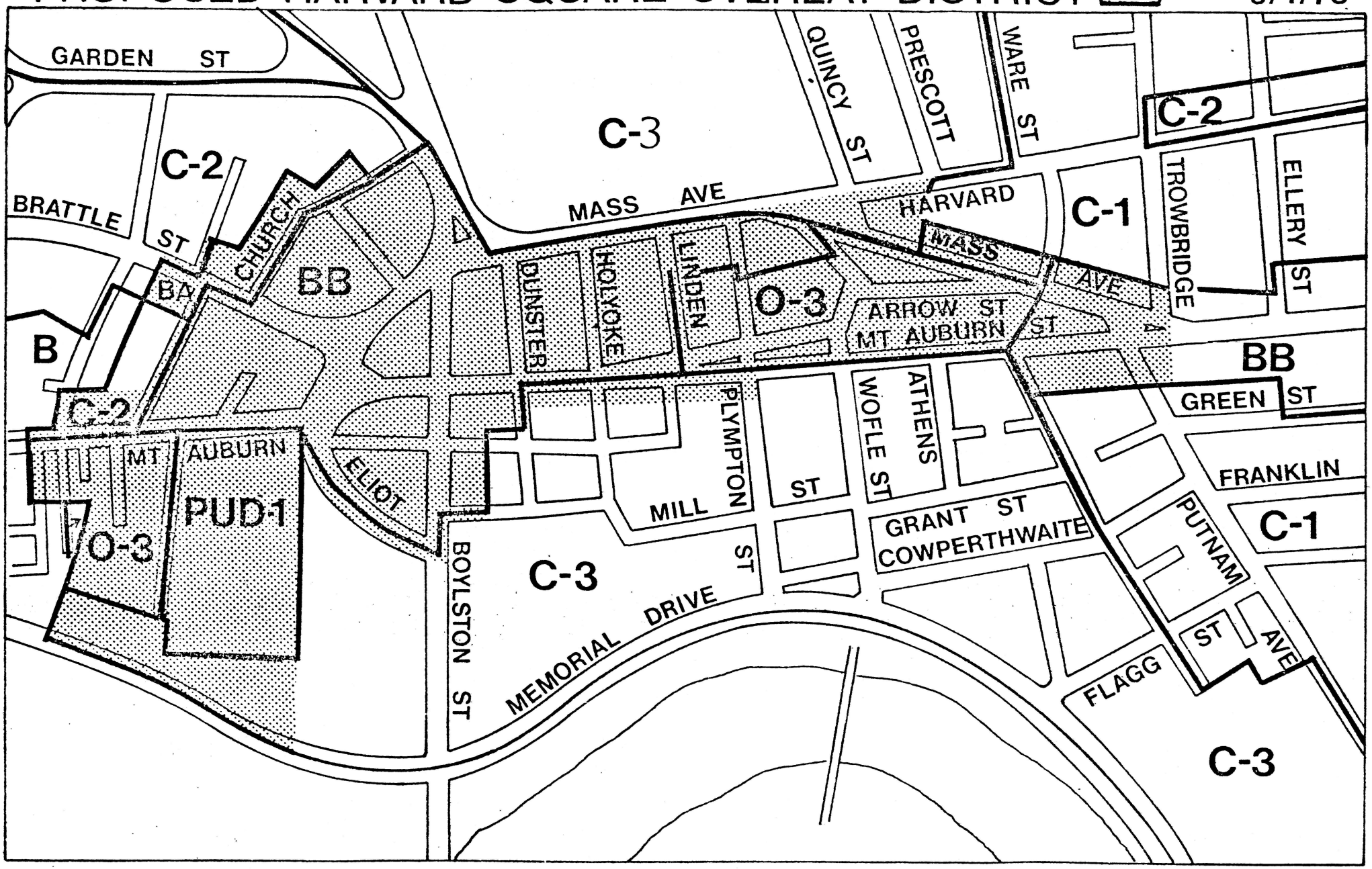
December 18, 1978

12/18/78

Referred to the Preusser Petition

PROPOSED HARVARD SQUARE OVERLAY DISTRICT

9/1/78



C. C. 106

Calendar #5

City of Cambridge

MASSACHUSETTS

In City Council 2/26/ 1979

Councillor Frisoli moved Reconsideration -

	YEA	NAY	ABSENT	PRESENT
Mr. Crane	✓			
Mr. Duehay		✓		
Mr. Frisoli	✓			
Ms. Graham		✓		
Ms. Preusser		✓		
Mr. Sullivan	✓			
Mr. Vellucci		✓		
Mr. Wylie		✓		
Mayor Danehy	✓			
	4	5	0	

- Motion for Reconsideration fails -

C. Frisoli moved Reconsideration of the vote of the City Council on February 12 adopting the order introduced by C. Preusser relative to recording the Harvard Square Overlay District as "passed to be ordained" and further requesting that the record be corrected to show that the ordinance was ordained

CCM-101

City of Cambridge

AMENDED ORDER
5.
IN CITY COUNCIL
February 5, 1979

COUNCILLOR PREUSSER

WHEREAS: Douglas Randall, Attorney at Law, retained by David Vickery, Assistant City Manager for Community Development for the City of Cambridge, with the approval of the City Solicitor and the City Manager, drafted the following order which includes advice to the City Council regarding what action should be taken by the City Council relative to the petition by Councillor Preusser, et al as it relates to the Harvard Square Overlay, and

WHEREAS: Councillor Preusser had on February 5, 1979 submitted this order for which said Attorney Douglas Randall was paid to prepare by the city with the approval of the City Manager, and

WHEREAS: The vote of the City Council taken on January 22, 1979, on the final adoption of the proposed zoning ordinance amendment, creating a Harvard Square Overlay District, was recorded as six in favor, two opposed and one "present", and

WHEREAS: The presiding officer declared that the proposed ordinance failed of passage, presumably due to the filing of objections by certain landowners and the provisions of General Laws Chapter 40A Section 5, and

WHEREAS: The legal effect of such vote is in doubt by reason that:-

1. The vote of "present" may satisfy the requirement of Section 5 which reads in part as follows:-

   "No zoning ordinance or by-law shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are two branches, or by a two-thirds vote of a town meeting; provided that if in a city or town with a council of fewer than twenty-five members there is filed with the clerk prior to final action by the council a written protest against such change, stating the reasons duly signed by owners of twenty per cent or more of the area of the land proposed to be included in such change, or of the area of the land immediately adjacent extending three hundred feet therefrom, no such change of any such ordinance shall be adopted except by a three-fourths vote of all members."

City of Cambridge

2. The recorded vote was sufficient for enactment, for reason that the portion of said section permitting protests and thereby requiring a three-fourths vote is unconstitutional under the Fourteenth Amendment to the United States Constitution in that it denies certain inhabitants of the City of Cambridge their right to the equal protection of the laws by:-

(a) permitting certain corporate property owners and individual property owners who own substantial areas of land to exercise a greater influence upon legislative enactment of the zoning regulation of their land and lands lying adjacent thereto than is accorded to the inhabitants of Cambridge at large;

(b) allowing the corporate owners and individual owners to protest the proposed legislation and thereby precipitate the alleged necessity of a three-fourths vote instead of the normal two-thirds vote, which corporations are substantially exempt from real estate taxation, the major source of support of municipal services supplied equally to all land owners;

(c) requiring the change in the quantum of vote necessary for such legislative enactment from two-thirds to three-fourths solely as the result of a protest of landowners and not the protest of inhabitants who alone are entitled to equal representation on the city council and to the equality of opportunity to effect legislation;

(d) predicating the power to change the legislative quantum for passage of zoning ordinances solely upon property ownership and not upon habitation within the community; and

(e) imposing upon this and other proposed zoning amendments (e.g. the Riverfront District Zone, submitted to the Cambridge City Council, Spring and Summer 1973) the unique and arbitrary requirement of a three-fourths vote instead of the traditional majority vote necessary for all other regulatory legislation under the police power of States and their subdivisions, and the traditional two-thirds vote only for long term borrowings, zoning enactments, Constitutional or Charter amendments, the overriding of vetoes and other matters of extreme gravity; and

WHEREAS: The importance of this zoning enactment is such that such doubts should be resolved in favor of its passage, now therefore be it

C. C. 108

City of Cambridge

ORDERED: That the recorded vote on the final enactment of the proposed zoning amendment creating a Harvard Square Overlay District, as taken on January 22, 1979, be now recorded as "passed to be ordained", and be it further

ORDERED: That the City Clerk is directed to correct his records accordingly and publish the ordinance as adopted in the usual course, and be it further

ORDERED: That it is the policy of the City Council to defend against this possible infringement of the rights of the inhabitants of the City of Cambridge to the equal protection of the laws by such legal action as may be deemed necessary and appropriate, and be it further

ORDERED: That the City Manager be and hereby is requested to petition the courts for a declaratory judgment affirming the validity of the enactment of said zoning amendment.

In City Council February 12, 1979.
Adopted as amendment by a yea and nay vote:-
Yeas 5; Nays 4; Absent 0.
Attest:- Paul E. Healy, City Clerk.

A true copy:-

ATTEST:- 

Councillor Sullivan has filed reconsideration on this matter.

C. C. 106

City of Cambridge

MASSACHUSETTS

In City Council February 26 1979

Councillor Frisoli moved reconsideration on Calendar Item Number Five.

	YEA	NAY	ABSENT	PRESENT
Mr. Crane	X			
Mr. Duehay		X		
Mr. Frisoli	X			
Ms. Graham		X		
Ms. Preusser		X		
Mr. Sullivan	X			
Mr. Vellucci		X		
Mr. Wylie		X		
Mayor Danehy	X			
	4	5	0	

Councillor Frisoli moved reconsideration of the vote of the City Council on February 12, 1979 adopting the order introduced by Councillor Preusser relative to recording the Harvard Square Overlay District as "passed to be ordained" and further requesting that the record be corrected to show that the ordinance was ordained.

Motion for reconsideration - fails.

CCM-101

City of Cambridge

AMENDED ORDER

5.

IN CITY COUNCIL
February 5, 1979

COUNCILLOR PREUSSER

WHEREAS: Douglas Randall, Attorney at Law, retained by David Vickery, Assistant City Manager for Community Development for the City of Cambridge, with the approval of the City Solicitor and the City Manager, drafted the following order which includes advice to the City Council regarding what action should be taken by the City Council relative to the petition by Councillor Preusser, et al as it relates to the Harvard Square Overlay, and

WHEREAS: Councillor Preusser had on February 5, 1979 submitted this order for which said Attorney Douglas Randall was paid to prepare by the city with the approval of the City Manager, and

WHEREAS: The vote of the City Council taken on January 22, 1979, on the final adoption of the proposed zoning ordinance amendment, creating a Harvard Square Overlay District, was recorded as six in favor, two opposed and one "present", and

WHEREAS: The presiding officer declared that the proposed ordinance failed of passage, presumably due to the filing of objections by certain landowners and the provisions of General Laws Chapter 40A Section 5, and

WHEREAS: The legal effect of such vote is in doubt by reason that:-

1. The vote of "present" may satisfy the requirement of Section 5 which reads in part as follows:-

   "No zoning ordinance or by-law shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are two branches, or by a two-thirds vote of a town meeting; provided that if in a city or town with a council of fewer than twenty-five members there is filed with the clerk prior to final action by the council a written protest against such change, stating the reasons duly signed by owners of twenty per cent or more of the area of the land proposed to be included in such change, or of the area of the land immediately adjacent extending three hundred feet therefrom, no such change of any such ordinance shall be adopted except by a three-fourths vote of all members."

City of Cambridge

2. The recorded vote was sufficient for enactment, for reason that the portion of said section permitting protests and thereby requiring a three-fourths vote is unconstitutional under the Fourteenth Amendment to the United States Constitution in that it denies certain inhabitants of the City of Cambridge their right to the equal protection of the laws by:-

   (a) permitting certain corporate property owners and individual property owners who own substantial areas of land to exercise a greater influence upon legislative enactment of the zoning regulation of their land and lands lying adjacent thereto than is accorded to the inhabitants of Cambridge at large;

   (b) allowing the corporate owners and individual owners to protest the proposed legislation and thereby precipitate the alleged necessity of a three-fourths vote instead of the normal two-thirds vote, which corporations are substantially exempt from real estate taxation, the major source of support of municipal services supplied equally to all land owners;

   (c) requiring the change in the quantum of vote necessary for such legislative enactment from two-thirds to three-fourths solely as the result of a protest of landowners and not the protest of inhabitants who alone are entitled to equal representation on the city council and to the equality of opportunity to effect legislation;

   (d) predicating the power to change the legislative quantum for passage of zoning ordinances solely upon property ownership and not upon habitation within the community; and

   (e) imposing upon this and other proposed zoning amendments (e.g. the Riverfront District Zone, submitted to the Cambridge City Council, Spring and Summer 1973) the unique and arbitrary requirement of a three-fourths vote instead of the traditional majority vote necessary for all other regulatory legislation under the police power of States and their subdivisions, and the traditional two-thirds vote only for long term borrowings, zoning enactments, Constitutional or Charter amendments, the overriding of vetoes and other matters of extreme gravity; and

WHEREAS: The importance of this zoning enactment is such that such doubts should be resolved in favor of its passage, now therefore be it

City of Cambridge

ORDERED: That the recorded vote on the final enactment of the proposed zoning amendment creating a Harvard Square Overlay District, as taken on January 22, 1979, be now recorded as "passed to be ordained", and be it further

ORDERED: That the City Clerk is directed to correct his records accordingly and publish the ordinance as adopted in the usual course, and be it further

ORDERED: That it is the policy of the City Council to defend against this possible infringement of the rights of the inhabitants of the City of Cambridge to the equal protection of the laws by such legal action as may be deemed necessary and appropriate, and be it further

ORDERED: That the City Manager be and hereby is requested to petition the courts for a declaratory judgment affirming the validity of the enactment of said zoning amendment.

In City Council February 12, 1979.
Adopted as amended by a yea and nay vote:-
Yeas 5; Nays 4; Absent 0.
Attest:- Paul E. Healy, City Clerk.

A true copy:-

ATTEST:- Paul E. Healy.

Councillor Sullivan has filed reconsideration on this matter.

DATE: February 29/1979
A TRUE COPY ATTEST:
Paul E. Healy
City Clerk

CCM-101

City of Cambridge

AMENDED ORDER

5.

IN CITY COUNCIL
February 5, 1979

COUNCILLOR PREUSSER

WHEREAS: Douglas Randall, Attorney at Law, retained by David Vickery, Assistant City Manager for Community Development for the City of Cambridge, with the approval of the City Solicitor and the City Manager, drafted the following order which includes advice to the City Council regarding what action should be taken by the City Council relative to the petition by Councillor Preusser, et al as it relates to the Harvard Square Overlay, and

WHEREAS: Councillor Preusser had on February 5, 1979 submitted this order for which said Attorney Douglas Randall was paid to prepare by the city with the approval of the City Manager, and

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1. The vote of "present" may satisfy the requirement of Section 5 which reads in part as follows:-

   "No zoning ordinance or by-law shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are two branches, or by a two-thirds vote of a town meeting; provided that if in a city or town with a council of fewer than twenty-five members there is filed with the clerk prior to final action by the council a written protest against such change, stating the reasons duly signed by owners of twenty per cent or more of the area of the land proposed to be included in such change, or of the area of the land immediately adjacent extending three hundred feet therefrom, no such change of any such ordinance shall be adopted except by a three-fourths vote of all members."

City of Cambridge

2. The recorded vote was sufficient for enactment, for reason that the portion of said section permitting protests and thereby requiring a three-fourths vote is unconstitutional under the Fourteenth Amendment to the United States Constitution in that it denies certain inhabitants of the City of Cambridge their right to the equal protection of the laws by:-

   (a) permitting certain corporate property owners and individual property owners who own substantial areas of land to exercise a greater influence upon legislative enactment of the zoning regulation of their land and lands lying adjacent thereto than is accorded to the inhabitants of Cambridge at large;

   (b) allowing the corporate owners and individual owners to protest the proposed legislation and thereby precipitate the alleged necessity of a three-fourths vote instead of the normal two-thirds vote, which corporations are substantially exempt from real estate taxation, the major source of support of municipal services supplied equally to all land owners;

   (c) requiring the change in the quantum of vote necessary for such legislative enactment from two-thirds to three-fourths solely as the result of a protest of landowners and not the protest of inhabitants who alone are entitled to equal representation on the city council and to the equality of opportunity to effect legislation;

   (d) predicating the power to change the legislative quantum for passage of zoning ordinances solely upon property ownership and not upon habitation within the community; and

   (e) imposing upon this and other proposed zoning amendments (e.g. the Riverfront District Zone, submitted to the Cambridge City Council, Spring and Summer 1973) the unique and arbitrary requirement of a three-fourths vote instead of the traditional majority vote necessary for all other regulatory legislation under the police power of States and their subdivisions, and the traditional two-thirds vote only for long term borrowings, zoning enactments, Constitutional or Charter amendments, the overriding of vetoes and other matters of extreme gravity; and

WHEREAS: The importance of this zoning enactment is such that such doubts should be resolved in favor of its passage, now therefore be it

City of Cambridge

ORDERED: That the recorded vote on the final enactment of the proposed zoning amendment creating a Harvard Square Overlay District, as taken on January 22, 1979, be now recorded as "passed to be ordained", and be it further

ORDERED: That the City Clerk is directed to correct his records accordingly and publish the ordinance as adopted in the usual course, and be it further

ORDERED: That it is the policy of the City Council to defend against this possible infringement of the rights of the inhabitants of the City of Cambridge to the equal protection of the laws by such legal action as may be deemed necessary and appropriate, and be it further

ORDERED: That the City Manager be and hereby is requested to petition the courts for a declaratory judgment affirming the validity of the enactment of said zoning amendment.

In City Council February 12, 1979.
Adopted as amended by a yea and nay vote:-
Yeas 5; Nays 4; Absent 0.
Attest:- Paul E. Healy, City Clerk.

A true copy:-

ATTEST:- Paul E. Healy.

Councillor Sullivan has filed reconsideration on this matter.

DATE: February 29/1979

A TRUE COPY ATTEST:

Paul E. Healy

City Clerk

ORDINANCE NO. 908.

Final Publication No. 1972. First Publication in the Chronicle-Sun on December 21, 1978.

City of Cambridge

In the Year One Thousand, Nine Hundred Seventy-Nine

AN ORDINANCE

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

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

The Zoning Map accompanying the ordinance passed to be ordained September 26, 1977 entitled: "The Zoning Ordinances of the City of Cambridge" is hereby amended by establishing an overlay zone designated "Harvard Square Overlay District" in the area bounded by Church Street, Massachusetts Avenue, Brattle Street, Farwell Place, Story Street, Mt. Auburn Street, Hilliard Street, Gerry Street, Revere Street, Memorial Drive, Bennett Street, Eliot Street, Boylston Street, South Street, Dunster Street, Holyoke Place, Plympton Street, Banks Street, Putnam Avenue, Trowbridge Street, Harvard Street, Bow Street, Arrow Street, Linden Street, Winthrop Street, Palmer Street, Mifflin Place, University Road, Nutting Road and Revere Street, as outline on the map below.

Also by amending the text of the Zoning Ordinances by adding a new section 3.12 in Section 3.10 entitled: "Division of the City into Zoning Districts".

Also by adding in Article 11.00 entitled: "Special Regulations" the following new section 11.40 entitled: Harvard Square Overlay District".

In City Council January 22, 1979.

Failed of ordination by a yea and nay vote: Yeas 6; Nays 2; Absent 0. Present 1.

James L. Sullivan, City Manager.

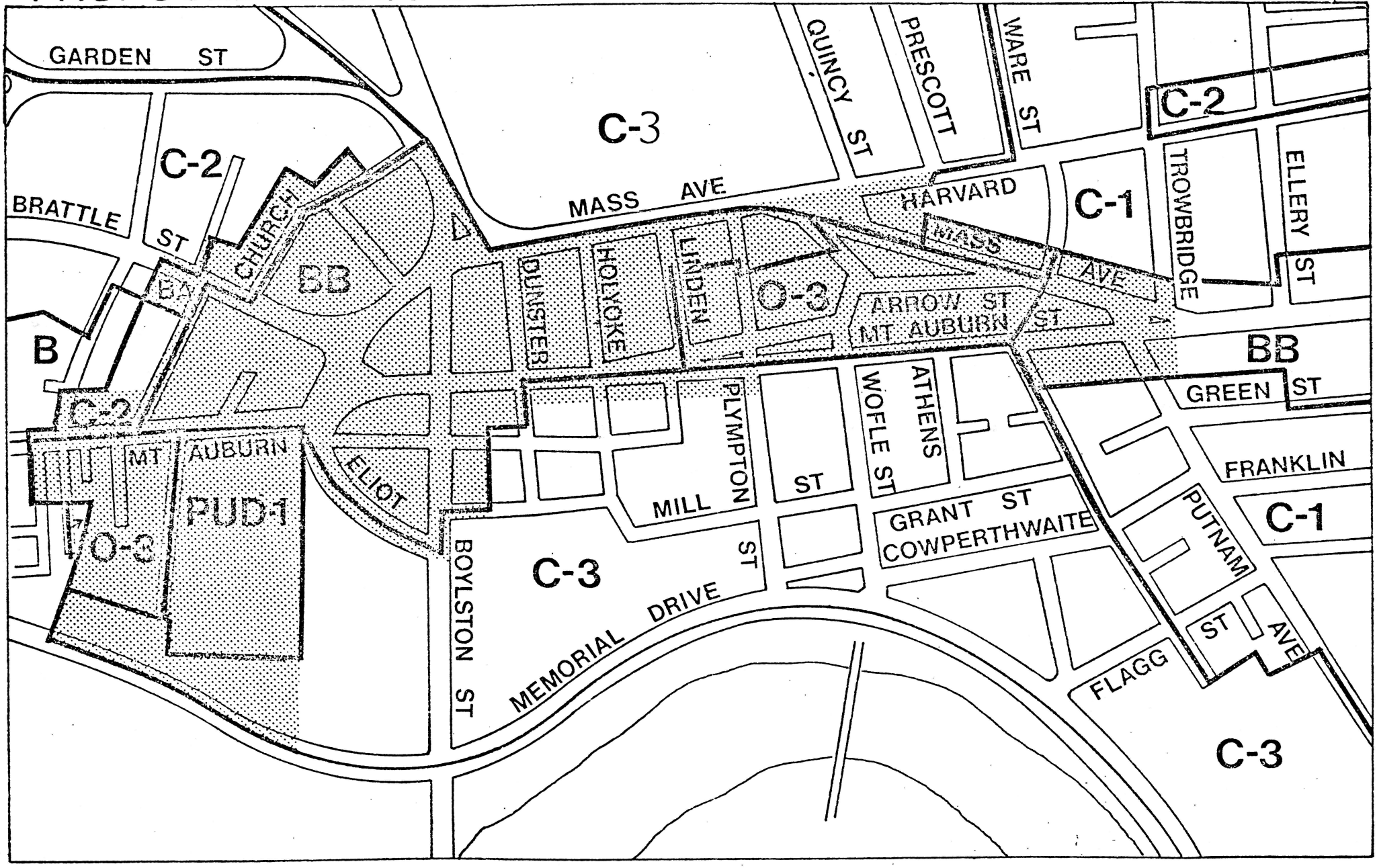
ATTEST:- Paul E. Healy, City Clerk.

NOTE: Pursuant to the provisions of General Laws, Chapter 40, Section 32A, Tercentenary Edition, the ordinance as aforesaid which exceeds in length eight octavo pages of ordinary book print may be summarized for publication in a newspaper of general circulation in the city with the further provision that said Zoning Ordinance may be examined and obtained at the City Clerk's Office during office hours and that any objection to its invalidity by reason of any defect in the procedure of adoption may only be made within ninety days after the posting or the second publication.

ATTEST:- Paul E. Healy, City Clerk.

PROPOSED HARVARD SQUARE OVERLAY DISTRICT ▭

9/1/78



C. C. 106

City of Cambridge

MASSACHUSETTS

In City Council February 26 1979

Calendar Item Number Five

	YEA	NAY	ABSENT	PRESENT
Mr. Crane	X			
Mr. Duehay		X		
Mr. Frisoli	X			
Ms. Graham		X		
Ms. Preusser		X		
Mr. Sullivan	X			
Mr. Vellucci		X		
Mr. Wylie		X		
Mayor Danehy	X			
	4	5	0	

Councillor Frisoli moved reconsideration of Calendar Item Number Five the same being Councillor Sullivan's intention to move reconsideration of the vote of the City Council on February 12, 1979 adopting an order introduced by Councillor Preusser relative to recording the zoning amendment creating a Harvard Square Overlay District as "passed to be ordained".

Motion for reconsideration - Failed.

PUBLICATIONS – Harvard Sq. Overlay

ORDINANCE NO. 908.

Final Publication No. 1972. First Publication in the Chronicle-Sun on December 21, 1978.

CITY OF CAMBRIDGE

In the Year One Thousand, Nine Hundred Seventy-Nine

AN ORDINANCE

In amendment to an ordinance 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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Also by amending the text of the Zoning Ordinances by adding a new section 3.12 in Section 3.10 entitled: "Division of the City into Zoning Districts".

Also by adding in Article 11.00 entitled: "Special Regulations" the following new section 11.40 entitled: Harvard Square Overlay District".

In City Council February 12, 1979.

Passed to be ordained by a yea and nay vote:-Yeas 6; Nays 2; Absent 0; Present 1 on January 22, 1979 by authorization of an order adopted by the City Council on February 12, 1979.

