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Lopez, Donna

From: Michael Brandon [mjbrandon@gmail.com]
Sent: Thursday, July 26, 2012 4:56 PM
To: Lopez, Donna
Cc: City Council
Subject: Massachusetts Avenue Overlay District rezoning proposal

Councillors:

Please postpone final adoption of the pending amendments to the Massachusetts Avenue Overlay District and instruct the City Clerk's Office to refile the petition upon its expiration on September 4 so that the revised proposal can undergo legal review and additional scrutiny by the public and members of the City Council.

While the goals of this zoning petition are worthy ones, the needlessly complicated, confusing, and contradictory language and revisions proposed by the Community Development Department require additional refinement to prevent unintended consequences.

Creating a "North Massachusetts Avenue Subdistrict" with use and dimensional regulations that differ from those in the rest of the overlay district would appear to conflict with Section 4 of Chapter 40A ("The Zoning Act"):

Any zoning ordinance or by-law which divides cities and towns into districts shall be uniform within the district for each class or kind of structures or uses permitted.*

Proposed Section 20.100.23, authorizing the Cambridge Planning Board to approve dormitories and residences without the "required" ground-floor nonresidential uses, undermines the express intention of the petition, makes outcomes unpredictable, and defeats the main purpose of the amendment. This section, among others that grant the planning board broad powers to waive both use and dimensional regulations on the basis of somewhat vague discretionary criteria, should be closely reviewed for possible deletion before the City Council cedes its zoning authority to an unelected board.

Other problems also need to be addressed. For instance, the proposed language would not accomplish the intended revision to city's zoning map that the state statute requires. And specifically listing uses such as Fast Order Food Establishments and commercial recreation that are not allowed in the base zoning district as "qualifying" ground-floor "required" uses is unnecessary and merely creates potential confusion when landowners, abutters, and city zoning officials attempt to interpret the zoning ordinance and decipher your legislative intent in the future.

Delaying final action on the amendment would not only allow time for appropriate legal analysis--none has been done so far, according to CDD--but would also permit careful consideration of the Ordinance Committee's report and the recommendation of the Cambridge Planning Board, neither of which are publicly available as I write.

Thank you for considering my views about this important rezoning initiative, which should not be rushed to a vote at a summer meeting that will not allow for adequate public input or due deliberation by the City Council.

Sincerely,

Michael Brandon

**Michael Brandon
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*From a 2003 comment by the Mass. Attorney General's Office ([link](#); my emphases):

G.L. c. 40A, § 4. Section 4 provides, in pertinent part, that "any zoning by-law that divides the town into districts shall be uniform within the district for each class or kind of structures or uses permitted." The uniformity requirement of Section 4 is based on the principles of equal treatment. A zoning by-law is to be applied uniformly to all property located within a particular district, and all owners of properties in that district must be subjected to the same restrictions for the common benefit of all. SCIT, Inc. v. Planning Board of Braintree, 19 Mass. App. Ct. 101, 108 (1984), citing Everpure Ice Mfg. Co. v. Board of Lawrence, 324 Mass. 433, 439 (1949).

We are mindful that there are exceptions to the uniformity provision of Chapter 40A, Section 4. The SCIT case states that the Zoning Act sanctions certain exceptions to the uniformity provision of Section 4. These exceptions are: Chapter 40A, § 6, relating to existing structures and uses, and Chapter 40A, §§ 9 and 10, relating to special permits and variances. SCIT, 19 Mass. App. Ct. at 108. "These exceptions aside, Section 4 does not contemplate, once a district is established and uses within it authorized as of right, conferral on local zoning boards of a roving and virtually unlimited power to discriminate as to uses between landowners similarly situated." Id. at 108. Therefore, in the

absence of at least one of the foregoing statutory exceptions, it is not permissible to single out one lot and impose restrictions upon that lot that are less onerous than those imposed upon other lots similarly situated. *Whitmore v. Building Inspector of Falmouth*, 313 Mass. 248, 249 (1943).