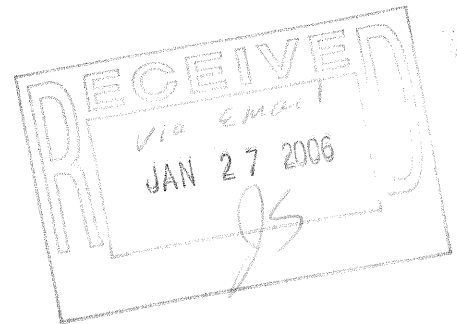


January 27, 2006

William Chin, Chair
Zoning Board of Appeal
c/o Jay Szklut, Planning and Economic
Development Manager
Homer Municipal building
Belmont, MA 02478



**Re: 40B Uplands Proposal
- Residences at Acorn Park**

Dear Mr. Chin:

In submitting this request, we follow the newly issued 40B guidelines entitled “Local 40B Review and Decision Guidelines”, dated November 25, 2005 (the “Guidelines”). We also highlight the advice of Clark Ziegler, Executive Director of the Massachusetts Housing Partnership, who states in his letter dated November 26, 2005 submitting the Guidelines to Legislators: “The most important advice in the guidelines is that ZBAs should identify key concerns about the impacts of a proposed 40B development early in the process and communicate those concerns to the applicant. Communities should hold off on detailed technical review until general issues have been identified and the developer has had an opportunity to modify the proposal.”

Under its Chapter 40B application (the “40B Application”), AP Cambridge Partners II, LLC (the “Applicant”) has requested the waiver of zoning and other local regulations that in the Applicant’s opinion would impede the development of the 299 units of housing including 60 affordable units (the “Project”).

At the same time, under Chapter 40B, the Zoning Board of Appeal (the “ZBA”) can balance “local needs”, such as protection of health and public safety, protection of open space, and the safeguard of the environment (collectively, “local needs”), against housing needs. Guidelines, Page 1. If the ZBA finds that the need to support local needs are paramount, the ZBA can decide (a) not to waive certain local regulations and/or (b) to impose conditions to mitigate adverse effects to local needs.

The Guidelines on Page 1 go on to state: “HAC regulations establish high thresholds to establish consistency with local needs, including the degree to which the health and safety of occupants or town residents is *imperiled*, the natural environment is *endangered*, the design of the site and the proposed housing is *seriously* deficient, open spaces are *critically* needed, and the local requirements and regulations bear a *direct and substantial relationship* to the protection of [health and safety, design and open spaces]. 760 C.M.R. §31.07(2)(b). There are times when a project cannot be conditioned to ensure that the health and safety is not imperiled or the

William Chin, Chair
Zoning Board of Appeal
January 27, 2006
Page 2

environment is not endangered. In these instances HAC will uphold a local denial of a proposed project.”

To our knowledge, at present, the ZBA is the only government board or agency with permitting authority that is actively considering (a) the local and regional flooding and sanitary impacts to public health, safety and the environment, and (b) the loss of natural open space.

To date, Cambridge has not commented on the Application. Nor are we aware that the Applicant has applied to the Massachusetts Department of Environmental Protection (“DEP”) for (a) a sewer connection permit or (b) a stormwater individual or general permit.

The Applicant stated at the first public hearing on the Application held on January 11, 2006 that it intends to postpone MEPA review until after the issuance by the ZBA of the Comprehensive Permit.

Of course, once the Applicant files an Environmental Notification Form or Notice of Project Change to the MEPA office, MEPA will require further analysis by the Applicant. Moreover, as part of the MEPA process, DEP, DCR, Cambridge, MWRA, and other parties will be notified, and undoubtedly will file comments. This study and further analysis under MEPA would be helpful to the ZBA in connection with the ZBA’s review of the 40B Application. But the ZBA will not have this information before it in a timely manner.

Likewise the Applicant has postponed filing a Notice of Intent (“NOI”) with the Conservation Commission. The NOI filing would have called for further assessment of the impacts from the Project on wetlands and other resource areas. It is interesting to note that the Applicant took the opposite course with its R&D proposal when it filed its NOI early. The earlier R&D NOI filing was upheld by DEP.