Attest:-

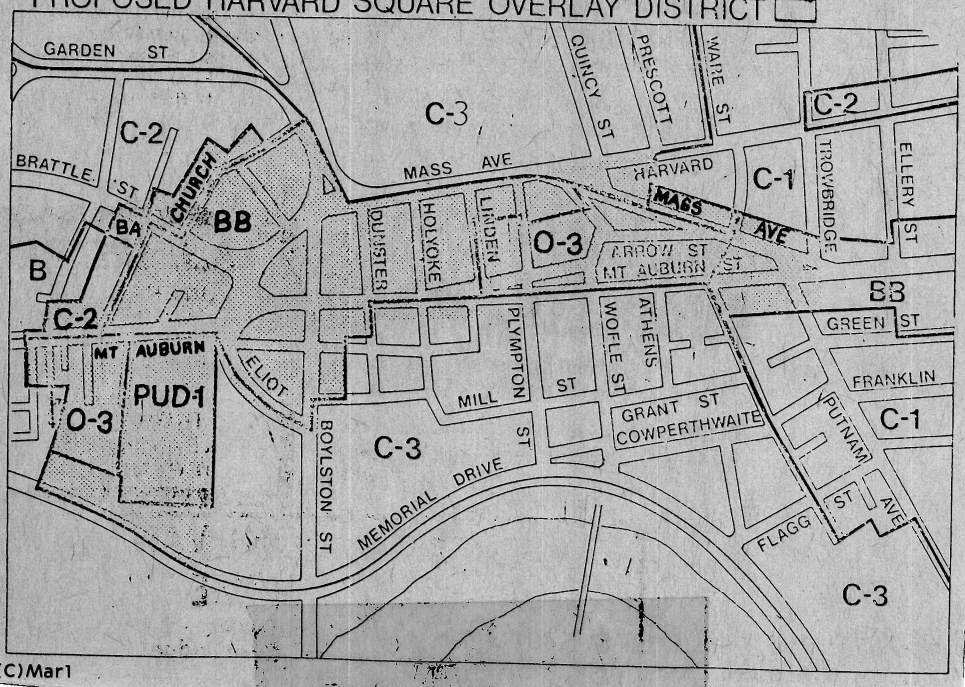
Paul E. Healy, City Clerk.

Note: Pursuant to the provisions of General Laws, Chapter 40, Section 32A, Tercentenary Edition, the ordinance as aforesaid which exceeds in length eight octavo pages of ordinary book print may be summarized for publication in a newspaper of general circulation in the city with the further provisions that said Zoning Ordinance may be examined and obtained at the City Clerk's Office during office hours and that any objection to its invalidity by reason of any defect in the procedure of adoption may only be made within ninety days after the posting or second publication.

Attest:-

Paul E. Healy, City Clerk.

PROPOSED HARVARD SQUARE OVERLAY DISTRICT



Passed to be ordained

PUBLISHED IN: Chronicle

DATE: March 1, 1979

EDITION: _____

ORDINANCE NO. 908.

Final Publication No. 1972. First Publication in the Chronicle-Sun on December 21, 1978.

City of Cambridge

In the Year One Thousand, Nine Hundred Seventy-Nine

AN ORDINANCE

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

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

The Zoning Map accompanying the ordinance passed to be ordained September 26, 1977 entitled: "The Zoning Ordinances of the City of Cambridge" is hereby amended by establishing an overlay zone designated "Harvard Square Overlay District" in the area bounded by Church Street, Massachusetts Avenue, Brattle Street, Farwell Place, Story Street, Mt. Auburn Street, Hilliard Street, Gerry Street, Revere Street, Memorial Drive, Bennett Street, Eliot Street, Boylston Street, South Street, Dunster Street, Holyoke Place, Plympton Street, Banks Street, Putnam Avenue, Trowbridge Street, Harvard Street, Bow Street, Arrow Street, Linden Street, Winthrop Street, Palmer Street, Mifflin Place, University Road, Nutting Road and Revere Street, as outline on the map below.

Also by amending the text of the Zoning Ordinances by adding a new section 3.12 in Section 3.10 entitled: "Division of the City into Zoning Districts".

Also by adding in Article 11.00 entitled: "Special Regulations" the following new section 11.40 entitled: Harvard Square Overlay District".

In City Council February 12, 1979.

City of Cambridge

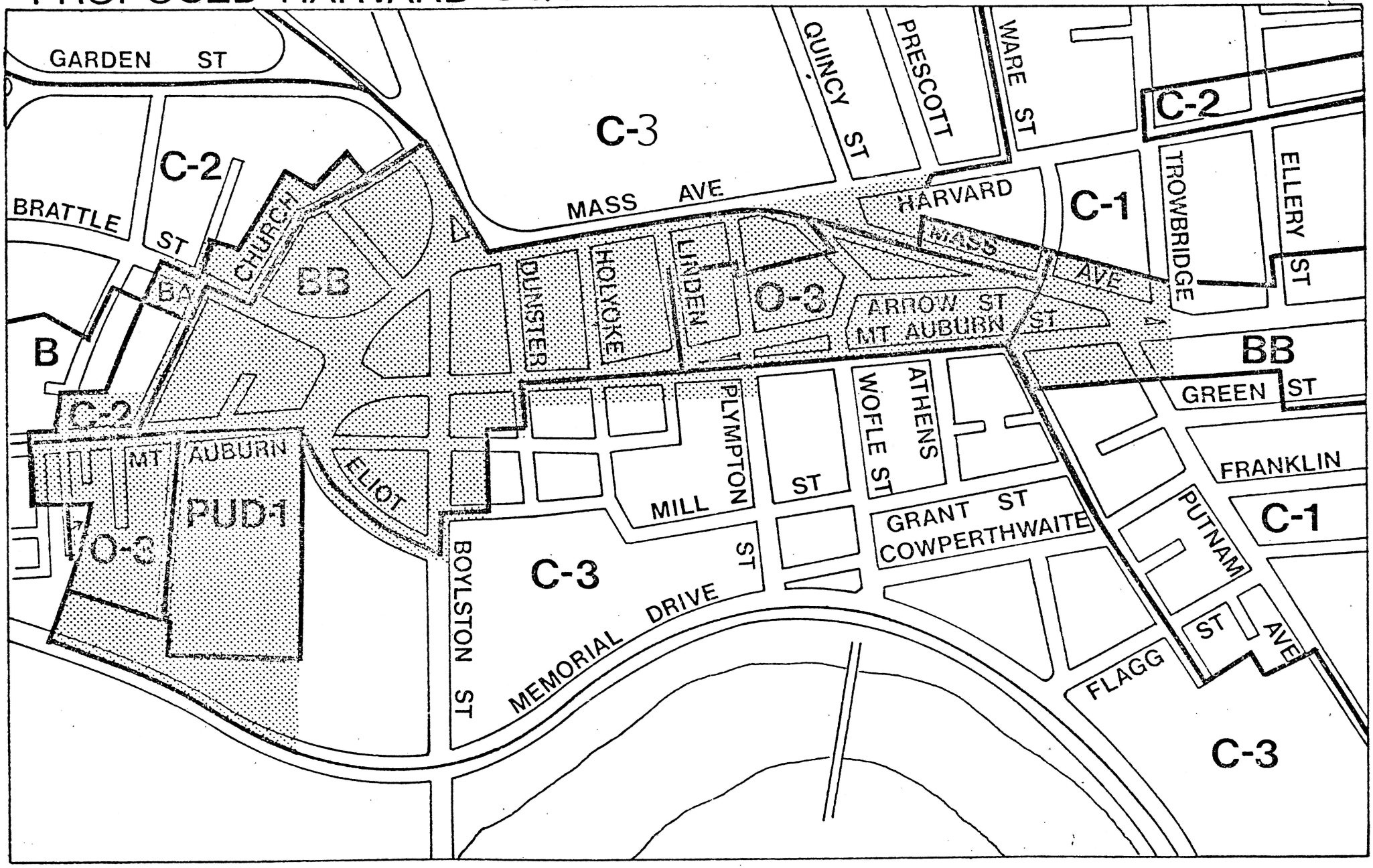
Passed to be ordained by a yea and nay vote:- Yeas 6; Nays 2; Absent 0; Present 1 on January 22, 1979 by authorization of an order adopted by the City Council on February 12, 1979.

ATTEST:- Paul E. Healy, City Clerk.

NOTE: Pursuant to the provisions of General Laws, Chapter 40, Section 32A, Tercentenary Edition, the ordinance as aforesaid which exceeds in length eight octavo pages of ordinary book print may be summarized for publication in a newspaper of general circulation in the city with the further provisions that said Zoning Ordinance may be examined and obtained at the City Clerk's Office during office hours and that any objection to its invalidity by reason of any defect in the procedure of adoption may only be made within ninety days after the posting or second publication.

ATTEST:- Paul E. Healy, City Clerk.

PROPOSED HARVARD SQUARE OVERLAY DISTRICT ▭ 9/1/78



ORDINANCE NO. 908

Final Publication No. 1972. First Publication in the Chronicle-Sun on December 21, 1978.

City of Cambridge

In the Year One Thousand, Nine Hundred Seventy-Nine

AN ORDINANCE

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

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

The Zoning Map accompanying the ordinance passed to be ordained September 26, 1977 entitled: "The Zoning Ordinances of the City of Cambridge" is hereby amended by establishing an overlay zone designated "Harvard Square Overlay District" in the area bounded by Church Street, Massachusetts Avenue, Brattle Street, Farwell Place, Story Street, Mt. Auburn Street, Hilliard Street Gerry Street, Revere Street, MEmorial Drive, BEnnett Street, Eliot Street, Boylston Street, South Street, Dunster Street, Holyoke Place, Plympton Street, Banks Street, Putnam Avenue, Trowbridge Street, Harvard Street, Bow Street, Arrow Street, Linden Street, Winthrop Street, Palmer Street, Mifflin Place, University Road, Nutting Road and Revere Street, as outlined on the map below.

Also by amending the text of the Zoning Ordinances by adding a new section 3.12 in Section 3.10 entitled "Division of the City Into Zoning Districts".

Also by adding in Article 11.00 entitled: "Special Regulations" the following new section 11.40 entitled: "Harvard Square Overlay District".

In City Council Failed of ordination by a ~~Passed to be ordained as amended by a~~ yea and nay vote: Yeas 6 ; Nays 2 ; Absent 0 . Present 1.

James L. Sullivan, City Manager.

Attest:- Paul E. Healy, City Clerk.

NOTE: Pursuant to the provisions of General Laws, Chapter 40, Section 32A, Tercentenary Edition, the ordinance as aforesaid which exceeds in length eight octavo pages of ordinary book print may be summarized for publication in a newspaper of general circulation in the city with the further provision that said Zoning Ordinance may be examined and obtained at the City Clerk's Office during office hours and that any objection to its invalidity by reason of any defect in the procedure of adoption may only be made within ninety days after the posting or the second publication.

ATTEST:- Paul E. Healy, City Clerk.

C. C. 106

City of Cambridge

PETITION OF MARY ELLEN PREUSSER, ET AL.

RE: SPECIAL OVERLAY DISTRICT FOR HARVARD SQUARE BUSINESS AREA.

Petition filed with the City Clerk — September 5, 1978

(All hearings to be completed 65 days from filing date with the City Clerk.)

25 days = Sept.
31 days = Oct.
9 days = Nov.
65 days = November 9, 1978 — November 9, 1978

In City Council — September 11, 1978

Referred to Planning Board for report — September 13, 1978

Planning Board Hearing — October 24, 1978

(CITY COUNCIL must act within 90 days of the Planning Board's hearing which would be January 22, 1979.)

7 days = October
30 days = November
31 days = December
22 days = January
90 days = January 22, 1979 — January 22, 1979

City Council Hearing published — Chronicle — September 28, 1978
October 5, 1978

Hearing before the City Council — October 19, 1978 at 6 PM

Report to the City Council — 10/23/78

Passed to a second reading — as amended — 12/18/78
Published — Chronicle 12/21/78
Herald 12/26/78 - Camb Page

Ready for Ordination → ON OR AFTER 1/8/79
Published — 1/24/78 Passed to Ordination 6-2-04

COMPLETION DATE: JANUARY 22, 1978

1/22/78 L. Preusser and L. Dockray Moved Reconsideration of the vote of 1/22/79

1/29/79 Placed on file. - No motion for Reconsideration received

ORDINANCE NO. 908.

Final Publication No. 1972. First Publication in the Chronicle-Sun on December 21, 1978.

City of Cambridge

In the Year One Thousand, Nine Hundred Seventy-Nine

AN ORDINANCE

In amendment to an ordinance 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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Also by adding in Article 11.00 entitled: "Special Regulations" the following new section 11.40 entitled: Harvard Square Overlay District".

In City Council February 12, 1979.

C. C. 106

City of Cambridge

Passed to be ordained by a yea and nay vote:- Yeas 6; Nays 2; Absent 0; Present 1 on January 22, 1979 by authorization of an order adopted by the City Council on February 12, 1979.

ATTEST:- Paul E. Healy, City Clerk.

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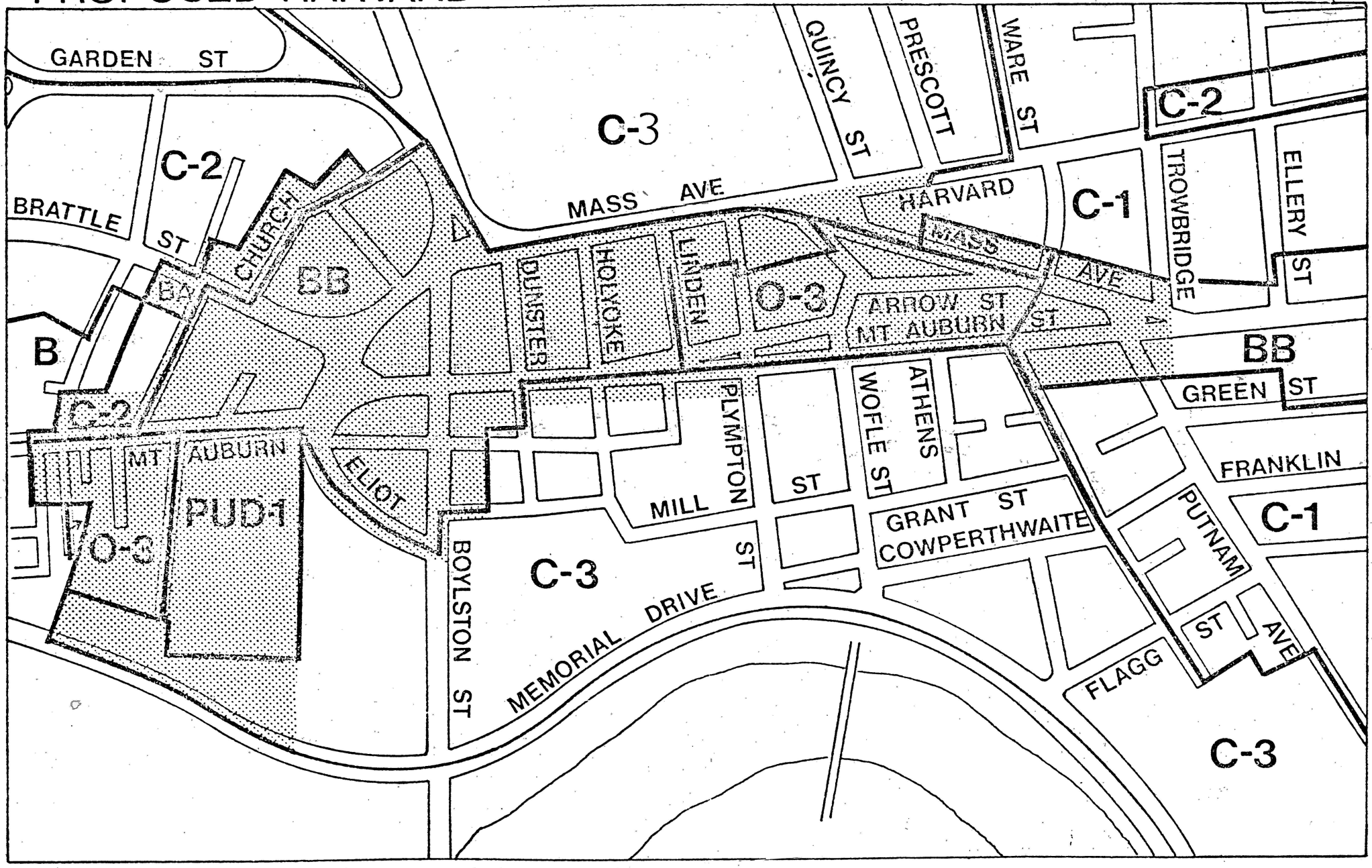
ATTEST:- Paul E. Healy, City Clerk.

PROPOSED HARVARD SQUARE OVERLAY DISTRICT

9/1/78



ORDINANCE NO. 908.

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City of Cambridge

In the Year One Thousand, Nine Hundred Seventy-Nine

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In City Council February 12, 1979.

City of Cambridge

Passed to be ordained by a yea and nay vote:- Yeas 6; Nays 2; Absent 0; Present 1 on January 22, 1979 by authorization of an order adopted by the City Council on February 12, 1979.

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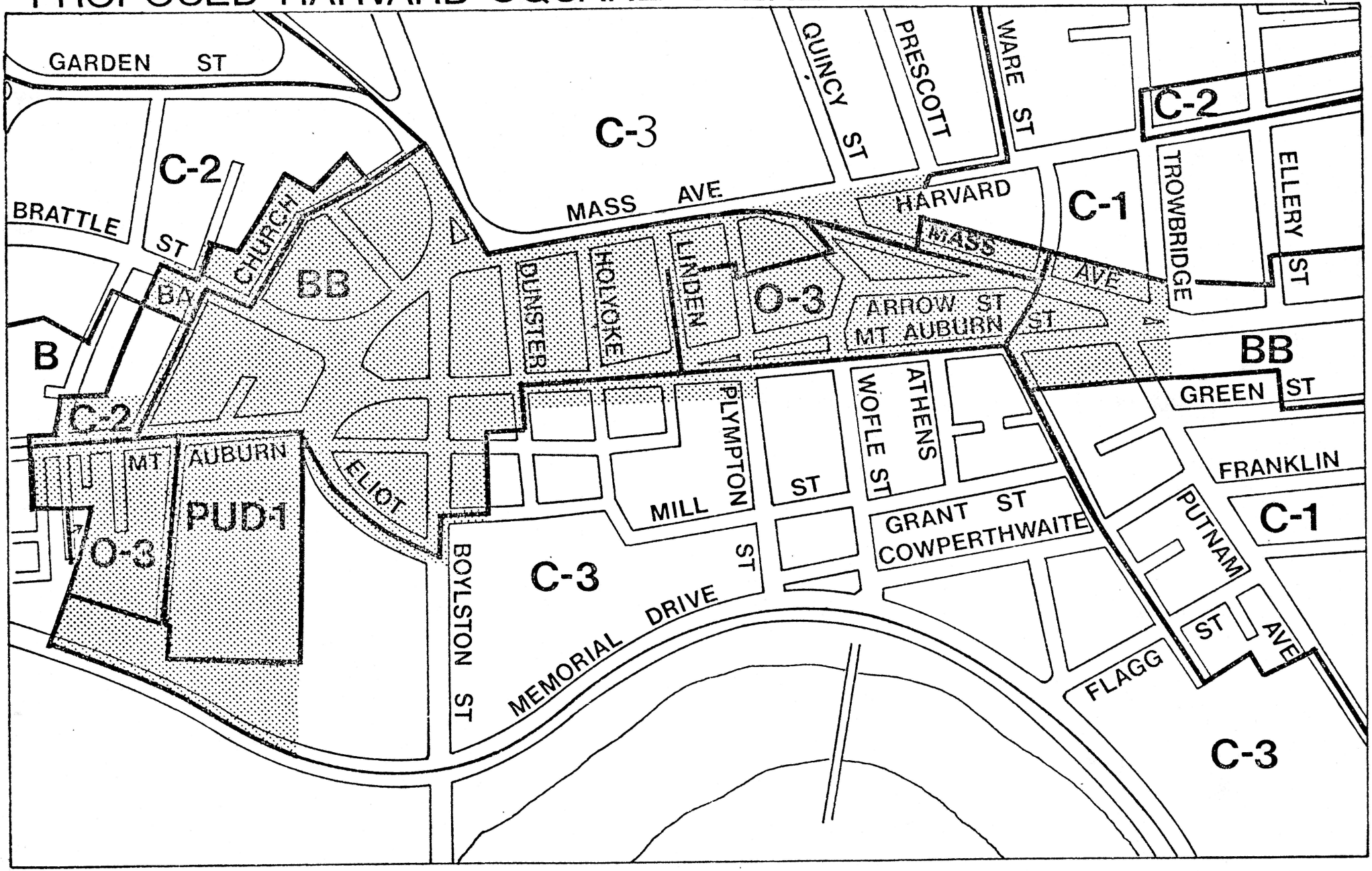
PROPOSED HARVARD SQUARE OVERLAY DISTRICT ▭

9/1/78



GUTERMAN, HORVITZ, RUBIN & RUDMAN

THREE CENTER PLAZA

BOSTON, MASSACHUSETTS 02108

617 227-8010

HAROLD HORVITZ
HOWARD RUBIN
STANLEY H. RUDMAN
ABRAHAM WEKSTEIN
MORRIS A. GREENBAUM
MILTON BORDWIN
I. FRANCIS GREGORY II
GITTA M. KURLAT
W. BRADLEY RYAN
PETER B. FINN
ANDREW J. NEWMAN
HAROLD STAHLER
CHARLES J. SPELEOTIS
J. ROBERT CASEY
PAUL G. ROBERTS
JOHN D. KALISH
MICHAEL R. CORPOCK
RAYMOND M. KWASNICK
DANA F. RODIN

GUTERMAN & GUTERMAN
1920-1933

CABLE ADDRESS
[illegible]

HAND DELIVERED

February 9, 1979

The Honorable Thomas Danehy
Mayor and Chairman, City Council
City Hall
Cambridge, MA 02139

Re: Harvard Square Overlay District Petition by
Mary Ellen Preusser, et al, and
Harvard Square Overlay District Petition by
Mary Ellen Preusser

Dear Sir:

Under date of January 22, 1979, the undersigned sent a letter to you, with copy as indicated, a photocopy of that same letter being herewith attached and incorporated herein as if fully set forth. In essence, we advised you as to our ownership of certain land covered by the proposed Harvard Square Overlay District Petition, together with other owner or owners of property similarly affected from whom you also received written notices. In combination, more than 20% of the affected land owners filed written protest. It became apparent at the meeting of the City Council of January 22 that by reason of the General Laws of Massachusetts Chapter 40A, Section 5, as amended, and other sections of the said chapter that the petition as presented would significantly and impermissibly impair and restrict the uses of the land for purported purposes without such planning being justifiable and would otherwise be illegal and improper.

Accordingly on January 22, 1979 when the above-referred to petition was presented to the City Council, the Council voted against passage of the said overlay petition by virtue of there being an absence of seven affirmative votes in favor of the same.

Our attention has now been called to a motion dated February 2, 1979 presented by Councilor Mary Ellen Preusser seeking not by petition but by motion that the vote of January 22, 1979 "be now recorded as 'passed to be ordained'. . ." and ". . .that the City Clerk is directed to correct his records accordingly and publish

the ordinance as adopted in the usual course". . . . There are other aspects to this motion, a photocopy of which in full is attached hereto and incorporated herein as if fully set forth. We were advised that the motion will come before the Council at its meeting on February 12, 1979.

We respectfully call your attention first to the fact that the filing under date of February 2, 1979 we have distinguished as a motion and, therefore, call your attention [illegible] of Order, Newly Revised Edition, section 35, page [illegible], the paragraph being entitled "Improper Motions". There is no question that the paragraph numbered one of the motion clearly refers to section 5 of Chapter 40A and to the Council's knowledge of the fact that 20% or more of the area of the land proposed to be included in the petition of January 22, 1979 filed a written protest against such change. Accordingly, when the vote was recorded as six in favor, two opposed and one "present", there was not an affirmative vote of three-fourths of all members of the City Council necessary to pass the said petition. A motion seeking to alter the result of that vote is an improper motion in accordance with Robert's Rules, as cited above, in that it conflicts with the laws of the Commonwealth of Massachusetts and as adopted would be null and void. For that reason alone, the motion should be ruled out of order and not be voted upon by the Council.

If in the alternative, the Chairman rules that the motion of February 2, 1979 is not a motion but a petition, your attention again is respectfully directed to the fact that more than 20% of the land to be affected has already recorded its protest and the undersigned again records his protest with regard to the petition of January 22, 1979 and the motion or petition of February 2, 1979 involving precisley the same subject matter.

Your attention is further respectfully [illegible] Wallace L. Trumper and Another vs. the City of Quincy, [illegible], involving the constitutionality of a [illegible] Quincy which was in substance precisely [illegible] ordinance here under consideration. [illegible] and to require a vote in the affirmative [illegible] members of the City Council where there [illegible] owners of 20% of the affected land. [illegible] consisting of nine or more members. The motion by Councillor [illegible], which aside from the specific quoted [illegible] cited, purports to set forth in [illegible] recording the vote of January 22, 1979 [illegible]

and in violation of the 14th Amendment of the Constitution of the United States. We respectfully suggest to you that the decision in Trumper, supra, clearly and definitively passes upon the issues raised in the motion, and that the decision by the Supreme Judicial Court, issued as recently as 1970, is clearly dispositive of the purported basis for the motion. There is not even room for small doubt that the Trumper case represents the law of the Commonwealth of Massachusetts, and any action by the City Council of Cambridge contrary to that decision would be null and void.

In the light of what we have said prior hereto and with absolute conviction that the Trumper case is the laws of the Commonwealth of Massachusetts, we must regretfully but insistently take the further position that the passage of the motion, either as a motion or a petition, would seriously affect the land involved and the value thereof, and significantly and impermissibly impair and restrict the uses of that land. We would regard the passage of the motion of Councilor Preusser as being a willful, intentional and wrongful act by the Council and members thereof who voted in favor of it and such other members of the City, its agents, servants or employees who would take affirmative action by the recording of the same or otherwise in the records of or on behalf of the City of Cambridge. Your attention in this regard is directed to General Laws of the Commonwealth of Massachusetts Chapter 258 (Chapter 512 of the Acts of 1978). The act makes members of the Council and any committee thereof liable for intentional torts as well as for acts and omissions which constitute a violation of the civil rights of any person. We respectfully suggest with the passage of this motion in the light of the substance of the law and the rules of procedure of the Council itself both as hereto cited, would constitute an intentional tort and would affect the civil rights of the undersigned.

Under all of the circumstances, therefore, we respectfully urge upon you that the motion itself be ruled out of order and that no action in connection therewith be taken by the City Council. If for any reason, the Council acts otherwise and a vote is taken, we urge upon you that in accordance with the laws of the Commonwealth of Massachusetts as defined by the Supreme Judicial Court, the motion or petition be voted down.

