



CITY OF CAMBRIDGE, MASSACHUSETTS
PLANNING BOARD

CITY HALL ANNEX, 344 BROADWAY, CAMBRIDGE, MA 02139

Notice of Decision

Permit No: **PB #141, Minor Amendment #1**

Address: 364 Third Street

Applicant/Owner: Kendall Square, LLC
[formerly Cambridge Research Park,
101 Main Street, 18th Floor
Cambridge, Massachusetts, 02142

Zoning District: Office-3A / PUD-3

Date of Final Development Plan Decision: March 16, 1999

Date of Minor Amendment #1: January 17, 2006

Application: Request for approval of a series of four (4) Minor Amendments to Special Permit PB #141:

1. Increase theatre use (as a part of allowed retail) by 10,000 SF and commensurately decrease allowed hotel use by an equal amount.
2. Increase allowed height on Parcel E-2 [250 Kendall Street] above 120' up to the height to be subsequently approved by the Planning Board in its design review approval but not above 200', subject to (a) compliance with the 25% area coverage maximum formula set forth in Section 13.44.2 of the Zoning Ordinance, and (b) Planning Board design review approval of the building to be constructed on Parcel E-2 as provided for in PB #141.
3. Increase allowed retail by 15,500 SF and commensurately decrease allowed hotel use by an equal amount.
4. Increase allowed life science research and office by 12,500 SF and commensurately decrease allowed hotel use by an equal amount.

Decision: GRANTED with conditions.

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OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

Submitted Documents

1. Letter to the Planning Board from David Clem of Kendall Square, LLC, requesting four Minor Amendments to PB #141, dated November 28, 2005.
2. Charts provided by Daniel Winny on behalf of Lyme Properties, illustrating the mix of uses described in the approved Final Development Plan, the existing mix of uses (as of 12/09/05) in the completed development, and the mix of uses as would result from the proposed minor amendment, as well as the amount of space in building permits issued and space committed as of December 2005, dated December 12, 2005.
3. Plan drawings of PUD development as specified in the Final Development Plan and development status of buildings as of December, 2005.
4. Memorandum to the Planning Board from Community Development Department staff including pertinent sections of the PUD Special Permit decision PB #141, a section of the Final Development Plan for PB #141, Section 12.37 of the Zoning Ordinance, and Section 13.40 of the Zoning Ordinance. December, 2005.
5. Letter to the Planning Board from Barbara Broussard, President of the East Cambridge Planning Team, dated December 19, 2005.
6. Axonometric drawings of the Final Development Plan as approved in PB #141 and of the development plan with the proposed Minor Amendments, provided by Daniel Winny on behalf of Lyme Properties, dated January 9, 2006.
7. Letter to the Planning Board from David Clem of Kendall Square, LLC, providing supplemental information requested by the Planning Board and Community Development Department staff, providing aerial photos, and addressing impacts to traffic, parking, open space, and shadows associated with the proposed amendment, dated January 12, 2006.
8. Letter to the Planning Board from Nancy Stiening, dated January 17, 2006.

Findings

After review of the application documents, discussion with the Applicant at regular Planning Board meetings, comments from the staff and the general public, and as required in Condition 1(a) of the original Special Permit Decision PB #141 (and by reference Section 12.37 of the Zoning Ordinance), the Planning Board makes the following findings:

1. In its deliberations, the Planning Board considered provisions of Sections 12.37 and 13.44 of the Cambridge Zoning Ordinance, as well as the original Special Permit Decision PB #141, and has concluded that the requested amendments to the Final Development Plan as approved constitute Minor Amendments.

- a. Regarding the question of whether the requested redistribution of allowed gross floor area from the hotel use to other uses (Proposed Amendments #1, #3, and #4) constitutes a Minor Amendment to the Special Permit, the Planning Board referred to Section 12.37.2 of the Zoning Ordinance (Amendments to Final Development Plan), which reads: “Minor amendments are changes which do not alter the concept of the PUD in terms of density, floor area ratio, land usage, height, provision of open space, or the physical relationship of elements of the development.” The Planning Board finds that the proposed amendments do not alter the concept of the PUD as approved in the Special Permit.

The Planning Board also referred to Condition 1(e) of the Special Permit Decision PB #141 approving the PUD Final Development Plan, which states that “... housing may be increased without limit with concomitant reductions in the gross floor area devoted to any of the other uses authorized by this Decision without a Major Amendment being required.” The proposed changes to the originally proposed use mix, as has been the case with past changes in the Development Plan, have been predominantly from hotel use to residential use.

