

BZA APPLICATION FORM

GENERAL INFORMATION

The undersigned hereby petitions the Board of Zoning Appeal for the following:

Special Permit: _____ Variance: _____

Appeal: ☒ X

2019 AUG -8 PM 2:52
OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

PETITIONER: DIV 35 CPD, LLC

PETITIONER'S ADDRESS: c/o The Davis Companies, 125 High St., 21st Fl., Boston
MA 02110

LOCATION OF PROPERTY: 35 Cambridgepark Drive

TYPE OF OCCUPANCY: OFFICE ZONING DISTRICT: _____

REASON FOR PETITION:

- | | |
|---|--|
| <input type="checkbox"/> Additions | <input type="checkbox"/> New Structure |
| <input type="checkbox"/> Change in Use/Occupancy | <input type="checkbox"/> Parking |
| <input type="checkbox"/> Conversion to Addi'l Dwelling Unit's | <input type="checkbox"/> Sign |
| <input type="checkbox"/> Dormer | <input type="checkbox"/> Subdivision |
| <input checked="" type="checkbox"/> Other: <u>Appeal from Building Inspector's Interpretation</u> | |

DESCRIPTION OF PETITIONER'S PROPOSAL:

Petitioner requests that the ZBA review the Building Inspector's interpretation and application of Cambridge Zoning Ordinance Sections 2.000 and 11.202 as set out in the Building Inspector's letter dated July 10, 2019 which is attached as Exhibit B to Petitioner's Notice of Appeal filed herewith, which Notice of Appeal sets forth more fully Petitioner's position and is incorporated herein by reference.

SECTIONS OF ZONING ORDINANCE CITED:

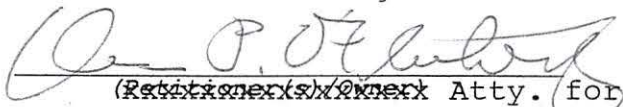
Article 2 Section 2.000 "Incentive Project"
Article 11 Section 11.202
Article 10 Section 10.20

Applicants for a Variance must complete Pages 1-5

Applicants for a Special Permit must complete Pages 1-4 and 6

Applicants for an Appeal to the BZA of a Zoning determination by the Inspectional Services Department must attach a statement concerning the reasons for the appeal

Original Signature(s):


(Petitioner's) ~~Owner's~~ Atty. (for Owner)
Kevin P. O'Flaherty, Esq.
(Print Name)

Address: Goulston & Storrs PC
400 Atlantic Avenue
Boston, MA 02110

Tel. No.: 617-482-1776

E-Mail Address: koflaherty@goulstonstorrs.com

Date: 8/8/19

COPY

goulston&storrs
counsellors at law

Kevin O'Flaherty
koflaherty@goulstonstorrs.com
(617) 574-6413 (Tel)

August 8, 2019

VIA HAND DELIVERY

Re: **Appeal of Building Inspector's Determination (35 Cambridgepark Drive)**

Ms. Paula M. Crane, Interim City Clerk
City of Cambridge
795 Mass Ave
Cambridge, MA 02139

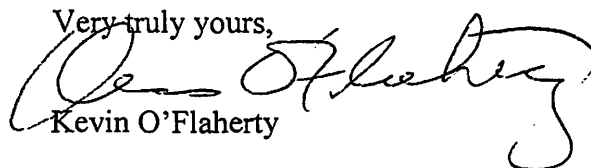
Dear Ms. Crane:

Enclosed in connection with the above-referenced matter, please find:

1. BZA Application – General Information and Ownership Information;
2. Notice of Appeal from Determination of ISD Commissioner (supporting document),
and
3. Check payable to the City of Cambridge in the amount of One Hundred Dollars
(\$100).

Please date stamp the enclosed copy of this cover letter as proof of filing and return it to the person who is filing the above papers. Thank you for your attention to this matter. Please feel free to contact me with any questions or concerns.