Very truly yours,
Louis F. DiGiovanni and
Louis F. DiGiovanni, Trustee
Trinity Realty Trust

Guterman, Horvitz, Rubin & Rudman

By: Stanley H. Rudman

SHR/djk
cc: City Council Members
Encs.

GUTERMAN, HORVITZ, RUBIN & RUDMAN

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MICHAEL R. CORPOCK
RAYMOND M. KWASNICK
DANA F. RODIN

GUTERMAN & GUTERMAN
[illegible]
[illegible]

HAND DELIVERED

February 9, 1979

The Honorable Thomas Danehy
Mayor and Chairman, City Council
City Hall
Cambridge, MA 02139

Re: Harvard Square Overlay District Petition by
Mary Ellen Preusser, et al, and
Harvard Square Overlay District Petition by
Mary Ellen Preusser

Dear Sir:

Under date of January 22, 1979, the undersigned sent a letter to you, with copy as indicated, a photocopy of that same letter being herewith attached and incorporated herein as if fully set forth. In essence, we advised you as to our ownership of certain land covered by the proposed Harvard Square Overlay District Petition, together with other owner or owners of property similarly affected from whom you also received written notices. In combination, more than 20% of the affected land owners filed written protest. It became apparent at the meeting of the City Council of January 22 that by reason of the General Laws of Massachusetts Chapter 40A, Section 5, as amended, and other sections of the said chapter that the petition as presented would significantly and impermissibly impair and restrict the use of the land for purposes purposes without such planning being justifiable and would otherwise be illegal and improper.

Accordingly on January 22, 1979 when the above-referred petition was presented to the City Council, the Council [illegible] against passage of the said overlay petition by virtue of there being an absence of seven affirmative votes in favor of the [illegible].

Our attention has now been called to a motion dated February 2, 1979 presented by Councilor Mary Ellen [illegible] petition but by motion that the vote of January 22, 1979 "be now recorded as 'passed to be ordained'. . ." and ". . . the City Clerk is directed to correct his records accordingly and publish

P. O. BOX 212 - HARVARD SQUARE
CAMBRIDGE, MASSACHUSETTS 02138

[illegible]

The Honorable Thomas Danehy
Mayor and Chairman, City Council
City Hall
Cambridge, Massachusetts 02139

Re: Harvard Square [illegible]
By Mary [illegible]

Dear Sir:

The undersigned owner of land in the area of land proposed to be included in the change of the Zoning Ordinance of the City of Cambridge sought by the captioned petition, or in the land immediately adjacent to such area of land and extending [illegible] therefrom, hereby protest against such change [illegible] c. [illegible]A, paragraph [illegible], as amended, for [illegible] that [illegible] change would [illegible] use of land [illegible] planned [illegible] amended, [illegible] uniform requirements [illegible] permitted; constitute an [illegible] to a non-legislative body with [illegible] exercise.

Very truly yours,

[illegible]

[illegible]

[illegible]

[illegible]

LFD:bc

cc: Lawrence W. Frisoli
Chairman, Ordinance Committee

P. O. BOX 212 - HARVARD SQUARE
CAMBRIDGE, MASSACHUSETTS 02138

[illegible]

The Honorable Thomas Danehy
Mayor and Chairman, City Council
City Hall
Cambridge, Massachusetts 02139

Re: Harvard Square [illegible]
By Mary Ellen [illegible]

Dear Sir:

The undersigned owner of land in the area of land proposed to be included in the change of the Zoning Ordinance of the City of Cambridge sought by the captioned petition, or on the land immediately adjacent to such area of land and extending [illegible] feet therefrom, hereby protest against such change pursuant to G.L. c. [illegible] A, paragraph 5, as amended, for the reasons, among others, that [illegible] change would: [illegible] and [illegible] use of land for [illegible] planning [illegible] amended, by [illegible] uniform requirements for each class or [illegible] permitted; constitute an [illegible] power to a non-legislative body with [illegible] for its exercise.

Very truly yours,

[illegible]

[illegible]

[illegible]

[illegible]

LFD:bc

cc: Lawrence W. Frisoli
Chairman, Ordinance Committee

City of Cambridge

COUNCILLOR PREUSSER

IN CITY COUNCIL

February 2, 1979

WHEREAS, the vote of the City Council taken on January 2[illegible], 1979, on [illegible] adoption of the proposed zoning ordinance [illegible], [illegible] a Harvard Square Overlay District, was recorded as 6 in favor, 2 opposed and 1 "present"; and

WHEREAS, the presiding officer declared that the proposed ordinance failed of passage, presumably due to the filing of objections [illegible] the provisions of [illegible] Section 5; and

WHEREAS, the legal effect of such vote is [illegible]:

1. The vote of "present" may satisfy the requirement of Section 5 which reads in part as follows:

   "No zoning ordinance or by-law shall be adopted or changed [illegible] by a two-thirds vote of all the members of the town council, [illegible] of the city council where there is a commission form of government or a single branch, or of each branch [illegible] branches, or by a two-thirds vote of a town meeting [illegible] that if in a city or town with a [illegible] five members there is filed with the [illegible] by the council a written protest [illegible] reasons duly signed by owners of twenty per cent or more [illegible] area of the land proposed to be included in such change, [illegible] area of the land immediately adjacent [illegible] therefrom, no such change of any such ordinance shall be adopted except by a three-fourths vote of all members."

AND

2. The recorded vote was sufficient for [illegible] [illegible] three-fourths vote [illegible] the U.S. [illegible] City of Cambridge [illegible] by:

   (a) permitting certain corporate [illegible] tial areas of land [illegible] lative enactment of the zoning [illegible] lands [illegible] tants of Cambridge [illegible];

City of Cambridge

COUNCILLOR PREUSSER

IN CITY COUNCIL

February [illegible]

WHEREAS, the vote of the City Council taken on [illegible], 1979, [illegible] adoption of the proposed zoning ordinance [illegible] Overlay District, was recorded as 6 in favor, 2 opposed and 1 "present"; and

WHEREAS, the presiding officer declared that the proposed ordinance [illegible] of [illegible], presumably due to the filing of objections [illegible] the provisions of [illegible]; and

WHEREAS, the legal effect of such vote is [illegible]:

1. The vote of "present" may satisfy the [illegible] which reads in part as follows:

   "No zoning ordinance or by-law shall be adopted or changed [illegible] by a two-thirds vote of all the members of the [illegible] of the city council where there is a [illegible] or a single branch, or of each [illegible] branches, or by a two-thirds vote of [illegible] that is in [illegible] [illegible] by the council a written [illegible] reasons duly signed by [illegible] area of the land proposed to be [illegible] area of the land immediately [illegible] therefrom, no such change of any such ordinance shall be [illegible] except by a three-fourths vote of all [illegible]."

AND

2. The recorded vote was sufficient for [illegible] [illegible] three-fourths vote [illegible] the U.S. [illegible] City of Cambridge [illegible] by:

   (a) permitting certain corporate [illegible] tial areas of land to [illegible] lative enactment of [illegible] lands lying [illegible] tants of Cambridge [illegible]

the ordinance as adopted in the usual [illegible] ". . . . [illegible] other aspects to this motion, a photocopy of which in full [illegible] attached hereto and incorporated herein as [illegible] set forth. We were advised that the motion will come [illegible] the Council at its meeting on February 12, 1979.

We respectfully call your attention first to the fact that the filing under date of February 2, 1979 we have distinguished as a motion and, therefore, call your [illegible] of Order, Newly Revised Edition, Section [illegible] being entitled "Improper Motions". There [illegible] paragraph numbered one of the motion [illegible] of Chapter 40A and to the Council's knowledge of the fact that [illegible] or more of the area of the land proposed [illegible] petition of January 22, 1979 filed a written protest against such change. Accordingly, when the vote was recorded as six in favor, two opposed and one "present", there was not an affirmative vote of three-fourths of all members of the City Council necessary to pass the said petition. A motion [illegible] that vote is an improper motion in [illegible] with [illegible], as cited above, in that it conflicts with [illegible] wealth of Massachusetts and [illegible] that reason alone, the motion should be [illegible] be voted upon by the Council.

If in the alternative, the Chairman rules that the motion of February 2, 1979 is not a motion but a petition, your attention again is respectfully directed to the fact that more than [illegible] of the land to be affected has already recorded its protest and the undersigned again records his protest with regard to the petition of January 22, 1979 and the motion or petition of February 2, 1979 involving precisley the same subject matter.

Your attention is further respectfully [illegible] Wallace L. Trumper and Another vs. the [illegible], involving the constitutionality of [illegible] Quincy which was in substance precisely [illegible] ordinance here under consideration. [illegible] and to require a vote in the affirmative [illegible] members of the City Council where [illegible] owners of 20% of the affected land. [illegible] consisting of nine or more members. [illegible] which aside from the specific quoted [illegible] cited, purports to set forth in [illegible] recording the vote of January 22, [illegible]

and in violation of the 14th Amendment of the Constitution of the United States. We respectfully suggest to you that the decision in Trumper, supra, clearly and definitively passes upon the issues raised in the motion, and that the decision by the Supreme Judicial Court, issued as recently as 1970, is clearly dispositive of the purported basis for the motion. There is not even room for small doubt that the Trumper case represents the law of the Commonwealth of Massachusetts, and any action by the City Council of Cambridge contrary to that decision would be null and void.

In the light of what we have said prior hereto and with absolute conviction that the Trumper case is the laws of the Commonwealth of Massachusetts, we must regretfully but insistently take the further position that the passage of the motion, either as a motion or a petition, would seriously affect the land involved and the value thereof, and significantly and impermissibly impair and restrict the uses of that land. We would regard the passage of the motion of Councilor Preusser as being a willful, intentional and wrongful act by the Council and members thereof who voted in favor of it and such other members of the City, its agents, servants or employees who would take affirmative action by the recording of the same or otherwise in the records of or on behalf of the City of Cambridge. Your attention in this regard is directed to General Laws of the Commonwealth of Massachusetts Chapter 25[illegible] (Chapter 51[illegible] of the Acts of 1978). The act makes members of the Council and any committee thereof liable for intentional torts as well as for acts and omissions which constitute a violation of the civil rights of any person. We respectfully suggest with the passage of this motion in the light of the substance of the law and the rules of procedure of the Council itself both as hereto cited, would constitute an intentional tort and would affect the civil rights of the undersigned.

Under all of the circumstances, therefore, we respectfully urge upon you that the motion itself be ruled out of order and that no action in connection therewith be taken by the City Council. If for any reason, the Council acts otherwise and a vote is taken, we urge upon you that in accordance with the laws of the Commonwealth of Massachusetts as defined by the Supreme Judicial Court, the motion or petition be voted down.

Very truly yours,
Louis F. DiGiovanni and
Louis F. DiGiovanni, Trustee
Trinity Realty Trust

Guterman, Horvitz, Rubin & Rudman

By: Stanley H. Rudman

SHR/djk
cc: City Council Members
Encs.

HARVARD UNIVERSITY

Office of Government and
Community Affairs

16 Grays Hall
Cambridge, Massachusetts 02138
617-495-4955

RECEIVED BY
OFFICE OF CITY CLERK
Dec 18 4 01 PM '78
CAMBRIDGE, MASS.

December 18, 1978

City Clerk
City of Cambridge
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Harvard Square Overlay District Petition by Mary Ellen Preusser, et al., filed with the City Clerk on September 5, 1978.

Dear Sir:

The undersigned, owner of 20% or more of the area of land proposed to be included in the change to the Zoning Ordinance of the City of Cambridge sought by the captioned petition, or of the land immediately adjacent to such area of land and extending three hundred feet therefrom, have reviewed the amendments to the captioned petition as set forth in the Planning Board's letter to the City Council dated December 14, 1978; confirms its protest against such change pursuant to G.L. c. 40A Section 5, as amended, for the reasons, among others, that such change would: significantly and impermissibly impair and restrict the use of land for proper purposes without sufficient planning justification; violate G.L. c. 40A Section 4, as amended, by creating a zoning district within which there are not uniform requirements for each class or kind of structures or uses permitted; constitute an improper delegation of the zoning power to a non-legislative body without adequate standards for its exercise.

Hand Delivered:
RETURN RECEIPT REQUESTED

Sincerely,

PRESIDENT AND FELLOWS OF HARVARD COLLEGE

By: _____

ORDINANCE NO. 908.

Final Publication No. 1972. First Publication in the Chronicle-Sun on December 21, 1978.

City of Cambridge

In the Year One Thousand, Nine Hundred Seventy-Nine

AN ORDINANCE

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

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

The Zoning Map accompanying the ordinance passed to be ordained September 26, 1977 entitled: "The Zoning Ordinances of the City of Cambridge" is hereby amended by establishing an overlay zone designated "Harvard Square Overlay District" in the area bounded by Church Street, Massachusetts Avenue, Brattle Street, Farwell Place, Story Street, Mt. Auburn Street, Hilliard Street, Gerry Street, Revere Street, Memorial Drive, Bennett Street, Eliot Street, Boylston Street, South Street, Dunster Street, Holyoke Place, Plympton Street, Banks Street, Putnam Avenue, Trowbridge Street, Harvard Street, Bow Street, Arrow Street, Linden Street, Winthrop Street, Palmer Street, Mifflin Place, University Road, Nutting Road and Revere Street, as outline on the map below.

Also by amending the text of the Zoning Ordinances by adding a new section 3.12 in Section 3.10 entitled: "Division of the City into Zoning Districts".

Also by adding in Article 11.00 entitled: "Special Regulations" the following new section 11.40 entitled: Harvard Square Overlay District".

In City Council January 22, 1979.

Failed of ordination by a yea and nay vote:- Yeas 6; Nays 2; Absent 0; Present 1.

James L. Sullivan, City Manager.

ATTEST:- Paul E. Healy, City Clerk.

NOTE: Pursuant to the provisions of General Laws, Chapter 40, Section 32A, Tercentenary Edition, the ordinance as aforesaid which exceeds in length eight octavo pages of ordinary book print may be summarized for publication in a newspaper of general circulation in the city with the further provision that said Zoning Ordinance may be examined and obtained at the City Clerk's Office during office hours and that any objection to its invalidity by reason of any defect in the procedure of adoption may only be made within ninety days after the posting or the second publication.

ATTEST:- Paul E. Healy, City Clerk.

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 a public hearing will be held by the Committee on Ordinances, comprised of the entire membership of the City Council on **Monday, December 18, 1978 at 8:30 P. M.** in the City Council Chambers, City Hall, Cambridge, Massachusetts on a petition by **Alfred E. Vellucci** to amend the Zoning Ordinances of the City of Cambridge by striking out the designation Residence C-3 and substituting in place thereof the designation Residence C-2A insofar as it relates to the following described areas of land:-

Premises of the following parcels as designated on Assessors Plat No. 156. Odd numbers 7 through 37 Mellen Street, even numbers 8 through 34 Wendell Street, odd numbers 61 through 69 Oxford Street, odd numbers 1637 and 1645 Massachusetts Avenue and which includes all or parts of lots numbered 26, 86, 60, 61, 29, 30, 31, 32, 33, 83, 36, 37, 38, 39, 40, 57, 56, 55, 82, 53, 52, 51, 50, 49, 48, 47, 46, 45, 87, 80, 82, 90, 41, 91, 92 as shown on Assessors' Plat No. 156;

Premises of the following parcels as designated on Assessors' Plat No. 157. Odd numbers 3 through 37 Everett Street, odd numbers 1607 through 1627 Massachusetts Avenue, odd numbers 45 through 53 Oxford Street and even numbers 6 through 24 Mellen Street, and which includes all or parts of lots numbered 1, 39, 26, 52, 53, 54, 49, 50, 2, 3, 4, 5, 6, 7, 8, 23, 51, 20, 68, 19, 61, 64, 65, 66, 67, 62, 63 as shown on Assessors' Plat No. 157; and which is bounded and described as follows:-

Beginning at a point said point being theintersection of a line 100 feet distant from and parallel to the southeastern streetline of Massachusetts Avenue and the centerline of Wendell Street;

Thence running southwesterly along a line 100 feet distant from and parallel to the southeastern streetline of Massachusetts Avenue 125 feet more or less to a point said point being the intersection of a line 100 feet distant from and parallel to the southeastern streetline of Massachusetts Avenue and a line 100 feet distant from and parallel to the southwestern streetline of Wendell Street;

Thence running northwesterly along a line 100 feet distant from and parallel to the southwestern streetline of Wendell Street and its extension 150 feet more or less to a point said point being the intersection of a line 100 feet distant from and parallel to the southwestern streetline of Wendell Street and its extension and the centerline of Massachusetts Avenue;

Thence running southwesterly along the centerline of Massachusetts Avenue 515 feet more or less to a point said point being the intersection of the centerline of Massachusetts Avenue and the centerline of Everett Street and its extension;

Thence running southeasterly along the centerline of Everett Street and its extension 925 feet more or less to a point said point being the intersection of the centerline of Everett Street and its extension and the centerline of Oxford Street;

Thence running northeasterly along the centerline of Oxford Street 660 feet more or less to a point said point being the intersection of the centerline of Oxford Street and the centerline of Wendell Street and its extension;

Thence running northwesterly along the centerline of Wendell Street and its extension 775 feet more or less to the point of origin and which comprises an area of 591,750 square feet more or less.

AMEND THE TEXT OF THE ORDINANCE AS FOLLOWS:

1. In Section 3.10, Division of the City Into Zoning Districts, amend the first sentence of subsection 3.11 by changing "sixteen classes of districts" to "seventeen classes of districts," by renumbering items 6 through 16 in the list of districts as 7 through 17 respectively, and by inserting the following in the list:

"6. Residence C-2A ... Multi-Family Dwellings"

2. Amend Section 4.22 "Offices in Residences" so that it reads as follows:

In Residence C-2A and C-3 districts offices for physicians and dentists may be located on the first or second floor of a residential building where such office space does not exceed ten percent of the gross floor areas of the building.

3. In Section 4.30, Table of Use Regulations, change the column heacing " Res. C-1,2,3" so that it reads " Res. C-1, 2, 2A, 3."

4. In Sec. 4.30, Table of Use Regulations, change the footnotes to subsections 4.31e (2) (Hotel or Motel) and 4.31f (2) (Lodging House) so that each one reads as follows:

" C-2, C-2A and C-3 only; no in C-1 and O-1."

4. In Section 5.30, District Dimension Regulations amend Table 5-1 by adding the following new row and footnotes:

Table 5-1. Table of Dimensional Requirements - Residential Districts

District	(1) Max. Ratio of Floor Area to Lot Area	(2) Minimum Lot Size in Sq. Ft.	(3) Min. Lot Area for Each D.U. in Sq. Ft.	(4) Minimum Lot Width in feet	(5) Minimum Yard in Feet			(6) Minimum Height in Feet	(7) Min. Ratio of Useable Op. Sp. to Lot Area
					Front	Side	Rear		
Res. C-2A	2.5	5,000	300	50	H+1. (b). (d) / 5	H+1. (d) / 6	H+L (c) / 5	60	10 (e)

(d) In no case may a building on any lot which abuts or is separated only by a public or private way from Residence A-1, A-2, B, C-1 or C-2 district be nearer the street line or side line of the lot than the minimum front and side yard requirements for the residential district which said lot abuts or from which it is separated by a way. However, such increased setback requirements shall only apply to any part of a building which is located within 125 feet of a Residence A-1, A-2, B, C-1 or C-2 district.

(e) The minimum ratio of usable open space to lot area required for a lot which abuts or is separated only by a public or private way from a Residence A-1, A-2, B, C-1 or C-2 district shall be equal to the amount of usable open space required in the residential district which said lot abuts or from which it is separated by a way.

6. In Section 5.30, District Dimensional Regulations, amend subsection 5.31 (3c) by changing the first clause so that it reads as follows:

(c) In a Residence C-1, C-2, C-2A or C-3 district if a building is hereafter erected on a lot adjacent to a building having a blank wall directly on the side lot line, the new building may be so designed and erected that it will be flush with that portion of the blank wall of the former building which extends along the lot line.

7. In Section 6.30, Table of Parking Requirements, add "Residence C-2A" to the heading for the third row so that it reads as follows:

Zoning District	Residence: Minimum number spaces per group of dwelling units	Public Assembly: Number seats requiring 1 space	Institution	Retail & Office: Ground Floor	Retail & Office: Other Level	Factory Warehouse
Res. C-2A Res. C-3 Office-3	1.0 per 1.0	15	1,800 s.f.	900 s.f.	1,800 s.f.	2,000 s.f.
Ind. B Bus. C						

8. In Section 6.50, Location and Layout of Parking Facilities amend subsection 6.51 (1) so that it reads as follows:

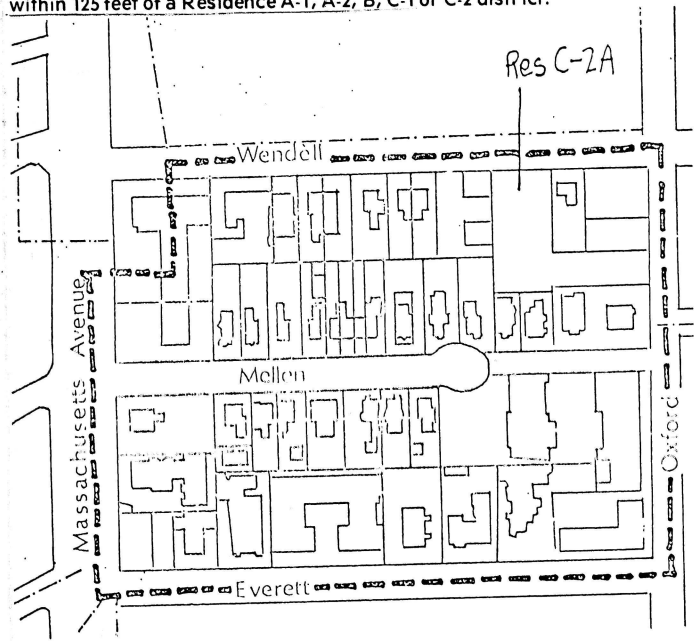
"1. In the case of new construction of a multi-family apartment building in a Residence C-2A, Residence C-3 or Office 3 district, the required parking facilities may be provided on lots not more than two hundred feet away from the building to be served."

9. In Section 11.10, Townhouse Development, amend subsection 11.12 so that it reads as follows:

11.12 **Area of Applicability.** Townhouse developments which meet the development standards set forth in Section 11.13 shall be allowed in Residence B, C-1, C-2, C-2A, C-3 and Business A, A-1, B, and C districts. The development standards established herein are applicable only to townhouse developments and do not change in any way the development standards for other uses in the Residence B, C-1, C-2, C-2A, C-3 and Business A, A-1, B, and C districts."

10. In Section 6.50, Location and Layout of Parking Facilities, add the following subsection:

6.59 No on-grade parking shall be allowed in Residence C-2A districts within 125 feet of a Residence A-1, A-2, B, C-1 or C-2 district.



Mellen Street Rezoning
Res C-3 to Res C-2A

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 a public hearing will be held by the Committee on Ordinances, comprised of the entire membership of the City Council on **Monday, December 18, 1978 at 8:30 P. M.** in the City Council Chambers, City Hall, Cambridge, Massachusetts on a petition by **Alfred E. Vellucci** to amend the Zoning Ordinances of the City of Cambridge by striking out the designation Residence C-3 and substituting in place thereof the designation Residence C-2A insofar as it relates to the following described areas of land:-

Premises of the following parcels as designated on Assessors Plat No. 156. Odd numbers 7 through 37 Mellen Street, even numbers 8 through 34 Wendell Street, odd numbers 61 through 69 Oxford Street, odd numbers 1637 and 1645 Massachusetts Avenue and which includes all or parts of lots numbered 26, 86, 60, 61, 29, 30, 31, 32, 33, 83, 36, 37, 38, 39, 40, 57, 56, 55, 82, 53, 52, 51, 50, 49, 48, 47, 46, 45, 87, 80, 82, 90, 41, 91, 92 as shown on Assessors' Plat No. 156;

Premises of the following parcels as designated on Assessors' Plat No. 157. Odd numbers 3 through 37 Everett Street, odd numbers 1607 through 1627 Massachusetts Avenue, odd numbers 45 through 53 Oxford Street and even numbers 6 through 24 Mellen Street, and which includes all or parts of lots numbered 1, 39, 26, 52, 53, 54, 49, 50, 2, 3, 4, 5, 6, 7, 8, 23, 51, 20, 68, 19, 61, 64, 65, 66, 67, 62, 63 as shown on Assessors' Plat No. 157; and which is bounded and described as follows:-

Beginning at a point said point being the intersection of a line 100 feet distant from and parallel to the southeastern streetline of Massachusetts Avenue and the centerline of Wendell Street;

Thence running southwesterly along a line 100 feet distant from and parallel to the southeastern streetline of Massachusetts Avenue 125 feet more or less to a point said point being the intersection of a line 100 feet distant from and parallel to the southeastern streetline of Massachusetts Avenue and a line 100 feet distant from and parallel to the southwestern streetline of Wendell Street;

Thence running northwesterly along a line 100 feet distant from and parallel to the southwestern streetline of Wendell Street and its extension 150 feet more or less to a point said point being the intersection of a line 100 feet distant from and parallel to the southwestern streetline of Wendell Street and its extension and the centerline of Massachusetts Avenue;

Thence running southwesterly along the centerline of Massachusetts Avenue 515 feet more or less to a point said point being the intersection of the centerline of Massachusetts Avenue and the centerline of Everett Street and its extension;

Thence running southeasterly along the centerline of Everett Street and its extension 925 feet more or less to a point said point being the intersection of the centerline of Everett Street and its extension and the centerline of Oxford Street;

Thence running northeasterly along the centerline of Oxford Street 660 feet more or less to a point said point being the intersection of the centerline of Oxford Street and the centerline of Wendell Street and its extension;

Thence running northwesterly along the centerline of Wendell Street and its extension 775 feet more or less to the point of origin and which comprises an area of 591,750 square feet more or less.

