

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • TEL. 876-6800

LAW DEPARTMENT

PHILIP M. CRONIN
CITY SOLICITOR

EDWARD D. MCCARTHY
ROWENA E. TAYLOR
ASSISTANT CITY SOLICITORS

JOHN A. SERINO
LEGISLATIVE AGENT

September 21, 1973

To the Honorable City Council
City Hall
Cambridge, Massachusetts

Dear Councillors:

You have requested my opinion as to the legal steps which can be taken by the City Council relative to the revocation of all licenses and permits previously granted to Kentucky Colonel Fried Chicken at the intersection of Prospect and Hampshire Streets.

Upon request from the Office of the Mayor as to what recourse the neighborhood residents might have in this matter, I recommended that they appeal the issuance of the building permit by the Superintendent of Buildings to the Board of Zoning Appeal. It is my understanding that this appeal has been timely filed with said Board.

Under Art. I, Sec. 4 paragraph 6a of our Zoning Ordinance, the latter Board has the power and duty "To hear and decide appeals for interpretation where it is alleged that there is error in any order or decision made by an administrative official in the enforcement of this ordinance."

To the Honorable City Council

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September 21, 1973

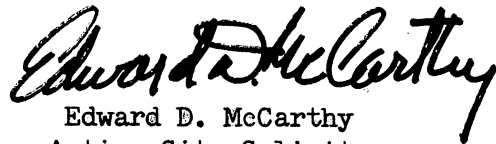
The Supreme Judicial Court of Massachusetts in *Bearce v. Zoning Board of Appeals of Brockton*, 351 Mass. 316, a 1966 decision, stated: "There is no question that the decision of the Superintendent of Buildings to issue the permit is reviewable by the Board of Appeals."

Until such time as the Board of Appeal interprets the Zoning Ordinance in this case and decides whether or not to revoke the permit previously granted; there is no legal action to be taken by you.

Assuming that the Board of Appeal revokes the permit in question, then "State, county and municipal officers must refuse permits or licenses for new uses of buildings, structures or land which would be in violation of any city zoning ordinance ..."Hardy, Municipal Law Sec. 356. All of the latter, of course, subject to judicial review.

The Council may of course take land by eminent domain by a 2/3 rd. vote provided the taking is for a public purpose and an appropriation is made.

Very truly yours,



Edward D. McCarthy
Acting City Solicitor

EDMcC:cas

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Communication from Edward D. McCarthy,
Acting City Solicitor relative to his
opinion as to the legal steps which can
be taken by the City Council relative to
the revocation of all licenses and permits
previously granted to Kentucky Colonel
Fried Chicken.

In City Council,

September 24, 1973

9/24/73

Placed on File
Copy to be prepared
for the meeting
with the City
Managers