Very truly yours,



Kevin O'Flaherty

KO/jea
Enclosures

cc (w/encl): Constantine Alexander, Chair
Board of Zoning Appeal
831 Massachusetts Avenue #1
Cambridge, MA 02139

2019 AUG -8 PM 2:18
OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

Mr. Ranjit Singanayagam, Commissioner
Inspectional Services Department
831 Massachusetts Avenue
Cambridge MA 02139

City Law Department
795 Mass Ave, 3rd Flr.
Cambridge, MA 02139

DOCUMENT INCLUDES VISIBLE FIBERS, CHEMICAL REACTIVE PROPERTIES, FEATURES A FOIL HOLOGRAM AND DETECTION AREA REVEALS A LOCK WHEN TESTED

GOULSTON & STORRS
A PROFESSIONAL CORPORATION
PARALEGAL ACCOUNT
400 Atlantic Avenue
Boston, MA 02110-3333

5-7017/2110

21955

DATE

08/07/2019

Shield

PAY TO THE
ORDER OF

City Of Cambridge

\$ 100.00-

one hundred and 00/100

DOLLARS



Security
Features
Included.
Details on back

NOT VALID FOR AMOUNTS OVER \$1000.00
VOID AFTER 90 DAYS



CITIZENS BANK
MASSACHUSETTS

FOR

Zoning Appeal (01651, 0017)

S. Bradley

AUTHORIZED SIGNATURE

⑈0021955⑈ ⑆211070175⑆ 1137421662⑈

BZA APPLICATION FORM - OWNERSHIP INFORMATION

To be completed by OWNER, signed before a notary and returned to The Secretary of the Board of Zoning Appeals.

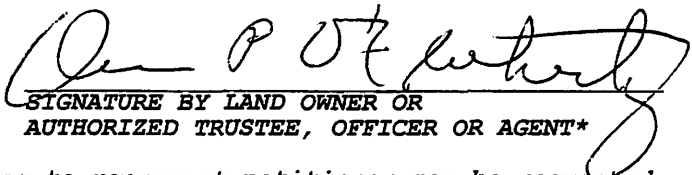
I/We Kevin P. O'Flaherty, Esq.
~~(OWNER)~~ Attorney for Owner

Address: Goulston & Storrs PC, 400 Atlantic Avenue, Boston, MA 02110

DIV 35 CPD, LLC owns
State that ~~XXX own~~ the property located at 35 Cambridgepark Drive,
which is the subject of this zoning application.

The record title of this property is in the name of DIV 35 CPD, LLC

*Pursuant to a deed of duly recorded in the date 3/15/2016, Middlesex South
County Registry of Deeds at Book 66935, Page 204; or
Middlesex Registry District of Land Court, Certificate No. _____
Book _____ Page _____.


SIGNATURE BY LAND OWNER OR
AUTHORIZED TRUSTEE, OFFICER OR AGENT*

**Written evidence of Agent's standing to represent petitioner may be requested.*

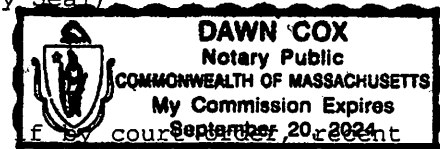
Commonwealth of Massachusetts, County of Suffolk

The above-name Kevin P. O'Flaherty personally appeared before me,
this 8th of August, 2019, and made oath that the above statement is true.

Dawn Cox Notary

My commission expires September 20, 2024 (Notary Seal)

- If ownership is not shown in recorded deed, e.g. deed, or inheritance, please include documentation.



CITY OF CAMBRIDGE BOARD OF ZONING APPEAL

DIV 35 CPD, LLC

Petitioner,

v.

RANJIT SINGANAYAGAM,
Commissioner, City of Cambridge
Inspectional Services Department,

Respondent.