AMEND THE TEXT OF THE ORDINANCE AS FOLLOWS:

1. In Section 3.10, Division of the City Into Zoning Districts, amend the first sentence of subsection 3.11 by changing "sixteen classes of districts" to "seventeen classes of districts," by renumbering items 6 through 16 in the list of districts as 7 through 17 respectively, and by inserting the following in the list:

"6. Residence C-2A ... Multi-Family Dwellings"

2. Amend Section 4.22 "Offices in Residences" so that it reads as follows:

In Residence C-2A and C-3 districts offices for physicians and dentists may be located on the first or second floor of a residential building where such office space does not exceed ten percent of the gross floor areas of the building.

3. In Section 4.30, Table of Use Regulations, change the column heading " Res. C-1,2,3" so that it reads " Res. C-1, 2, 2A, 3."

4. In Sec. 4.30, Table of Use Regulations, change the footnotes to subsections 4.31e (2) (Hotel or Motel) and 4.31f (2) (Lodging House) so that each one reads as follows:

" C-2, C-2A and C-3 only; no in C-1 and O-1."

4. In Section 5.30, District Dimension Regulations amend Table 5-1 by adding the following new row and footnotes:

Table 5-1. Table of Dimensional Requirements - Residential Districts

District	(1) Max. Ratio of Floor Area to Lot Area	(2) Minimum Lot Size in Sq. Ft.	(3) Min. Lot Area for Each D.U. in Sq. Ft.	(4) Minimum Lot Width in Feet	(5) Minimum Yard in Feet: Front	Side	Rear	(6) Minimum Height In Feet	(7) Min. Ratio of Usable Op. Sp. to Lot Area
Res. C-2A	2.5	5,000	300	50	H+1. (b). (d) 5	H+1. (d) 6	H+L (c) 5	60	10 (e)

(d) In no case may a building on any lot which abuts or is separated only by a public or private way from Residence A-1, A-2, B, C-1 or C-2 district be nearer the street line or side line of the lot than the minimum front and side yard requirements for the residential district which said lot abuts or from which it is separated by a way. However, such increased setback requirements shall only apply to any part of a building which is located within 125 feet of a Residence A-1, A-2, B, C-1 or C-2 district.

(e) The minimum ratio of usable open space to lot area required for a lot which abuts or is separated only by a public or private way from a Residence A-1, A-2, B, C-1 or C-2 district shall be equal to the amount of usable open space required in the residential district which said lot abuts or from which it is separated by a way.

6. In Section 5.30, District Dimensional Regulations, amend subsection 5.31 (3c) by changing the first clause so that it reads as follows:

(c) In a Residence C-1, C-2, C-2A or C-3 district if a building is hereafter erected on a lot adjacent to a building having a blank wall directly on the side lot line, the new building may be so designed and erected that it will be flush with that portion of the blank wall of the former building which extends along the lot line.

7. In Section 6.30, Table of Parking Requirements, add "Residence C-2A" to the heading for the third row so that it reads as follows:

Zoning District	Residence: Minimum number spaces per group of dwelling units	Public Assembly: Number seats requiring 1 space	Institution	Retail & Office: Ground Floor	Retail & Office: Other Level	Factory Warehouse
Res. C-2A Res. C-3 Office-3	1.0 per 1.0	15	1,800 s.f.	900 s.f.	1,800 s.f.	2,000 s.f.
Ind. B Bus. C						

8. In Section 6.50, Location and Layout of Parking Facilities amend subsection 6.51 (1) so that it reads as follows:

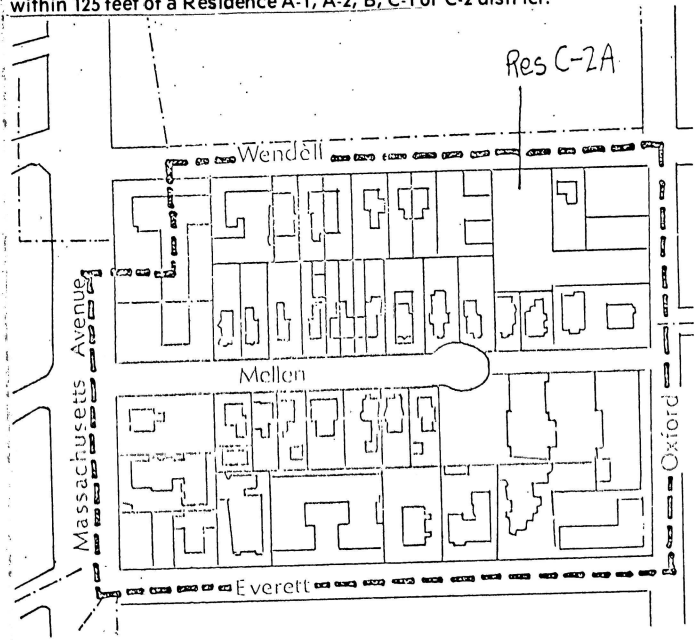
"1. In the case of new construction of a multi-family apartment building in a Residence C-2A, Residence C-3 or Office 3 district, the required parking facilities may be provided on lots not more than two hundred feet away from the building to be served."

9. In Section 11.10, Townhouse Development, amend subsection 11.12 so that it reads as follows:

11.12 **Area of Applicability.** Townhouse developments which meet the development standards set forth in Section 11.13 shall be allowed in Residence B, C-1, C-2, C-2A, C-3 and Business A, A-1, B, and C districts. The development standards established herein are applicable only to townhouse developments and do not change in any way the development standards for other uses in the Residence B, C-1, C-2, C-2A, C-3 and Business A, A-1, B, and C districts."

10. In Section 6.50, Location and Layout of Parking Facilities, add the following subsection:

6.59 No on-grade parking shall be allowed in Residence C-2A districts within 125 feet of a Residence A-1, A-2, B, C-1 or C-2 district.



Mellen Street Rezoning
Res C-3 to Res C-2A

Harvard Sq. Overlay Petition

MOTION FOR RECONSIDERATION SUBMITTED BY COUNCILLORS DUEHAY AND PREUSSER

JANUARY 22, 1979
Date

Councillors Duehay and Preusser have notified the City Clerk of their intention to move reconsideration of the vote of the City Council on January 22, 1979 failing to ordain the proposed amendment to the Zoning Ordinances of the City of Cambridge submitted by Councillor Mary Ellen Preusser providing for a Special Overlay for the Harvard Square Business Area.

Mary Ellen Preusser
Keith H. Duehay
Signature

HARVARD UNIVERSITY

RECEIVED BY
OFFICE OF CITY CLERK
DEC 18 4 01 PM '78
CAMBRIDGE, MASS.

OFFICE OF GOVERNMENT AND
COMMUNITY AFFAIRS

16 GRAYS HALL
CAMBRIDGE, MASSACHUSETTS 02138
617-495-4955

December 18, 1978

City Clerk
City of Cambridge
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Harvard Square Overlay District Petition by Mary Ellen Preusser, et al., filed with the City Clerk on September 5, 1978.

Dear Sir:

The undersigned, owner of 20% or more of the area of land proposed to be included in the change to the Zoning Ordinance of the City of Cambridge sought by the captioned petition, or of the land immediately adjacent to such area of land and extending three hundred feet therefrom, have reviewed the amendments to the captioned petition as set forth in the Planning Board's letter to the City Council dated December 14, 1978; confirms its protest against such change pursuant to G.L. c. 40A Section 5, as amended, for the reasons, among others, that such change would: significantly and impermissibly impair and restrict the use of land for proper purposes without sufficient planning justification; violate G.L. c. 40A Section 4, as amended, by creating a zoning district within which there are not uniform requirements for each class or kind of structures or uses permitted; constitute an improper delegation of the zoning power to a non-legislative body without adequate standards for its exercise.

Hand Delivered:
RETURN RECEIPT REQUESTED

Sincerely,

PRESIDENT AND FELLOWS OF HARVARD COLLEGE

By: _____

NEIGHBORHOOD NINE ASSOCIATION
Cambridge, Mass. 02140

January 22, 1979

The Cambridge City Council
City Hall
Cambridge, Mass. 02139

Re: Petition for an Overlay District in Harvard Square

Dear Honorable Councillors:

The directors of the Neighborhood Nine Association support the petition for an overlay district for Harvard Square.

Recognizing that currently increasing development pressures threaten to change the local sky line and local traffic flows in ways which may detract from our quality of life, we believe it to be in local residents' interests to have a review and information-communicating process available to them routinely when building permits for high-rise structures are sought.

We urge you to support this petition as an early step towards ensuring that Cambridge's neighborhood shopping centers remain in human scale and in harmony with local markets.

Very truly yours,

Topliffe Sawyer
President

HARVARD UNIVERSITY

Office of Government and
Community Affairs

16 Grays Hall
Cambridge, Massachusetts 02138
617-495-4955

December 18, 1978

City Clerk
City of Cambridge
Cambridge City Hall
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Hand Delivered:
RETURN RECEIPT REQUESTED

Sincerely,

PRESIDENT AND FELLOWS OF HARVARD COLLEGE

By: _____

C. C. 106

City of Cambridge

PETITION OF MARY ELLEN PREUSSER, ET AL.

RE: SPECIAL OVERLAY DISTRICT FOR HARVARD SQUARE BUSINESS AREA.

Petition filed with the City Clerk — September 5, 1978

(All hearings to be completed 65 days from filing date with the City Clerk.)

25 days = Sept.
31 days = Oct.
9 days = Nov.
65 days = November 9, 1978 — November 9, 1978

In City Council — September 11, 1978

Referred to Planning Board for report — September 13, 1978

Planning Board Hearing — October 24, 1978

(CITY COUNCIL must act within 90 days of the Planning Board's hearing which would be January 22, 1979.)

7 days = October
30 days = November
31 days = December
22 days = January
90 days = January 22, 1979 — January 22, 1979

City Council Hearing published — Chronicle — September 28, 1978; October 5, 1978

Hearing before the City Council — October 19, 1978 at 6 PM

Report to the City Council — 10/23/78

Passed to a second reading — As amended — 12/18/78
Published — Cambridge Chronicle 12/21/78; Cambridge Ed. Herald 12/26/78

Ready for Ordination — On/or after 1/8/79
Published

COMPLETION DATE: JANUARY 22, 1978

FIRST PUBLICATION NO. 1970.

City of Cambridge

In the Year One Thousand, Nine Hundred Seventy-Eight

AN ORDINANCE

In an amendment to an ordinance entitled: "The Zoning Ordinance of the City of Cambridge".

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

The Zoning Map accompanying the ordinance passed to be ordained September 26, 1977 entitled: "The Zoning Ordinance of the City of Cambridge" is hereby amended by establishing an overlay zone designated "Harvard Square Overlay District" in the area bounded by Church Street, Massachusetts Avenue, Brattle Street, Farwell Place, Story Street, Mt. Auburn Street, Hilliard Street, Gerry Street, Revere Street, Memorial Drive, Bennett Street, Eliot Street, Boylston Street, South Street, Dunster Street, Holyoke Place, Plympton Street, Banks Street, Putnam Avenue, Trowbridge Street, Harvard Street, Bow Street, Arrow Street, Linden Street, Winthrop Street, Palmer Street, Mifflin Place, University Road, Nutting Road, and Revere Street, as outlined on the map below.
Also by amending the text of the Zoning Ordinances by adding a new section 3.12 in Section 3.10 entitled "Division of the City Into Zoning Districts".

Also by adding in Article 11.00 entitled: "Special Regulations" the following new section 11.40 entitled: "Harvard Square Overlay District".

Passed to a second reading as amended at the City Council meeting of December 18, 1978 and on or after January 8, 1979 the question may be on passing to be ordained.

ATTEST:- Paul E. Healy, City Clerk.

NOTE: Pursuant to the provisions of General Laws, Chapter 40, Section 32A, Tercentenary Edition, the ordinance as aforesaid which exceeds in length eight octavo pages of ordinary book print may be summarized for publication in a newspaper of general circulation in the city with the further provision that said Zoning Ordinance may be examined and obtained at the City Clerk's Office during office hours and that any objection to its invalidity by reason of any defect in the procedure of adoption may only be made within ninety days after the posting or the second publication.

ATTEST:- Paul E. Healy, City Clerk.

FIRST PUBLICATION NO. 1970.

City of Cambridge

In the Year One Thousand, Nine Hundred Seventy-Eight

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FIRST PUBLICATION NO. 1970.

City of Cambridge

In the Year One Thousand, Nine Hundred Seventy-Eight

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Passed to a second reading as amended at the City Council meeting of December 18, 1978 and on or after January 8, 1979 the question may be on passing to be ordained.

ATTEST:- Paul E. Healy, City Clerk.

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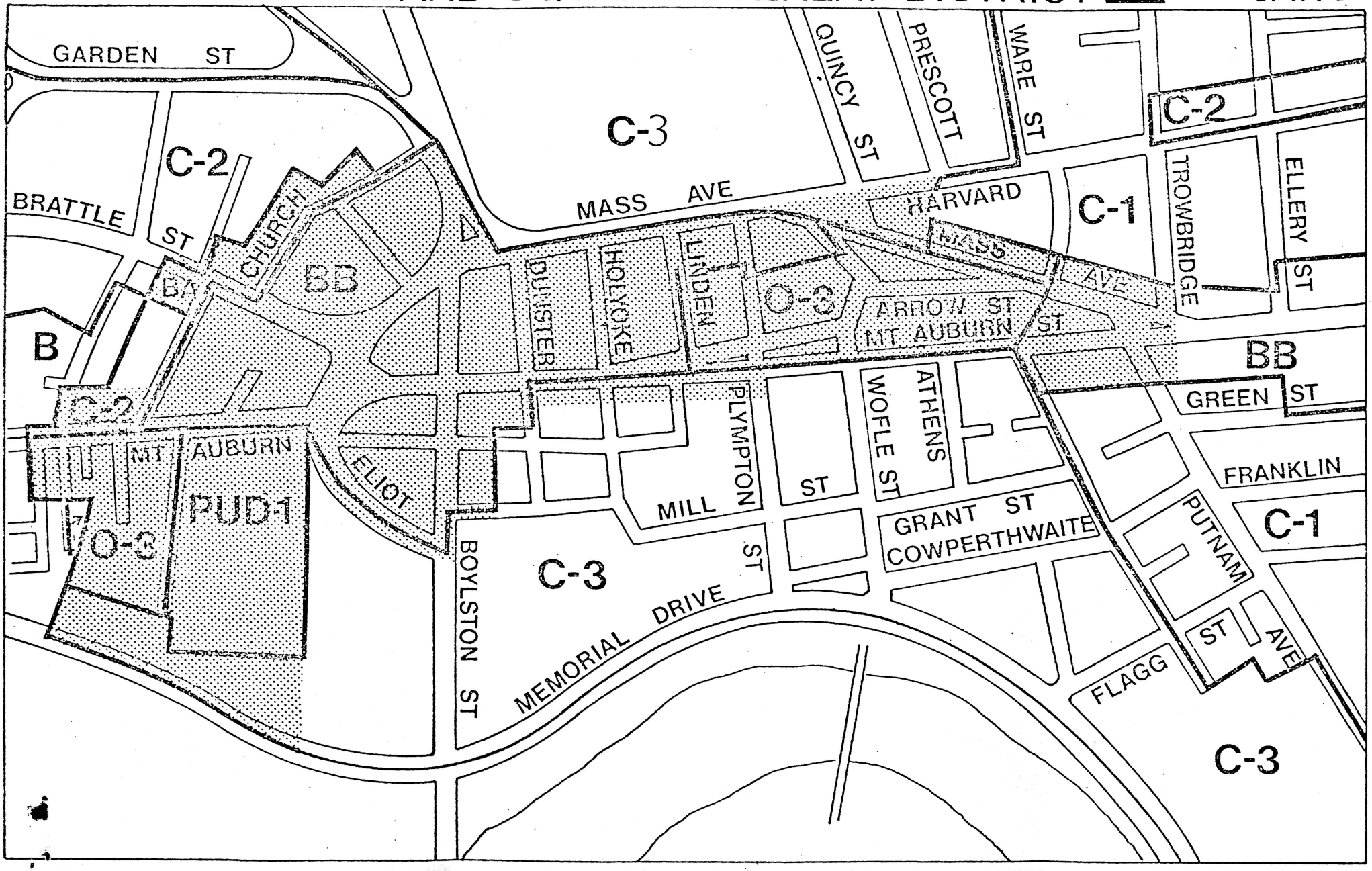
ATTEST:- Paul E. Healy, City Clerk.

PROPOSED HARVARD SQUARE OVERLAY DISTRICT ▭

9/1/78



City of Cambridge

In City Council October 23, 1978

The City Council *Committee* on Ordinances

to which was referred the petition of Councillor Mary Ellen Preusser, et al, to amend the text of the Zoning Ordinance of the City of Cambridge by creating a Special Overlay District for the Harvard Square business area as shown on an attached map. The amendment would provide that existing zoning controls would remain unchanged with the exceptions that the building height would be limited to 60 feet but could be increased to 80 feet for projects granted a special permit by the Planning Board and that most new construction in the district be subject to a review process by the Planning Board and further that the development proposal covered by a planned unit development review would be exempt from the process established by this petition.

The Committee heard from David Vickery, Assistant City Manager for Community Development, who outlined the provisions of the proposed ordinance.

Councillor Frisoli announced that he had received a communication from the President and Fellows of Harvard College indicating their ownership of 20% of the land proposed to be inclused in the change and recorded their opposition to the proposed amendment.

A second communication was received from Louis D. Giovanni recording his opposition to the proposed change and indicating his ownership of 20% of the land area in the proposed change.

Reports,

Hugh Russell, 1 Hollis Place, a petitioner and member of the Harvard Square Task Force, recorded himself in favor of the proposed amendment.

In the close of the hearing, the proposed amendment was referred to the City Council without recommendation.

For the Committee,

Councillor Lawrence W. Frisoli
Chairman

REPORT #2

Committee on Ordinances re: petitio of Mary Ellen Preusser, et al, to amend the Zoning Ordinance by establishing a Special Overlay District for the Harvard Square busi- ness area.

In City Council,

October 23, 1978

10/23/78 Referred to City Council No Action Taken prior to Adjournment

10/30/78 No Action Taken

12/11/78 No Action Taken

RECEIVED BY
OFFICE OF CITY CLERK
DEC 4 2 12 PM '78
CAMBRIDGE, MASS.

CITY OF CAMBRIDGE, MASSACHUSETTS

PLANNING BOARD

CITY HALL ANNEX, 57 INMAN STREET, CAMBRIDGE 02139

December 12, 1978

To the Honorable the City Council

Dear Councillors:

SUBJECT: HARVARD SQUARE OVERLAY DISTRICT REZONING PETITION

In accordance with Chapter 40A of the General Laws, on October 24, 1978, the Planning Board held a public hearing on a proposed amendment to the Zoning Ordinance of the City of Cambridge. This petition was filed by Mary Ellen Preusser and others.

THE PETITION

The proposed amendment would create a special overlay district for the Harvard Square business area. The regulations for this new district would supplement the zoning requirements presently existing in this section of the City. Existing zoning controls would remain unchanged with the following exceptions:

1. Building height would be limited to 60 feet, but could be increased to 80 feet for projects granted a special permit by the Planning Board.

2. Most new construction in the district would be subject to an advisory development review process by the Planning Board. Covered by this process would be proposals which involve construction of any new structure, exterior renovations facing a street, building additions, increasing floor area by 100 square feet or more, and construction of five or more parking spaces.

Development proposals covered by a Planning Board planned unit development review would be exempt from the process established in the petition. The process provides for special notice of pending actions under the overlay regulations to organizations most concerned with the future of Harvard Square. The City's Permit granting authorities would be required to acknowledge and address the concerns raised during the Harvard Square development review process.

THE HEARING

At the October 24 hearing there were questions concerning the origin of the 60-80 foot height limitations proposed in the petition. These limits were suggested in the Harvard Square Comprehensive Policy Plan (Harvard Square Development Task Force, 1976). Questions concerning the status of that docu-

ment were also asked. The Plan has never been adopted by either the Planning Board or the City Council. Cornelia Wheeler testified in favor of the petition on behalf of Alida O'Loughlin (Chairperson of the Harvard Square Development Task Force) and Reverend James Lowery (President of the Neighborhood 10 Association). Hugh Russell of 1 Corliss Place and Allan Happe of the First Church in Cambridge also gave testimony supporting the petition.

Three persons testified against the petition. Michael Brewer, Assistant Vice President of Harvard University, expressed "tentative, technical opposition" to the proposed rezoning. He expressed concern that Harvard had not been involved in discussions on this proposal prior to the hearing, that the intent and nature of the development review procedure was unclear and that the height limitations were unduly restrictive. He did indicate that Harvard might support an amended rezoning proposal. Paul Counihan, an attorney representing Mrs. Macmillan, owner of four properties in Harvard Square, spoke against the petition generally. He specifically questioned the notification requirements in the proposed development review process. Louis DiGiovanni testified that he supported the spirit of the petition but that a 60 foot as-of-right height limitation is unreasonable and that the proposed review process is unclear and could cause costly delays for developers.

RECOMMENDATION

The Planning Board has long supported height limitations in Harvard Square and in other unrestricted areas of the city. Furthermore, the Board feels that special consideration of major physical change is important, not only in Harvard Square, but in other business districts as well. The present petition is deficient in two ways. First, the proposed height limitations are somewhat restrictive. Buildings up to eighty feet tall should be allowed as a matter of right, subject to certain restrictions. Buildings up to but not exceeding 110 feet tall should be allowed, but only if subjected to careful public scrutiny through a special permit process. The second fault with the petition is the unclarity and inequity of the development review process. It appears that the review only can occur after a developer has completed all his plans and construction drawings. This could impose a costly thirty day delay. All projects are treated the same way—from minor alterations to major mixed use developments. The purpose and nature of public notification is unclear. Finally, the range of projects subject to review is too broad.

The Board is submitting for your approval an amended version of the petition. It would increase the maximum as-of-right building height limitation to 80 feet provided that specified setback requirements are met and that certain amenities are provided. Increased height, up to 110 feet on special permit, would be allowed subject to specified review criteria. The nature and procedures of the development review process would be clarified. An informed "development consultation" by the staff of the Community Development Department is suggested. This process would be streamlined to no more than two days in the case of small projects and ten days for larger projects. In both cases the consultation may occur prior to detailed design work. Citizen group notice and participation would take place only for larger projects. As with the original petition, the development consultation is an advisory process only.

The Planning Board feels that this proposal provides a reasonable level of protection to Harvard Square without causing undue hardship for property owners and potential developers. The Board recommends that this petition be ADOPTED AS AMENDED.

Respectfully submitted,

For the Planning Board

Arthur C. Parris

Arthur C. Parris
Chairman

ACP: jp
Enclosure

Comm. from Arthur C. Parris, Chairman, Planning Board, transmitting the Planning Board's recommendation on the petition of Councillor Mary Ellen Preusser providing for a Special Overlay in the Harvard Square business area.

In City Council,

December 18, 1978

12/18/78
Referred to the
Preusser Petition

P. O. BOX 212 - HARVARD SQUARE
CAMBRIDGE, MASSACHUSETTS 02138

RECEIVED BY
OFFICE OF CITY CLERK
JAN 23 3 48 PM '79
CAMBRIDGE, MASS.

January 22, 1979

The Honorable Thomas Danehy
Mayor and Chairman, City Council
City Hall
Cambridge, Massachusetts 02139

Re: Harvard Square Overlay District Petition
By Mary Ellen Preusser, et. al.

Dear Sir:

The undersigned owner of land in the area of land proposed to be included in the change of the Zoning Ordinance of the City of Cambridge sought by the captioned petition, or on the land immediately adjacent to such area of land and extending 300 feet therefrom, hereby protest against such changes pursuant to G.L. c. 40A, paragraph 5, as amended, for the reasons, among others, that such change would: significantly and impermissibly impair and restrict the use of land for proper purposes without sufficient planning justification; violate G.L. c. 40A, paragraph 4, as amended, by creating a zoning district within which there are not uniform requirements for each class or kind of structures or uses permitted; constitute an improper delegation of the zoning power to a non-legislative body without adequate strictness for its exercise.

Very truly yours,

Louis F. DiGiovanni

Louis F. DiGiovanni, Trustee
Trinity Realty Trust

LFD:bc

cc: Lawrence W. Frisoli
Chairman, Ordinance Committee

CITY OF CAMBRIDGE, MASSACHUSETTS
PLANNING BOARD
CITY HALL ANNEX, 57 INMAN STREET, CAMBRIDGE 02139

December 12, 1978

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The Planning Board feels that this proposal provides a reasonable level of protection to Harvard Square without causing undue hardship for property owners and potential developers. The Board recommends that this petition be ADOPTED AS AMENDED.

