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CITY OF CAMBRIDGE  
COMMUNITY DEVELOPMENT DEPARTMENT

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SUSAN GLAZER  
Acting Assistant City manager  
for Community Development

## Fox Petition

### Comparison of Existing and Proposed Zoning Districts

	FAR	Height	Lot Area/DU	Uses
<b>Exiting Base District: Business B-2</b>	1.0 non-residential/1.75 residential	45 ft	600 sf	Housing, office, retail, institutional
<b>Existing Overlay District: Massachusetts Avenue</b>	Same	Same	Same	Same
<b>Proposed District: Residence B</b>	<i>0.5/0.35 after the first 5,000 sq ft of lot area</i>	<i>35 ft</i>	<i>2500/4000 after the first 5,000 sq ft of lot area</i>	<i>Single and two-family dwellings, townhouses; 5.28.2 conversion to multifamily</i>

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November 17, 2010

**VIA FAX (617-349-4269) AND FIRST CLASS MAIL**

Councillor Sam Scidel, Co-Chair  
Councillor Timothy J. Toomey, Jr., Co-Chair  
Cambridge City Council – Ordinance Committee  
City Hall  
795 Massachusetts Avenue  
Cambridge, MA 02139

RE: Fox Rezoning Petition - Opposition of Cottage Park Realty, Inc., Owner of  
22 Cottage Park Avenue

Dear Councillor Seidel, Councillor Toomey and Members of the Ordinance Committee:

This firm represents Cottage Park Realty, Inc., the owner of 22 Cottage Park Avenue, Assessors Map 189, Lot 84 (the "Cottage Park Realty Property"). Cottage Park Realty, Inc. (hereinafter "Cottage Park Realty") opposes the Petition submitted on September 23, 2010 by William A. Fox, et al. to amend the City of Cambridge Zoning Map by rezoning an area in North Cambridge from its current designation of Business A-2 to a new designation of Residence B (the "Fox Petition"). The area that would be impacted by the Fox Petition includes the Cottage Park Realty Property as well as five other parcels to the north and east of the Cottage Park Realty Property.

The Cottage Park Realty Property comprises approximately 13,959 square feet. The northern portion of the Cottage Park Realty Property is located in the Business A-2 Zoning District and the southern sliver is located in the Special District 2 Zoning District. The Cottage Park Realty Property is located on Cottage Park Avenue, a dead-end street in North Cambridge that connects to Massachusetts Avenue. The Cottage Park Realty Property contains one existing three-story brick building comprised of four connected structures that were constructed between 1909 and 1930. The building contains over 35,000 square feet of gross floor area.

With respect to adjacent zoning districts, as shown on the Cambridge Zoning Map, the area to the south of the Cottage Park Realty Property is within the Special District 2 Zoning District. Just across Cottage Park Avenue to the west, the land is zoned Residence B. The area

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to the north of the Cottage Park Realty Property, as well as along both sides of Massachusetts Avenue, is zoned Business A-2.

### The Fox Petition

The Fox Petition was received by the City Clerk on September 23, 2010. The Fox Petition asks the City Council “to amend the Map of the Zoning Ordinance of the City of Cambridge by rezoning an area in North Cambridge from its current designation of Business A-2 to a new designation of Residence B. The area proposed to be rezoned is ... for that area bounded by the centerline of Cottage Park Avenue on the north, the existing Special District 2 zoning district line on the west and on the east by a line westerly of, parallel to, and 100 feet distant from the westerly sideline of Massachusetts Avenue.”

As an initial matter, we note that the directional designations in the proposed rezoning are incorrect. Although subject to confusion, for which the Fox Petition should be denied to avoid any procedural problem, we have interpreted the area to be rezoned as follows for purposes of these rezoning proceedings: “for that area bounded by the centerline of Cottage Park Avenue on the *west*, the existing Special District 2 zoning district line on the *south* and on the east by a line westerly of, parallel to, and 100 feet distant from the westerly sideline of Massachusetts Avenue.” We note that there are approximately five properties that would be impacted by the Fox Petition.

In addition to the need to deny the Fox Petition due to its imprecision regarding the area to be rezoned, Cottage Park Realty disagrees with the substantive points raised in the Fox Petition regarding the need to rezone the Cottage Park Realty Property.