NOTICE OF APPEAL
FROM DETERMINATION OF
ISD COMMISSIONER

2019 AUG -8 PM 2:18
OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

Pursuant to M.G.L. c. 40A, §§ 8 and 15, and § 10.20 of the City of Cambridge Zoning Ordinance (the "Ordinance"), Petitioner DIV 35 CPD, LLC ("DIV") hereby notices its appeal to the City of Cambridge Board of Zoning Appeal from Inspectional Services Department Commissioner Ranjit Singanayagam's ("Commissioner Singanayagam") application of Ordinance §§ 2.000 and 11.202 to the real property located at 35 Cambridge Park Drive, Cambridge, Massachusetts.

PARTIES

1. DIV is a limited liability company established and organized pursuant to the laws of the Commonwealth with a principal place of business of 125 High Street #2111, Boston, Massachusetts.

2. Commissioner Singanayagam has been, at all relevant times hereto, the Commissioner of the City of Cambridge Inspectional Services Department ("ISD") with a principal place of business of 831 Massachusetts Ave. #1, Cambridge, Massachusetts.

FACTS

3. DIV owns an office building situated at 35 Cambridge Park Drive (the “Office Building”).

4. The Office Building was originally constructed in the 1950s as an industrial building and was, at that time and many years afterward, used for industrial purposes.

5. In the 1980s the then-owner of the Office Building obtained municipal permits and approvals to allow the building to be redeveloped and adapted for office use. The Office Building has been used since that time—nearly 40 years—for office purposes. Attached hereto as Exhibit A is the Variance and Special Permit (BZA Case no. 4838) issued by the Board of Zoning Appeal for the City of Cambridge which, among other things, allowed alterations to the structure to accommodate the change of use from warehouse to office.

6. DIV has constructed a 47,179-sf addition to the existing 137,635-sf Office Building (the “Project”). The Project will continue the existing office use in the new space.

7. The City of Cambridge has informed DIV that the Project triggers § 2.000 of the Ordinance which provides that “[a]ny *new development* that consists of at least thirty thousand (30,000) square feet of Gross Floor Area devoted to [among other things] office and laboratory use” is to be considered an “incentive project” and subject to an “incentive payment” calculated at \$13.50 per square foot (Emphasis added).

8. § 2.000 defines a “new development” which would trigger the incentive payment (in this instance, a Housing Contribution) in several ways. First, a “new development” is “substantial construction of new buildings.” Second, a “new development” is “additions to existing buildings to accommodate uses in the above list,” which include office use. Third, a

“new development” is where there is “substantial rehabilitation of buildings to accommodate uses...for which the buildings were not originally used.”

9. Therefore, § 2.000 provides that a Housing Contribution obligation is triggered when (1) there is an addition to an existing building to accommodate, among other things, office use, or when (2) there is a substantial rehabilitation of a building to accommodate a use for which the building was not originally used. Section 2.000 then provides that the Housing Contribution for an addition to an existing building to accommodate, among other things, office use, shall be calculated using the *additional* GFA only.

10. Commissioner Singanayagam has taken the position that the second of these definitions applies to the Project, and thereby triggers a Housing Contribution based on the entire GFA of the Building (184,814-sf). In his July 10, 2019 letter (attached hereto as Exhibit B), he wrote:

“[The Project] consists of adding a 47,179 square foot addition at the Property. It also consists of substantially rehabilitating the existing building at the Property. Your client’s proposed use of the Property is an office and laboratory use. The original use of the building was steel fabrication, which was an industrial use. Accordingly, the addition and substantial rehabilitation of the existing building at the Property both constitute a new development, which is subject to the Housing Contribution.”