Respectfully submitted,

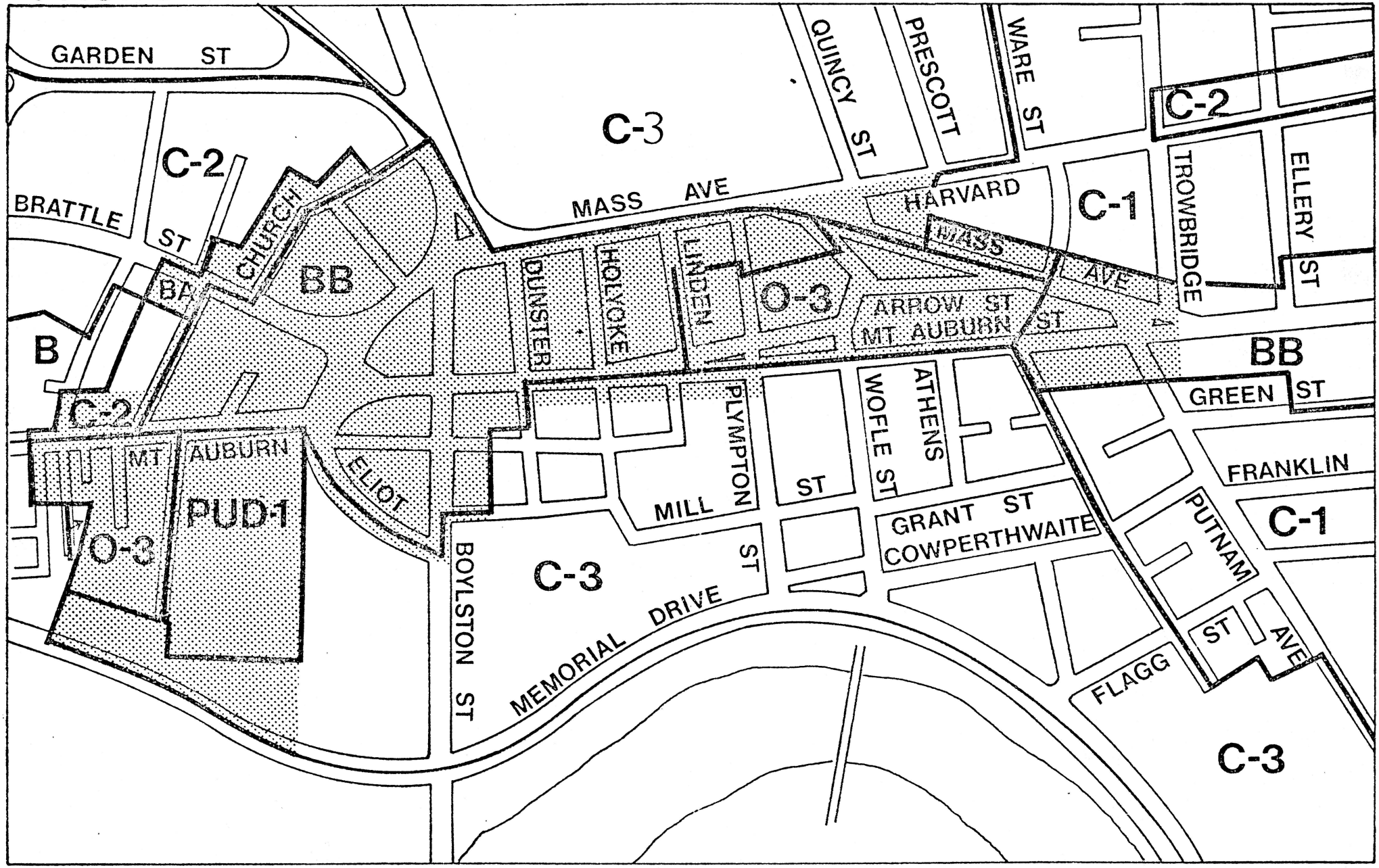
For the Planning Board

Arthur C. Parris

Arthur C. Parris
Chairman

ACP: jp
Enclosure

PROPOSED HARVARD SQUARE OVERLAY DISTRICT ▭ 9/1/78



HARVARD SQUARE OVERLAY DISTRICT REZONING PETITION WITH PLANNING BOARD AMENDMENTS

Cambridge, August 24 19 78

To the Honorable, the City Council of the City of Cambridge:

Revised December 11, 1978

The undersigned respectfully pray that the Zoning Ordinance of the City of Cambridge be amended as follows:

A. Amend the Zoning Map by establishing an overlay zone designated "Harvard Square Overlay District" over the existing district designations for the following described area of land:

Beginning at a point, said point being the intersection of the centerline of Massachusetts Avenue and the centerline of Church Street;

Thence, running westerly along the centerline of Church Street 240 feet more or less to a point, said point being the intersection of the centerline of Church Street and the extension of the western lot line of lot 79 of Assessors' Plat #169;

Thence, running northerly along the western lot line of lot 79 of Assessors Plat #169, 70 feet more or less to a point said point being the intersection with the northern lot line of lots 8, 67 and 68 of Assessors' Plat #169;

Thence, running westerly along the northern lot line of lots 8, 67, and 68 of Assessors' Plat #169, 147 feet more or less to a point, said point being the intersection of the northern lot line of lots 8, 67, and 68 of Assessors' Plat #169 and the eastern lot line of lot 10 of Assessors' Plat #169;

Thence, running northerly along the eastern lot line of lot 10 of Assessors' Plat #169, 127 feet more or less to a point, said point being the intersection of the eastern lot line of lot 10, Assessors' Plat #169 and the southern lot line of lots 19, 18, 17, 16, 15, and 14 of Assessors' Plat #169;

Thence, running westerly along the southern lot line of lots 19, 18, 17, 16, 15 and 14 of Assessors' Plat #169, 290 feet more or less to a point said point being the intersection with a line parallel to and 100 feet from the northeastern street line of Brattle Street;

Thence, running northerly along a line parallel to and 100 feet from the northeastern street line of Brattle Street, 95 feet more or less to a point, said point being the intersection with the centerline of Farwell Place;

Thence, running southwesterly along the centerline of Farwell Place, 135 feet more or less to a point, said point being the intersection of the centerline of Farwell Place and the centerline of Brattle Street;

Thence, running northwesterly along the centerline of Brattle Street, 55 feet more or less to a point, said point being the intersection of the centerline of Brattle Street and a line parallel to and 100 feet from the northwestern street line of Story Street;

Thence, running westerly along a line parallel to and 100 feet from the northwestern street line of Story Street, 130 feet more or less to a point, said point being the intersection of a line parallel to and 100 feet from the northwestern street line of Story Street and a line parallel to and 100 feet from the southwestern street line of Brattle Street;

Thence, running southerly along a line parallel to and 100 feet from the southwestern street line of Brattle Street, 115 feet more or less to a point, said point being the intersection with the centerline of Story Street;

Thence, running southwesterly along the centerline of Story Street, 235 feet more or less to a point, said point being the intersection of the centerline of Story Street and a line parallel to and 100 feet from the northeast street line of Mt. Auburn Street;

Thence, running northwesterly along a line parallel to and 100 feet northeasterly of the northeast street line of Mt. Auburn Street, 255 feet more or less to a point, said point being at the intersection of the above line and the centerline of Hilliard Street;

Thence, running southwesterly along the centerline of Hilliard Street, 120 feet more or less to a point, said point being the intersection of the centerline of Hilliard Street and the centerline of Mt. Auburn Street;

Thence, running northwesterly along the centerline of Mt. Auburn Street, 50 feet more or less to a point, said point being the intersection of the centerline of Mt. Auburn Street and the centerline of Gerry Street;

Thence, running southwesterly along the centerline of Gerry Street, 193 feet more or less to a point, said point being the intersection of the centerline of Gerry Street and the centerline of Revere Street;

Thence, running southeasterly along the centerline of Revere Street and an extension thereof, 135 feet more or less to a point, said point being the intersection of the extension of the centerline of Revere Street and the southeastern lot line of lot 41 as shown on Assessors' Plat #166;

Thence, running southwesterly along the southeastern lot lines of lots 41, 43, 44, 61, and an extension thereof, as shown on Assessors' Plat #166, 446 feet more or less to a point, said point being the intersection of the extension of the southwestern lot line of lot 61 as shown on Assessors' Plat #166 and the centerline of Memorial Drive;

Thence, running southerly along the centerline of Memorial Drive 805 feet more or less to a point, said point being the intersection of th e centerline of Memorial Drive and the extension of the southeastern lot line of lot 47 on Assessors' Plat #165;

Thence, running northeasterly along the southeastern lot line of lot 47 and an extension thereof on Assessors' Plat #165, 830 feet more or less to a point, said point being the intersection of the extension of the southeastern lot line of lot 47 on Assessors' Plat #165 and the centerline of Bennett Street;

Thence, running southeasterly along the centerline of Bennett Street and an extension thereof 95 feet more or less to a point, said point being the intersection of the extension of the centerline of Bennett Street and the centerline of Eliot Street;

Thence, running southeasterly along the centerline of Eliot Street and an extension thereof, 370 feet more or less to a point, said point being the intersection of the centerline of Eliot Street and the centerline of Boylston Street;

Thence, running northeasterly along the centerline of Boylston Street 85 feet more or less to a point, said point being the intersection of the centerline of Boylston Street and the extension of the centerline of South Street;

Thence, running southeasterly along the centerline of South Street and an extension thereof 175 feet more or less to a point, said point being the intersection of the centerline of South Street and the extension of the southeastern lot line of lot 5 on Assessors' Plat #162;

Thence, running northeasterly along the southeastern lot line of lot 5 and an extension thereof on Assessors' Plat #162, 50 feet more or less to a point, said point being the intersection of the southeastern lot line of lot 5 on Assessors Plat #162 and the northeastern lot line of said lot;

Thence, running northwesterly along the northeastern lot line of lot 5 on Assessors' Plat #162, 15 feet more or less to a point, said point being the intersection of the northeastern lot line of lot 5 and the southeastern lot line of lot 36 on Assessors' Plat #162;

Thence, running northeasterly along the southeastern lot line of lot 36 on Assessors' Plat #162, 50 feet more or less to a point, said point being the intersection of the southeastern lot line of lot 36 and the northeastern lot line of said lot;

Thence, running northwesterly along the northeastern lot line of lot 36 on Assessors' Plat #162, 18 feet more or less to a point, said point being the intersection of the northeastern lot line of lot 36 and the southeastern lot line of lot 70 on Assessors' Plat #162;

Thence, running northeasterly along the southeastern lot lines of lots 71 and 47 and an extension thereof on Assessors' Plat #162, 195 feet more or less to a point, said point being the intersection of the southeastern lot line of lot 47 on Assessors Plat #162 and the northeastern lot line of said lot;

Thence, running southeasterly along the southwestern lot line of lot 68 on Assessors' Plat #162 29 feet more or less to a point said point being the intersection of the southwestern lot line of lot 68 and the northwestern lot line of lot 67 on Assessors' Plat #162;

Thence, running southwesterly along the northwestern lot line of lot 67 on Assessors' Plat #162 34 feet more or less to a point, said point being the intersection of the northwestern lot line of lot 67 on Assessors' Plat #162 and the southwestern lot line of said lot;

Thence, running southeasterly along the southwestern lot line of lot 67 on Assessors' Plat #162, 96 feet more or less to a point, said point being the intersection of the southwestern lot line of lot 67 and an extension thereof on Assessors' Plat #162 and the centerline of Dunster Street;

Thence, running northeasterly along the centerline of Dunster Street 20 feet more or less to a point said point being the intersection of the centerline of Dunster Street and the extension of the southwestern lot line of lot 10 on Assessors' Plat #162;

Thence, running northeasterly along the southwestern lot lines of lots 10, 11, 62 and an extension thereof on Assessors' Plat #162 and lots 1, 2, and 3 thereof on Assessors' Plat #161, 438 feet, more or less to a point, said point being the intersection of the extension of the southwestern lot line of lot 3 on Assessors' Plat #161 and the centerline of Holyoke Place;

Thence, running southwesterly along the centerline of Holyoke Place 15 feet more or less to a point, said point being the intersection of the centerline of Holyoke Place and a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street;

Thence, running southeasterly along a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street 245 feet more or less to a point, said point being the intersection of a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street and the centerline of Plympton Street;

Thence, running northeasterly along the centerline of Plympton Street 125 feet more or less to a point, said point being the intersection of the centerline of Plympton Street and the centerline of Mt. Auburn Street;

Thence, running southeasterly along the centerline of Mt. Auburn Street 789 feet more or less, to a point, said point being the intersection of the centerline of Mt. Auburn Street and the extension of the centerline of Banks Street;

Thence, running southwesterly along the centerline of Banks Street 125 feet more or less to a point, said point being the intersection of the centerline of Banks Street and a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street;

Thence, running southeasterly along a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street 337 feet, more or less to a point, said point being the intersection of a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street and the centerline of Putnam Avenue;

Thence, running southerly along the centerline of Putnam Avenue 40 feet more or less to a point, said point being the intersection of the centerline of Putnam Avenue and the extension of the southern lot line of lot 1 on Assessors' Plat #121;

Thence, running easterly along the southern lot line of lot 1 on Assessors' Plat #121 56 feet more or less to a point, said point being the intersection of the southern lot line of lot 1 and the eastern lot line of said lot on Assessors' Plat #121;

Thence, running northeasterly along the eastern lot line of lot 1 and an extension thereof on Assessors' Plat #121 172 feet more or less to a point, said point being the intersection of the eastern lot line of said lot and the centerline of Massachusetts Avenue;

Thence, running northwesterly along the centerline of Massachusetts Avenue 40 feet more or less to a point, said point being the intersection of the centerline of Massachusetts Avenue and the centerline of Trowbridge Street;

Thence, running northeaterly along the centerline of Trowbridge Street 160 feet more or less to a point, said point being the intersection of the centerline of Trowbridge Street and a line 100 feet from and parallel to the northerly sideline of Massachusetts Avenue;

Thence, running northwesterly along a line 100 feet from and parallel to the southerly sideline of Massachusetts Avenue 675 feet to a point, said point being the intersection of a line 100 feet from and parallel to the northerly sideline of Massachusetts Avenue and the southeastern lot line of lot 1 on Assessors Plat #134;

Thence, running northeasterly along the southeastern lot line of lot 1 on Assessors' Plat #134 120 feet more or less to a point, said point being the intersection of the southeastern lot line of lot 1 on said plat and the centerline of Harvard Street;

Thence, running northwesterly along the centerline of Harvard Street 367 feet more or less to a point, said point being the intersection of the centerline of Harvard Street and the centerline of Massachusetts Avenue;

Thence, running northwesterly along the centerline of Massachusetts Avenue 1338 feet more or less to a point, said point being the intersection of the centerline of Massachusetts Avenue and the centerline of Church Street, the point of origin.

Said area includes all or parts of parcels of land as designated on Assessors' Plat #133: Even numbers 1086 through 1096, 1100 through 1124, 1130 through 1134, 1154 through 1162, 1170 through 1174, 1208, 1210, 1218 and 1230 through 1256 Massachusetts Avenue; even numbers 6, 8 and 12, odd numbers 3 through 39 Bow Street; even numbers 4 through 10 and 24, odd numbers 17 through 25 Arrow Street; even numbers 4 through 44 Plympton Street; odd numbers 1 through 19, 23 through 27 and 35 through 53 Mt. Auburn Street, and which includes all or parts of lots numbered 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56 as shown on Assessors' Plat #133;

Premises of the following parcels as designated on Assessors' Plat #132; Even numbers 2 through 10 Mt. Auburn Street; even number 18 Bank Street; odd numbers 3 and 11, even number 6 Putnam Avenue and which includes all or parts of lots numbered 97, 122, 131, 135 and 138 as shown on Assessors' Plat #132;

Premises of the following parcels as designated on Assessors' Plat #121; odd number 9 and even number 12 Putnam Avenue and even numbers 1050 through 1056 Massachusetts Avenue and which includes all or parts of lot numbered 1; as shown on Assessors Plat #121;

Premises of the following parcels as designated on Assessors' Plat #134: Odd numbers 1075, 1091, 1095, 1097, 1099, 1105, 1115, 1131, 1137, 1145, 1171, 1173, 1191 and 1201, and even number 1096 Massachusetts Avenue; odd number 5, even number 6 Remington Street and which includes all or parts of lots numbered 1, 2, 7, 8, 50 and 56 as shown on Assessors' Plat #124;

Premises of the following parcels as designated on Assessors' Plat #160; even number 1268 through 1392 Massachusetts Avenue; odd numbers 1 through 35 Plympton Street; even numbers 8 through 10 Linden Street; odd numbers 3 through 9 Linden Street, even numbers 2 through 26 Holyoke Street; odd numbers 11 through 23 Holyoke Street; even numbers 2 through 36 Dunster Street; odd numbers 5 through 35 Dunster Street; even numbers 2 through 42 Boylston Street; odd numbers 1 through 41 Boylston Street; even numbers 10 through 36 Brattle Street; odd numbers 57 through 101 Mt. Auburn Street; odd numbers 47 through 57 Bow Street; and which includes all of lots numbered 11, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 30, 36, 37, 38, 46, 48, 51, 52, 53, 54, 55, 57, 58, 59, 60, 61, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84 as shown on Assessors Plat #160;

Premises of the following parcels as designated on Assessors' Plat #161; odd numbers 57 and 59 Plympton Street; even numbers 52 through 72 Mt. Auburn Street; even numbers 2 and 8 Holyoke Place; odd numbers 1 and 7 Holyoke Place; even number 28 Holyoke Street; and which includes all or parts of lots numbered 1, 2, 3, 81, and 82 as shown on Assessors' Plat #161;

Premises of the following parcels as designated on Assessors' Plat #162; even numbers 74 through 104 Mt. Auburn Street; even numbers 2 through 28 Eliot Street; odd numbers 53 through 65 Boylston Street; even numbers 44 through 60 Boylston Street; odd number 43 Dunster Street; even numbers 44 and 50 Dunster Street; odd numbers 25 and 27 Holyoke Street; odd numbers 67 through 107 Winthrop Street; even numbers 70 through 106 Winthrop Street; odd numbers 9 through 21 South Street; and which includes all of lots numbered 4, 5, 9, 10, 11, 17, 18, 19, 26, 29, 35, 36, 47, 51, 52, 54, 57, 58, 59, 62, 64, 65, 66, 67, 68, 69, 71, 72, 73, 74, 75 as shown on Assessors' Plat #162;

Premises of the following parcels as designated on Assessors' Plat #169; even numbers 1394 through 1442 Massachusetts Avenue; even numbers 2 through 8 Brattle Street; odd numbers 1 through 51 Brattle Street; odd numbers 1 through 35 Palmer Street; even numbers 2 through 32 Palmer Street; even numbers 2 through 66 Church Street; odd numbers 21 through 67 Church Street; even number 2 Farwell Place; and which includes all of lots numbered 7, 8, 10, 11, 12, 14, 17, 39, 40, 41, 42, 43, 44, 45, 46, 47, 50, 67, 68, 80, 81, 82, 83, 84, 85, 86, 89, 96; as shown on Assessors' Plat #169;

Premises of the following parcels as designated on Assessors' Plat #168; even numbers 38 through 54 Brattle Street; odd numbers 109 through 125 Mt. Auburn Street; even numbers 8 through 20 Mifflin Place; odd numbers 5 through 19 Mifflin Place; even numbers 4 through 18 Story Street; odd number 5 Story Street; and which includes all or part of lots numbered 4, 5, 13, 16, 17, 20, 21, 22, 23, 24, 25, 30, 31, 32, 33, 36, 37, 55, 56, 57, 60 as shown on Assessors' Plat #168;

Premises of the following parcels as designated on Assessors' Plat #165; even numbers 108 through 128 Mt. Auburn Street; even numbers 2 through 44 University Road; odd numbers 1 through 43 University Road; odd numbers 1 through 7 Nutting Road; even numbers 976 through 982 Memorial Drive; and which includes all or part of lots numbered 7, 15, 23, 24, 26, 28, 29, 34, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 as shown on Assessors' Plat #165;

Premises of the following parcels as designated on Assessors' Plat #166; even numbers 132 through 138 Mt. Auburn Street; even numbers 2 through 16 Nutting Road; odd numbers 1 through 7 and even numbers 2 through 10 Revere Street; all numbers on Mt. Auburn Place; even numbers 2 through 8 Gerry Street; and which includes all or parts of lots numbered 33, 34, 35, 37, 38, 41, 42, 50, 51, 73, 74, 75, as shown on Assessors' Plat #166;

Premises of the following parcels as designated on Assessors' Plat #168; odd numbers 127 through 133 Mt. Auburn Street; 15 through 17 Story Street; 18 through 22 Hilliard Street; and which includes all or part of lots numbered 40, 41, 48, 49, 53, 54, as shown on Assessors' Plat #166.

B. Amend the text of the Zoning Ordinance as follows:

1. In Section 3.10, Division of the City Into Zoning Districts, add the following new subsection:

"3.12 In addition to the districts established under subsection 3.11, overlay districts may be established from time to time. As specified elsewhere in this Ordinance, each overlay district shall have special regulations which shall be applicable in lieu of or in addition to the regularly applicable regulations for the base zoning district."

2. In Article 11.000, Special Regulations, add the following new section:

"11.40 HARVARD SQUARE OVERLAY DISTRICT

11.41 Establishment and Scope. There is hereby established the Harvard Square Overlay District which shall be governed by the regulations and procedures specified in this Section 11.40. It is the intent of this section that these regulations will apply to a single area described generally as the Harvard Square business district and certain abutting portions of the neighborhoods around it.

11.42 Purpose. It is the purpose of this Section 11.40 to augment existing zoning regulations to respond to the unique problems and pressures for change particular to the Harvard Square area. The regulations contained in said section provide for more careful public scrutiny of development proposals that may alter the established urban form of the Harvard Square area. These regulations are intended to channel the extreme development pressures in ways which will preserve and enhance the unique functional environment and visual character of Harvard Square; to mitigate the functional impacts of new development; and to reduce the visual impact of Harvard Square development on adjacent residential neighborhoods.

11.43 Applicability. The Square Overlay District shall be an overlay district on the Zoning Map established by Section 3.20.

11.431 The use of land within said district shall be controlled by the pertinent regulations within the base zoning districts, except as modified by the requirements of this Section 11.40 which shall apply in addition to regulations imposed by the base zoning map designations.

11.432 The requirements of this Section 11.40 shall not apply to planned unit development proposals filed, reviewed and regulated by Article 12.000; however, said requirements shall apply to other development proposals in a PUD district.

11.44 Building Height Limitations. The maximum height of buildings in the Harvard Square Overlay District shall be governed by the requirements of this Section 11.44; however, at locations where the base zoning district establishes a more restrictive height limitation, the more restrictive shall apply.

11.441 As-of-Right Height Limitations. The maximum height of any building at the street line shall be sixty (60) feet. Portions of buildings may extend to eighty (80) feet in height provided that those portions in excess of 60 feet are set back from the street line at least 10 feet, that those portions are also set back from one or more 45° sky exposure planes and that the building will provide the minimum required amenities specified in subsection 11.442. A 45° sky exposure plane shall be an imaginary inclined plane beginning 60 feet above any street line in the district and rising over one or more lots at a 45° angle.

11.442 Required Amenities for Taller Buildings. Any building in the district exceeding 60 feet in height shall provide at least 10 points worth of amenities according to the following schedule:

(1) Off-street parking in excess of the requirements specified in Section 6.30 -- 1 point for each 4 spaces.

(2) Split level commercial frontage -- 1 point for each 10 linear feet along the street line.

(3) Shopping arcade, as defined by Sec. 13.452(5) -- 1 point for each 10 linear feet along the street line.

(4) Through-block arcade, as defined by Sec. 13.452(7) -- 10 points.

(5) Other open space at or within 10 feet of street level designed to be generally accessible to the public including parks, plazas, courtyards, landscaped area open to the sky, and galleries -- 2 points for each 225 square feet of open space in excess of the minimum usable open requirements for the lot specified in Section 5.30.

11.443 Special Permit for Additional Height. The maximum allowable height in the district may be increased up to 110 feet upon issuance of a special permit by the Planning Board. In granting a special permit for increased height, the Planning Board shall find that provision of any of the following amenities provides substantial public benefits.

(1) open space or recreational facilities dedicated to public use;

(2) walkways or similar facilities which enable the public to have access through the building to existing areas of unique natural or man-made value;

(3) development design, which enhances any unique natural or man-made features of the site or abutting areas;

(4) pedestrian malls, arcades, decks, bridges, or similar facilities within the interior of the building which are designed to appeal to the general public;

(5) other amenities that the developer may propose which the Planning Board feels provide unique advantages to the general public or which contribute to achieving city development goals;

In evaluating a Development Proposal providing building height in excess of 80 feet, the Planning Board shall give consideration to evidence presented on the following:

a. that increased height will not cast shadows or alter air currents in ways that will unreasonably limit the amount of light and air reaching other buildings in the vicinity to a significantly greater extent than if the building height did not exceed 80 feet;

b. that increased height would mitigate detrimental environmental impacts such as excessive ground coverage, diminution of open space, and monotonous development;

c. that increased height would not adversely affect and would result in increased sensitivity to the visual and physical characteristics of the particular location through more harmonious relationships to the terrain and to proposed and existing buildings in the vicinity that have functional or visual relationships to the proposed building;

d. that increased height would result from actions taken to lessen the impact of traffic and parking on the surrounding area; and

e. that the orientation and location of the proposed structure shall not otherwise diminish the health and safety of the Harvard Square area.

11.45 Streetwalls and Building Setback Reduction. Maintenance of existing streetwalls is encouraged within the district. This may be accomplished by principal front wall plane setbacks and cornice lines which are consistent with existing buildings on the same block face. In order to enable this and to provide greater design flexibility, buildings within the district shall be exempt from any minimum yard requirements specified in Section 5.30 except for cases in which such reduced yard would abut a lot (but not a public way) outside the district.

11.46 Development Consultation Procedure. It is the purpose of this Section 11.46 to provide for city professional staff review of and comment on development proposals in the district prior to the formulation of final plans. This development consultation procedure is intended to enable discussion of potential changes in Harvard Square which could alter the physical environment of the area. It will provide an informal mechanism for reviewing potential projects and, when appropriate, suggesting ways in whichs such projects might better comply with various public plans and policies for Harvard Square. Each application for a building permit for one of the categories of development specified in subsection 11.461 shall be accompanied by a written certification from the Cambridge Com-

munity Development Department indicating that the applicant has, within the previous six month period, participated in the development consultation procedure specified in this section 11.46, for the proposal for which the permit is being sought. At the development consultation session, members of the staff of the Community Development Department will review the proposal and discuss the opportunities and problems it presents.

11.461 The following types of development proposals within the Harvard Square Overlay District shall be subject to development consultation:

(1) construction of any new building;

(2) construction of any other new structure;

(3) any exterior building alteration increasing gross floor area by 100 square feet or more;

(4) construction of five or more parking spaces, whether on grade or in a structure;

(5) erection of a sign;

(6) any other exterior alteration facing a street but not painting, brick repointing or masonry repairs, building cleaning, gutter replacement or similar routine maintenance.

11.462 Small Project Procedure. Prior to formal permit application, the applicant for a building permit for a development project, except those specified in subsection 11.463 shall contact the Community Development Department and request a development consultation session. Upon making such a request, the applicant shall present for review such written or graphic materials necessary to give a reasonably complete, though not necessarily detailed, indication of the nature and scope of the development proposal. In most cases the Community Development Department staff person will complete the review and issue the certification of compliance with this section 11.46 at the end of the consultation session. However, if questions arise during the session suggesting the need for advice and assistance of other city departments or others, the development proposal materials may be kept for further review. However, the final staff comments and compliance certification shall be made within two business days of the consultation session.

11.463 Large Project Procedure. Any development proposal involving the construction of a new building or an alteration increasing the gross floor area of an existing building by 2000 square feet or more shall follow the review procedure specified in this subsection 11.463. Prior to application for a building permit, the applicant shall submit the materials specified in subsection 11.464 to the Community Development Department for its review. Within five (5) business days of such submittal, the Department will schedule and hold a consultation session with the applicant or his designee

and any parties listed in Section 11.465 who express interest in participating in the consultation. Within five (5) days of the consultation session, the Community Development Department shall issue to the applicant written comments on the development proposal and a consultation compliance certificate.

