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CITY OF CAMBRIDGE

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April 22, 2024

Planning Board
City Hall Annex
344 Broadway
Cambridge, MA 02139

Affordable Housing Trust
City Hall Annex
344 Broadway
Cambridge, MA 02139

Re: *Griffin-Sheperd, et al. Zoning Petition regarding the Affordable Housing Trust*

Dear Members of the Planning Board and Trustees of the Affordable Housing Trust,

I am writing in response to Assistant City Manager for Community Development Iram Farooq's request that the Law Department provide guidance to the Planning Board and Affordable Housing Trust concerning the Griffin-Sheperd, et al. Zoning Petition (the "Petition"), which is a citizen zoning petition that seeks to amend Section 11.206 of the Cambridge Zoning Ordinance as it relates to the composition, powers, and duties of the Affordable Housing Trust. The Petition seeks to amend or add five sub-sections of Section 11.206 of the Zoning Ordinance, and I will address those five changes below.

A. Background re: the Affordable Housing Trust

In Cambridge, the Affordable Housing Trust ("AHT") was established in 1989, and in 1991 the Legislature and Governor approved the City's Home Rule Petition and enacted Chapter 482 of the Acts of 1991 entitled "An Act Authorizing the Establishment of a Housing Trust Fund in the City of Cambridge" ("the Special Act"). Two other relevant pieces of legislation are the Community Preservation Act, enacted in 2000, and the statewide Municipal Affordable Housing Trust Fund Law, G.L. c.44, §55C, which was enacted in 2005 and is a local acceptance law that allows municipalities to establish an affordable housing trust without having to submit a Home Rule Petition.

The AHT is authorized by the Special Act, and its powers and duties are further defined by Section 11.206 of the Zoning Ordinance and the AHT's Declaration of Trust. The Zoning Ordinance and Declaration of Trust can further define and expand on the AHT's powers and

duties, but they cannot contradict or go beyond the purposes that are authorized in the Special Act.

B. Griffin-Sheperd, et al. Zoning Petition

1. Amendments concerning the composition of the Board of Trustees of the AHT

The Petition seeks to increase the number of Trustees of the Board of Trustees of the AHT from 9 Trustees to 13 Trustees and to require at least 6 of the Trustees to have “lived experience with housing instability and/or Cambridge’s housing assistance programs.” As explained below, increasing the number of Trustees conflicts with, and is preempted by, the Special Act. Changing the number of Trustees would require the Special Act to be amended.

The Special Act provides that the Board of Trustees consists of 9 Trustees. To increase the number of Trustees, the City Council must submit a Home Rule Petition seeking to amend the Special Act to increase the number of Trustees. An amendment to the Special Act must happen before the Zoning Ordinance can be amended.

If the City Council amends Section 11.206.1(a) to require that at least 6 of the Trustees have “lived experience with housing instability and/or Cambridge’s housing assistance programs,” I recommend that the AHT amend the Declaration of Trust to be consistent with that requirement. If the number of Trustees is increased, the Declaration of Trust should also be increased to reflect the new number of Trustees. Additionally, I recommend the below underlined and strikethrough changes to the Petition’s language to clarify the intent and enforceability:

The Board of Trustees shall include at least six individuals who have lived experience with housing instability and/or Cambridge housing assistance programs as demonstrated by qualifying as one of, from at least four of the following categories at the time of appointment or re-appointment, with at least four of the following categories represented on the Board at any one time:

- Individuals with experience being unhoused in Cambridge
- Individuals who live in CHA buildings
- Individuals who live in other 100% subsidized buildings in Cambridge
- Individuals with housing vouchers who live in Cambridge, including (but not limited to) Section 8
- Individuals who live in Inclusionary Housing in Cambridge
- Individuals who live in affordable homeownership units in Cambridge
- Individuals who live in market rate housing in Cambridge and are on the CHA waitlist or the Inclusionary Housing Waitlist.

2. Amendment adding AHT quarterly reporting to the City Council

The Petition includes a requirement that the City Manager shall make quarterly reporting to the City Council concerning the AHT. If the Zoning Ordinance is amended to include this

requirement, I recommend that the AHT amend the Declaration of Trust to be consistent with this requirement.

3. Amendment adding payment of stipends to Trustees of the AHT

The Petition includes a requirement that the City Manager make funding available to provide each Trustee with an annual stipend. Under the Conflict of Interest Law, G.L. c.268A, §20, a City employee generally may not be paid for two positions with the City. The AHT Board of Trustees includes the City Manager. Therefore, I recommend the below underlined changes to the Petition's language to ensure that City employees are not eligible for a stipend:

(e) The City Manager shall make sufficient funding available to provide each member of the Affordable Housing Trust with an annual stipend intended to offset the out-of-pocket costs incurred by the Trust members in connection with participation on the Trust, including (but not limited to) meeting time, advance preparation time, travel, and child care expenses, except as prohibited by the Conflict of Interest Law, G.L. c.268A.

Additionally, if the Zoning Ordinance is amended to include this requirement, the AHT must also amend the Declaration of Trust because the Declaration of Trust currently provides that each Trustee shall serve without compensation.