The Planning Board also referred to the Clarification of Decision on PB #141 issued by the Planning Board and filed with the City Clerk on July 2, 2002, which reads in part: “Building C as identified on the approved Final Development Plan and otherwise referenced in the text of the Special Permit #141 Decision may be used as a performance arts facility. ... The Board finds that a Building C containing up to 85,000 square feet of gross floor area devoted to the foregoing activities and uses is fully consistent with the authorizations granted in the Special Permit #141 Decision.”

- b. Regarding the question of whether the requested change in the allowed height of the building on “Parcel E-2” (Proposed Amendment #2) constitutes a Minor Amendment to the Special Permit, the Planning Board referred to the sections referenced above and to Paragraph 13.44.2 of the Zoning Ordinance (Development Controls in the PUD-3 District), which reads: “The Planning Board shall not approve any Final Development Plan in which twenty-five (25) percent or more of the land area of the development parcel is covered with such buildings or parts of buildings not exempted by Section 5.23 in excess of one hundred and twenty (120) feet in height or in which fifteen (15) percent or more of the land area of the development parcel is covered with such buildings or parts thereof in excess of two hundred (200) feet in height.” This condition in the PUD-3 District regulations will not be violated by the proposed amendment to permit additional height for a residential building on Parcel E-2, and the additional height will occur on a lot and within a precinct of the approved Final Development Plan already containing a building in excess of 200 feet in height.

The Planning Board also referred to Paragraph 13.44.3 of the Zoning Ordinance (Development Controls in the PUD-3 District), which reads: “In evaluating a

Development Proposal providing building height in excess one hundred and twenty (120) feet [sic], the Planning Board shall give consideration to evidence presented on the following: (a) that increased height will not cast shadows or alter air currents in ways that will unreasonably limit the amount of light and air reaching other buildings in the vicinity to a significantly greater extent than if the building height did not exceed one hundred and twenty (120) feet; (b) that increased height would mitigate detrimental environmental impacts such as excessive ground coverage, diminution of open space, and monotonous development; (c) that increased height would not adversely affect and would not result in increased sensitivity to the visual and physical characteristics of the particular location through more harmonious relationships to the terrain and to the proposed and existing buildings in the vicinity that have functional or visual relationships to the proposed building; (d) that increased height would result from actions taken to lessen the impact of traffic and parking on the surrounding area; and (e) that the orientation and location of the proposed structure would not otherwise diminish the health and safety of the area around the development parcel.” The Board determined that it is appropriate for such considerations to be reviewed when the Board evaluates a preliminary design for the proposed residential building under the design review procedures established in the original Special Permit Decision.

2. The change in allowed gross floor area from hotel use to residential use does constitute a substantial change in the overall mix of uses, as it increases the proportion of residential use in the development from 18% (as originally authorized in the Special Permit) or 30% (as exists for the current development program reflected in the use of all buildings approved to date by the Planning Board) to 35%. However, the conditions of the Special Permit Decision PB #141, referenced above, permit allowed gross floor area to be converted to housing from any other use without requiring a Major Amendment. Moreover, the Special Permit Decision specifically encourages such a shift of uses, particularly where it reduces the total amount of non-residential uses. While the loss of the hotel use in the development is regrettable, the desired mixed-use nature of the entire development remains fully intact and functional with the mix of uses included in the requested amendments.
3. The Planning Board finds that the requested increases in life science research / office use and retail / theater use, with commensurate decreases in the allowed amount of hotel use, do not constitute a substantial deviation from the concept of the approved PUD with regard to the overall mix of uses, as they result in only a minor change in the proportion of research / office use (from 53% to 54%) and a minor change in the proportion of retail / theater use (from 9% to 11%). The Board finds reasonable the Applicant’s explanation that the hotel use as originally proposed would have included accessory retail and office uses on the first and second floors, and that the request for a change is made with the purpose of retaining those uses as they were envisioned in the original Final Development Plan when the site is developed as housing. Such active ground floor uses are an integral part of the Final Development Plan and an important element of the long-term success of the project.