11.464 Large Project Submittal Requirements. Development proposals submitted for review in accordance with subsection 11.463 shall include such written and graphic materials necessary to give a reasonably complete indication of the nature and scope of the development proposal. Each of the following shall be submitted as appropriate to the proposal:

(1) A site plan indicating the general location and boundaries of the lot, major anticipated changes in natural features, existing and proposed buildings, existing and proposed curb cuts, off-street parking areas, loading and service facilities, and generalized landscaping scheme or other anticipated treatment of open spaces.

(2) Cross section(s), generalized floor plans or other diagram(s) indicating the anticipated locations of various land uses and major pedestrian pathways.

(3) Architectural elevations or sketches indicating anticipated facade treatment along public ways including the proposed entrances, fenestration, and signage.

11.465 Large Project Review Participants. Abuttors and representatives of various agencies and interest groups shall be invited to participate in the consultation sessions for large scale development proposals submitted for review in accordance with subsection 11.463. The Community Development Department shall give notification of any scheduled development consultation to each abutting property owner and to any individual or organization who each year files with the Community Development Department a written request for such notification.

11.466 In reviewing each development application, the Community Development Department shall have the following powers and duties:

(1) The Department shall evaluate the proposal for compliance with zoning requirements, for appropriateness in terms of other planned or programmed public or private development activities in the vicinity. The Department shall consider the proposal in

terms of the specific and general impact of the use and/or dimensions proposed therein on the Harvard Square Overlay District and adjoining areas where applicable. Such evaluation shall be conducted in light of the purposes of the Harvard Square Overlay District and adjoining areas where applicable. Such evaluation shall be conducted in light of the purposes of the Harvard Square Overlay District hereinbefore stated and shall further take account of the following considerations: scale, bulk, density, aesthetic qualities, land use, functional characteristics, parking, loading, and impact on public services and facilities.

(2) In its written report the Department shall make recommendations to the applicant including general approval or disapproval of the proposal and in connection therewith may suggest specific project adjustments and alterations to further the purposes of this Section 11.40.

11.467 The Community Development Department may seek the advice and assistance of other city departments and of the organizations given notice in subsection 11.465 in reviewing a development proposal.

C. C. 106

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 a public hearing will be held by the Committee on Ordinances, comprised of the entire membership of the City Council, on Thursday, October 19, 1978 at 6:00 P. M. in the City Council Chamber, City Hall, Cambridge, Massachusetts on a petition of Mary Ellen Preusser, et al to amend the Zoning Ordinances of the City of Cambridge by creating a special overlay district for the Harvard Square business area as shown on the attached map.

The regulations for this new district would supplement the zoning requirements presently existing in this section of the City. Existing zoning controls would remain unchanged with the following exceptions:-

1. Building height would be limited to 60 feet, but could be increased to 80 feet for projects granted a special permit by the Planning Board.

2. Most new construction in the district would be subject to an advisory development review process by the Planning Board.

Development proposals covered by a Planning Board planned unit development review would be exempt from the process established in this petition. The City's permit granting authorities would be required to acknowledge and address the concerns raised during theHarvard Square Development review process.

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 Frisoli,
Chairman, Committee on Ordinances.

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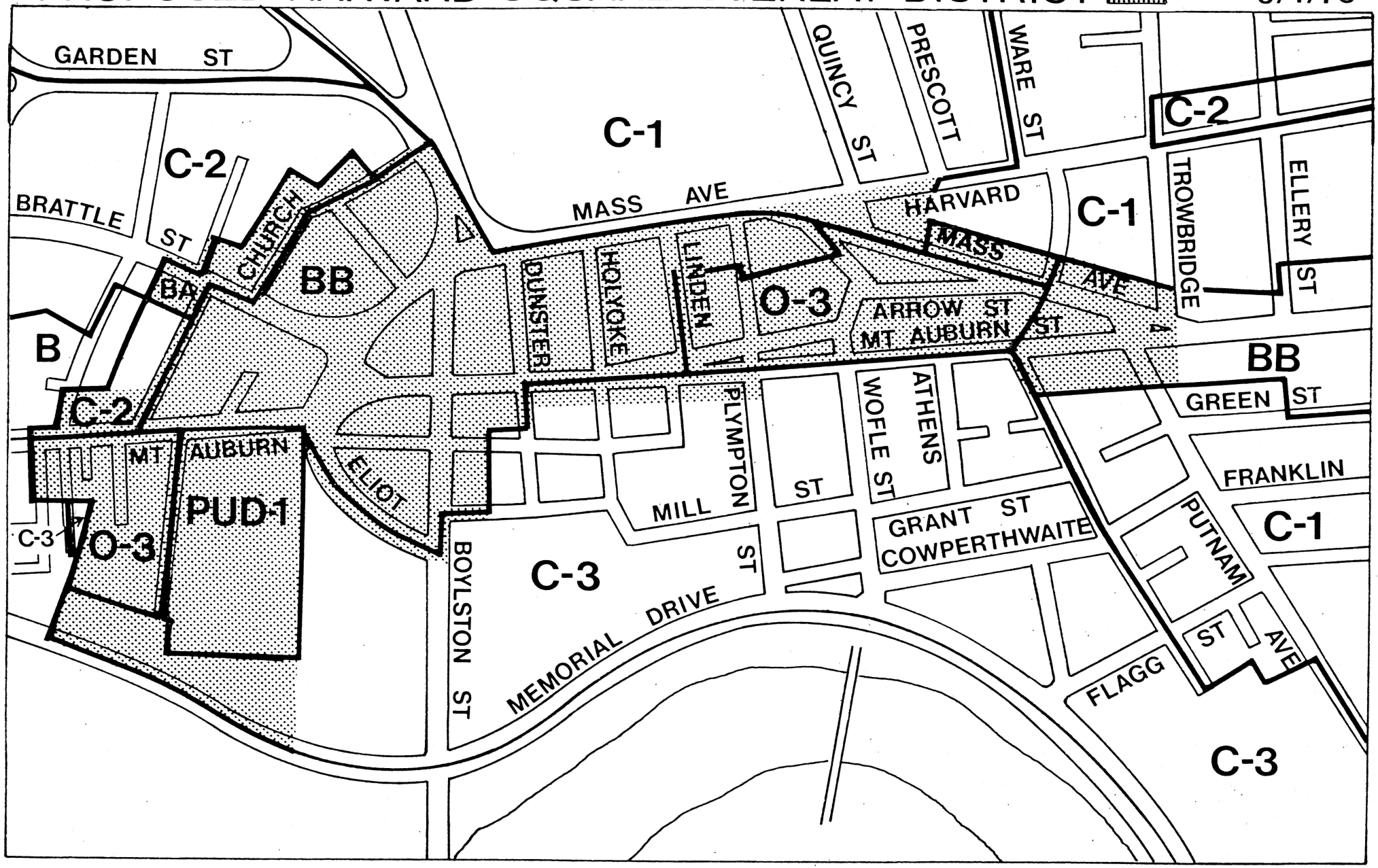
10/19/78

Returned to the City Council w/o recommendation—

PROPOSED HARVARD SQUARE OVERLAY DISTRICT

9/1/78



Re: Harvard Square Overlay District Petition
by Mary Ellen Preusser, et. al.

The undersigned owner of 20% or more of the area of land proposed to be included in the change of the Zoning Ordinance of the City of Cambridge sought by the captioned petition, or on the land immediately adjacent to such area of land and extending 300 feet therefrom, hereby protest against such changes pursuant to G.L. c. 40A, paragraph 5, as amended, for the reasons, among others, that such change would: significantly and impermissibly impair and restrict the use of land for proper purposes without sufficient planning justification; violate G.L. c. 40A, paragraph 4, as amended, by creating a zoning district within which there are not uniform requirements for each class or kind of structures or uses permitted; constitute an improper delegation of the zoning power to a non-legislative body without adequate strictness for its exercise.

1/ Louis F. D. Giovanni

2/ Louis D. Giovanni
Trustee Trinity
Realty Trust

Received by Clerk at 6:38 at the Rostrum 10/19/78

C. C. 1978

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Development proposals covered by a Planning Board planned unit development review would be exempt from the process established in this petition. The City's permit granting authorities would be required to acknowledge and address the concerns raised during theHarvard Square Development review process.

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

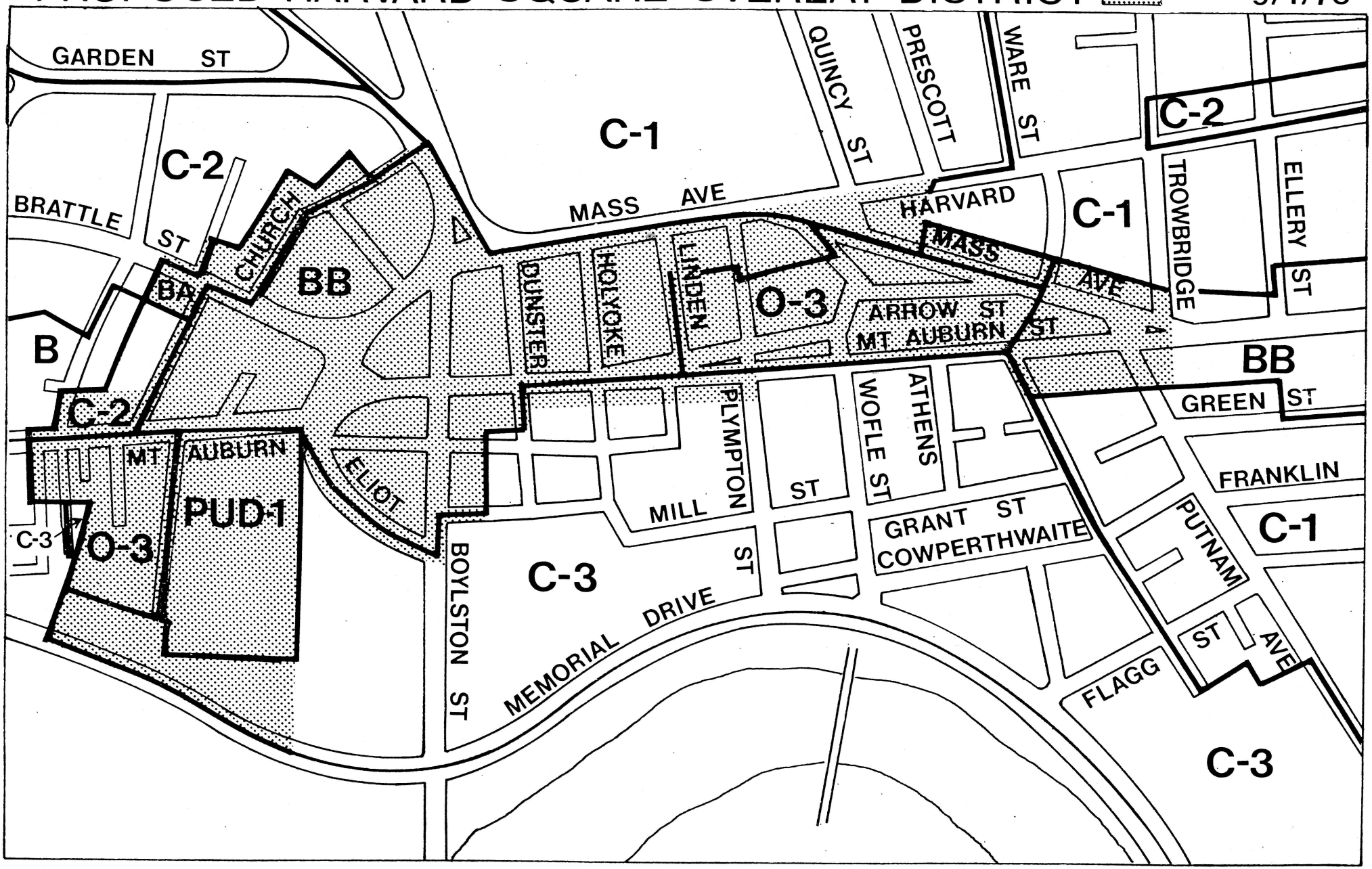
All persons interested in this matter may appear at this time and be heard.

For the Committee,

Councillor Frisoli,
Chairman, Committee on Ordinances.

PROPOSED HARVARD SQUARE OVERLAY DISTRICT

9/1/78



HARVARD SQUARE OVERLAY DISTRICT PETITION

September 1, 1978

The attached rezoning petition would create a special overlay district for the Harvard Square business area. This proposal is an update of a petition originally submitted to the City Council in 1973. The regulations for this new district would supplement the zoning requirements presently existing in this section of the City. Existing zoning controls would remain unchanged with the following exceptions:

(1) Building height would be limited to 60 feet, but could be increased to 80 feet for projects granted a special permit by the Planning Board. This is consistent with the recommendation of the Harvard Square Comprehensive Policy Plan.

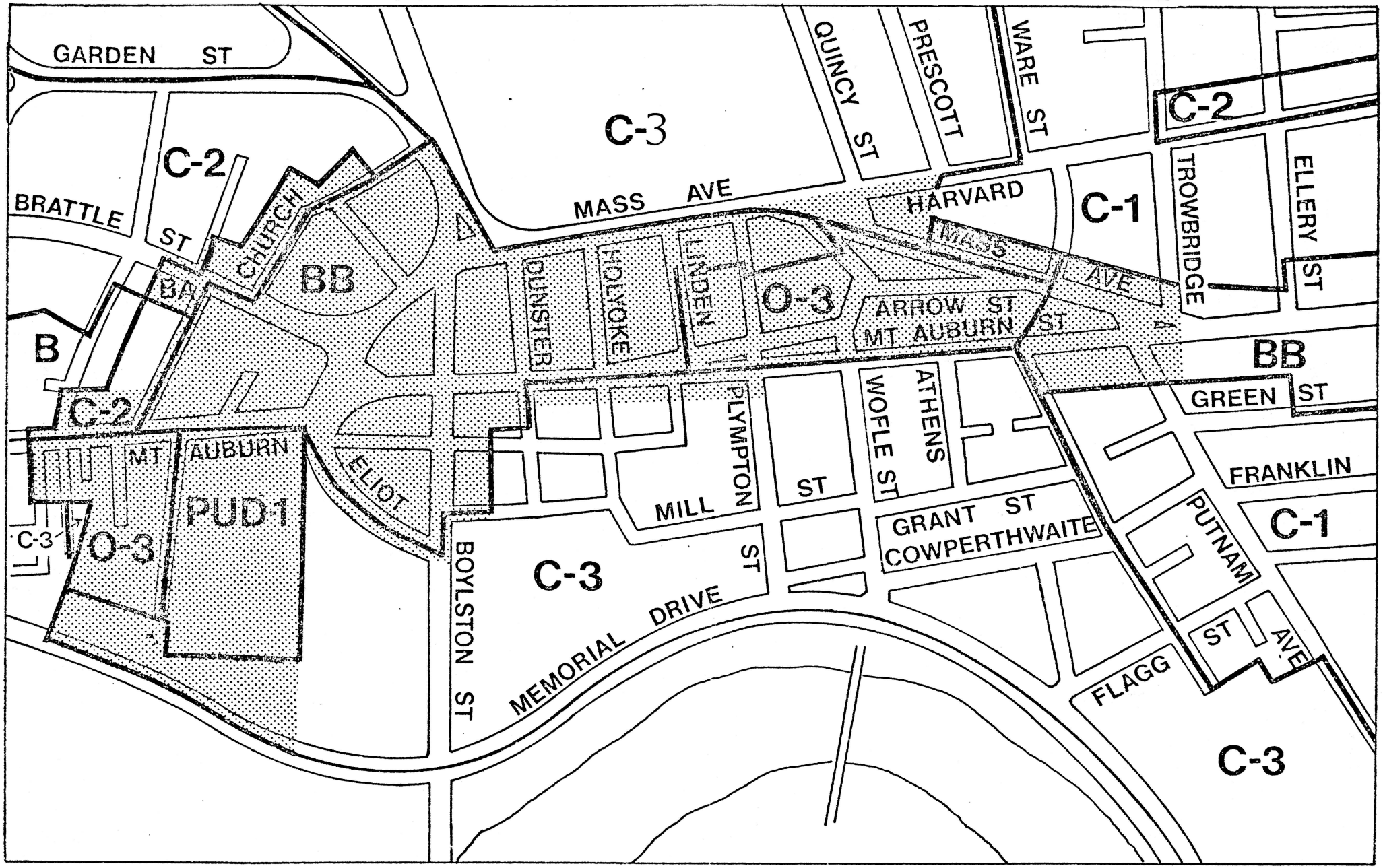
(2) Most new construction in the district would be subject to an advisory development review process by the Planning Board. Covered by this process would be proposals which involve construction of any new structure, exterior renovations facing a street, building additions increasing floor area by 100 square feet or more, and construction of five or more parking spaces.

Development proposals covered by a Planning Board planned unit development review would be exempt from the process established in this petition. This prepared process provides for special notice of pending actions under the overlay regulations to organizations most concerned with the future of Harvard Square.

The City's Permit granting authorities would be required to acknowledge and address the concerns raised during the Harvard Square development review process.

PROPOSED HARVARD SQUARE OVERLAY DISTRICT

9/1/78



Cambridge, August 24 19 78

To the Honorable, the City Council of the
City of Cambridge:

The undersigned respectfully pray that the Zoning Ordinance of the City of Cambridge be amended as follows:

A. Amend the Zoning Map by establishing an overlay zone designated "Harvard Square Overlay District" over the existing district designations for the following described area of land:

Beginning at a point, said point being the intersection of the centerline of Massachusetts Avenue and the centerline of Church Street;

Thence, running westerly along the centerline of Church Street 240 feet more or less to a point, said point being the intersection of the centerline of Church Street and the extension of the western lot line of lot 79 of Assessors' Plat #169;

Thence, running northerly along the western lot line of lot 79 of Assessors Plat #169, 70 feet more or less to a point said point being the intersection with the northern lot line of lots 8, 67 and 68 of Assessors' Plat #169;

Thence, running westerly along the northern lot line of lots 8, 67, and 68 of Assessors' Plat #169, 147 feet more or less to a point, said point being the intersection of the northern lot line of lots 8, 67, and 68 of Assessors' Plat #169 and the eastern lot line of lot 10 of Assessors' Plat #169;

Thence, running northerly along the eastern lot line of lot 10 of Assessors' Plat #169, 127 feet more or less to a point, said point being the intersection of the eastern lot line of lot 10, Assessors' Plat #169 and the southern lot line of lots 19, 18, 17, 16, 15, and 14 of Assessors' Plat #169;

Thence, running westerly along the southern lot line of lots 19, 18, 17, 16, 15 and 14 of Assessors' Plat #169, 290 feet more or less to a point said point being the intersection with a line parallel to and 100 feet from the northeastern street line of Brattle Street;

Thence, running northerly along a line parallel to and 100 feet from the northeastern street line of Brattle Street, 95 feet more or less to a point, said point being the intersection with the centerline of Farwell Place;

Thence, running southwesterly along the centerline of Farwell Place, 135 feet more or less to a point, said point being the intersection of the centerline of Farwell Place and the centerline of Brattle Street;

Thence, running northwesterly along the centerline of Brattle Street, 55 feet more or less to a point, said point being the intersection of the centerline of Brattle Street and a line parallel to and 100 feet from the northwestern street line of Story Street;

Thence, running westerly along a line parallel to and 100 feet from the northwestern street line of Story Street, 130 feet more or less to a point, said point being the intersection of a line parallel to and 100 feet from the northwestern street line of Story Street and a line parallel to and 100 feet from the southwestern street line of Brattle Street;

Thence, running southerly along a line parallel to and 100 feet from the southwestern street line of Brattle Street, 115 feet more or less to a point, said point being the intersection with the centerline of Story Street;

Thence, running southwesterly along the centerline of Story Street, 235 feet more or less to a point, said point being the intersection of the centerline of Story Street and a line parallel to and 100 feet from the northeast street line of Mt. Auburn Street;

Thence, running northwesterly along a line parallel to and 100 feet northeasterly of the northeast street line of Mt. Auburn Street, 255 feet more or less to a point, said point being at the intersection of the above line and the centerline of Hilliard Street;

Thence, running southwesterly along the centerline of Hilliard Street, 120 feet more or less to a point, said point being the intersection of the centerline of Hilliard Street and the centerline of Mt. Auburn Street;

Thence, running northwesterly along the centerline of Mt. Auburn Street, 50 feet more or less to a point, said point being the intersection of the centerline of Mt. Auburn Street and the centerline of Gerry Street;

Thence, running southwesterly along the centerline of Gerry Street, 193 feet more or less to a point, said point being the intersection of the centerline of Gerry Street and the centerline of Revere Street;

Thence, running southeasterly along the centerline of Revere Street and an extension thereof, 135 feet more or less to a point, said point being the intersection of the extension of the centerline of Revere Street and the southeastern lot line of lot 41 as shown on Assessors' Plat #166;

Thence, running southwesterly along the southeastern lot lines of lots 41, 43, 44, 61, and an extension thereof, as shown on Assessors' Plat #166, 446 feet more or less to a point, said point being the intersection of the extension of the southwestern lot line of lot 61 as shown on Assessors' Plat #166 and the centerline of Memorial Drive;

Thence, running southerly along the centerline of Memorial Drive 805 feet more or less to a point, said point being the intersection of the centerline of Memorial Drive and the extension of the southeastern lot line of lot 47 on Assessors' Plat #165;

Thence, running northeasterly along the southeastern lot line of lot 47 and an extension thereof on Assessors' Plat #165, 830 feet more or less to a point, said point being the intersection of the extension of the southeastern lot line of lot 47 on Assessors' Plat #165 and the centerline of Bennett Street;

Thence, running southeasterly along the centerline of Bennett Street and an extension thereof 95 feet more or less to a point, said point being the intersection of the extension of the centerline of Bennett Street and the centerline of Eliot Street;

Thence, running southeasterly along the centerline of Eliot Street and an extension thereof, 370 feet more or less to a point, said point being the intersection of the centerline of Eliot Street and the centerline of Boylston Street;

Thence, running northeasterly along the centerline of Boylston Street 85 feet more or less to a point, said point being the intersection of the centerline of Boylston Street and the extension of the centerline of South Street;

Thence, running southeasterly along the centerline of South Street and an extension thereof 175 feet more or less to a point, said point being the intersection of the centerline of South Street and the extension of the southeastern lot line of lot 5 on Assessors' Plat #162;

Thence, running northeasterly along the southeastern lot line of lot 5 and an extension thereof on Assessors' Plat #162, 50 feet more or less to a point, said point being the intersection of the southeastern lot line of lot 5 on Assessors Plat #162 and the northeastern lot line of said lot;

Thence, running northwesterly along the northeastern lot line of lot 5 on Assessors' Plat #162, 15 feet more or less to a point, said point being the intersection of the northeastern lot line of lot 5 and the southeastern lot line of lot 36 on Assessors' Plat #162;

Thence, running northeasterly along the southeastern lot line of lot 36 on Assessors' Plat #162, 50 feet more or less to a point, said point being the intersection of the southeastern lot line of lot 36 and the northeastern lot line of said lot;

Thence, running northwesterly along the northeastern lot line of lot 36 on Assessors' Plat #162, 18 feet more or less to a point, said point being the intersection of the northeastern lot line of lot 36 and the southeastern lot line of lot 70 on Assessors' Plat #162;

Thence, running northeasterly along the southeastern lot lines of lots 71 and 47 and an extension thereof on Assessors' Plat #162, 195 feet more or less to a point, said point being the intersection of the southeastern lot line of lot 47 on Assessors Plat #162 and the northeastern lot line of said lot;

Thence, running southeasterly along the southwestern lot line of lot 68 on Assessors' Plat #162 29 feet more or less to a point said point being the intersection of the southwestern lot line of lot 68 and the northwestern lot line of lot 67 on Assessors' Plat #162;

Thence, running southwesterly along the northwestern lot line of lot 67 on Assessors' Plat #162 34 feet more or less to a point, said point being the intersection of the northwestern lot line of lot 67 on Assessors' Plat #162 and the southwestern lot line of said lot;

Thence, running southeasterly along the southwestern lot line of lot 67 on Assessors' Plat #162, 96 feet more or less to a point, said point being the intersection of the southwestern lot line of lot 67 and an extension thereof on Assessors' Plat #162 and the centerline of Dunster Street;

Thence, running northeasterly along the centerline of Dunster Street 20 feet more or less to a point said point being the intersection of the centerline of Dunster Street and the extension of the southwestern lot line of lot 10 on Assessors' Plat #162;

Thence, running northeasterly along the southwestern lot lines of lots 10, 11, 62 and an extension thereof on Assessors' Plat #162 and lots 1, 2, and 3 thereof on Assessors' Plat #161, 438 feet, more or less to a point, said point being the intersection of the extension of the southwestern lot line of lot 3 on Assessors' Plat #161 and the centerline of Holyoke Place;

Thence, running southwesterly along the centerline of Holyoke Place 15 feet more or less to a point, said point being the intersection of the centerline of Holyoke Place and a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street;

Thence, running southeasterly along a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street 245 feet more or less to a point, said point being the intersection of a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street and the centerline of Plympton Street;

Thence, running northeasterly along the centerline of Plympton Street 125 feet more or less to a point, said point being the intersection of the centerline of Plympton Street and the centerline of Mt. Auburn Street;

Thence, running southeasterly along the centerline of Mt. Auburn Street 789 feet more or less, to a point, said point being the intersection of the centerline of Mt. Auburn Street and the extension of the centerline of Banks Street;

Thence, running southwesterly along the centerline of Banks Street 125 feet more or less to a point, said point being the intersection of the centerline of Banks Street and a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street;

Thence, running southeasterly along a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street 337 feet, more or less to a point, said point being the intersection of a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street and the centerline of Putnam Avenue;

Thence, running southerly along the centerline of Putnam Avenue 40 feet more or less to a point, said point being the intersection of the centerline of Putnam Avenue and the extension of the southern lot line of lot 1 on Assessors' Plat #121;

Thence, running easterly along the southern lot line of lot 1 on Assessors' Plat #121 56 feet more or less to a point, said point being the intersection of the southern lot line of lot 1 and the eastern lot line of said lot on Assessors' Plat #121;

Thence, running northeasterly along the eastern lot line of lot 1 and an extension thereof on Assessors' Plat #121 172 feet more or less to a point, said point being the intersection of the eastern lot line of said lot and the centerline of Massachusetts Avenue;

Thence, running northwesterly along the centerline of Massachusetts Avenue 40 feet more or less to a point, said point being the intersection of the centerline of Massachusetts Avenue and the centerline of Trowbridge Street;

Thence, running northeaterly along the centerline of Trowbridge Street 160 feet more or less to a point, said point being the intersection of the centerline of Trowbridge Street and a line 100 feet from and parallel to the northerly sideline of Massachusetts Avenue;

Thence, running northwesterly along a line 100 feet from and parallel to the southerly sideline of Massachusetts Avenue 675 feet to a point, said point being the intersection of a line 100 feet from and parallel to the northerly sideline of Massachusetts Avenue and the southeastern lot line of lot 1 on Assessors Plat #134;

Thence, running northeasterly along the southeastern lot line of lot 1 on Assessors' Plat #134 120 feet more or less to a point, said point being the intersection of the southeastern lot line of lot 1 on said plat and the centerline of Harvard Street;

Thence, running northwesterly along the centerline of Harvard Street 367 feet more or less to a point, said point being the intersection of the centerline of Harvard Street and the centerline of Massachusetts Avenue;

Thence, running northwesterly along the centerline of Massachusetts Avenue 1338 feet more or less to a point, said point being the intersection of the centerline of Massachusetts Avenue and the centerline of Church Street, the point of origin.