First, the Fox Petition states that “[t]he affected area is principally accessed via Cottage Park Avenue, a small dead end street that is predominantly residential in nature and limited in its ability to safely handle significant automobile traffic.” While it is true that Cottage Park Avenue is a dead end street, the entire easterly side of Cottage Park Avenue is zoned Business A-2 until it meets the Special District 2 Zoning District to the south. The Fox Petition contains no documentation or support by a qualified traffic engineer to support the premise that Cottage Park Avenue is “limited in its ability to safely handle significant automobile traffic.” While the Petitioners may desire to restrict traffic along Cottage Park Avenue, their wishes are not sufficient evidence to warrant rezoning the Cottage Park Realty Property.

Second, the Fox Petition states: “The westerly side of Cottage Park Avenue is already zoned Residence B and there are residential uses currently in the affected area.” While this is true, the fact that one side of a street is zoned residential and the other side is zoned business is not sufficient grounds to warrant rezoning. As noted above, the entire easterly side of Cottage Park Avenue is zoned Business A-2 until it meets the SD-2 district.

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Third, the Fox Petition continues: *"The density of the current Business A-2 zoning designation, and its wide range of retail and office uses, is inappropriate for this small area that does not front onto Massachusetts Avenue. It is one of very few areas along the avenue where the business district extends more than 100 feet from sidewalks along the highway."* This statement is not accurate. There are other areas along Massachusetts Avenue where the Business A-2 zoning district extends more than 100 feet. For example, there is an area to the east of the proposed area to be rezoned, near Locke Street, where the Business A-2 zoning designation extends to the north by several hundred feet. This area is approximately five blocks from the proposed area to be rezoned. Moreover, at the time the Cottage Park Realty Property was zoned Business A-2, the City of Cambridge intentionally included the Cottage Park Realty Property and extended the Business A-2 zone to the south of Massachusetts Avenue more than 100 feet.

Fourth, the Fox Petition states: *"Housing at the density of the existing neighborhood as developed on the other side of Cottage Park Avenue is more appropriate."* As noted above, the entire easterly side of Cottage Park Avenue is zoned Business A-2 until it meets the SD-2 zoning district. The Fox Petition was signed by a number of Cambridge residents who, presumably, live in the neighborhood adjacent to the proposed rezoning area, and who want to change the zoning designation so that they can guarantee future land uses at neighboring properties. When these residents purchased their properties or moved to the neighborhood, the zoning designations and information were public information and they were on notice that the neighborhood included mixed uses. The Cottage Park Realty Property and the other affected properties are not the only properties zoned Business A-2 in the area. The current Zoning Map designates areas and districts and should not be changed merely to make something more palatable to neighbors in another district.

Fifth, according to the Fox Petition, *"The large area of industrial property at the end of Cottage Park Avenue was recently rezoned from its original industrial designation to a new, low density district (Special District 2) similar in density to the Residence B district, with the express intent of encouraging this industrial land to evolve over time to housing compatible with the abutting neighborhood. The present proposal would complete the implementation of that change in city policy and reserve this small area for future residential development as well. The historic commercial and industrial zoning designations in this area reflected a different time and pattern of use that grew up around the railroad. Times have changed and land use patterns have evolved; limiting future development along Cottage Park Avenue to housing is most appropriate today and the proposed rezoning would accomplish that."* This raises a number of points. The City of Cambridge Community Development Department spends a considerable amount of time conducting planning initiatives throughout the City to ensure that the zoning and land uses are appropriate given the evolution of neighborhoods. If the City of Cambridge had wanted to rezone the Cottage Park Realty Property, it would have done so at the time the Special District 2 zoning was enacted. Yet the City did not do so; it left the Business A-2 zoning designation in place. Further, the characterizations of the uses permitted in the SD-2 district are not accurate as portrayed by the Fox Petition. The SD-2 district permits nonresidential uses in buildings in existence as of September 1, 1998, which includes the building at the Cottage Park Realty Property. The specific types of nonresidential uses permitted in the SD-2 zoning district include

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office and laboratory uses, retail business and consumer service establishments, open air or drive-in retail and service, as well as multifamily uses. See Cambridge Zoning Ordinance, Section 17.23.

In addition to the changes in permitted uses, the Fox Petition would also change the dimensional and density provisions that apply to the Cottage Park Realty Property and other affected properties. The Floor Area Ratio would be reduced from 1.0 for commercial and 1.75 for residential uses to 0.5/0.35 depending on lot size; the lot area per unit would be increased from 600 square feet to 2,500/4,000 square feet depending on lot size; and the maximum height limit would decrease from 45 feet to 35 feet. Although the Cottage Park Realty Property contains an existing building, if the area were to be rezoned, the rezoning would severely limit the future uses at the Cottage Park Realty Property.