11. However, as DIV initially explained in a letter dated June 6, 2019, and prior to Commissioner Singanayagam reaching his determination, the plain language of § 2.000 demonstrates the first of the definitions is the framework applicable to the Project.¹ The Project does not entail a “substantial rehabilitation” undertaken to “accommodate” the existing Office Building to a use different from its original use. Rather, the Office Building was adapted from an industrial/manufacturing use to office use more than 37 years ago; and any current

¹ DIV’s June 6, 2019 letter, which is attached as Exhibit C, explains DIV’s position as to the proper interpretation and application of Ordinance §§ 2.000 and 11.202. DIV reserves its right to make additional arguments based on further factual development and additional legal analysis.

renovations or additions to the Office Building are for that same use—a use to which the Office Building was already adapted.

12. For this reason, the Housing Contribution should be calculated using the 47,179-sf GFA that comprises the “addition to an existing building to accommodate” an office use.

13. The difference between the two approaches is substantial. If the entire GFA of the existing Office Building is used to calculate the Housing Contribution, the resulting fee would be \$2,494,989.00. If instead, only the GFA of the actual addition is used, the Housing Contribution would be \$636,916.50.

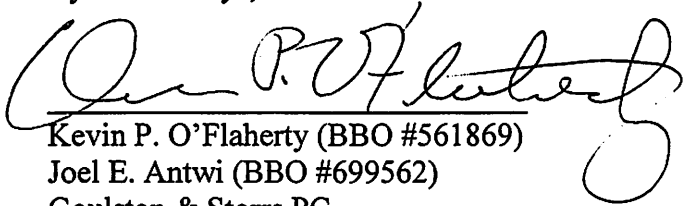
14. Commissioner Singanayagam’s position (using the GFA of an entire building to calculate an incentive payment when only an addition has been made, and the existing building’s use is not changed) is also contrary to good public policy. Such a financial imposition would dissuade an owner from undertaking adaptive re-use of buildings that had reached the end of their economic life with respect to certain uses, but not with respect to others. This would run counter to the City’s well-stated land use policies of historic preservation and adaptive reuse of structures. Using the entire square footage of a building to calculate the Housing Contribution when the use of the existing building is not changing and that use is only being expanded would, in fact, discourage adaptive re-use and, potentially, the preservation of existing structures.

15. Accordingly, the Housing Contribution should be calculated using the GFA of the area which was added and not the GFA of the whole existing Office Building. As noted above, the Project does not result in the existing Office Building undergoing any change in use.

Respectfully submitted,

DIV 35 CPD, LLC

By its attorneys,

A handwritten signature in black ink, appearing to read "Kevin P. O'Flaherty", is written over a horizontal line.

Kevin P. O'Flaherty (BBO #561869)

Joel E. Antwi (BBO #699562)

Goulston & Storrs PC

400 Atlantic Avenue

Boston, MA 02110-3333

(617) 482-1776

ko^oflaherty@goulstonstorrs.com

jantwi@goulstonstorrs.com

Dated: August 8, 2019

Exhibit A

CITY OF CAMBRIDGE

BOARD OF ZONING

CASE NO. 1 4838

CAMBRIDGE, MASS.

PREMISES: 35 Rindge Avenue Extension Office 2 Zone
Middlesex County Registry of Deeds,
Book 13855, Page 417

PETITIONER: Cambridge I Associates

DATE OF FILING OF PETITION: June 5, 1981

DATES OF PUBLIC NOTICE: June 11 and June 18, 1981

DATE OF HEARING: June 25, 1981

PETITION: Variance: Alteration and extension of non-conforming
structure, side yard violations, parking
layout

Special
Permit: Reduction in number of off-street parking
spaces

VIOLATION: Article 5, Section 5.31 (Dimensions)
Article 8, Sections 8.11 and 8.22 (alteration of non-
conforming structure)
Article 6, Sections 6.35 and 6.40 (Parking)

At the public hearing held on June 25, 1981, the full Board heard Jay R. Schochet of 14 Byron Street, Boston and William Berg of 452 Broadway, Cambridge, Massachusetts, of Cambridge I Associates, Owner, Boston, Massachusetts; Easley Hamner, of Hugh Stubbins and Associates, Architects/Planners, 1033 Massachusetts Avenue, Cambridge, Massachusetts, project architects; and Jordan P. Krasnow of Gaston Snow & Ely Bartlett, One Federal Street, Boston, Massachusetts, attorneys for the Owner.

Petitioner seeks to convert the warehouse building at the subject premises to office use, a permitted use in the Office 2 zoning district. The premises are the former warehouse of the Bethlehem Steel Corporation on Rindge Avenue Extension. The area, which has been targeted by the City of Cambridge for revitalization as a part of the Red Line MBTA Extension and station slated for the area, has begun to undergo change. The Petitioner has commenced renovation of the premises into a three-story office building containing approximately 134,000 square feet of rentable area. The existing steel frame of the building is being retained and the only additional land area to be occupied by the structure is on the westerly side of the building where an additional required gross stairway is being built, and in the front where a former open railway loading dock area is being enclosed. Otherwise, the existing footprint of the building is being maintained.

The Petitioner stated that because of certain ambiguities in the Zoning Ordinance regarding changes in non-conforming buildings, the lenders for the project have refused to advance funds without affirmative relief from this Board. The Petitioner pointed out that the renovation has received the enthusiastic endorsement of public officials in Cambridge, including Planning and Building Department officials, that the additional expansion of the building is the minimum necessary for the conversion without demolition of the entire building, and that in view of the upgrading of the building, the extension and alteration contemplated is advantageous to the area.

35 Rindgo Avenue Extension
Cambridge, Massachusetts

-2-

Case No. J434

With respect to the parking, the Petitioner intends to provide 184 parking spaces on site, in accordance with the plans submitted with the Application. Since a major portion of the site was taken by the MBTA, the small size of the reduced lot necessitates a reduction in required parking, and the parking layout, which includes areas for compact cars as well as tandem parking. The Petitioner did indicate that it has also made arrangements with an abutter across Rindgo Avenue Extension for additional parking. The number of parking spaces to be provided complies with the new Cambridge Zoning Ordinance adopted in May 1981, but not with landscaping and layout requirements. Given the size of the lot and the desire to maintain the existing structure, a substantial hardship would result from a literal enforcement of the Ordinance. In addition, the Petitioner stated that no impact would result to the neighborhood, and in fact the proposal would not derogate from the Zoning Ordinance.

After hearing all the evidence, the Board finds:

A. Front and side yard violations:

1. The Board finds that the side yard addition does not add substantially to the bulk of the building and that the same is a minimal insignificant intrusion made necessary by the requirement for an additional egress stairway. The front yard enclosure of the former loading area does not increase the bulk of the building and is not any closer to the street than the rest of the property.

2. It would cause a substantial hardship to the Petitioner not to allow these minor violations.

3. Both setback violations result from the peculiar shape of the site and the existing structure; the site being oddly shaped as a result of MBTA takings and the structure being unusually long.

4. The conversion of the building fulfills the intent of the Ordinance including recent amendments which have been designed to upgrade the entire area. The project will be beneficial to the neighborhood and the community as one of the first steps in the revitalization of the area and an upgrading of the uses.

B. Alteration of Non-Conforming Structure:

1. The City of Cambridge has consistently maintained that no relief from the Board of Appeals is required for an alteration, reconstruction or enlargement of a structure if the structural frame of the building remains unchanged. Such is the case in this matter. Accordingly, the Board finds that the proposed alteration conforms to the Ordinance and that no variance or special permit is required.

C. Parking:

1. Some confusion apparently existed over the number of required parking spaces because of the adoption of the new parking ordinance. A letter was received from an abutter questioning the allowance of parking at less than the minimum required by the new zoning ordinance. The Board finds that in fact the number of spaces to be provided, while not complying with the literal terms of the prior ordinance, does comply with the new ordinance.