Said area includes all or parts of parcels of land as designated on Assessors' Plat #133: Even numbers 1086 through 1096, 1100 through 1124, 1130 through 1134, 1154 through 1162, 1170 through 1174, 1208, 1210, 1218 and 1230 through 1256 Massachusetts Avenue; even numbers 6, 8 and 12, odd numbers 3 through 39 Bow Street; even numbers 4 through 10 and 24, odd numbers 17 through 25 Arrow Street; even numbers 4 through 44 Plympton Street; odd numbers 1 through 19, 23 through 27 and 35 through 53 Mt. Auburn Street, and which includes all or parts of lots numbered 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56 as shown on Assessors' Plat #133;

Premises of the following parcels as designated on Assessors' Plat #132; Even numbers 2 through 10 Mt. Auburn Street; even number 18 Bank Street; odd numbers 3 and 11, even number 6 Putnam Avenue and which includes all or parts of lots numbered 97, 122, 131, 135 and 138 as shown on Assessors' Plat #132;

Premises of the following parcels as designated on Assessors' Plat #121; odd number 9 and even number 12 Putnam Avenue and even numbers 1050 through 1056 Massachusetts Avenue and which includes all or parts of lot numbered 1; as shown on Assessors Plat #121;

Premises of the following parcels as designated on Assessors' Plat #134: Odd numbers 1075, 1091, 1095, 1097, 1099, 1105, 1115, 1131, 1137, 1145, 1171, 1173, 1191 and 1201, and even number 1096 Massachusetts Avenue; odd number 5, even number 6 Remington Street and which includes all or parts of lots numbered 1, 2, 7, 8, 50 and 56 as shown on Assessors' Plat #124;

Premises of the following parcels as designated on Assessors' Plat #160; even number 1268 through 1392 Massachusetts Avenue; odd numbers 1 through 35 Plympton Street; even numbers 8 through 10 Linden Street; odd numbers 3 through 9 Linden Street, even numbers 2 through 26 Holyoke Street; odd numbers 11 through 23 Holyoke Street; even numbers 2 through 36 Dunster Street; odd numbers 5 through 35 Dunster Street; even numbers 2 through 42 Boylston Street; odd numbers 1 through 41 Boylston Street; even numbers 10 through 36 Brattle Street; odd numbers 57 through 101 Mt. Auburn Street; odd numbers 47 through 57 Bow Street; and which includes all of lots numbered 11, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 30, 36, 37, 38, 46, 48, 51, 52, 53, 54, 55, 57, 58, 59, 60, 61, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84 as shown on Assessors Plat #160;

Premises of the following parcels as designated on Assessors' Plat #161; odd numbers 57 and 59 Plympton Street; even numbers 52 through 72 Mt. Auburn Street; even numbers 2 and 8 Holyoke Place; odd numbers 1 and 7 Holyoke Place; even number 28 Holyoke Street; and which includes all or parts of lots numbered 1, 2, 3, 81, and 82 as shown on Assessors' Plat #161;

Premises of the following parcels as designated on Assessors' Plat #162; even numbers 74 through 104 Mt. Auburn Street; even numbers 2 through 28 Eliot Street; odd numbers 53 through 65 Boylston Street; even numbers 44 through 60 Boylston Street; odd number 43 Dunster Street; even numbers 44 and 50 Dunster Street; odd numbers 25 and 27 Holyoke Street; odd numbers 67 through 107 Winthrop Street; even numbers 70 through 106 Winthrop Street; odd numbers 9 through 21 South Street; and which includes all of lots numbered 4, 5, 9, 10, 11, 17, 18, 19, 26, 29, 35, 36, 47, 51, 52, 54, 57, 58, 59, 62, 64, 65, 66, 67, 68, 69, 71, 72, 73, 74, 75 as shown on Assessors' Plat #162;

Premises of the following parcels as designated on Assessors' Plat #169; even numbers 1394 through 1442 Massachusetts Avenue; even numbers 2 through 8 Brattle Street; odd numbers 1 through 51 Brattle Street; odd numbers 1 through 35 Palmer Street; even numbers 2 through 32 Palmer Street; even numbers 2 through 66 Church Street; odd numbers 21 through 67 Church Street; even number 2 Farwell Place; and which includes all of lots numbered 7, 8, 10, 11, 12, 14, 17, 39, 40, 41, 42, 43, 44, 45, 46, 47, 50, 67, 68, 80, 81, 82, 83, 84, 85, 86, 89, 96; as shown on Assessors' Plat #169;

Premises of the following parcels as designated on Assessors' Plat #168; even numbers 38 through 54 Brattle Street; odd numbers 109 through 125 Mt. Auburn Street; even numbers 8 through 20 Mifflin Place; odd numbers 5 through 19 Mifflin Place; even numbers 4 through 18 Story Street; odd number 5 Story Street; and which includes all or part of lots numbered 4, 5, 13, 16, 17, 20, 21, 22, 23, 24, 25, 30, 31, 32, 33, 36, 37, 55, 56, 57, 60 as shown on Assessors' Plat #168;

Premises of the following parcels as designated on Assessors' Plat #165; even numbers 108 through 128 Mt. Auburn Street; even numbers 2 through 44 University Road; odd numbers 1 through 43 University Road; odd numbers 1 through 7 Nutting Road; even numbers 976 through 982 Memorial Drive; and which includes all or part of lots numbered 7, 15, 23, 24, 26, 28, 29, 34, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 as shown on Assessors' Plat #165;

Premises of the following parcels as designated on Assessors' Plat #166; even numbers 132 through 138 Mt. Auburn Street; even numbers 2 through 16 Nutting Road; odd numbers 1 through 7 and even numbers 2 through 10 Revere Street; all numbers on Mt. Auburn Place; even numbers 2 through 8 Gerry Street; and which includes all or parts of lots numbered 33, 34, 35, 37, 38, 41, 42, 50, 51, 73, 74, 75, as shown on Assessors' Plat #166;

Premises of the following parcels as designated on Assessors' Plat #168; odd numbers 127 through 133 Mt. Auburn Street; 15 through 17 Story Street; 18 through 22 Hilliard Street; and which includes all or part of lots numbered 40, 41, 48, 49, 53, 54, as shown on Assessors' Plat #166.

B. Amend the text of the Zoning Ordinance as follows:

1. In Section 3.10, Division of the City Into Zoning Districts, add the following new subsection:

"3.12 In addition to the districts established under subsection 3.11, overlay districts may be established from time to time. As specified elsewhere in this Ordinance, each overlay district shall have special regulations which shall be applicable in lieu of or in addition to the regularly applicable regulations for the base zoning district."

2. In Article 11.000, Special Regulations, add the following new section:

"11.40 HARVARD SQUARE OVERLAY DISTRICT

11.41 Establishment and Scope. There is hereby established the Harvard Square Overlay District which shall be governed by the regulations and procedures specified in this Section 11.40. It is the intent of this section that these regulations will apply to a single area described generally as the Harvard Square business district and certain abutting portions of the neighborhoods around it.

11.42 Purpose. It is the purpose of this Section 11.40 to augment existing zoning regulations to respond to the unique problems and pressures for change particular to the Harvard Square area. The regulations contained in said section provide for more careful public scrutiny of development proposals that may alter the established urban form of the Harvard Square area. These regulations are intended to channel the extreme development pressures in ways which will preserve and enhance the unique functional, environmental and visual character of Harvard Square; to mitigate the functional impacts of new development; and to reduce the visual impact of Harvard Square development on adjacent residential neighborhoods.

11.43 Applicability. The Harvard Square Overlay District shall be an overlay district on the Zoning Map established by Section 3.20. The use of land within said district shall be controlled by the pertinent regulations within the base zoning districts, except as modified by the requirements of this Section 11.40 which shall apply in addition to regulations imposed by the base zoning map designations.

The requirements of this Section 11.40 shall not apply to planned unit development proposals filed, reviewed and regulated by Article 12.000; however, said requirements shall apply to other development proposals in a PUD district.

11.44 Building Height Limitation. The maximum height of any building shall be 60 feet unless the Planning Board issues a special permit for additional height up to but not exceeding 80 feet.

11.45 Development Plan Review Procedure. No permit for the construction, alteration, or reconstruction shall be issued for the categories of development listed in subsection 11.451 without referral of the applicant's proposals to the Planning Board, and the receipt of said Board's written plan review thereon by the Superintendent of Buildings, unless 30 days elapse from the date of transmittal of plans to the Board without receipt of such report from the Planning Board. Development proposals for one of the categories of development in Section 11.451 requiring a special permit or variance shall also be filed and reviewed by the Planning Board in the manner provided in this Section 11.45 but shall follow the procedural requirements established by Section 10.33 and Section 10.42.

11.451 The following types of development proposals shall be subject to plan review:

(1) any new structure;

(2) any building addition increasing gross floor area by 100 square feet or more;

(3) construction of five or more parking spaces, whether on grade or in a structure;

(4) any exterior renovation facing a street.

11.452 Applications for permits for construction subject to this Section 11.45 shall be accompanied by four prints of plans of the proposal. The Superintendent of Buildings shall forward three copies to the Planning Board for its review, and shall give notice in a local newspaper that he has done so, identifying the location and nature of the proposal. Notice shall also be mailed to a representative of each of the following organizations who annually files a request for notification of action under this Section 11.40 with the Building Department: the Harvard Square Development Task Force, the Harvard Square Businessmen's Association, the Neighborhood 9 Association, the Neighborhood 10 Association, the Mid-Cambridge Association, the Riverside Planning Team, the Riverside-Cambridgeport Community Corporation, the Agassiz Neighborhood Association, Harvard University, St. John's Monastery, the Cambridge Historical Commission and the Cambridge Conservation Commission.

11.453 Plans subject to review under this Section 11.45 shall be prepared by a registered Architect, Landscape Architect, or Professional Engineer. A site plan shall be submitted showing the general location and boundaries of the lot, topographic changes, existing and proposed curb cuts, loading and service areas, parking, landscaping, screening and proposed utility changes. Accompanying the site plan shall be floor plans indicating calculations of gross floor area, architectural elevations, and drawings of any signs.

11.454 The applicant or the preparer of the materials specified in Section 11,453 shall meet with the Planning Board or with its staff to review the development proposal. At that meeting the Board or its agent will discuss the opportunities and problems presented by the proposal.

11.455 In reviewing each development application, the Planning Board shall have the following powers and duties:

(1) The Board shall evaluate the proposal for compliance with zoning requirements, for appropriateness in terms of other planned or programmed public or private development activities in the vicinity, for consistency with the relevant provisions of the Harvard Square Comprehensive Policy Plan. The Board shall consider the proposal in terms of the specific and general impact of the use and/or dimensions proposed therein on the Harvard Square Overlay Zone and adjoining areas where applicable. Such evaluation shall be conducted in light of the purposes of the Harvard Square Overlay District hereinbefore stated and shall further take account of the following considerations: scale, bulk, density, aesthetic qualities, land use, functional characteristics, parking, loading, and impact on public services and facilities.

(2) In its written report the Planning Board shall make recommendations to the Superintendent of Buildings or the Board of Zoning Appeal for approval or disapproval of any such application and in connection therewith may suggest specific project adjustments and alterations to further the purposes of this Section 11.40.

11.456 The Planning Board may seek the advice and assistance of other city departments and of the organizations given notice in subsection 11.452 in reviewing a development proposal.

11.457 In reviewing an application for a construction permit, special permit or variance subject to the requirements of this Section 11.40, the Superintendent of Buildings or the Board of Zoning Appeal shall give due consideration to the recommendations, concerns and other information contained in the report of the Planning Board. They shall explain to the Board in writing the reasons for any action taken by him in conflict with those findings.

RECEIVED BY
OFFICE OF CITY CLERK
SEP 21 4 37 PM '78
CAMBRIDGE, MASS.

Notice of Public Hearing

The Planning Board of the City of Cambridge will hold a public hearing on Tuesday, October 24, 1978 at 8:30 p.m. in the City Council Chamber, City Hall, Cambridge, Mass. on a petition by Mary Ellen Preusser et al to amend the Zoning Ordinance of the City of Cambridge by creating a special overlay district for the Harvard Square business area as shown on the attached map.

The regulations for this new district would supplement the zoning requirements presently existing in this section of the City. Existing zoning controls would remain unchanged with the following exceptions:

1. Building height would be limited to 60 feet, but could be increased to 80 feet for projects granted a special permit by the Planning Board.

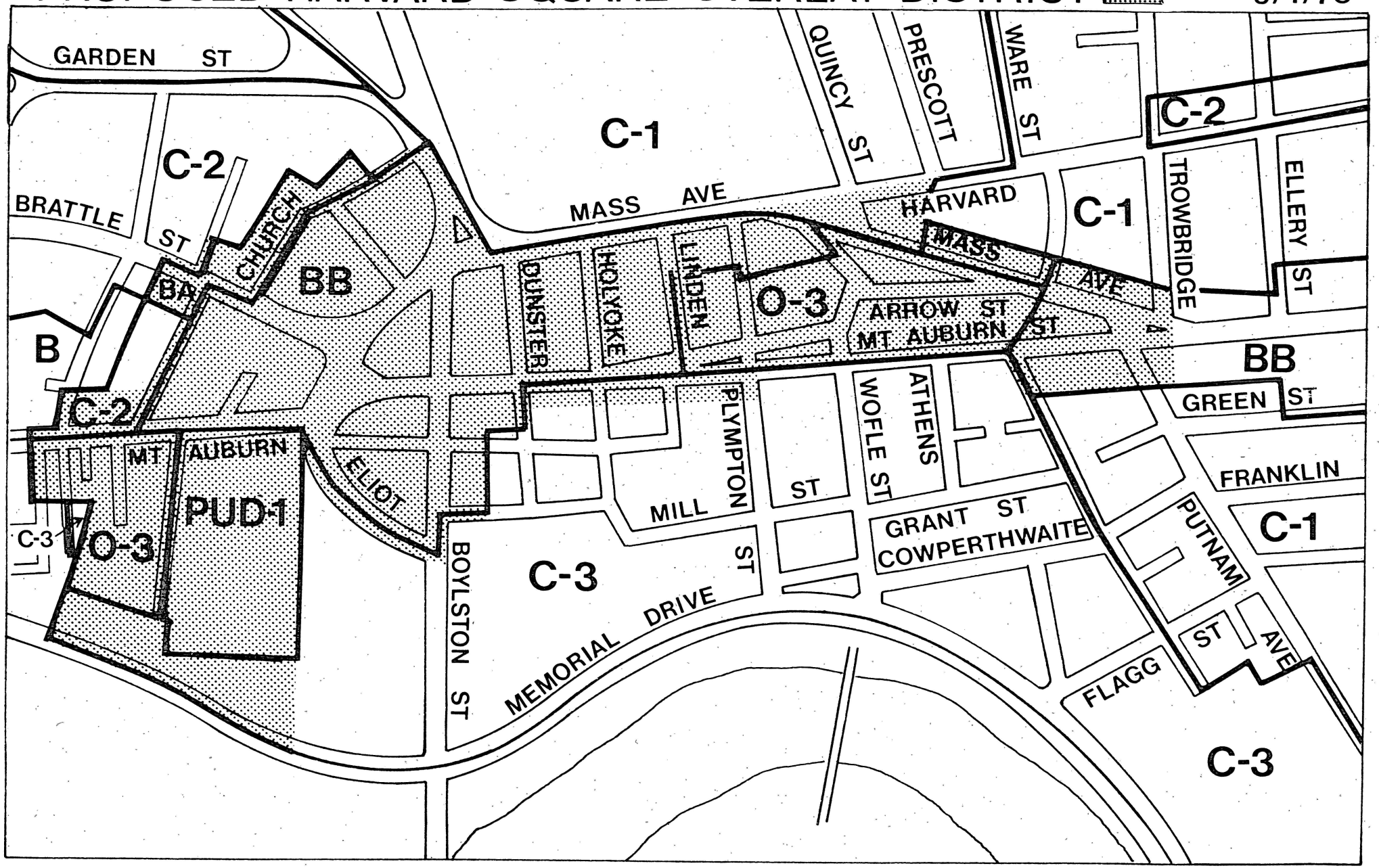
2. Most new construction in the district would be subject to an advisory development review process by the Planning Board.

Development proposals covered by a Planning Board planned unit development review would be exempt from the process established in this petition. The City's permit granting authorities would be required to acknowledge and address the concerns raised during the Harvard Square development review process.

A legally correct description of this petition is on file at the Office of the City Clerk. Questions concerning this petition may be addressed to Donald Balcom at 876-6800, ext. 345.

PROPOSED HARVARD SQUARE OVERLAY DISTRICT

9/1/78



HARVARD SQUARE OVERLAY DISTRICT PETITION

September 1, 1978

RECEIVED BY
OFFICE OF CITY CLERK
SEP 5 12 18 PM '78
CAMBRIDGE, MASS.

The attached rezoning petition would create a special overlay district for the Harvard Square business area. This proposal is an update of a petition originally submitted to the City Council in 1973. The regulations for this new district would supplement the zoning requirements presently existing in this section of the City. Existing zoning controls would remain unchanged with the following exceptions:

(1) Building height would be limited to 60 feet, but could be increased to 80 feet for projects granted a special permit by the Planning Board. This is consistent with the recommendation of the Harvard Square Comprehensive Policy Plan.

(2) Most new construction in the district would be subject to an advisory development review process by the Planning Board. Covered by this process would be proposals which involve construction of any new structure, exterior renovations facing a street, building additions increasing floor area by 100 square feet or more, and construction of five or more parking spaces.

Development proposals covered by a Planning Board planned unit development review would be exempt from the process established in this petition. This prepared process provides for special notice of pending actions under the overlay regulations to organizations most concerned with the future of Harvard Square.

The City's Permit granting authorities would be required to acknowledge and address the concerns raised during the Harvard Square development review process.

PROPOSED HARVARD SQUARE OVERLAY DISTRICT

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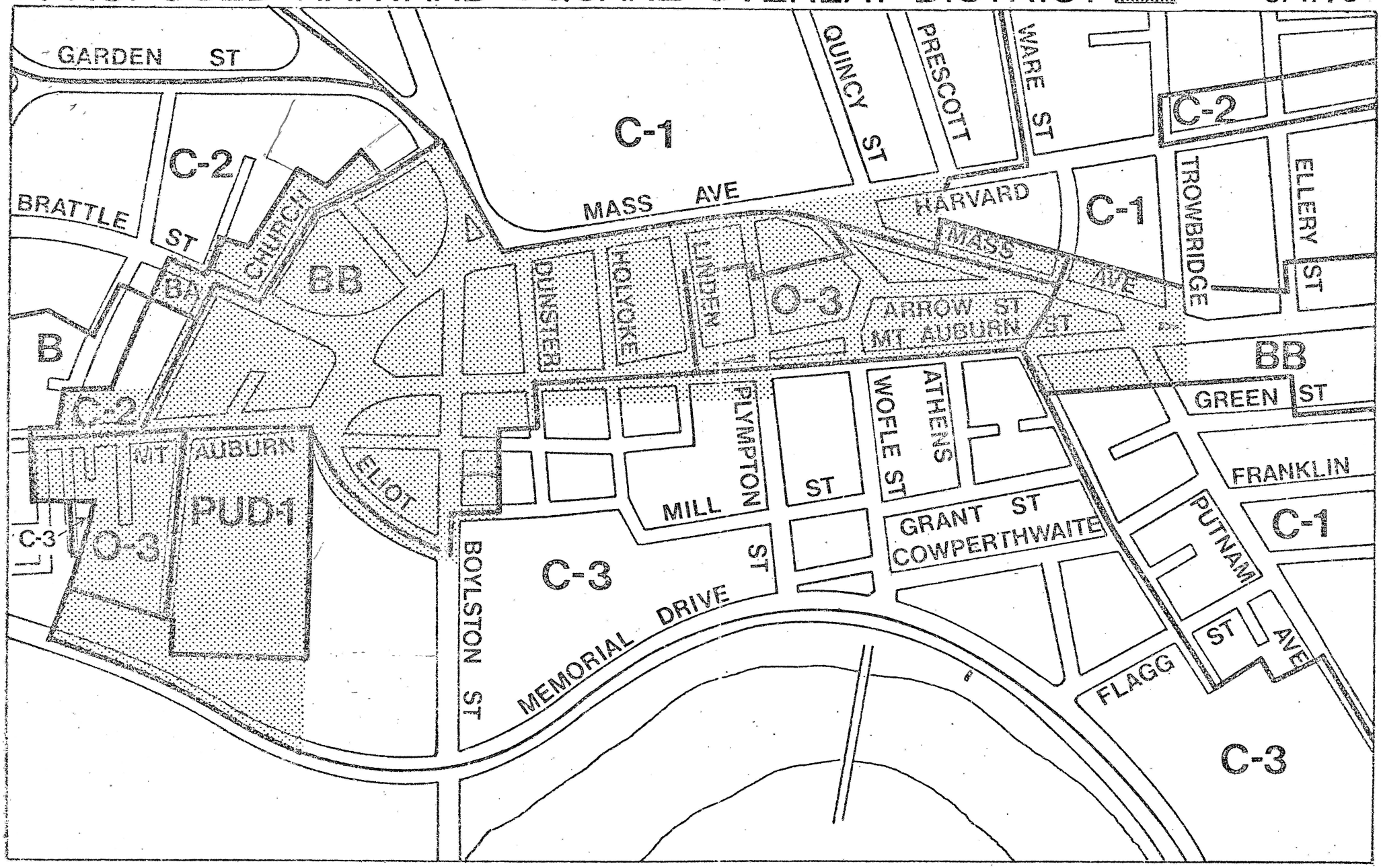


RECEIVED BY
OFFICE OF CITY CLERK
SEP 5 12 19 PM '78
CAMBRIDGE, MASS.

Cambridge, SEPTEMBER 5, 1978

To the Honorable, the City Council of the
City of Cambridge:

The undersigned respectfully pray

that the Zoning Ordinance of the City of Cambridge be amended as follows:

A. Amend the Zoning Map by establishing an overlay zone designated "Harvard Square Overlay District" over the existing district designations for the following described area of land:

Beginning at a point, said point being the intersection of the centerline of Massachusetts Avenue and the centerline of Church Street;

Thence, running westerly along the centerline of Church Street 240 feet more or less to a point, said point being the intersection of the centerline of Church Street and the extension of the western lot line of lot 79 of Assessors' Plat #169;

Thence, running northerly along the western lot line of lot 79 of Assessors Plat #169, 70 feet more or less to a point said point being the intersection with the northern lot line of lots 8, 67 and 68 of Assessors' Plat #169;

Thence, running westerly along the northern lot line of lots 8, 67, and 68 of Assessors' Plat #169, 147 feet more or less to a point, said point being the intersection of the northern lot line of lots 8, 67, and 68 of Assessors' Plat #169 and the eastern lot line of lot 10 of Assessors' Plat #169;

Thence, running northerly along the eastern lot line of lot 10 of Assessors' Plat #169, 127 feet more or less to a point, said point being the intersection of the eastern lot line of lot 10, Assessors' Plat #169 and the southern lot line of lots 19, 18, 17, 16, 15, and 14 of Assessors' Plat #169;

Thence, running westerly along the southern lot line of lots 19, 18, 17, 16, 15 and 14 of Assessors' Plat #169, 290 feet more or less to a point said point being the intersection with a line parallel to and 100 feet from the northeastern street line of Brattle Street;

Thence, running northerly along a line parallel to and 100 feet from the northeastern street line of Brattle Street, 95 feet more or less to a point, said point being the intersection with the centerline of Farwell Place;

Thence, running southwesterly along the centerline of Farwell Place, 155 feet more or less to a point, said point being the intersection of the centerline of Farwell Place and the centerline of Brattle Street;

PETITION

of .....

for .....

No. .....

.....19

In City Council, 19

Referred to the Committee on

Attest:

City Clerk.