The Guidance on Page 5 states “The ZBA should then (after commencing the public hearing) solicit written comments from all relevant local boards, determine whether the application is complete, and advise the applicant if additional information is needed to make an informed decision.”

Lacking information that would have been made available through the MEPA and the Conservation Committee review processes, the ZBA should request from the Applicant relevant information to enable it to study and regulate the public health, safety, environmental and open space aspects especially resulting from potential harmful flooding, inadequate sanitary waste infrastructure, and loss of wildlife habitat. This is of critical importance because of adjacent wetlands, Class B water bodies, parkland within the Alewife Reservation, and public health issues because of prevalent flooding within the Alewife watershed area and the continued discharge from combined sewer over flows (CSOs) at Alewife Brook.

William Chin, Chair
Zoning Board of Appeal
January 27, 2006
Page 3

This calls for the ZBA to request the Applicant to submit further analyses to describe and quantify these impacts and to work with the ZBA in fashioning reasonable solutions to these problems.

The information and tasks that we ask the ZBA to request from the Applicant are the following:

Notification of Interested Parties

The Applicant should be asked to send the Application to the following interested parties for comment.

Department of Conservation and Recreation (DCR), MWRA, Cambridge, Arlington, and the Mystic River Watershed Association (MyRWA).

Open Space

Adequacy of Open Space from design standpoint beneficial to the tenants and their invitees.

Describe both the passive and active resident adult and children recreational areas. What are the sizes of these areas and what equipment and landscaping are proposed by the Applicant? Are the outside areas grassed or paved? Provide plans showing their locations.

Adequacy of open space from a community-wide standpoint.

[Note: The Uplands Advisory Committee will provide a separate letter on this subject based in part on the Town's Open Space and Recreation Plan.]

Design of the Site and the Proposed Housing and Respect for Natural Environment

The Applicant has requested a waiver from all site plan review procedures in §6.B.8 of the Zoning By-law. While Chapter 40B excuses the Applicant from the Planning Board discretionary site plan approval process, the ZBA can apply those §6.B.8 requirements that are reasonably relevant to the Project as part of ZBA's review.

The Applicant should be asked to submit those items listed under the following numbered subparagraphs of §6.B.8 and relevant to open space as follows:

- (iv) views of the Project from public locations
- (xi) view shed analysis;

Also, the Applicant should be asked to:

(a) Provide a plan (with the proposed buildings and pavement and the different resource and applicable buffers marked thereon) showing (a) the location of Silver Maples and other vegetation that will be removed by the Project, (b) the location of Silver Maples that will be preserved under the Conservation Restriction ("CR"), and (c) the location of Silver Maples that will remain outside the areas referred to in (a) and (b) above, together with a plan for the protection and maintenance of the trees and other vegetation that will remain after the construction of the Project.

(b) Show the smaller footprint of the Project if the height of the buildings was raised to seven stories; and

(c) Show alternate proposals with the proposed on-grade parking spaces placed in a garage underground and with stormwater retention basins placed under the buildings, driveways, parking lots, or Acorn Park Drive.

Environmental

Conservation Restriction

Overlay on a plan showing the outline of the buildings, parking lots, and retention basins together with the resource areas and buffers thereto - the two conservation restrictions, first the one committed to by the Applicant under the R&D Memorandum of Agreement and second, the one showing the CR proposed for the Project.

Provide terms of proposed Conservation Restriction and highlight changes from the terms of the R&D conservation restriction.

Avoidance and Mitigation of any harm to wetlands and Little Pond and Little River

Provide copy of proposed Notice of Intent proposed to be submitted to the Conservation Committee or equivalent.

Explain how water quality impairment, erosion and other potential adverse effects on wetlands, banks, Little Pond, and Little River, caused by the installation, construction, and operation of parking lots, buildings, detention basins, Fire Road, sanitary waste pump, force main, and gravity main will be avoided or mitigated. Examine cumulative impacts without limitation due to Wetlands Protection Act and Rivers Protection Act regulatory threshold exemptions; follow what a comprehensive MEPA study would entail and measure cumulative impacts including those from Discovery Park by Bulfinch and other projects in the vicinity for which MEPA filings have been made, and those from future development allowed under the proposed rezoning of the Quadrangle and Triangle by Cambridge.