4. The Planning Board finds that the requested increase in allowed height on Parcel E-2 does not constitute a substantial deviation from the approved PUD concept. Furthermore, the Board finds that it may allow heights on parcel E-2 above 120 feet, but not to exceed 200 feet, without violating the PUD-3 development controls specified in Paragraph 13.44.2 of the Zoning Ordinance (as referenced above), because the resulting percentage of the development area with heights above 120 feet would still be below the specified 25% maximum. Additionally, the Board finds reasonable the Applicant's explanation that the increase in height is necessary and appropriate in order to accommodate a residential building on the site. Housing, to be successful, requires dimensional standards different from those of a hotel. Additional height can help to facilitate the success of a residential project by allowing better views from the building. Such additional height is anticipated in the Development Controls of the PUD-3 District, and the requested additional allowed height is proposed for the same lot that already allows a building height above 200 feet.

Decision

Based on the above findings, the Planning Board determines that the requested amendments to the Final Development Plan as originally approved in Special Permit #141 are Minor Amendments to the Special Permit, as that term is defined in the conditions of the Special Permit Decision and Article 12.000 of the Zoning Ordinance. The Planning Board GRANTS the following Minor Amendments to Special Permit #141, subject to the conditions and limitations set forth below.

1. The allowed gross floor area for theater use (as part of allowed retail) shall be increased by 10,000 square feet, and the allowed gross floor area for hotel use shall be decreased by an equal amount.
2. The allowed building height on Parcel E-2 shall be increased up to 200 feet, subject to (a) compliance with the 25% area coverage maximum formula set forth in Section 13.44.2 of the Zoning Ordinance, and (b) Planning Board design review approval of the building to be constructed on Parcel E-2 as provided for in Special Permit #141.
3. The allowed gross floor area for retail (not including theater) use shall be increased by 15,500 square feet, and the allowed gross floor area for hotel use shall be decreased by an equal amount.
4. The allowed gross floor area for life science research/office use shall be increased by 12,500 square feet, and the allowed gross floor area for hotel use shall be decreased by an equal amount.
5. As a result of the changes authorized in Conditions 1-4 above, the allowed gross floor area dedicated to different use categories referenced in Condition 1(e) of the original Special Permit Decision PB #141, shall be changed as specified in the following tables:

Old Allowed Use Mix (before Minor Amendments):

	Gross Floor Area (square feet)	Percent of Total Gross Floor Area
Life Sciences Research and Office	726,000	53 %
Hotel	275,000	20 %
Residential (incl. 100,000 sqft. bonus)	250,000	18 %
Retail (incl. Theater and Other)	125,000	9 %
TOTAL	1,376,000	100 %

New Allowed Use Mix (after Minor Amendments):

	Gross Floor Area (square feet)	Percent of Total Gross Floor Area
Life Sciences Research and Office	738,500	54 %
Hotel	0	0 %
Residential (incl. 100,000 sq ft. bonus)	487,000	35 %
Retail (incl. Theater and Other)	150,500	11 %
TOTAL	1,376,000	100 %

6. On the occasion of the Planning Board's design review of the residential building to be developed on "Parcel E-2" (250 Kendall Street), the Applicant shall review the impacts on traffic, parking, and pedestrian circulation that might result from a significant increase in the floor area dedicated to residential use, and shall explain how those impacts will be addressed. Also on the occasion of the aforementioned design review, the Planning Board shall consider the criteria specified in Paragraph 13.44.3 of the Zoning Ordinance, including shadow impacts and impacts to open space and pedestrian circulation.

Voting in the Affirmative to GRANT the Minor Amendments were B. Shaw, P. Winters, H. Russell, W. Tibbs, T. Carpenter, and J. Molinsky, Associate Member appointed to act in place of an absent Planning Board member, constituting at least two thirds of the members of the Planning Board necessary to grant a Minor Amendment to a Special Permit. Board Member T. Anninger voted not to grant the Minor Amendments.

For the Planning Board,

A handwritten signature in cursive script that reads "Barbara Shaw".

Barbara Shaw, Chair

A copy of this Minor Amendment to Decision PB #141 shall be filed with the City Clerk. Appeals, if any, shall be made pursuant to Section 17, Chapter 40A, Massachusetts General Laws, and shall be filed within twenty (20) days after the date of such filing in the Office of the City Clerk.

ATTEST: A true and correct copy of the above decision filed with the Office of the City Clerk on February 2, 2006 by Elizabeth M. Paden, authorized representative of the Cambridge Planning Board. All plans referred to in the decision have been filed with the City Clerk on said date or as part of the original application.

DATE: