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DECISION

**TOWN OF BELMONT, MASSACHUSETTS
ZONING BOARD OF APPEALS**

**DECISION UPON APPLICATION OF
AP CAMBRIDGE PARTNERS II, LLC
FOR A COMPREHENSIVE PERMIT**

FEBRUARY 16, 2007

PROCEDURAL HISTORY

1. On or about December 16, 2005, AP Cambridge Partners II, LLC (the "Applicant"), applied for a Comprehensive Permit, pursuant to Massachusetts General Laws Chapter 40B ("Chapter 40B" or the "Act"), to construct 299 units of rental housing on the west side of Acorn Park Drive in Belmont, Massachusetts (the "Project"). The Project site is within a larger parcel of land containing approximately 12.9 acres in Belmont (the "Property") and an additional 2.7 acres of land in Cambridge, Massachusetts (the "Cambridge Area"). The Property is known as Map 40, Block 1, of the Belmont Assessing Department Records. The Project is identified as "The Residences at Acorn Park" located on the south side of Frontage Road and the west side of Acorn Park Drive in Belmont, Massachusetts.

2. The Zoning Board of Appeals (the "Board"), opened a duly advertised public hearing on January 11, 2006 and continued the public hearing to the following dates:

February 15, 2006	September 5, 2006
March 22, 2006	October 4, 2006
May 4, 2006	November 1, 2006
May 31, 2006	December 6, 2006
June 28, 2006	January 3, 2007
July 26, 2006	

3. On January 3, 2007 the Board closed the Public Hearing and entered into deliberations.

4. On January 17, 2007, January 24, 2007, January 30, 2007, February 6, 2007, February 7, 2007, and February 12, 2007 the Board conducted public meetings to deliberate on this application for a Comprehensive Permit (the "Application"). The Applicant granted the Board an extension of time up to 5 P.M. on February 16, 2007 to file a written decision on the Application. On February 16, 2007, the Board voted to grant the Comprehensive Permit subject to the conditions listed below.

5. A list of the letters, reports, plans and emails received by the Board and made a part of the record is attached as Attachment B.

6. The Board retained the following consultants to assist in the review of the Application:

Civil Engineering Review: Fay, Spofford & Thorndike
Burlington, MA

Environmental Review: Wetlands & Wildlife, Inc.
(sub-contractor to FST) Ashburnham, MA

MHP Fund: Michael Jacobs
(Ch. 40B Advisor) MHJ Associates
Brookline, MA

Transportation Review: BSC Group
Boston, MA

7. In addition to having copies of the complete application available for public review at the Belmont Public Library, 336 Concord Avenue and at the Office of Community Development, 19 Moore Street, consistent with the provisions of Chapter 40B, Section 21, the Board notified the following boards, committees, and commissions of the filing of the Application by sending a copy thereof to such local boards for their recommendations, all of which have been made a part of the record of these proceedings and have been taken into consideration by the Board in rendering its decision.

Board of Selectmen
Board of Health
Planning Board
Conservation Commission
Historic District Commission
Fire Department
Police Department
Department of Public Works
Housing Trust
Building Commissioner
Uplands Advisory Committee

FINDINGS - GENERAL

1. The Applicant is qualified pursuant to 760 Code of Massachusetts Regulations (“CMR”) 31.10 in that the Applicant:
 - a) is or will become a “limited dividend organization” as that term is used in Chapter 40B, Section 21 and 760 CMR 31.01 in that prior to the issuance of a Building Permit it will execute a Regulatory Agreement that shall require the limiting of its profits on this Project to an annual return on equity no greater than 10%.
 - b) has a determination of Project Eligibility (Site Approval) dated February 11, 2005 from MassDevelopment regarding use of the MassDevelopment Tax-Exempt Bond Program for Rental Housing establishing fundability by a subsidizing agency in compliance with 760 CMR 31.01(1)(b).
 - c) has control of the site as that term is used in 760 CMR 31.01 in that a copy of the deed has been provided showing transfer of ownership from Arthur D. Little Real Estate Corporation to the Applicant, dated June 24, 1999, and recorded in Middlesex South District Registry of Deeds at Book 30386, pages 240 - 243.

2. Based on the evidence presented by the Applicant, local boards and officials, various consultants, and interested parties at the Public Hearing, the Board finds as follows:

- a) The Town of Belmont (the "Town") has not met the statutory minimum set forth in Chapter 40B, Section 20 or 760 CMR 31.04 in that (i) it does not have 10% of its total housing units available to low and moderate income households, (ii) affordable housing is not located on sites comprising 1 ½% or more of the total land area zoned for residential, commercial or industrial use, and (iii) the development of affordable homes consistent with the Application will not result in the commencement of construction of such housing on sites comprising more than 0.3% of such land area or ten (10) acres, whichever is larger, in any one calendar year.
- b) If the Applicant complies with the conditions set forth in this Decision, and only if it complies with those conditions, the Project will adequately provide for traffic circulation, storm water drainage, sewage disposal, water, open space and the environment without an undue burden on, or a threat to the public health and safety of, the Project's occupants, the surrounding neighborhood, the Town or the Town of Arlington.
- c) The Project is supported by the evidence and, as conditioned below, (i) would represent a reasonable accommodation of the regional need for low and moderate income housing, and (ii) would be consistent with local needs within the meaning of Chapter 40B, Section 20.

FINDINGS - SITE SPECIFIC

3. The Property was rezoned in 2002 at the Applicant's request from a General Residence Zoning District (two-family residential) to the Belmont Uplands District, a Zoning District that was designed specifically for the Property and consists solely of the Property. In the Belmont Uplands District, only non-residential uses are allowed, particularly, office, research and development, open space, and accessory uses. At the time of the rezoning, the Applicant indicated the intent to construct at the Property a four-story office/lab building with an accessory parking structure.

4. As a result of this rezoning, Section 6B was added to the Zoning By-Law of the Town (the "By-Law"). The dimensional regulations of Section 6B were based upon the particular features and conditions of the Property and the Cambridge Area and reflect valid health, safety, environmental, and other local concerns as to the development capacity of the Property and the Cambridge Area.

5. In connection with such rezoning, the Applicant and the Town entered into a certain Memorandum of Agreement dated May 28, 2002, and recorded with the Middlesex South District Registry of Deeds in Book 35716, Page 594 (the "MOA"). In consideration of the rezoning, the Applicant agreed in the MOA to a number of conditions, each designed to mitigate the expected consequences of development of the Property. According to the MOA, the obligations of the Applicant under the MOA shall run with the land.

6. The Applicant agreed in the MOA to preserve certain portions of the Property and the adjacent land in Cambridge as open space pursuant to a Conservation Restriction and Easement.

Although a metes and bounds legal description of the land subject to such Conservation Restriction may not have been completed, the boundaries of the restricted land were sufficiently established so that the Applicant's engineer could plot them on a plan included in the record of this Application and determine the area of the restricted land.

7. The Project encroaches in the southern and western directions into the land shown as restricted under the MOA, which encroachments, given the environmental sensitivity of such land and its proximity to resource areas, the Board finds material. Absent a release by the Town of the land subject to such encroachments, the Board raised the question of the authority of the Applicant to make any use of such land in a manner inconsistent with the Conservation Restriction, such as for any building, parking, or services areas of the Project.

8. The dimensional regulations of Section 6B and the conditions of the MOA were an integral part of the rezoning. The Applicant relies upon the rezoning in determining the acquisition value of the Property in its financial projections submitted by the Applicant to the Board.

FINDINGS - WASTEWATER

9. One of the gravest issues presented by the Project is the sewage it will generate in light of the existing sewage problems in the area during storm events. This issue was the subject of a great deal of discussion at the hearings with testimony from the public, the Applicant's consultant, Mr. Sullivan of Rizzo Associates ("Rizzo"), and the peer reviewer, Mr. Gould of Fay, Spofford & Thorndike ("FST"), who is also the Town's consultant on wastewater issues. Rizzo and FST also presented a number of written analyses. As discussed below, the Town sewer system in the adjacent area has adequate capacity to accept the additional flow during ordinary conditions. However, the nearby areas suffer "sewage discharge events" – backups – in severe storms. Numerous residents, particularly from Oliver Road and Frost Road, testified to backups over the past few years from personal experience. While the Applicant is not responsible for these existing problems, any worsening of the problem due to the Project would increase the exposure of the residents in nearby areas to raw sewage in their homes and pose a severe public health problem.

10. The projected average daily flow from the proposed 463-bedroom Project is estimated at approximately 51,000 gallons per day under Title 5 (which assumes 110 gallons per day per bedroom), but both Rizzo and FST agreed that the projected actual average daily flow is approximately half of the Title 5 number, or 25,500 gallons per day. The MOA regarding the rezoning of the Property contemplated a Title 5 average daily flow of 18,375 gallons, so it appears that the Project will generate slightly less than three times the amount of wastewater projected for the Office/R&D project contemplated by Section 6B of the By-Law.

11. The Applicant proposes to provide sewer service by the construction of a pump station and a force main along Acorn Park Drive, Frontage Road, Lake Street and Garrison Road. The force main will connect to the Town of Belmont gravity sewer at the intersection of Garrison Road and Gilmore Road. This 8" gravity sewer flows from Gilmore Road to Oliver Road and into a 15" gravity sewer in Brighton Street before discharging into the 36-inch MWRA Belmont Branch Sewer at the intersection of Brighton Street and Flanders Road. Approximately 80% (60 miles) of Belmont's sewer system is tributary to the Flanders Road connection. The 15" connection on Brighton Street is located at the furthest downstream point in the system.

12. FST constructed a computer model of the existing gravity sewer sub-system tributary to the Brighton Street connection. Based on flow-monitoring and MWRA data, FST modeled the peak flow during normal conditions with the addition of the proposed flow from the Project. FST concluded (6/23/06 letter and attachments) that during normal conditions the existing gravity sewer has sufficient capacity to accept the additional flow. However, during a storm event, the existing sewer experiences surcharge conditions (that is, exceeds capacity and backs up) without the Project and lacks capacity to accept the additional flow. In sum, without mitigation, the addition of the Project wastewater will make the existing problems worse in storm conditions.

13. Three principal ways of addressing the Project's wastewater were discussed during the hearings.¹ First, there was possibility of avoiding any Belmont connection by running the sewer from the Project to the Discovery Park pump station just south of Acorn Park Drive in Cambridge. The wastewater from that station flows through an 18" sewer which connects to the 30" branch of the MWRA Belmont Branch sewer in Cambridge approximately 2,800 feet downstream from Brighton Street. Both Rizzo and FST agreed (Rizzo 12/5/06 letter and 12/6/06 hearing; FST at the 1/3/07 hearing) that with such a connection the Project would have a "virtually negligible" impact on Belmont. Mr. Gould stated that this alternative would avoid the impact of the Project on Belmont, although it would not improve the existing situation. However, the City of Cambridge has not indicated any willingness to agree to such a connection. Since neither the Board nor the Applicant has the ability to require Cambridge to agree to such a connection, this potential solution – while preferable – is hypothetical. The Board decided to encourage the Applicant to pursue this approach by condition, but it cannot rely on it.

14. Second, the Applicant proposed and FST recommended negotiation of a payment to the Town to fund an infiltration/inflow ("I/I") removal program to help offset the proposed peak flows. FST estimated the Town's present actual cost of removing I/I to be \$1.50 per gallon and stated that on projects it had been involved in the removal ratio ranged from 4:1 to 10:1. The McLean project provided I/I mitigation at a 5:1 ratio, while the MOA provided for I/I mitigation based on the Title V number, a 5:1 removal ratio and a removal cost of \$1.26 per gallon. Municipal policy for I/I included a 5:1 ratio in 2004 (OCD letter 5/20/04). According to FST (7/26/06 hearing), the I/I ratio is greater than 1:1 because inflow accumulates faster than sewage. Based on the comments on the draft conditions, the Applicant is willing to accept an I/I mitigation based on Title V flows, a 5:1 ratio, and a \$1.50 per gallon cost. While there were discussions of other formulas for I/I, FST stated there was no precedent for them. The Board decided to require by condition an I/I payment based on Title V numbers, a 5:1 removal ratio and the present \$1.50/gallon removal cost. The Applicant's I/I payment will be \$382,500, except as provide in condition 28.

15. While an I/I mitigation payment would potentially remove infiltration and inflow from the Town's sewers and help offset the new wastewater from the Project, it is not in itself a solution. The additional sewage from the Project would still add to the overload on the sewers during storm events, when the existing system is at capacity and inflow is fastest, and the I/I payment is not targeted to these

¹ At the hearings, there was also discussion of installation of a pump in the Winn Brook area to alleviate backup problems, but FST (6/28/06 and 7/26/06 hearings) stated that this would merely move the problem from one part of the system to another. There was also discussion of the size of the 8" sewer from Gilmore to Oliver Road, but FST said that this sewer has adequate capacity: the problem is the wet weather flows from Belmont and other towns as it reaches the MWRA connector. The location of the Project is not the problem, and bypassing Oliver Road would not change the situation. A similar addition to wastewater elsewhere in Town would have the same effect.

events. In sum, this proposed mitigation, while helpful, does not directly address the critical issue of avoiding additional wastewater impact on the Town sewer system during storm events.

16. Third, the Applicant proposed to provide a holding tank to hold wastewater when the Belmont sewers approach surcharge condition. As outlined by Rizzo (11/1/06 and 12/6/06 hearings), the holding tank would have a 25,000-gallon capacity to hold one day's worth of wastewater from the Project. This approximately 10' by 45' concrete tank would be located under the parking lot to north side of the site in an area outside of the 100 year floodplain. There would be a sensor at Brighton Street that would be triggered when the flow in the 36" pipe reaches a 30" level, before the pipe reaches capacity and creates surcharge conditions. FST confirmed at the 1/3/07 hearing that when the sewer level is at 30" it is within capacity so that there would be no surcharge. When the meter is triggered, the wastewater flow from the pump station at the Project would be diverted into the holding tank. When the level in the sewer fell below the trigger level, the wastewater would be redirected to the Belmont sewer, and the holding tank would gradually empty into the sewer. If the wastewater is diverted into the holding tank for long enough to approach capacity, the holding tank would be pumped out by a septage hauler. The Applicant proposed to include this on-call service as part of its contract with a trucking company.

17. Rizzo supported this approach with an analysis of the length of surcharge events over the past five years from MWRA flow metering data (11/27/06 email). Based on data from 10/1/01 to 10/1/06, Rizzo identified eight periods when the flow in the 36" interceptor pipe flow exceeded 35", one of which (5/13-14/06) lasted over 24 hours. Using the more conservative 30" surcharge trigger level, Rizzo identified 15 surcharge periods, two of which (5/13-15/06 and 4/1-2/04) lasted more than 24 hours (26:15 and 43:30, respectively). Based on that analysis, Rizzo contended that a holding tank capacity at the 24 hour flow amount was reasonable. Rizzo stated that this was not a new technology, and the septage hauler would be placed "on alert" when a sensor in the holding tank showed that the holding tank had reached a percentage of capacity. Rizzo added that avoiding overflow would be a top priority since backup due to a full holding tank would be onsite.

18. FST reviewed and agreed that the analysis and recommended tank size were reasonable (12/1/06 email), although it noted that (a) the Applicant would need to have a septage hauler available to pump out the tank as necessary if the capacity of the holding tank is exceeded by an event lasting more than 24 hours, and (b) operating protocols and "SCADA" systems/instrumentation will be needed to activate the system. FST stated (1/3/07 hearing) that it was satisfied that the tank is large enough, and that the Title V numbers are based on private residential flows that contain an "inherent multiplier" so that half of the Title V average daily flow is an appropriate size. Review of the 100 year floodplain (at 8.2') shows that the holding tank can be located in the parking lot and that access from Frontage Road and Acorn Park Drive will not require going into the 100 year floodplain.