2. However, as a result of the size of the structure on a lot which has been greatly reduced by the earlier takings, it is impossible to comply with the landscaping and layout requirements of the parking ordinance.

35 Rindge Avenue Extension . . -3-
Cambridge, Massachusetts

Case No. 4838

3. The Board finds:

(a) That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship in that the existing structure would not be able to be appropriately utilized.

(b) The hardship is due to the peculiar size and shape of the lot and the building.

(c) Desirable relief can be granted without detriment to the public good because of the general upgrading of the premises resulting from the rehabilitation; to the maximum extent possible, landscaping is being provided around the perimeter of the property; the Petitioner has extra parking across the street within 400 feet of the premises; and the fact that an MBTA parking garage is under construction on an adjoining property.

4. The Board further discussed the leased parking across Rindge Avenue Extension, and has determined that no zoning relief is required for its use.

5. The Board, however, expressed some concern regarding the parking in the front of the building, and, to minimize such concern, has asked that certain modifications be made.

THEREFORE, the Board of Zoning Appeal unanimously vote to GRANT the variances as set forth above, and request the Superintendent of Buildings to issue the necessary permits to allow the proposed renovations, subject to the following condition as it affects the parking variance:

Parallel parking only shall be allowed in the front of the building, the number of spaces shall be reduced from 17 by at least one-half, only four curb cuts shall be allowed from the entire property on to Rindge Avenue Extension, and, to the extent feasible and consistent with the foregoing, sidewalks and some landscaping shall be provided along the front of the building. Further, while not imposed as a condition, the Board urges the Petitioner to provide as much decorative landscaping as is compatible with its parking layout.

Vote: yes: Kenneth Daloy
Vincent Panico
John Holway
Hugh Russell
Brendan Sullivan

Hugh Russell
Hugh Adams Russell, Chairperson

ATTEST: A true and correct copy of decision filed with the offices of the City Clerk and Planning Board on June 26, 1981
by [Signature], Secretary

Twenty days have elapsed since the date of filing of this decision.
No appeal has been filed
Appeal has been filed and dismissed or denied

[Signature]
City Clerk, City of Cambridge

Exhibit B



CITY OF CAMBRIDGE
INSPECTIONAL SERVICES DEPARTMENT 831 MASS. AVE.
CAMBRIDGE, MASSACHUSETTS 02139 (617) 349-6100

Ranjit Singanayagam
Commissioner

July 10, 2019

BY EMAIL AND FIRST-CLASS MAIL

Kevin P. O'Flaherty, Esq.
Goularon & Storrs
400 Atlantic Avenue
Boston, MA 02110
koflaherty@goulstonstorrs.com

Re: 35 Cambridge Park Drive, Cambridge, MA.

Dear Mr. O'Flaherty,

I am in receipt of your June 6, 2019 letter concerning your client's position regarding the Housing Contribution, pursuant to Cambridge Zoning Ordinance ("Zoning Ordinance") Section 11.202, for the redevelopment of the property located at 35 Cambridge Park Drive (the "Property").

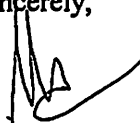
An Incentive Project that is subject to Section 11.202 of the Zoning Ordinance is defined as:

Any new development that consists of at least thirty thousand (30,000) square feet of Gross Floor Area devoted to one or more of the following uses listed in Section 4.30 of the Zoning Ordinance: Sections 4.31 i-1 (Hotel or motel), 4.32 f (Radio and television studio), 4.33 b-5 (College or University not exempt by statute, specifically including those uses and facilities listed in Subsection 4.56 c-4, c-5, and c-6), 4.33 c (Noncommercial Research Facility), 4.33 d (Health Care Facilities), 4.33 e (Social Service Facilities), 4.34 (Office and Laboratory Use), 4.35 (Retail Business and Consumer Service Establishments), 4.36 (Open Air or Drive In Retail Service), 4.37 (Light Industry, Wholesale Business and Storage), and 4.38 (Heavy Industry). For the purpose of this definition, new development shall mean (1) construction of new buildings or additions to existing buildings to accommodate uses in the above list, (2) substantial rehabilitation of buildings to accommodate uses in the above list for which the buildings were not originally used, or (3) Gross Floor Area whose use is changed from a use not included in the above list to a use included in the above list. In no case shall Gross Floor Area devoted to a Municipal Service Facility or Other Government Facility be considered an Incentive Project.

Your client's project consists of adding a 47,179 square foot addition at the Property. It also consists of substantially rehabilitating the existing building at the Property. Your client's proposed use of the Property is an office and laboratory use. The original use of the building at the Property was steel fabrication, which was an industrial use. Accordingly, the addition and substantial rehabilitation of the existing building at the Property both constitute new development, which is subject to the Housing Contribution, pursuant to Section 11.202 of the Zoning Ordinance.

You have a right to appeal this determination pursuant to G.L. c.40A, §8 and Zoning Ordinance Article 10.00, Section 10.20.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ranjit Singanayagam', with a stylized flourish at the end.

Ranjit Singanayagam
Commissioner
Inspectional Services Department

Exhibit C

June 6, 2019

VIA HAND DELIVERY

Mr. Ranjit Singanayagam
Commissioner
City of Cambridge Inspectional Services Department
831 Massachusetts Avenue
Cambridge, MA 02139

Re: 35 Cambridge Park Drive

Dear Commissioner Singanayagam:

This firm represents the owner of 35 Cambridge Park Drive. As you know, the owner has completed a renovation of the pre-existing technical office building, including the addition of 47,179 square feet of gross floor area ("GFA") (collectively, the "Project"). I am writing to advise you of the owner's view regarding certain matters related to Section 11.202 of the Cambridge Zoning Ordinance, which relates to the Housing Contribution under Incentive Zoning.

As you may know, the building was originally constructed in the 1950s and was used at that time, and for many years thereafter, by Bethlehem Steel for manufacturing and warehouse purposes. In 1981, the Board of Zoning Appeal for the City of Cambridge issued a variance (BZA Case no. 4838) authorizing alterations to the structure to accommodate a change in use from warehouse to office use. Starting in 1998, the building was occupied by Vecna, a technology company founded by a consortium of MIT Engineers. In December 2016, the Planning Board issued a Special Permit (Case No. 314) to allow for the construction of a 47,179 square foot addition to the building. The owner's renovation and expansion of the building did not and will not change its prior use.

Section 11.202 of the Cambridge Zoning Ordinance requires the developer of an Incentive Project to make a Housing Contribution. Section 2.000 defines an Incentive Project as "[a]ny new development that consists of at least thirty thousand (30,000) square feet of Gross Floor Area devoted to [among other things] office and laboratory use".

We understand that an issue has arisen regarding whether the Housing Contribution should be calculated using the GFA of 47,179 square feet, the amount of additional gross floor area, or 184,814 square feet, the GFA of the entire building after the expansion.

As we understand it, the question you are considering is how you are to interpret and apply the provision of Section 2.000 which defines "new development" as the "substantial

rehabilitation of buildings to accommodate uses...for which the buildings were not originally used." We understand that it has been suggested that because the building was originally used for a manufacturing and warehouse use, the entire building GFA of 184,814 should be included in calculating the Housing Contribution and not just the 47,179 GFA which constitutes the actual additional gross floor area.

The difference between the two approaches is substantial. If the entire gross floor area of the building is used to calculate the Housing Contribution, the result would be \$2,494,989.00. If instead, only the area of the actual addition is used, the Housing Contribution would be \$636,916.50.

Section 2.000 defines a "new development" which would trigger a Housing Contribution in several ways. First, Section 2.000 provides that a "new development" for which a Housing Contribution must be made is "substantial construction of new buildings." A second definition of "new development" is "additions to existing buildings to accommodate uses in the above list," which include office use. A third definition of "new development" in Section 2.000 is where there is "substantial rehabilitation of buildings to accommodate uses...for which the buildings were not originally used." For the reasons set out below, we believe that the second definition applies and that only the 47,179 sf addition should be used to calculate the Housing Contribution.

