

From: Thomas Stohlman [tstohlman@alum.mit.edu]
Sent: Monday, January 05, 2015 1:52 PM
To: City Council
Cc: Lopez, Donna
Subject: 1/5/2014 Reconsideration

To the Members of the City Council,

I write to support reconsideration and eventual approval of changing the words in the Cambridge Zoning Ordinance Section 10.43 from “will normally be” to “may be”.

The current wording (“will normally be”) implies less discretion for the approval of a special permit than the State enabling law (MGL Chapter 40:Section 9) allows. The proposed wording “may be” is more consistent with the actual language used in MGL40:Sec.9 and with established case law regarding special permits.

Simply put, a special permit is discretionary and is not granted “by-right”. The words “may be” more strongly imply discretion than the words “will normally be”.

Although not on your agenda, I wish to call to your attention the need for the City to bring the City Ordinance into compliance with modern State Enabling Law for Planning Boards. Although I think the City automatically had to comply with MGL41:Sec81A and MGL41:Sec81B when Charter E was adopted, the City Council can affirmatively require this under MGL41:Sec81A. My understanding is that the City’s Planning Board currently operates under the archaic MGL41:Sec70.

Finally, both the archaic and modern laws require the appointing authority to have the appointments affirmed by the City Council. I understand there is potentially conflicting wording under the Plan E Charter (MGL43:Section107) regarding interference with the City Manager in appointing members of the Planning Board. I personally do not think the affirmation requirement violates Plan E, but I understand that City Staff believe it does. I would appreciate any help in resolving this apparent conflict.

Why? City Council affirmation of the City Manager’s Planning Board appointments would help assure that the Planning Board better represents the voters of Cambridge.

Thank You,

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