19. In light of FST's agreement with Rizzo's analysis, the Board was inclined to adopt a condition requiring a 25,000-gallon capacity holding tank and the septage hauler contract as proposed. However, the Board was informed by staff that the MWRA requires septage haulers to dispose of pumped septage in the municipality where the septage originated. This raised a significant concern because 80% of the Belmont system flows to the Flanders Road connector. Disposal of septage pumped from the Project's holding tank into the Belmont system during surcharge conditions would merely replicate the surcharge problem the holding tank/septage hauler contract was intended to mitigate. In these circumstances, the septage hauler trucks would have to hold the septage until the end of the

surcharge event: they would thus function as ancillary holding tanks, not an alternative method of disposing of the septage. Given that there will be periods when the capacity of the 25,000- gallon capacity tank is exceeded (as shown by the Rizzo analysis of the 2001-2006 period), the Board concluded that the 25,000 gallon capacity tank is too small. Having trucks filled with septage parked at the Project (or elsewhere in Belmont) until the surcharge event ended might be acceptable during rare events, but it is not a reasonable solution where it would have been required twice in the past five years. The Board, accordingly, concluded that the holding tank(s) should have a capacity of at least 50,000 gallons (two days of Project wastewater) so that surcharge events like those during the 2001-2006 analysis period would not require use of the septage hauler trucks as ancillary holding tanks.

20. As the I/I payment and the holding tank(s) are mitigation measures that to some extent overlap, the Board determined that a limited deduction from the I/I payment to reflect at least part of the capital costs of the holding tank(s) is appropriate.

21. The other main wastewater issue concerned the size of the force main and the pump station. FST reviewed the pump station wastewater flow calculation and design, including the peaking factor used to account for peak flows in the mornings or Super Bowl half-time. FST expressed concern over the size of the force main and the pump. Based on Technical Report #16, Guides for the Design of Wastewater Treatment Works ("TR-16"), by the New England Interstate Water Pollution Control Commissioner, an accepted industry standard for the design of wastewater systems, FST recommended (5/17/06) that the minimum force main diameter be 4" and that the pump be capable of passing a minimum 3"-diameter sphere. Rizzo contended that TR-16 permits use of smaller sizes for small residential systems and asserts that based on the 25,500 gallons per day estimated flow a 3" force main and a pump capable of passing a 2 1/2" diameter sphere are sufficient. FST responded (7/25/06 letter and 7/26/06 hearing) that not adhering to the guidelines will likely result in the need for increased maintenance and will reduce reliability. In response to concerns expressed at the hearings, FST also noted (7/25/06) that the pumping station will have two pumps (one for operation and one for backup, although they will exchange roles) and further recommended that the pumping station have emergency power to avoid overflow risk in the event of a power outage. The Applicant agreed (7/26/06 hearing) that there will be two pumps and backup power.

22. The proposed pumping station itself will only store a few hundred gallons of sewage (FST 7/25/06), so that reliability of the pump station is critical. While the redundant pump and backup power address this issue to some extent, FST is of the view that the larger force main and pump will improve reliability by minimizing the potential for clogging and recommends them under the TR-16 industry standard. The Applicant (7/26/06 hearing) advised that the additional cost of the larger pump would be less than \$50,000. The reliability is of concern even though the Applicant will be responsible for maintenance of the privately owned force main and pump. The Board accordingly determined to require the larger pipe and pump, as recommended by FST, by condition.

FINDINGS - ENVIRONMENT

23. The Application proposes five buildings (A-E) and a total of 337,884 s.f. of gross floor area ("GFA"). The western half of the Project would be surrounded by a fire road constructed using a pervious paving system. At a point, the proposed fire road behind Building B would abut the Wetlands Protection Act's 200' riverfront buffer zone of the Little River. Building B would be approximately

300' long on the side facing the River. At its closest point, Building B would be only 220 feet from the River.

24. The Project would be located squarely in the middle of the forest and surrounding ecosystems. See Epsilon's Open Space Maintenance Plan (2002) (Figure 4) and Rizzo Associates' Conservation Restriction Limits Comparison (sheet CR-1) (6/5/06). It would severely fragment that environment and habitat.

25. In the Public Hearing, the Belmont Conservation Commission submitted comments to the Board expressing serious concerns about the impacts of the Project on the surrounding environment. It noted that:

the site ... provides a vital link to the urban greenway which connects the Little River, Alewife Brook, Aberjona River, and the Mystic River to the Charles River Basin. The area is already heavily developed except for this Greenway and segmenting the green space diminishes its value to wildlife and pollution mitigation.

The Commission also noted that Little River/Alewife Brook is an impaired water body requiring a Total Maximum Daily Load Limit because of a variety of pollutants. It expressed concern that the runoff from the parking lots, via swales, detention and/or retention basins, would further degrade the water quality.

26. The Belmont Planning Board recommended that, in view of the Town's Open Space Plan of 2001, the Project be required to meet the dimensional regulations in Section 6B of the By-Law. Those regulations are a minimum open space of 65%, maximum lot coverage of 20%, maximum impervious surface of 35% and maximum GFA of 245,000 s.f.

27. The Belmont Board of Selectmen submitted comments supporting the "smallest possible development", in part because of the sensitivity of the site.

28. Other participants in the Public Hearing also objected to the impacts the Project would have on the surrounding environment. For example, the Mystic River Watershed Association echoed the characterization of the site as part of a significant greenway and habitat corridor. It also noted that "uplands abutting wetlands provide a greater range of habitat than wetlands alone, by allowing some animals who need uplands, or both wetlands and uplands, to live there" (citing its publication *An Alewife Area Ecology Guide* (Cambridge; Arthur D. Little, Inc., 1994)). MyRWA also submitted its observations of water quality in the Little River and surrounding water bodies, as well as data on the pollutants in typical run-off. It noted that, for example, under DEP's Stormwater Policy, roof water is considered clean and can be infiltrated directly but often contains elevated levels of nutrients and heavy metals.

29. Most comprehensively, the non-profit organization Friends of the Uplands submitted extensive materials describing and documenting the habitat, pollution filtration and other ecological values of the Uplands, and the impacts of fragmentation and other intrusion. The Board received into the record of this Application all of these materials and finds them to be significant evidence of the environmental sensitivity of the site.

30. Based on all the evidence, including that submitted by the Applicant's consultant Epsilon, the Board finds that the silver maple forest on and adjacent to the site is remarkably intact for this region

and constitutes a rare monoculture; it is an important food source; the mixed hardwood forest and the adjacency of the two forest types is rare (perhaps unique) in the Boston area; and the wildlife includes such diverse and ecologically valuable species as otter, mink and fox; and that wildlife depends on the uplands as well as wetlands parts of the site and surrounding area. The Board walked the site and observed the condition of the forest. Based on all the evidence, the Board finds that the site constitutes an important component of contiguous regional open space and wildlife corridor, and the silver maple forest and other ecosystems on the site provide valuable wildlife habitat (both uplands and wetlands) and long-term filtering of pollutants.

31. The Board also finds that the Project would, even beyond its footprint, inevitably impair those functions and degrade the quality of the ecosystems on the site. Its impacts would be most acute between Building B and the Little River. Because of the size, orientation and proximity of that building, it will present a four-story wall of windows and noise to the riverfront area. Added to that would be significant light and noise from its parking garage, recreation on and off the fire road, and other spillover impacts. Some of the degradation might be gradual and long-term, but it would be inevitable.

32. The Board acknowledges the Conservation Restriction (the "CR") proposed by the Applicant, a small part of which would cover the area between the Project and the Little River. However, the CR would not prevent, or even mitigate, the impacts from Building B and the fire road, described above. Moreover, it would not prevent impacts to the environment from permitted uses of the CR area itself, which are likely to lead to trampling, littering and noise within and beyond the CR area.

33. The Board also acknowledges Epsilon's Open Space Maintenance Plan prepared for the R&D project in 2002. However, the Board believes that such Plan, parts of which are inapplicable to the Property and the Project, would not effectively protect these resources by itself.

34. Finally, the Board understands that the Project would not actually encroach into the riverfront area or violate any state or local regulations regarding wetlands or uplands. Nevertheless, it would blink reality to believe that the Project, and Building B in particular, would not degrade the nominally-protected ecosystems on and next to the site. The Board does not believe that such wishful thinking is required by Chapter 40B, and it unanimously finds that the Project is larger and more dense than appropriate for the site.

35. The Chapter 40B regulations, 760 CMR 31.07(2)(b), state that:

If a town ... attempts to rebut the presumption that there is a substantial regional housing need which outweighs local concerns, . . .

(b) the weight of the local concern will be commensurate with ... the degree to which the natural environment is endangered ... and the degree to which the local requirements and regulations bear a direct and substantial relationship to the protection of such local concerns....

36. The Board unanimously concludes that, in order to be consistent with local needs, several conditions are required to protect the surrounding open space and habitat, particularly in the direction of the Little River. It is requiring the Applicant to prevent or minimize the impacts of the Project in that direction by including the conditions set out in this Decision regarding pets, lighting, fencing, a trail/kiosk/parking area and other issues.

37. The Board considered requiring that the Project, and specifically Building B, be moved farther from the Little River and the riverfront area. Such a condition would address those resources most directly. However, the Board is unable to determine how much farther would be necessary to protect those resources more fully or what level of protection is significant for their healthy functioning. In those circumstances, the Board felt constrained that it lacks the authority under decisions of the Housing Appeals Committee (“HAC”) to require that the Project be reduced or moved significantly.

38. The Applicant recently recalculated the Project’s open space and impervious surface coverage by including the Cambridge Area, pursuant to Section 6B of the By-Law. Based on that recalculation, the Project would comply with the By-Law minimum of 65% open space. It still would slightly exceed the 35% maximum impervious surface coverage regulation (35.23%), but the Applicant withdrew its request for a waiver of that regulation. The Board also considered the rear setback and GFA regulations in Section 6B of the By-Law. It again felt constrained that conditions based on those regulations would be difficult to defend under HAC decisions, even though they would help preserve not only the off-site resources threatened by the Project but also part of the silver maple forest on the site.

DECISION

Pursuant to Chapter 40B, the Board, after Public Hearing and findings of fact, grants a Comprehensive Permit to the Applicant for the construction of no more than 299 rental units, with associated infrastructure improvements, subject to the conditions listed below.

CONDITIONS

1. (A) Except as more particularly provided for in this decision, including these conditions (“Decision”), the Project shall be constructed in conformance with the following plans of record (“Project Plans”):
 - a. Residences at Acorn Park, prepared by Rizzo Associates, dated December 6, 2005, revised June 26, 2006 (except as noted below) submitted as part of the Comprehensive Permit Application. Said plans include:
 - Sheet C-1: Existing Conditions Plan
 - Sheet C-2: Layout and Materials Plan (dated September 5, 2006, with revised Zoning Summary Table submitted to the Board on February 12, 2007)
 - Sheet C-3: Grading and Drainage Plan
 - Sheet C-4: Erosion Control Plan
 - Sheet C-5: Utility Plan (as marked July 26, 2006 to reflect discussions with Fire Department)
 - Sheet C-6: Landscape Plan
 - Sheet C-7: Lighting Plan
 - Sheet C-8 through C-10: Construction Details
 - Sheet C-11: Water and Sewer Extension Plan (as marked July 26, 2006 to show redundant water mains)
 - Sheet C-12: Surface Parking Cross Sections
 - Sheet C-13: Fire Truck Turning Plan
 - Sheet A-1: Architectural Site Plan, prepared by ADD, Inc (dated 5 December 2005)

- Sheet A-2: Typical Building Plans, Building E (A Similar), prepared by ADD, Inc (dated 5 December 2005)
 - Sheet A-3: Typical Building Plans, Building B (D Similar), prepared by ADD, Inc (dated 5 December 2005)
 - Sheet A-4: Typical Building Plans, Building C, prepared by ADD, Inc (dated 5 December 2005)
 - Sheet A-5: Typical Building Sections, prepared by ADD, Inc (dated 5 December 2005)
 - Sheet A-6: Typical Building Elevations, prepared by ADD, Inc (dated 5 December 2005)
 - Sheet CR-1: Conservation Restriction Limits Comparison (dated June 5, 2006)
- b. Open Space Maintenance Plan. Belmont Uplands Site. Acorn Park Drive and Frontage Road, Belmont/Cambridge, MA, prepared by Epsilon Associates, Inc., dated September 5, 2001, revised May 17, 2002.
- c. Stormwater Management Systems narrative prepared by Rizzo Associates, dated December 9, 2005, revised June 26, 2006. Including emails and memos dated July 18, 2006 and July 19, 2006.

(B) For the Project to be consistent with local needs, the following dimensional regulations of Section 6B shall be complied with: (i) minimum open space of 65% in accordance with Section 6B.2(h); and (ii) maximum impervious surface coverage of 35% in accordance with Section 6B.2(k). The Project zoning summary, as recently revised, indicates compliance with said minimum open space requirement. At the February 12, 2007 meeting, the Applicant withdrew its request for an exception to said minimum impervious surface coverage requirement.

2. Prior to the issuance of a Building Permit, the Applicant (which for the purposes of these conditions shall include its successors and assigns) shall submit the following final engineered plans and supporting documentation (“Final Plans”), which plans shall be consistent with the Project Plans as modified to reflect this Decision and shall be subject to review and approval by the Board or its designee:
- a. Site Plan (including location of snow removal and/or storage, bicycle racks, and dumpster location and screening). A property line should be shown on plan, stamped by a Professional Land Surveyor.
 - b. Landscaping, screening and planting plan to include opaque barrier to the south of Parking Lot A to prevent lighting of Conservation Restriction Area south of Building A caused by vehicle headlights.
 - c. Lighting plan.
 - d. Grading plan.
 - e. Architectural plans (including floor plans, exterior materials and elevations of all facades).
 - f. Erosion Control plans.
 - g. Utilities plan including Stormwater/drainage plan.
 - h. Final Stormwater management calculations and supporting material (including soils information) demonstrating compliance with Massachusetts Department of Environmental Protection (“DEP”) Stormwater Management Policy provisions.
 - i. Signage plan.
 - j. Road and sidewalk design with profiles.

3. During construction, the Applicant shall conform to all local, state, and federal laws regarding noise, vibration, dust, and blocking of any roads. The Applicant shall at all times use all reasonable means to minimize inconveniences to residents in the general area. Construction shall not commence on any day before 7:00 A.M. on weekdays, and 8:00 A.M. on Saturday, and shall not continue beyond 6:00 P.M. There shall be no construction on any Sunday or state or federal legal holiday.
4. Prior to commencing construction, the Applicant shall prepare and present to the Board or its designee, for its approval, a construction mitigation plan that shall include, but not be limited to, a phasing plan, a description of staging and storage areas, measures to control erosion and sedimentation, limitations on hours of work, a description of proposed earth removal, types and numbers of vehicles and vehicle trips involved with construction, a construction parking plan, tree and brush clearing and grading and general site mitigation measures. Construction vehicles approaching or leaving the site shall use, in the Town of Belmont, only Route 2, Route 60 (Pleasant Street), Acorn Park Drive, Frontage Road, Lake Street, Trapelo Road, and Belmont Street.
5. The Applicant shall submit draft Regulatory and Monitoring Agreements used by MassDevelopment to the Board for its review and approval. Such documents shall include the Town as a party to the Agreements with the right to enforce and impose sanctions and shall contain, at a minimum, the following terms:
 - a. no less than twenty percent (20%) of the units within the Project shall be affordable in perpetuity to households earning not more than 50 percent of Area Median Income (the "Affordable Units").
 - b. to the extent allowed by law, preference in the rental of the Affordable Units shall be given to Belmont residents. A Belmont resident shall be as determined in Section 6.10.2 (5) of the By-Law.
 - c. the Applicant shall select, with the prior approval of the Board, a Lottery Agent for the selection of the renters of the Affordable Units. Prior to conducting the Lottery, the Lottery Agent shall submit a final Lottery Plan to the Board for its review and approval.
 - d. the Monitoring Agent for the Project shall be Mass Development. In the event that Mass Development ceases to act as Monitoring Agent, the Town shall designate the Monitoring Agent. The fees of such Monitoring Agent shall be paid by the Applicant.
 - e. the Applicant shall donate to the Town profits from the Project that are in excess of those allowed by Chapter 40B as demonstrated by audit. Any excess profits shall be in an Affordable Housing Development Fund used for affordable housing purposes only.

The Applicant shall submit fully executed Regulatory and Monitoring Agreements to the Board before the issuance of a Building Permit.

6. This Project is subject to Massachusetts Environmental Policy Act ("MEPA") review, and this Decision shall not be implemented until the MEPA review has been completed. If, during the course of MEPA review, changes to the Project Plans as modified to reflect this Decision are necessitated, the Applicant shall return to the Board for a review of those changes in accordance with 760 CMR 31.03(3).
7. Prior to the issuance of the first Certificate of Occupancy, the Applicant shall provide a

performance guarantee (which may include a covenant, bond, surety, or tripartite agreement) to the Board or its designee for completion of on-site and off-site improvements (excluding buildings), in a form acceptable to the Board. The Board shall approve both the type and amount of the performance guarantee. The amount of the performance guarantee shall be based on the costs of any improvements, as determined by the Project Engineer plus a ten percent (10%) contingency. Any such security instrument shall provide for reduction in the secured amount as the work is satisfactorily completed as indicated by Building Inspector certificates.

8. a. If the Applicant must revise any of the Final Plans to comply with any other local or state or federal approvals or permits, it shall present the revised plans to the Board or its Agent for a review of those changes in accordance with 760 CMR 31.03(3).
- b. Before the issuance of a Building Permit and before commencement of any site work (including site clearing activities), the Applicant shall certify to the Board or its designee that all local, state and federal approvals and permits required to obtain a Building Permit or commence site work have been obtained. Notice of construction activity, test borings or other such activity shall be provided to the Town's Office of Community Development at least three days prior to the commencement of such activity.
9. As set forth in 760 CMR 31.08(5), this Comprehensive Permit is granted solely to AP Cambridge Partners II, LLC, and shall not be transferred to any other person or entity without the written approval of the Board. In the event AP Cambridge Partners II, LLC sells, transfers, or assigns any of its interest in the Project, this Comprehensive Permit shall be binding upon the purchaser, transferee, or assignee. The provisions and limitations of the Limited Dividend Organization shall apply to the Project regardless of sale, transfer or assignment.
10. Annually, and immediately upon its receipt, the Applicant shall submit to the Board a copy of the audit conducted by the Monitoring Agent. The Board reserves the right to conduct an initial audit pursuant to Massachusetts Housing Partnership guidelines with the reasonable cost thereof paid by the Applicant and any other audit. The Applicant shall provide a copy of its cost certification to the Town not later than sixty (60) days after the issuance of the final Certificate of Occupancy and in no event later than the time it provides the cost certification to the Monitoring Agent.
11. The Applicant shall submit to the Board a Final As-Built site plan showing the Property line and the location of all buildings and other improvements on the Property. Said As-Built plan shall be stamped by a Professional Land Surveyor or Registered Land Surveyor and shall be submitted within 90 days of the final Certificate of Occupancy.
12. The Applicant shall pay within thirty days of receiving notice all reasonable inspection, peer review and/or legal fees for Town consultants or counsel as may be required to ensure compliance with the conditions listed herein.
13. The Applicant has requested, and the Board hereby authorizes those exceptions from the requirements of the By-Law and other local laws, rules and regulations, as listed in Attachment A, as long as the Project is constructed in accordance with the Project Plans and this Decision (including these Conditions). To the extent that the Project Plans show additional exceptions or waivers not expressly set forth in Attachment A, such exceptions or waivers were not requested

and, in any event, are denied. Minor deviations from otherwise applicable local rules may be authorized by the Board in the subsequent review and approval of Final Plans. Except as permitted by this Decision (including Attachment A), the Applicant shall be required to comply with all other applicable local bylaws, rules and regulations, as well as all applicable laws and regulations of the Commonwealth of Massachusetts and the United States of America.

Site Specific

14. The Applicant shall provide a shuttle service designed to meet the needs of employees and residents of the Project to travel from the Project to (and from) the Alewife MBTA Station and Belmont Center. The Applicant shall provide a proposed shuttle schedule and fees, if any, for non-residents to the Board for its review and comment prior to the initial Certificate of Occupancy. The proposed schedule shall address shuttle service (a) during initial occupancy and (b) when occupancy reaches 90%. Six months after the Project reaches 90% occupancy, the Applicant shall submit a report regarding the shuttle bus service which shall include, at a minimum, hourly ridership numbers during relevant periods (weekday, rush hour, evening, Saturday and Sunday/holiday), together with any proposals for modifications (increases and/or decreases) in service to reasonably reflect ridership levels during typical periods, for the Board's review and comment. Thereafter, the Applicant shall at least annually submit to the Board such a report for its review and comment.
15.
 - a. The Applicant shall provide four bicycle racks, each holding 8 bicycles, in each of Buildings A, B, D, and E. Racks shall be located in the underground parking facilities. In addition, Applicant shall provide two bicycle racks, each holding 8 bicycles, in Building C, which shall be located in the underground parking facility of that building.
 - b. The Project shall conform to either (1) or (2) herein below with appropriate signage and geometric design, but in either event shall be subject to (3) herein below:
 - (1) There shall be three driveways as follows: a central driveway for ingress to the Project only and north and south driveways for egress from the Project only, or
 - (2) There shall be only two driveways. The central driveway currently shown on the Project Plans shall be closed in a manner acceptable for emergency access by the Fire Department.
 - (3) The driveways shall be as narrow as safe driveway design and turning radius requirements will allow and any resulting reduction in paving shall be converted to pervious surfaces to the maximum extent possible.
16. Prior to receipt of a Building Permit for any buildings on the Property, the Applicant shall provide the Fire Department final plans showing the details demonstrating compliance with the following:
 - a. As requested by the Fire Department the Project shall include around the rear of Buildings B and D a fire access lane, as shown on the plans, constructed out of a pervious paving system and constructed so as to support the weight of an operating fire apparatus.
 - b. As requested by the Fire Department the Project shall be serviced by a redundant water supply connected to the Belmont water system. The redundant water lines may be

- located within the same utility trench, provided that they are separated within such trench and that the two water lines tie into the Belmont water system at different locations.
- c. Final plans shall be submitted to the Fire Department to demonstrate that the “trash rooms” will be constructed as agreed to by Applicant and the Fire Department.

Housing

17. The Project shall not exceed 299 rental units in 5 buildings consisting of 20 studio units, 156 one-bedroom units, 107 two-bedroom units, and 16 three-bedroom units. Twenty percent of each unit type shall be Affordable Units. In the event the number of units is reduced as a result of this Decision, or for any other reason, the Affordable Units shall consist of studio, one-bedroom, two-bedroom, and three-bedroom units in the same proportion as provided by the Applicant were the Project to contain 299 units.
18. The Affordable Units and the market rate units shall be distributed proportionately within the buildings of the Project and among bedroom types. The Affordable Units shall be comparable to the market-rate units in terms of location, quality, character, room size, number of rooms, amenities and external appearance. The interior finishes of and appliances in the Affordable Units shall be comparable to the interior finishes and appliances in the market-rate units. The Affordable Units shall be constructed simultaneously with the construction of the market-rate units and occupancy permits shall be issued at a proportional rate for affordable as for market rate units.
19. The affordability restrictions shall be enforceable against all subsequent owners and shall be effective in perpetuity. The calculation of affordability for the allowable monthly rent to be charged the occupants of the Affordable Units shall include all mandatory fees and standard allowances for tenant paid utilities.