Thence, running northwesterly along the centerline of Brattle Street, 55 feet more or less to a point, said point being the intersection of the centerline of Brattle Street and a line parallel to and 100 feet from the northwestern street line of Story Street;

Thence, running westerly along a line parallel to and 100 feet from the northwestern street line of Story Street, 130 feet more or less to a point, said point being the intersection of a line parallel to and 100 feet from the northwestern street line of Story Street and a line parallel to and 100 feet from the southwestern street line of Brattle Street;

Thence, running southerly along a line parallel to and 100 feet from the southwestern street line of Brattle Street, 115 feet more or less to a point, said point being the intersection with the centerline of Story Street;

Thence, running southwesterly along the centerline of Story Street, 235 feet more or less to a point, said point being the intersection of the centerline of Story Street and a line parallel to and 100 feet from the northeast street line of Mt. Auburn Street;

Thence, running northwesterly along a line parallel to and 100 feet northeasterly of the northeast street line of Mt. Auburn Street, 255 feet more or less to a point, said point being at the intersection of the above line and the centerline of Hilliard Street;

Thence, running southwesterly along the centerline of Hilliard Street, 120 feet more or less to a point, said point being the intersection of the centerline of Hilliard Street and the centerline of Mt. Auburn Street;

Thence, running northwesterly along the centerline of Mt. Auburn Street, 50 feet more or less to a point, said point being the intersection of the centerline of Mt. Auburn Street and the centerline of Gerry Street;

Thence, running southwesterly along the centerline of Gerry Street, 193 feet more or less to a point, said point being the intersection of the centerline of Gerry Street and the centerline of Revere Street;

Thence, running southeasterly along the centerline of Revere Street and an extension thereof, 135 feet more or less to a point, said point being the intersection of the extension of the centerline of Revere Street and the southeastern lot line of lot 41 as shown on Assessors' Plat #166;

Thence, running southwesterly along the southeastern lot lines of lots 41, 43, 44, 61, and an extension thereof, as shown on Assessors' Plat #166, 446 feet more or less to a point, said point being the intersection of the extension of the southwestern lot line of lot 61 as shown on Assessors' Plat #166 and the centerline of Memorial Drive;

Thence, running southerly along the centerline of Memorial Drive 805 feet more or less to a point, said point being the intersection of th e centerline of Memorial Drive and the extension of the southeastern lot line of lot 47 on Assessors' Plat #165;

Thence, running northeasterly along the southeastern lot line of lot 47 and an extension thereof on Assessors' Plat #165, 830 feet more or less to a point, said point being the intersection of the extension of the southeastern lot line of lot 47 on Assessors' Plat #165 and the centerline of Bennett Street;

Thence, running southeasterly along the centerline of Bennett Street and an extension thereof 95 feet more or less to a point, said point being the intersection of the extension of the centerline of Bennett Street and the centerline of Eliot Street;

Thence, running southeasterly along the centerline of Eliot Street and an extension thereof, 370 feet more or less to a point, said point being the intersection of the centerline of Eliot Street and the centerline of Boylston Street;

Thence, running northeasterly along the centerline of Boylston Street 85 feet more or less to a point, said point being the intersection of the centerline of Boylston Street and the extension of the centerline of South Street;

Thence, running southeasterly along the centerline of South Street and an extension thereof 175 feet more or less to a point, said point being the intersection of the centerline of South Street and the extension of the southeastern lot line of lot 5 on Assessors' Plat #162;

Thence, running northeasterly along the southeastern lot line of lot 5 and an extension thereof on Assessors' Plat #162, 50 feet more or less to a point, said point being the intersection of the southeastern lot line of lot 5 on Assessors Plat #162 and the northeastern lot line of said lot;

Thence, running northwesterly along the northeastern lot line of lot 5 on Assessors' Plat #162, 15 feet more or less to a point, said point being the intersection of the northeastern lot line of lot 5 and the southeastern lot line of lot 36 on Assessors' Plat #162;

Thence, running northeasterly along the southeastern lot line of lot 36 on Assessors' Plat #162, 50 feet more or less to a point, said point being the intersection of the southeastern lot line of lot 36 and the northeastern lot line of said lot;

Thence, running northwesterly along the northeastern lot line of lot 36 on Assessors' Plat #162, 18 feet more or less to a point, said point being the intersection of the northeastern lot line of lot 36 and the southeastern lot line of lot 70 on Assessors' Plat #162;

Thence, running northeasterly along the southeastern lot lines of lots 71 and 47 and an extension thereof on Assessors' Plat #162, 195 feet more or less to a point, said point being the intersection of the southeastern lot line of lot 47 on Assessors Plat #162 and the northeastern lot line of said lot;

Thence, running southeasterly along the southwestern lot line of lot 68 on Assessors' Plat #162 29 feet more or less to a point said point being the intersection of the southwestern lot line of lot 68 and the northwestern lot line of lot 67 on Assessors' Plat #162;

Thence, running southwesterly along the northwestern lot line of lot 67 on Assessors' Plat #162 34 feet more or less to a point, said point being the intersection of the northwestern lot line of lot 67 on Assessors' Plat #162 and the southwestern lot line of said lot;

Thence, running southeasterly along the southwestern lot line of lot 67 on Assessors' Plat #162, 96 feet more or less to a point, said point being the intersection of the southwestern lot line of lot 67 and an extension thereof on Assessors' Plat #162 and the centerline of Dunster Street;

Thence, running northeasterly along the centerline of Dunster Street 20 feet more or less to a point said point being the intersection of the centerline of Dunster Street and the extension of the southwestern lot line of lot 10 on Assessors' Plat #162;

Thence, running northeasterly along the southwestern lot lines of lots 10, 11, 62 and an extension thereof on Assessors' Plat #162 and lots 1, 2, and 3 thereof on Assessors' Plat #161, 438 feet, more or less to a point, said point being the intersection of the extension of the southwestern lot line of lot 3 on Assessors' Plat #161 and the centerline of Holyoke Place;

Thence, running southwesterly along the centerline of Holyoke Place 15 feet more or less to a point, said point being the intersection of the centerline of Holyoke Place and a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street;

Thence, running southeasterly along a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street 245 feet more or less to a point, said point being the intersection of a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street and the centerline of Plympton Street;

Thence, running northeasterly along the centerline of Plympton Street 125 feet more or less to a point, said point being the intersection of the centerline of Plympton Street and the centerline of Mt. Auburn Street;

Thence, running southeasterly along the centerline of Mt. Auburn Street 789 feet more or less, to a point, said point being the intersection of the centerline of Mt. Auburn Street and the extension of the centerline of Banks Street;

Thence, running southwesterly along the centerline of Banks Street 125 feet more or less to a point, said point being the intersection of the centerline of Banks Street and a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street;

Thence, running southeasterly along a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street 337 feet, more or less to a point, said point being the intersection of a line 100 feet from and parallel to the southerly sideline of Mt. Auburn Street and the centerline of Putnam Avenue;

Thence, running southerly along the centerline of Putnam Avenue 40 feet more or less to a point, said point being the intersection of the centerline of Putnam Avenue and the extension of the southern lot line of lot 1 on Assessors' Plat #121;

Thence, running easterly along the southern lot line of lot 1 on Assessors' Plat #121 56 feet more or less to a point, said point being the intersection of the southern lot line of lot 1 and the eastern lot line of said lot on Assessors' Plat #121;

Thence, running northeasterly along the eastern lot line of lot 1 and an extension thereof on Assessors' Plat #121 172 feet more or less to a point, said point being the intersection of the eastern lot line of said lot and the centerline of Massachusetts Avenue;

Thence, running northwesterly along the centerline of Massachusetts Avenue 40 feet more or less to a point, said point being the intersection of the centerline of Massachusetts Avenue and the centerline of Trowbridge Street;

Thence, running northeaterly along the centerline of Trowbridge Street 160 feet more or less to a point, said point being the intersection of the centerline of Trowbridge Street and a line 100 feet from and parallel to the northerly sideline of Massachusetts Avenue;

Thence, running northwesterly along a line 100 feet from and parallel to the southerly sideline of Massachusetts Avenue 675 feet to a point, said point being the intersection of a line 100 feet from and parallel to the northerly sideline of Massachusetts Avenue and the southeastern lot line of lot 1 on Assessors Plat #134;

Thence, running northeasterly along the southeastern lot line of lot 1 on Assessors' Plat #134 120 feet more or less to a point, said point being the intersection of the southeastern lot line of lot 1 on said plat and the centerline of Harvard Street;

Thence, running northwesterly along the centerline of Harvard Street 367 feet more or less to a point, said point being the intersection of the centerline of Harvard Street and the centerline of Massachusetts Avenue;

Thence, running northwesterly along the centerline of Massachusetts Avenue 1338 feet more or less to a point, said point being the intersection of the centerline of Massachusetts Avenue and the centerline of Church Street, the point of origin.

Said area includes all or parts of parcels of land as designated on Assessors' Plat #133: Even numbers 1086 through 1096, 1100 through 1124, 1130 through 1134, 1154 through 1162, 1170 through 1174, 1208, 1210, 1218 and 1230 through 1256 Massachusetts Avenue; even numbers 6, 8 and 12, odd numbers 3 through 39 Bow Street; even numbers 4 through 10 and 24, odd numbers 17 through 25 Arrow Street; even numbers 4 through 44 Plympton Street; odd numbers 1 through 19, 23 through 27 and 35 through 53 Mt. Auburn Street, and which includes all or parts of lots numbered 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56 as shown on Assessors' Plat #133;

Premises of the following parcels as designated on Assessors' Plat #132; Even numbers 2 through 10 Mt. Auburn Street; even number 18 Bank Street; odd numbers 3 and 11, even number 6 Putnam Avenue and which includes all or parts of lots numbered 97, 122, 131, 135 and 138 as shown on Assessors' Plat #132;

Premises of the following parcels as designated on Assessors' Plat #121; odd number 9 and even number 12 Putnam Avenue and even numbers 1050 through 1056 Massachusetts Avenue and which includes all or parts of lot numbered 1; as shown on Assessors Plat #121;

Premises of the following parcels as designated on Assessors' Plat #134: Odd numbers 1075, 1091, 1095, 1097, 1099, 1105, 1115, 1131, 1137, 1145, 1171, 1173, 1191 and 1201, and even number 1096 Massachusetts Avenue; odd number 5, even number 6 Remington Street and which includes all or parts of lots numbered 1, 2, 7, 8, 50 and 56 as shown on Assessors' Plat #124;

Premises of the following parcels as designated on Assessors' Plat #160; even number 1268 through 1392 Massachusetts Avenue; odd numbers 1 through 35 Plympton Street; even numbers 8 through 10 Linden Street; odd numbers 3 through 9 Linden Street, even numbers 2 through 26 Holyoke Street; odd numbers 11 through 23 Holyoke Street; even numbers 2 through 36 Dunster Street; odd numbers 5 through 35 Dunster Street; even numbers 2 through 42 Boylston Street; odd numbers 1 through 41 Boylston Street; even numbers 10 through 36 Brattle Street; odd numbers 57 through 101 Mt. Auburn Street; odd numbers 47 through 57 Bow Street; and which includes all of lots numbered 11, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 30, 36, 37, 38, 46, 48, 51, 52, 53, 54, 55, 57, 58, 59, 60, 61, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84 as shown on Assessors Plat #160;

Premises of the following parcels as designated on Assessors' Plat #161; odd numbers 57 and 59 Plympton Street; even numbers 52 through 72 Mt. Auburn Street; even numbers 2 and 8 Holyoke Place; odd numbers 1 and 7 Holyoke Place; even number 28 Holyoke Street; and which includes all or parts of lots numbered 1, 2, 3, 81, and 82 as shown on Assessors' Plat #161;

Premises of the following parcels as designated on Assessors' Plat #162; even numbers 74 through 104 Mt. Auburn Street; even numbers 2 through 28 Eliot Street; odd numbers 53 through 65 Boylston Street; even numbers 44 through 60 Boylston Street; odd number 43 Dunster Street; even numbers 44 and 50 Dunster Street; odd numbers 25 and 27 Holyoke Street; odd numbers 67 through 107 Winthrop Street; even numbers 70 through 106 Winthrop Street; odd numbers 9 through 21 South Street; and which includes all of lots numbered 4, 5, 9, 10, 11, 17, 18, 19, 26, 29, 35, 36, 47, 51, 52, 54, 57, 58, 59, 62, 64, 65, 66, 67, 68, 69, 71, 72, 73, 74, 75 as shown on Assessors' Plat #162;

Premises of the following parcels as designated on Assessors' Plat #169; even numbers 1394 through 1442 Massachusetts Avenue; even numbers 2 through 8 Brattle Street; odd numbers 1 through 51 Brattle Street; odd numbers 1 through 35 Palmer Street; even numbers 2 through 32 Palmer Street; even numbers 2 through 66 Church Street; odd numbers 21 through 67 Church Street; even number 2 Farwell Place; and which includes all of lots numbered 7, 8, 10, 11, 12, 14, 17, 39, 40, 41, 42, 43, 44, 45, 46, 47, 50, 67, 68, 80, 81, 82, 83, 84, 85, 86, 89, 96; as shown on Assessors' Plat #169;

Premises of the following parcels as designated on Assessors' Plat #168; even numbers 38 through 54 Brattle Street; odd numbers 109 through 125 Mt. Auburn Street; even numbers 8 through 20 Mifflin Place; odd numbers 5 through 19 Mifflin Place; even numbers 4 through 18 Story Street; odd number 5 Story Street; and which includes all or part of lots numbered 4, 5, 13, 16, 17, 20, 21, 22, 23, 24, 25, 30, 31, 32, 33, 36, 37, 55, 56, 57, 60 as shown on Assessors' Plat #168;

Premises of the following parcels as designated on Assessors' Plat #165; even numbers 108 through 128 Mt. Auburn Street; even numbers 2 through 44 University Road; odd numbers 1 through 43 University Road; odd numbers 1 through 7 Nutting Road; even numbers 976 through 982 Memorial Drive; and which includes all or part of lots numbered 7, 15, 23, 24, 26, 28, 29, 34, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 as shown on Assessors' Plat #165;

Premises of the following parcels as designated on Assessors' Plat #166; even numbers 132 through 138 Mt. Auburn Street; even numbers 2 through 16 Nutting Road; odd numbers 1 through 7 and even numbers 2 through 10 Revere Street; all numbers on Mt. Auburn Place; even numbers 2 through 8 Gerry Street; and which includes all or parts of lots numbered 33, 34, 35, 37, 38, 41, 42, 50, 51, 73, 74, 75, as shown on Assessors' Plat #166;

Premises of the following parcels as designated on Assessors' Plat #168; odd numbers 127 through 133 Mt. Auburn Street; 15 through 17 Story Street; 18 through 22 Hilliard Street; and which includes all or part of lots numbered 40, 41, 48, 49, 53, 54, as shown on Assessors' Plat #166.

B. Amend the text of the Zoning Ordinance as follows:

1. In Section 3.10, Division of the City Into Zoning Districts, add the following new subsection:

"3.12 In addition to the districts established under subsection 3.11, overlay districts may be established from time to time. As specified elsewhere in this Ordinance, each overlay district shall have special regulations which shall be applicable in lieu of or in addition to the regularly applicable regulations for the base zoning district."

2. In Article 11.000, Special Regulations, add the following new section:

"11.40 HARVARD SQUARE OVERLAY DISTRICT

11.41 Establishment and Scope. There is hereby established the Harvard Square Overlay District which shall be governed by the regulations and procedures specified in this Section 11.40. It is the intent of this section that these regulations will apply to a single area described generally as the Harvard Square business district and certain abutting portions of the neighborhoods around it.

11.42 Purpose. It is the purpose of this Section 11.40 to augment existing zoning regulations to respond to the unique problems and pressures for change particular to the Harvard Square area. The regulations contained in said section provide for more careful public scrutiny of development proposals that may alter the established urban form of the Harvard Square area. These regulations are intended to channel the extreme development pressures in ways which will preserve and enhance the unique functional, environmental and visual character of Harvard Square; to mitigate the functional impacts of new development; and to reduce the visual impact of Harvard Square development on adjacent residential neighborhoods.

11.43 Applicability. The Harvard Square Overlay District shall be an overlay district on the Zoning Map established by Section 3.20. The use of land within said district shall be controlled by the pertinent regulations within the base zoning districts, except as modified by the requirements of this Section 11.40 which shall apply in addition to regulations imposed by the base zoning map designations.

The requirements of this Section 11.40 shall not apply to planned unit development proposals filed, reviewed and regulated by Article 12.000; however, said requirements shall apply to other development proposals in a PUD district.

11.44 Building Height Limitation. The maximum height of any building shall be 60 feet unless the Planning Board issues a special permit for additional height up to but not exceeding 80 feet.

11.45 Development Plan Review Procedure. No permit for the construction, alteration, or reconstruction shall be issued for the categories of development listed in subsection 11.451 without referral of the applicant's proposals to the Planning Board, and the receipt of said Board's written plan review thereon by the Superintendent of Buildings, unless 30 days elapse from the date of transmittal of plans to the Board without receipt of such report from the Planning Board. Development proposals for one of the categories of development in Section 11.451 requiring a special permit or variance shall also be filed and reviewed by the Planning Board in the manner provided in this Section 11.45 but shall follow the procedural requirements established by Section 10.33 and Section 10.42.

11.451 The following types of development proposals shall be subject to plan review:

(1) any new structure;

(2) any building addition increasing gross floor area by 100 square feet or more;

(3) construction of five or more parking spaces, whether on grade or in a structure;

(4) any exterior renovation facing a street.

11.452 Applications for permits for construction subject to this Section 11.45 shall be accompanied by four prints of plans of the proposal. The Superintendent of Buildings shall forward three copies to the Planning Board for its review, and shall give notice in a local newspaper that he has done so, identifying the location and nature of the proposal. Notice shall also be mailed to a representative of each of the following organizations who annually files a request for notification of action under this Section 11.40 with the Building Department: the Harvard Square Development Task Force, the Harvard Square Businessmen's Association, the Neighborhood 9 Association, the Neighborhood 10 Association, the Mid-Cambridge Association, the Riverside Planning Team, the Riverside-Cambridgeport Community Corporation, the Agassiz Neighborhood Association, Harvard University, St. John's Monastery, the Cambridge Historical Commission and the Cambridge Conservation Commission.

11.453 Plans subject to review under this Section 11.45 shall be prepared by a registered Architect, Landscape Architect, or Professional Engineer. A site plan shall be submitted showing the general location and boundaries of the lot, topographic changes, existing and proposed curb cuts, loading and service areas, parking, landscaping, screening and proposed utility changes. Accompanying the site plan shall be floor plans indicating calculations of gross floor area, architectural elevations, and drawings of any signs.

11.454 The applicant or the preparer of the materials specified in Section 11,453 shall meet with the Planning Board or with its staff to review the development proposal. At that meeting the Board or its agent will discuss the opportunities and problems presented by the proposal.

11.455 In reviewing each development application, the Planning Board shall have the following powers and duties:

(1) The Board shall evaluate the proposal for compliance with zoning requirements, for appropriateness in terms of other planned or programmed public or private development activities in the vicinity, for consistency with the relevant provisions of the Harvard Square Comprehensive Policy Plan. The Board shall consider the proposal in terms of the specific and general impact of the use and/or dimensions proposed therein on the Harvard Square Overlay Zone and adjoining areas where applicable. Such evaluation shall be conducted in light of the purposes of the Harvard Square Overlay District hereinbefore stated and shall further take account of the following considerations: scale, bulk, density, aesthetic qualities, land use, functional characteristics, parking, loading, and impact on public services and facilities.

(2) In its written report the Planning Board shall make recommendations to the Superintendent of Buildings or the Board of Zoning Appeal for approval or disapproval of any such application and in connection therewith may suggest specific project adjustments and alterations to further the purposes of this Section 11.40.

11.456 The Planning Board may seek the advice and assistance of other city departments and of the organizations given notice in subsection 11.452 in reviewing a development proposal.

11.457 In reviewing an application for a construction permit, special permit or variance subject to the requirements of this Section 11.40, the Superintendent of Buildings or the Board of Zoning Appeal shall give due consideration to the recommendations, concerns and other information contained in the report of the Planning Board. They shall explain to the Board in writing the reasons for any action taken by him in conflict with those findings.

Mary Ellen Prevoner 2 Willard St. Cambridge, Ma.
Peter Lange 190 Hamilton St. Cambridge
ALBION T. SAWYER Jr. AVON
[illegible] 14 Avon Place, Cambridge 02140
Brian C. Kullman 121 Oxford St. Cambridge 02140
Ruth Collins Dirkhoff 45 Fayerweather St. Cambridge 02138
Allen Happe 44 Garden St., Cambridge 02138

John Brode 23 Berkeley St. Cambridge 02138

ALIDA J. OLOUGHLIN

Alida J. Oloughlin 101 Aberdeen Ave. Cambridge Ma. 02138

Vaughan C. Barton 128 Appleton St. Cambridge Ma 02138

ARTHUR H. BROOKS JR.

Arthur H. Brooks Jr 115 Brattle St. Cambridge Mass 02138

Hugh Adams Russell 1 Corliss Pl Cambridge 02139

Hathaway H. Green 33 Fenno St. Cambridge 02138

FIRST PUBLICATION NO. 1967.

City of Cambridge

In the Year One Thousand, Nine Hundred Seventy-Eight

AN ORDINANCE

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

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

The Zoning Map accompanying the ordinance passed to be ordained September 26, 1977 entitled: "The Zoning Ordinances of the City of Cambridge" is hereby amended by by creating a Special Overlay District for the Harvard Square Business area as shown on the attached map.

The regulations for this new district would supplement the zoning requirements presently existing in this section of the City. Existing zoning controls would remain unchanged with the following exceptions:-

1. Building height would be limited to 60 feet, but could be increased to 80 feet for projects granted a special permit by the Planning Board.

2. Most new construction in the district would be subject to an advisory development review process by the Planning Board.

Development proposals covered by a planning Board planned unit development review would be exempt from the process established in this petition. The City's permit granting authorities would be required to acknowledge and address the concerns raised during the Harvard Square Development review process.

In City Council

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

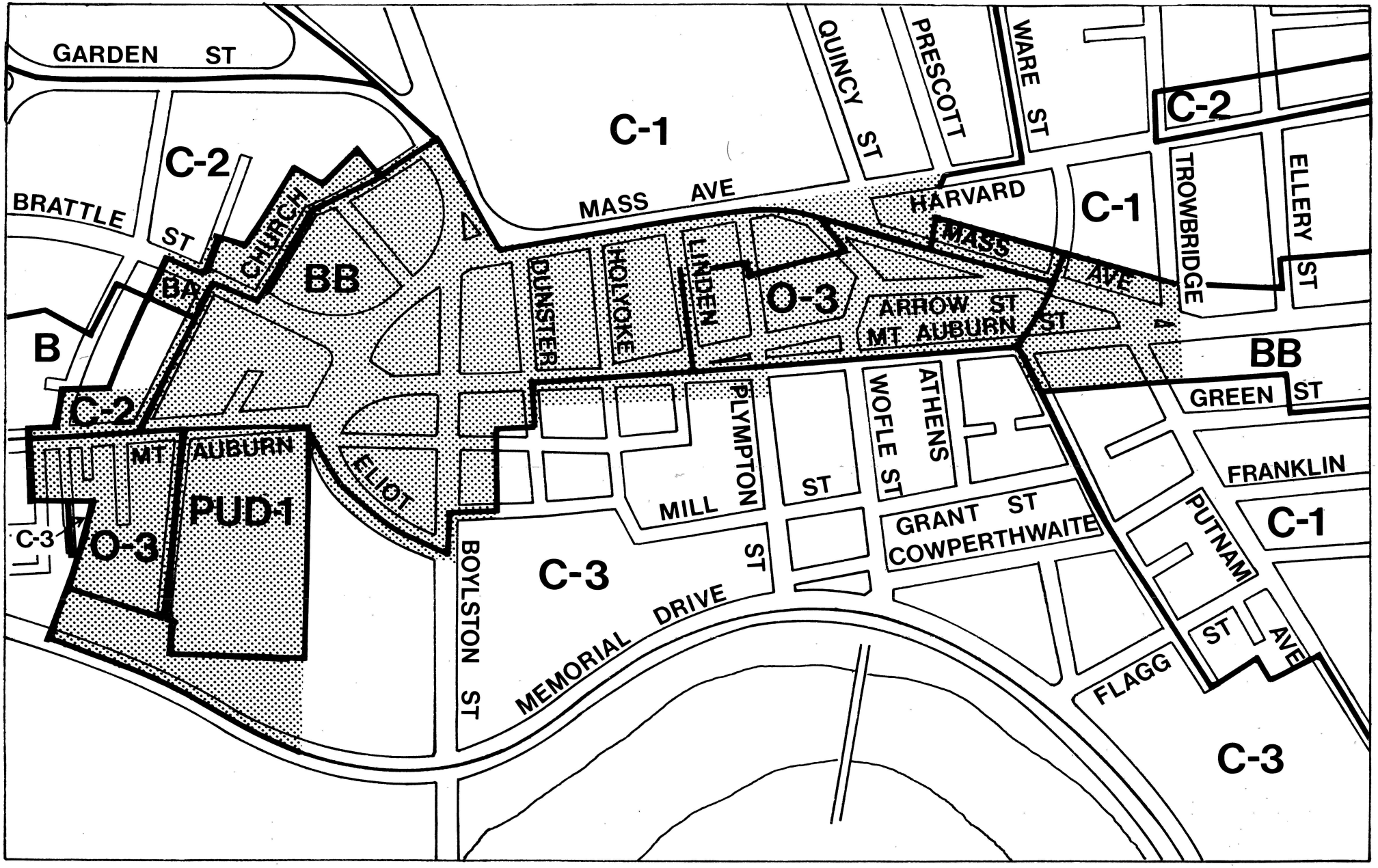
James L. Sullivan, City Manager.

ATTEST:- Paul E. Healy, City Clerk.

NOTE: Pursuant to the provisions of General Laws, Chapter 40, Section 32A, Tercentenary Edition, the ordinance as aforesaid which exceeds in length eight octavo pages of ordinary book print may be summarized for publication in a newspaper of general circulation in the city with the further provision that said Zoning Ordinance may be examined and obtained by the City Clerk's Office during office hours and that any objection of its invalidity by reason of any defect in the procedure of adoption may only be made within ninety days after the posting or the second publication.

PROPOSED HARVARD SQUARE OVERLAY DISTRICT

9/1/78



10 - 1979

Petition of Mary Ellen Preusser, et al, for an amendment to the Zoning Ordinance of the City of Cambridge which would create a special overlay district for the Harvard Square business area.

Copy of Final ordained version sent to Building 2/26/79

9/11/76 - Referred to Planning Board for Hearing and Report and to the Ordinance Committee for Hearing and Report

In City Council,
September 11, 1978

12/11/78 Passed to 2nd Reading

1/22/79 Failed of Ordination -

Copy sent 9-13-78

1/29/79 Placed on file. Motion to Reconsider filed but not acted upon -

2/5/79 C. Preusser Order Charter Right

4/12/79 [illegible]