The Fox Petition Does Not Satisfy the Criteria for a Zoning Map Amendment and Constitutes Reverse Spot Zoning

A zoning amendment needs to reflect substantive planning objectives, such as consideration of the community need or general welfare that would be improved as a result of the zoning change. The impact of a proposal on neighboring properties, existing nonconforming structure and the municipality's economic condition are crucial considerations. National Amusements v. City of Boston, 29 Mass. App. Ct. 305, 310 (1990). The impact of the proposed rezoning on the Cottage Park Realty Property, which is already partially subject to the SD-2 zoning district, would adversely affect the ability of Cottage Park Realty to develop and use its land.

The Massachusetts Zoning Act, M.G.L. c. 40A, Section 4 requires uniformity: "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."

Spot zoning occurs "where a zoning change is designed solely for the economic benefit of the owner of the property receiving special treatment and is not in accordance with a well considered plan for the public welfare." Board of Appeals of Hanover v. Housing Appeals Commn., 363 Mass. 339, 362 (1973). Typically, spot zoning singles out a small area of land for treatment less onerous than that imposed upon nearby, indistinguishable properties. Zoning amendments that single out a parcel of land for more restrictive treatment than other parcels in the same zoning district are known as "reverse spot zoning."

Spot zoning (or reverse spot zoning) is illegal on both Constitutional and statutory grounds and has been held to violate the "uniformity" requirement contained in Chapter 40A, Section 4, cited above. The test for spot zoning has been stated as follows:

"A city council is empowered to amend a zoning ordinance when the character and use of a district or the surrounding territory have become so changed since the original ordinance was enacted that the public health, morals, safety and welfare would be promoted if a change were made in the boundaries or in the regulations

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prescribed for certain districts; but mere economic gain to the owner of a comparatively small area is not sufficient cause to involve an exercise of this amending power for the benefit of such owner.”

Leahy v. Inspector of Buildings of New Bedford, 308 Mass. 128, 132-133 (1941).

Massachusetts courts have overturned zoning amendments creating reverse spot zoning where, as here, the amendment would cause an economic loss because the spectrum of potential land uses are restricted in comparison to neighboring properties. See Schertzer v. City of Somerville, 345 Mass. 747 (1963) (three small lots on the edge of a business district from business to residential invalidated); National Amusements, Inc. v. City of Boston, 29 Mass. App. Ct. (1990) (13-acre parcel rezoning from business to two-family residential invalidated).

In this case, the motives of a small group of adjacent neighbors to restrict the uses at the Cottage Park Realty Property so that the future land uses will be more favorable to them should not outweigh the rights of Cottage Park Realty to rely on the existing zoning designation that was upheld and maintained even after the City planning effort that changed the zoning designation of the southern portion of the property to SD-2. It is quite apparent that the target of the Fox Petition is the Cottage Park Realty Property. As such, if enacted, this zoning map amendment would clearly constitute reverse spot zoning argument.

If the Petitioners truly believe that the western side of Cottage Park Avenue must be zoned Residence B, then they should engage the City of Cambridge Community Development Department to conduct proper planning studies, which would be reviewed and discussed by all affected parties, and may result in a change to the zoning map. By filing a Petition, they have attempted to sidestep the essential step of careful and full review of all issues and impacts, including the economic impact to the property owners whose zoning designations may change, and force the City Council to vote based on the wishes of certain constituents. If this were to occur, our client would have no choice but to appeal such a determination on a number of grounds including reverse spot zoning.

As you may know, the Planning Board held a public hearing on the Fox Petition on November 16, 2010. After a considerable amount of discussion, the Planning Board closed the oral testimony portion of the hearing but will continue to accept written comments on the Fox Petition until a continued hearing date, approximately six weeks from now, that has not yet been established. The Planning Board will also seek input from the City Solicitor's office regarding the reverse spot zoning issues raised above.

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For the reasons set forth in this letter, the Ordinance Committee should send a negative recommendation to the City Council regarding the Fox Petition. Thank you for your time and attention.

Sincerely,



Ruth H. Silman

cc: D. Margaret Drury, City Clerk (via fax 617-349-4269)  
Liza Paden, City of Cambridge Community Development Department (via e-mail)  
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