Transportation

20. The Applicant shall complete the following traffic mitigation measures in accordance with the description set forth in the Traffic Impact and Access Study by Vanasse and Associates, Inc., dated January 23, 2006, as refined in the Vanasse and Associates April 28, 2006 response to comments (together, the “Vanasse Study”), and they shall be constructed prior to the issuance of the first Certificate of Occupancy for the Project.
 - a. Cross Street and Brighton Street Intersection - Design and implement an optimal traffic signal timing and phasing plan to include re-striping, shared turn-lane, and an upgrade of the existing traffic signal which will accommodate pedestrian and bicycle travel in a safe and efficient manner. Prepare an evaluation of, and design, an emergency preemption system and, if feasible and approved by the Town, install said system.
 - b. Lake Street and Cross Street Intersection - Re-stripe the northbound approach to provide separate left and right-turn lanes as an interim improvement measure. The Applicant shall undertake a supplemental analysis of operating conditions and safety at the intersection of Lake Street at Cross Street within one year of the issuance of the first Certificate of Occupancy for the Project. This study will consist of the collection of weekday morning (7 to 9 AM) and evening (4 to 6 PM) manual turning movement counts

at the intersection; a review of motor vehicle crash information for the most recent continuous three-year period; the completion of a detailed traffic operations analysis (LOS, delay and vehicle queuing); and the development of a conceptual improvement plan to address any safety or operational deficiencies that are identified as a result of the supplemental analysis. This information will be summarized in a report provided to the Board for planning purposes and to obtain funding to complete the identified improvements by others.

- c. Acorn Park Drive and Frontage Road Intersection - Upgrade the existing traffic signal equipment, timing and phasing as necessary to accommodate pedestrian and bicycle access to Project site. Include upgraded signs and pavement markings at intersection.
 - d. Concord Avenue and Blanchard Road Intersection - Design and implement an optimal traffic signal timing and phasing plan.
 - e. Concord Avenue at Alewife Brook Parkway - Undertake a detailed safety analysis of the rotary based on motor vehicle crash data provided by the City of Cambridge Police Department including a motor vehicle collision diagram, in order to identify any safety deficiencies that may exist at the rotary that are subject to correction, Subject to the approval of the DCR and the City of Cambridge, the Applicant will review and upgrade the signs and pavement markings at the rotary including providing advance directional signs on all approaches. Copies of the safety study will be provided to the DCR, MassHighway, the City of Cambridge, and the Town of Belmont.
 - f. Massachusetts Avenue/Lake Street and Massachusetts Avenue/Alewife Brook Parkway – Design and, subject to approval of the Town of Arlington, implement an optimal traffic signal timing and phasing plan.
 - g. All other intersection mitigation measures presented in the Vanasse Study.
21. The Applicant shall construct a sidewalk made of pervious material along the Project frontage on Acorn Park Drive that will link the Project to the existing sidewalk located along Frontage Road. The sidewalk design and construction shall meet MAAB & ADA requirements. Further, subject to being given an easement (at no acquisition charge to the Applicant) and all applicable approvals, the Applicant agrees to construct the missing segment of sidewalk between the Property and the existing sidewalk on Acorn Park Drive toward Cambridge Discovery Park. The Applicant shall submit to the Board copies of requests for easements and all applicable approvals by third parties, where necessary, prior to issuance of the first Certificate of Occupancy.
22. The Applicant will provide a weather protected waiting area for the shuttle bus within the Project which will be designed to be consistent with the architectural character and design of the buildings in the Project.
23. The Applicant's traffic mitigation measures described above in condition 20 assume that the improvements due to be made by the developer of Cambridge Discovery Park (as set forth at pages 5-6 of the Vanasse Study) will be in place when the Applicant commences implementation of its mitigation measures. If such mitigation measures of the developer of Cambridge Discovery Park are not completed when the Applicant proposes to implement its traffic mitigation measures, the Applicant will complete any or all improvements that should have been done by the developer of Cambridge Discovery Park that are not in place when the Applicant

commences work on its mitigation. The Applicant shall complete these measures before issuance of the first Certificate of Occupancy.

24. The Applicant shall be prohibited from granting easements over portions of the Property on the easterly side of Acorn Park Drive and onto the privately owned portion of Acorn Park Drive. The Applicant shall ensure access to the Project over Acorn Park Drive for school buses, police, fire and other municipal services. The Applicant shall be responsible for safe road maintenance (including but not limited to snow plowing, sanding, paving, and pothole repair) of Acorn Park Drive and shall annually file a plan for meeting this responsibility with the Town's Department of Public Works and Office of Community Development.

Infrastructure

25. The following portions of the Project shall be and shall remain forever private, and the Town shall not have, now or ever, any legal responsibility for their operation or maintenance:
 - a. stormwater management system
 - b. all driveways and parking areas and Acorn Park Drive
 - c. wastewater system to the connection on Garrison Road, including the pump station
 - d. on-site lighting
 - e. recreation and all other common areas, excluding the area subject to the Conservation Restriction (to the extent provided in the Conservation Restriction).
26. All utilities within the Property (including electric, telephone, cable, and other such lines and equipment) shall be underground.
27.
 - a. Wastewater flows from the Project will be discharged into the Belmont wastewater collection system ("Belmont System") starting on Garrison Road. The Applicant shall install on the Property a holding tank or tanks with a total capacity of at least 50,000 gallons to detain wastewater during surcharge events in the Belmont System. The holding tank(s) shall be under the parking area and not within the 100 year floodplain. In addition, the Applicant shall establish operating protocols which are to be supported by SCADA systems/instrumentation to activate the storage system during surcharge events (i.e., when the flow level in the 36" sewer at Brighton Street exceeds 30"). As part of those operating protocols, the Applicant shall have in place and shall perpetually maintain a septage hauler contract to pump out the holding tank(s) as frequently as necessary until surcharging in the Belmont System ceases. Such septage hauler shall not dispose of septage into the Belmont System until the surcharge event is over. The Applicant shall file a current copy of the septage hauler contract with the Town's Office of Community Development before issuance of an initial Certificate of Occupancy and shall maintain a current copy on file thereafter. The design of the holding tank(s) (including the operating protocols and the SCADA systems/instrumentation) shall be subject to the approval of the Board after review by the Town's sewer consultant, currently Fay Spofford & Thorndike. The cost of the holding tank(s) will be deducted from the Inflow/Infiltration (I/I) payment made pursuant to condition 28 to the extent allowed therein. The Applicant shall file a cost certification, with supporting detail, of the cost of the holding tank(s) with the Board before issuance of the first Certificate of

Occupancy.

- b. Prior to the issuance of the Building Permit, the Applicant shall make a good faith application to the City of Cambridge for a connection to the Cambridge municipal wastewater system ("Cambridge System") in Acorn Park Drive. If such application is approved (and no appeals are filed or any such appeals are resolved successfully) and the cost and timing of such connection to the Cambridge System is no greater than the cost and timing to connect to the Belmont System (e.g. the cost to construct the sewer line from the Property to Garrison Road and the costs to comply with conditions 27.a. and 28), then the Applicant shall connect into the Cambridge System instead of connecting to the Belmont System and installing a holding tank(s).
 - c. The Applicant may, with the approval of the Board, substitute another method that achieves the same result as condition 27.a.
28. The Applicant shall make an I/I payment of \$382,500.00 (less the cost of the holding tank(s) described in condition 27.a. or the alternative described in condition 27.c., but in any event not less than \$300,000) to the Town of Belmont prior to the issuance of a Building Permit, provided however, in the event the Applicant is allowed to connect to the Cambridge System, then such I/I payment will not be required.
29. The Applicant shall provide an Operations and Maintenance Plan (O&M Plan) for the Stormwater Drainage System to the Board prior to the issuance of the first Certificate of Occupancy. The O&M Plan shall include: monthly inspections and quarterly cleanings of catch basins, area drains, and drop inlets, and monitoring the depth of water in the infiltration /detention systems as part of the semi-annual maintenance program (and, during the first year of full occupancy, after each storm event defined as more than ½ inch of rain in a 24 hour period). The O&M Plan shall include a provision requiring the use of sand for de-icing of the travel surfaces of the Project.
30. The catch basins on grade shall be designed to capture fully the 100-year storm event (6.6 inches of rainfall in a 24 hour period). Manholes for maintenance will be constructed as part of each chamber and underground detention basin. A clean out shall be installed at the location where grit chambers connect to the system.
31. The Belmont Water Department shall inspect the water main installation during construction. Approval of installation by the Water Department is required prior to issuance of the first Certificate of Occupancy.
32. As recommended by FST, the wastewater pump and force main to be constructed for the Project shall have a minimum diameter of 4 inches, and the pump shall be capable of passing a 3" diameter sphere. There shall be redundant pumps and an emergency power source for the pumps. Specifications for the pump and force main shall be submitted to the Board for review and approval prior to the issuance of a Building Permit.