Stormwater

Control of Run Off

Assess volumes of run off from thunderstorms and steady rainfalls over several days leaving site and contributing to on-site and down gradient flooding.

To the extent this requirement exceeds the current State Stormwater Policies, we bring to your attention that in measuring these impacts on “local needs”, the ZBA must not rely only on local, state and federal regulations but also on generally recognized environment standards. To illustrate the latter point, we note that the Housing Appeal Committee (“HAC”) upheld the Hopedale Zoning Board of Appeal’s imposition of setbacks from a local airport’s runway despite the lack of prior local regulations to that effect. *Hamlet Development Corp. v. Hopedale Board Of Appeal*, Housing Appeal Committee, No. 90-03 (Jan. 23, 1992). The Guidance on Page 4 states that the chief elected officials (and we assume other Town Boards) can make constructive comments on “existing infrastructure (roads, water, sewer), the environment (such as traffic, storm water management, or groundwater quality), or suggestions on how the proposed site or building design might be modified to better fit into the surrounding neighborhood.”

How will these high runoff levels be prevented or mitigated?

Provide the proposed Operation and Maintenance Plan (“O&M Plan”) for stormwater control measures.

Stormwater Management Facilities

For each of the lettered paragraphs under §6.B.7 (for which the Applicant has sought waivers), describe what aspects of the requirements exceed the regulations under the Wetlands Protection Act, 310 CMR 10.000 et. seq. and the 1997 DEP Stormwater Policies. As to those aspects, state their respective costs and, if not to be complied with, state your reasons why compliance with those items is not helpful to avoiding or mitigating harmful erosion and adverse water quality and flooding impacts to downgradient water bodies, wildlife, and human habitation.

In brief, §6.B.8.7 includes requirements for (a) control of peak runoffs, (b) infiltration of clean roof tap water, (c) 10-year storm pipe capacity, (d) basins to detain at a minimum the difference between pre-and post-development discharge rates, (e) basins to hold stormwater sufficient to contain 100 year storm, (f) compensatory storage to off set 1.5 times loss of flood storage, (g) minimization of loss of tree cover and vegetation, (h) grading blended with terrain, (i) safety devices, and (j) responsibility for management and maintenance of SW facilities.

Adequacy of Infrastructure

Sanitary Sewer

Provide analysis and design to arrive at location, size, and type of new force and gravity mains to comply with governmental codes as well as reasonable environmental standards, to connect the Project to the MWRA interceptor at Brighton/Blanchard Streets. What is the apportionment of cost between Applicant and the Town of Belmont, and what is timetable for installation of sewer pipes broken down by Applicant's and Town's respective responsibilities.

What contribution is Applicant offering to make towards elimination of Inflow and Infiltration ("I&I")? Is this in addition to commitment under the R&D Memorandum of Agreement?

Describe provisions for storing sewage (that are required by Cambridge) to avoid discharge at time when combined sewer overflows ("CSOs") along Alewife Brook are discharging raw sewage into the Brook and the Mystic River.

Transportation

Show the existing public bus routes, stops, and timetables providing transportation from the Project to the Alewife T stop.

Are new routes proposed and what is status of MBTA approval process?

Show private bus shuttle route, stops, and timetables, size of buses, number of buses, and costs (capital and operating). Is this part of proforma costs? If not, what is the funding source? State the Applicant's commitment.

Show on a site map bicycle and walking routes to the Winn Brook neighborhood, the Arlington Lake Street neighborhood, Alewife T stop, and the Quadrangle and Triangle in Cambridge.

If a standard sidewalk in good condition does not exist, identify those areas and state the cost, grade changes, party responsible, and timetable for construction or reconstruction of sidewalk within those areas. If any of those areas where a sidewalk needs to be constructed or reconstructed, state the owners of such areas and whether such work can be done under current agreement or easement.

On any questions that you may have on the above, members of the Uplands Advisory Committee and others will be glad to respond.

William Chin, Chair
Zoning Board of Appeal
January 27, 2006
Page 7

We appreciate the time you are devoting to these important concerns.

Very truly yours,

Frederick S. Paulsen, Chair
Uplands Advisory Committee

FSP/fcc

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