4. Amendment adding that AHT funds may be used to fund a local rent subsidy program

The Petition seeks to expand the purposes for which AHT funds may be used to include funding a local rent subsidy program, including but not limited to a voucher program. Pursuant to the Special Act “[t]he purpose of the Trust is to assist in the creation and preservation of affordable housing for the benefit of low and moderate income households.” As explained further below, creation and preservation of affordable housing does not include funding a local rent subsidy program. As such, this use of funds cannot be added to the Zoning Ordinance without first amending the Special Act to expand the purposes of the AHT.

While “creation” and “preservation” are not defined in the Special Act, we can determine, pursuant to the rules of statutory construction, their meaning from the “plain and ordinary meanings” of the words as well as by analogy from definitions in other statutes. The Miriam-Webster definition of “creation” is “the act of creating. Especially: the bringing of the world into existence out of nothing.” In G.L. c.40R, the Smart Growth Zoning and Housing Production statute, the definition of “new construction” is “construction of new housing units, the substantial rehabilitation of existing buildings or the conversion to residential use of existing buildings to **create** additional housing units” (emphasis added). These definitions support that the meaning in the Special Act of “creation of affordable housing” is bringing new affordable housing units into existence through new construction or rehabilitation of existing buildings.

The Miriam-Webster definition of “Preservation” is “the act, process, or result of preserving something.” The Community Preservation Act, G.L. c.44B, §2, defines “preservation” as “protection of personal or real property from injury, harm or destruction.” These definitions support that the meaning in the Special Act of “preservation of affordable housing” is protecting affordable housing from ceasing to exist as affordable housing.

The terms “creation” and “preservation” of affordable housing do not include funding a local rent subsidy program. This is further supported by comparing the Special Act to the Community Preservation Act, which authorizes the use of CPA funds for the creation, preservation, and support of affordable housing. The CPA defines “support of community housing [which is affordable housing]” as “programs that provide grants, loans, rental assistance, security deposits, interest-rate write downs or other forms of assistance directly to individuals and families who are eligible for community housing or to an entity that owns, operates or manages such housing, for the purpose of making housing affordable.” *Id.* Therefore, a rental assistance program falls under support of affordable housing instead of “creation” or “preservation” of affordable housing, which is not a permissible purpose of the AHT.

By further comparison, municipal affordable housing trusts established pursuant to the statewide Municipal Affordable Housing Trust Fund Law, G.L. c.44, §55C, are authorized to use CPA funds that have been appropriated to the affordable housing trust to support affordable housing. This is because the stated purpose of an affordable housing trust pursuant to G.L. c.44, §55C is “the **creation and preservation of affordable housing** in municipalities for the benefit of low and moderate income households **and the funding of community housing [which is defined as low and moderate income housing for individuals and families], as defined and in accordance with the provisions of chapter 44B [the CPA].**” (emphasis added). That statute includes creation and preservation of affordable housing as authorized purposes, but also goes further and lists the purpose of funding community housing, which is affordable housing, in accordance with the CPA. The CPA specifically authorizes providing rental assistance programs and other forms of assistance to qualifying individuals and families as a way to fund/support community housing.

Therefore, the AHT may only use funds for the creation and preservation of affordable housing. CPA funds that have been appropriated to the AHT can only be used for creation and preservation of affordable housing because of the language in the Special Act. The Petition’s proposed amendment to authorize the local rent subsidy programs, such as a municipal voucher program, is not allowed because it is not permitted by the Special Act.

The following alternative options may allow the City to have a municipal voucher program:

- The City Council could submit a Home Rule Petition to seek to amend the Special Act to add funding rental assistance programs such as municipal voucher programs with CPA funds specifically, or all AHT funds generally, as an authorized purpose of the Special Act;
- The City Council could vote to adopt the statewide Municipal Affordable Housing Trust Fund Law, G.L. c.44, §55C, direct the City Manager to amend and reestablish the AHT

pursuant to that statute and make necessary amendments to the Zoning Ordinance, and request that the AHT adopt an Amended Declaration of Trust. That would allow the AHT to use CPA funds that have been appropriated to the AHT for the support of affordable housing, which includes rental assistance programs or other forms of assistance (of note, City staff would have to further review what effect having the AHT be authorized pursuant to G.L. c.44, §55C rather than the Special Act may have on the way the AHT presently operates);

- The City's Community Preservation Committee could recommend the City Council appropriate CPA funds for a municipal voucher program, which could include partnering with a non-profit or the Cambridge Housing Authority to administer the program;
- The City Council could appropriate general funds to the Cambridge Housing Authority, which the CHA could use to fund a municipal voucher program;
- The City may be able to use other federal or state funds to fund a municipal voucher program.

5. Amendment adding that AHT funds may be used to create housing for individuals experiencing homelessness

The final proposed amendment in the Petition would expand the purposes for which AHT funds may be used to include the "creation of low-threshold non-congregate shelter, transitional housing, or permanent supportive housing for individuals experiencing homelessness in Cambridge, including any related supportive services." The creation of transitional housing or permanent housing for individuals experiencing homelessness is already a permissible use of AHT funds as long as the transitional housing or permanent supportive housing is only available to individuals who qualify as low or moderate income. However, AHT funds cannot be used to fund shelter services or related support services. As a result, this proposed amendment to the Zoning Ordinance would conflict with the Special Act. Therefore, I recommend the below strikethrough changes:

~~Creation of low threshold non-congregate shelter, transitional housing, or permanent supportive housing for individuals experiencing homelessness in Cambridge, including any related supportive services.~~

Please let me know if you have any questions and I can be available to discuss further.

Very truly yours,


Megan B. Bayer