Environmental

33. The Applicant shall provide to the Board a detailed site preparation plan, planting/landscaping

plan, and monitoring/maintenance plan for each flood storage area to be created, including at a minimum the detail called for in Epsilon's letter of May 24, 2006 and attachments, prior to the issuance of a Building Permit. Floodplain compensation volumes shall be at a ratio of at least 1.6:1 calculated using the current FEMA 100 year flood elevation of 8.2'.

34. The Applicant shall submit to the Board a management plan for the open space surrounding the Project prior to the issuance of the first Certificate of Occupancy. Any Open Space Maintenance Plan for the Project shall be in a form substantially similar to and as a minimum implement habitat enhancement measures as referenced in the previous Open Space Maintenance Plan dated May 17, 2002 prepared for the R&D Office Building. In addition the Applicant shall provide the Board with a plan showing the location of all tenant recreational areas prior to the issuance of a Building Permit.
35. The Applicant shall provide a tree cutting plan to the Board prior to commencing site work. The Applicant shall use all reasonable efforts to preserve trees. The Applicant shall, after consultation with the Tree Warden, identify all trees that are healthy and greater than 9" dbh in or within 10 feet of the work area and determine whether slight modifications in the site plan are practicable to preserve those trees. If the Applicant determines that slight site plan modifications cannot be practicably accomplished, the Board may request that additional trees (including but not limited to silver maples) be planted outside the Project area, but on the Property.
36. The Applicant shall work with the Green Roundtable to incorporate, to the greatest extent economically feasible, low impact and sustainable development principles for the construction and maintenance of the Project including, but not limited to, use of pervious pavement, and drought-resistant plants and collection of rooftop runoff for the irrigation system. Prior to the issuance of the first Certificate of Occupancy, the Applicant shall submit to the Board the final report of the Green Round Table which will detail how the Project satisfies this condition.
37. The Applicant shall finalize, execute and record the Conservation Restriction (CR) in substantially the same form as the draft submitted to the Board on June 9, 2006. The CR will restrict approximately 7.91 acres of the 15.65 acre parcel owned by the Applicant, as generally shown on a plan entitled "Conservation Restriction Limits Comparison" drawn by Rizzo Associates, dated June 5, 2006 (CR-1). In the event the Project site shifts to the north and east as a result of this Decision, or for any other reason, then the boundaries of the CR shall shift accordingly. The Applicant shall perform all of the actions required in the CR, except that no trail, kiosk or parking area shall be constructed. The CR shall be recorded prior to the issuance of the first Certificate of Occupancy but shall be executed and delivered, subject to an escrow arrangement approved by the Board prior to the issuance of any Building Permit for the Project.
38. Prior to the first Certificate of Occupancy Applicant shall provide the Board with a snow removal plan. The Applicant's snow removal plan shall be consistent with DEP Snow Disposal Guidelines (BRPG01-01, March 8, 2001), in that landscaped areas designated on the plans as snow storage areas will be used as much as possible. Any damage occurring to such landscaped area due to snow storage shall be replaced/repaired as necessary by the Applicant consistent with BRPG01-01.

Any paved areas used for snow storage shall be graded to drain away from any wetlands and towards the site drainage system as required by BRPG01-01.

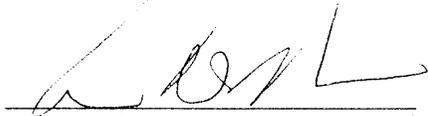
Legal

39. No dogs or cats, except seeing-eye dogs and hearing-ear dogs, shall be allowed on the Property.
40. The Board shall retain jurisdiction over the Project to ensure compliance with the terms and conditions of this Decision.
41. Subsequent to the expiration of all applicable appeal periods and, in any event, prior to the issuance of any Building Permit for the Project, the Applicant shall record this Decision in the Middlesex County South District Registry of Deeds and shall provide the Office of Community Development and the Building Inspector with a copy of this Decision endorsed with the applicable recording information.
42. This Comprehensive Permit shall expire, if the Applicant has not, for whatever cause, obtained a Building Permit for the units within three years of the date this Decision becomes final, or if the Applicant has not completed construction of the Project within five years of the date this Decision becomes final unless extended by the Board. The Decision is deemed to have become final upon the date the Decision is filed with the Town Clerk and no appeal is filed, or on the date the last appeal is decided or otherwise disposed of.

RECORD OF VOTE

The following members of the Board attended all public hearing sessions on this Case: William D. Chin, Chairman, Arthur P. Kreiger, Rebecca Vose, Eric A. Smith, and Anthony L. Leccese.

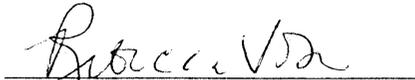
The following members of the Board vote to grant a comprehensive permit subject to the terms of this Decision:



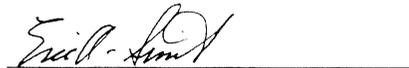
William D. Chin, Chairman



Arthur P. Kreiger

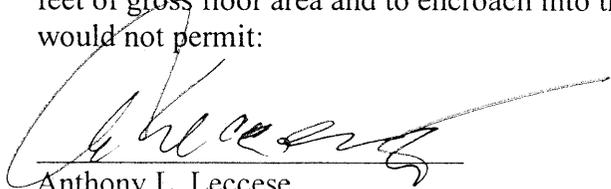


Rebecca Vose



Eric A. Smith

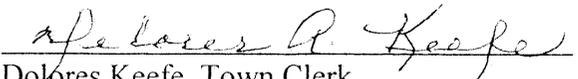
The following member of the Board votes to grant a comprehensive permit subject to the terms of this Decision except to the extent that it permits the Applicant to construct a total of 337,884 square feet of gross floor area and to encroach into the land shown as restricted under the MOA, which he would not permit:



Anthony L. Leccese

Wherefore a Comprehensive Permit, consistent with the conditions of this Decision is granted to the Applicant.

Filed with the Town Clerk on Feb 16, 2007.



Dolores Keefe, Town Clerk

LIST OF ATTACHMENTS

Attachment A	List of Exceptions From Local By-Laws and Ordinances
Attachment B	List of Documents

ATTACHMENT A

**REQUIRED EXCEPTIONS FROM LOCAL BYLAWS AND ORDINANCES
RESIDENCES AT ACORN PARK
“BELMONT UPLANDS”
ACORN PARK DRIVE
BELMONT, MASSACHUSETTS**

I. ZONING BY-LAWS

A. Belmont Uplands District: Note: The Property is in the Belmont Uplands District and §6B.9 of the By-Law pre-empts and supersedes other provisions of the By-Law. The exceptions from the Uplands District for the Project are set forth below in this section “A” and those exceptions from the other applicable sections of the By-Law (not pre-empted or superseded by §6B.9) are set forth below in section “B”.

1. Use: Exception from the prohibition of residential uses set forth in §6B.1.

2. Dimensional: Exception from the following dimensional regulations of §6B.2

a.) Exception from §6B.2(c), minimum front set back
Required: 65’ Provided: 18.5’ (Building A only);
20.3’ (Building E only)

b.) Exception from §6B.2(e), minimum rear set back
Required: 40’ Provided: 27.1’ (Building D only)

c.) Exception from §6B.2(g), maximum gross floor area
Required: 245,000 sf Provided: 337,884 sf

3. Parking: Exception from §6B.3.3, limitation on number of outdoor parking spaces, the outdoor spaces of the Project exceed the permitted 110 outdoor spaces. Outdoor parking is not to exceed 210 spaces.

4. Lighting: Exception from §6B.5., to increase the maximum of 175 watts to 400 watts, the light poles have been maintained at a lower height (15’) in order to provide proper safe lighting. Proposed lighting is confined primarily to the interior of the building layout, and parking lot lighting is 175’ or more from Frontage Road.

5. Design and Site Plan Review: Exception from design and site plan review under §6B.6, permit approval procedure is governed by Chapter 40B.

6. Site Plan Review Procedures: Exception from site plan review under §6B.8, permit approval procedure is governed by Chapter 40B.

