

Zoning Board of Appeals
MEMORANDUM
September 12, 2011

CASE NO. 06-06 COMPREHENSIVE PERMIT
AP CAMBRIDGE PARTNERS II, LLC
Frontage Road and Acorn Park Drive

RE: Determination on Substantial Change of the Belmont Uplands Comprehensive Permit –

Once again, AP Cambridge Partners II, LLC (the Applicant¹) is before the Zoning Board of Appeals (the “Board”). Applicant is seeking “slight modification” of specific conditions of the Comprehensive Permit, dated February 16, 2007, “in order to integrate [the conditions] with the realities of obtaining our building permit and marketing the units”.

On September 1, 2011, James G. Ward, attorney for the Applicant, informed the Board that the Massachusetts Department of Transportation (“Mass DOT”) was requiring the Town to own the water and sewer lines in Frontage Road from Acorn Park Drive to the connection at Garrison Road. Mass DOT’s requirement contravenes Condition No. 25 which requires that such systems remain forever private. Applicant proposes to enter into an operation and maintenance agreement which will be satisfactory to the Town to assure that Applicant would remain responsible for maintaining said lines as was intended by Condition 25.

Applicant also requested a modification of Condition No. 39 which prohibited pets. Applicant suggests that the Board’s concern that unit owners would not properly control their pets to prevent the pets’ entry into the conservation area “can be effectively managed through rules and strict oversight of those rules”. Applicant submitted a draft of a proposed “Pet Rider”¹.

¹ Paragraph number 3 of proposed Pet Rider: “3. WALKING YOUR PET: Resident may not allow the pet out of the Leased Unit unless the pet is on a leash. Resident, or person who walks pet, must keep the pet on a leash (no

The Board vis-à-vis the Office of Community Development is required by 760 CMR 56.05 (11) (a) to determine and notify the Applicant within twenty (20) days whether the Board deems any “change to be substantial or insubstantial with reference to the factors set forth at 760 CMR 56.07 (4)”. If the Board deems the changes to be substantial, then the Board is required to hold a public hearing to review those changes.

The Applicant’s requests were placed for discussion and review on the Board’s September 12, 2011 Agenda, which was posted in Town Hall and was placed on the Town’s web-site. The Board met in the Art Gallery, 3rd floor, of the Homer Municipal Building, 19 Moore Street. Sitting for the Board were William D. Chin, Nicholas A. Iannuzzi, Jr., James-Ryan Fagan, Eric A. Smith, and Associate Member David Iaia.

The Board reviewed Applicant’s requests and submission. The Board approved Applicant’s draft Pet Rider, but took exception to Applicant’s requirement that, “Residents must CURB THE PET ONLY IN THE STREET.”, in paragraph number 3. The Board insisted that pet owners should be required to clean up after their pets.² The Board also reviewed the Housing Appeals Court regulations as they pertained to determining whether a substantial change had occurred.

After discussion and review the Board voted upon the following motions:

longer than 5 feet) at all times the pet is out of the Leased Unit. If the pet is a cat, Resident must keep the cat in an approved pet container when taken out of the Leased Unit.

Resident will walk the pet only in DESIGNATED AREAS ON THE PREMISES and/or OFF THE PREMISES of the apartment building. Resident must CURB THE PET ONLY IN THE STREET.

Resident will not be allowed to walk their pet in the Designated Conservation Restricted Area adjacent to the property. “

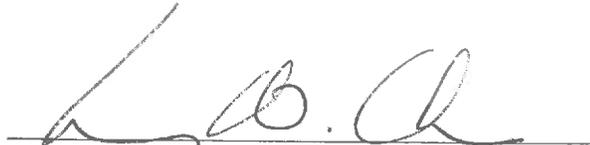
² The Board proposed to Applicant, as a guide, the following language: “Resident must clean up after pet at all times and properly dispose of all pet waste whether or not on or off the Premises.”

1. MOTION by Eric A. Smith, seconded by Nicholas A. Iannuzzi, Jr. that ownership of the water and sewer lines by the Town with an operation and maintenance agreement between the Town and Applicant for Applicant's responsibility for the maintenance of said lines would not be a substantial change and that a public hearing was not necessary. The Board voted 5-0 (Chin, Smith, Iannuzzi, Ryan, and Iaia).
2. MOTION by Eric A. Smith, seconded by Nicholas A. Iannuzzi, Jr. to accept an operation and maintenance agreement between the Town and the Applicant for Applicant's maintenance of the water and sewer lines as satisfaction of the relevant provision (s) of Condition No. 25. The Board voted 5-0 (Chin, Smith, Iannuzzi, Ryan, and Iaia).
3. MOTION by Eric A. Smith, seconded by Nicholas A. Iannuzzi, Jr. to remove from Condition No. 39 the prohibition against dogs and cats with the provision that pet owners must agree to add to their lease the pet rider which shall include additional language to require pet owners to clean up after their pets. The Board voted 5-0 (Chin, Smith, Iannuzzi, Ryan, and Iaia).

N. B. On September 15, 2011 Applicant submitted the attached Pet Rider with the additional "clean up" language.

Dated: January 19, 2012

For the Board



William D. Chin