B. General Zoning By-Laws NOT Superseded By Belmont Uplands District:

1. Parking:

- a.) Exception from §5.1.3(e) in accordance with note on §5.4.3(b), below
- b.) Exception from §5.1.3(g), egress location, exception from the limit of 2 driveway openings onto a street from a parking area serving more than 20 parking spaces where all driveways are not separated by 150’.

2. Landscaping:

- a.) Exception from §5.3.5, existing vegetation, exception from the retention of trees exceeding 6” dbh within 25’ of the street.

3. Lighting:

- a.) Exception from §5.4.3(b), provided that spillover off the Project site will be avoided or minimized, still consistent with pedestrian and vehicle safety, and the lighting plan shall be subject to the approval of the Board.

4. Cluster Development Special Permit

- a.) Exception from cluster development special permit under §6.5, permit approval procedure is governed by Chapter 40B.

5. Floodplain District

- a.) Exception from §6.6.7, special permits, permit approval procedure is governed by Chapter 40B.

6. Design and Site Plan Review

- a.) Exception from design and site plan review under §7.3, permit approval procedure is governed by Chapter 40B.

7. Special Permits

- a.) Exception from §7.4, special permits, permit approval procedure is governed by Chapter 40B.

8. Development Impact Report

- a.) Exception from development and impact report under §7.5, permit approval procedure is governed by Chapter 40B.

II. OTHER NON-ZONING BYLAWS AND REGULATIONS

- A. Water Department Regulations. Exception to the extent Section C (paragraphs 1 through 3) of the regulations for water main pipe extension require Applicant to

increase the size of proposed water pipes to accommodate future non-Project extensions.

ATTACHMENT B: LIST OF DOCUMENTS RECEIVED

APPLICANT'S SUBMITTALS

Application and Plans
Epsilon Associates response to Conservation Commission (12/9/03)
Revised Plans (6/8/06)
Financials including Pro Forma, Market Rent Study (9/30/03) and Appraisal (9/29/06)
Financial Pro Forma (12/4/06)
Traffic Impacts and Assessment Study
Requested Zoning Waivers
Unit Mix (12/1/06)
List of Requested Exemptions

COMMENTS

TOWN BOARDS/COMMITTEES

Uplands Advisory Committee (9 comment letters)
Board of Health
Housing Trust
Historic Commission
Fire Department (4)
School Department (2)
Board of Selectmen
Community Development
Conservation Commission
Planning Board
Police Department (3/15/06)
Police Department email (12/7/06)
Police Department email (12/28/06)
Public Works Dept. (3/15/06)
Response to Fire Dept - Rizzo (7/26/06)

OTHER PUBLIC COMMENTS

Sustainable Belmont
Mystic Rvr Wtrshd Assc
Kirwan
Bishop
Brownsberger Email (3/28/06)
Ltr from Clancy (5/11/06)
Ltr from Moore (12/19/06)
Cohen Comments (8/14/06 & 10/11/06)
Sewer System, Sumner Brown, (7/10/06)
Comments to Brown - FS&T (7/25/06)
Developer Responses (8/24/06)
Working Group Notes (10/16,10/23&10/31)

APPLICANT'S RESPONSE

SEB – Bob Engler (Affordable Housing Concerns) (2/9/06)
RIZZO ASSOCIATES (Site Design and Civil Engineering) (2/28/06)
ADD INC (Architecture) (2/23/06)
VANASSE & ASSOC. (Traffic) (2/27/06)
EPSILON ASSOCIATES (Draft and Final Response)- Environment (2/20 & 4/24/06)
NUTTER McCLENNEN & FISH (40B Process and Legal) (3/22/06)

PEER REVIEWS

Traffic – BSC Group (3/16/06)
Traffic – BSC Group Review of Response (5/4/06)
Traffic – BSC Group, Final Letter (7/26/06)
Site, Stormwater & Wastewater - Fay, Spofford & Thorndike (4/27/06)

Wastewater - Fay, Spofford & Thorndike (5/17/06), not posted
Site & Stormwater - FS&T Review of Response (6/22/06)
Wastewater - Fay, Spofford & Thorndike (6/23/06)
Site Supplemental - Fay, Spofford & Thorndike (7/20/06)
Wastewater, Pumping Station - Fay, Spofford & Thorndike (7/25/06)
Environmental - FST, Wetlands & Wildlife, (4/24/06)
Environmental - FST, Wetlands & Wildlife Review of Response (5/31/06)
Environmental - FST, Wetlands & Wildlife Review of Response (6/23/06)
Environmental - FST, Wetlands & Wildlife Review of Site Change (11/27/06)
Financial - Jacobs (12/4/06)
Traffic (review of narrowing Acorn Park– BSC Group, (12/7/06)
Review of Driveway Alternative - BSC Group (2/7/07 email)

RESPONSES TO REVIEWS

Traffic/BSC Group – Vanasse & Associates (4/28/06)
Site Traffic/BSC Group – Rizzo Associates (5/3/06)
Site & Stormwater/FS&T - Rizzo Associates (5/4/06)
Wastewater/FS&T - Rizzo Associates (5/30/06)
Environmental/Fay, Spofford & Thorndike – Epsilon Associates (5/24/06)
Final Site & Stormwater/FS&T - Rizzo Associates (6/8/06), long, not posted
Stormwater - Rizzo Associates (6/26/06)
Driveway Entrance - Rizzo/Vanasse Associates (6/29/06)
Stormwater, 8.2' FEMA - Rizzo Associates (7/6/06)
Technical Calculations - Rizzo Associates (7/18/06), not posted
Semi-annual inspection reports - Rizzo Associates (7/19/06), not posted
Re: widening Acorn Park Dr - Vanasse Associates (11/22/06)
Environmental Review of Revised Site Plan – Epsilon Associates (12/4/06)
Wastewater (Cambridge vs Tank) - Rizzo Associates (12/5/06)
Wastewater (MWRA 5 year data)- Rizzo Associates (12/6/06)
Revised Dimensional Setbacks - Rizzo Associates (2/7/07)

OTHER REVIEWS

Wastewater - Citizens Forum, Norfolk Ram Group

COMMUNICATIONS

Alcorn	Cunningham
Haller	Marinell
Flynn (2)	Duffy, D.
First Parish Church of Cambridge	Goldberg
Brownsberger email re: S. 1909	Frankel (email)
Cambridge Conservation Commission	Nuscher
Email from Gallant	Hickey
Velie/Stadler	Hanely
Town of Arlington (2)	Sodini
Dohanian	McGurl
Passero & Kirwan	Caputo et al

Duffy/Paulsen
Baram (email)
Mass (2)
Passero (2)
Canavan
Sorkin
Connolly (2)
Hartman

Fuller
Bass
Sciascia
Lambert
Brown (2)
Petition, High School Environmental Club
Katragadda email
Belmont Board of Selectmen (1/10/07)

MISCELLANEOUS

Friends of Alewife Reservation (Large Packet
Mass (email, 3/20/06)
Nutter McClennan & Fish (4/18/06)
Nutter McClennan & Fish (5/19/06)
Uplands Alternative Group
Statement by Kit Drier
City of Cambridge Resolution, Unofficial copy
S. 1909, Unofficial Copy of Act
BSC response re: S. 1909
Rizzo Associates, re: test pit locations
Unofficial FEMA Maps submitted by Rizzo Assoc
Nutter McClennan & Fish re: comparison of CR lands
Mystic River Watershed Assoc - Water Quality Data
Petition re: MEPA Review
Kaiser - Model for Establishing Mitigation Ratio
Sewer - memo from OCD and DPW example of license
Arlington Redevelopment Board
Presentation - Katuska, Brown, etc. (12/6)
Uplands Alternative Group (10/16/06)
Board of Selectmen (10/23/06)
Email comment from Applicant (10/10/06)
Board of Selectment Motion
Applicant submittal - HAC Decisions re: schools
Memo to Soloman (9/18/06)
Bass Testimony (12/6/06)
Cmbrdge Sewer Connection 2003 - Mass
Town of Arlington
Belmont Selectmen Letter (1/10/07)