It is a well-settled principle of statutory construction that statutes must be interpreted and applied according to their plain and unambiguous language. See, e.g., Construction Industry of Massachusetts v. Commissioner of Labor and Indus., 406 Mass. 162, 167 (1989)(the plain language of a statute must be given effect). The plain language of Section 2.000 provides that a Housing Contribution obligation is triggered when (1) there is an addition to an existing building to accommodate, among other things, office use, or when (2) there is a substantial rehabilitation of a building to accommodate a use for which the building was not originally used. Section 2.000 provides that the Housing Contribution for an addition to an existing building to accommodate, among other things, office use, shall be calculated using the additional GFA only.

The plain language of Section 2.000 demonstrates that it is the first of these definitions which applies to the Project. The Project does not entail a "substantial rehabilitation" undertaken to "accommodate" the building to a use different from its original use. The building already was adapted from an industrial/manufacturing use to office use. Thus, that accommodation occurred more than 37 years ago. It is clear that the renovation of the building will accommodate the same use. For this reason, the Housing Contribution should be calculated using the 47,179 GFA that comprises the "addition to an existing building to accommodate" a technical office use.

This approach is not only consistent with the plain language of Section 2.000, it is consistent with other established principles of statutory interpretation and application. For example, a court will interpret a statute in a manner that is workable and logical, which is consistent with other statutes, with considerations of public interest and sound policy, and in a manner that does not lead to harsh or inequitable results. See, e.g. Local 589, Amalgamated

Transit Union v. MBTA, 392 Mass. 407, 415 (1984), Hashimi v. Kalil, 388 Mass. 607, 610 (1983) and Larkin v. Charlestown Savings Bank, 7 Mass.App.Ct. 178, 183 n. 9 (1979)(where the construction or interpretation of a statute is in question, hardship and inequitable treatment flowing from one interpretation may be considered and should be avoided).

Using the GFA of the entire structure to calculate an incentive payment when only a small addition has been added would dissuade an owner from undertaking adaptive re-use of buildings that had reached the end of their economic life with respect to certain uses, but not with respect to others. This would run counter to the City's well stated land use policies of historic preservation and adaptive reuse of structures. Using the entire square footage of a building to calculate the Housing Contribution when the use of the existing building is not changing and that use is only being expanded would, in fact, discourage adaptive re-use and, potentially, the preservation of existing structures in Cambridge.

An example of how such an interpretation of the definition of an Incentive Project could lead to an illogical result would be the Novartis campus on Massachusetts Ave. In that case, a former candy manufacturing plant (the "Necco Building") was converted to a lab use in 2002. In 2011, a new lab building was constructed across the street for the same use. In the future, if 30,000 sf of either of those buildings underwent substantial rehabilitation, the new building would not be subject to a Housing Contribution payment, but the Necco Building would. There is no evidence in the statutory history of Section 11.200 or Section 2.000 that it was the intention of the amendment to create a two tier class of buildings for purposes of requiring a housing contribution, where uses contained in structures that have been adaptively reused to office/lab space would be burdened differently than such uses contained in newly constructed buildings. Such "inequitable treatment" is precisely what the Supreme Judicial Court and the Appeals Court cautioned against in the cases cited above.

Finally, we must ask how Section 2.000 has been applied where other property owners, including large institutional property owners, have adapted buildings from prior industrial or manufacturing to office uses and then, later, substantially renovated or expanded those adapted buildings. Given the fact that numerous buildings in Cambridge have been adapted from prior industrial or manufacturing uses to office uses, we must assume that this is not the first time the issue has been presented. If that assumption is correct, and other property owners have only been required to make incentive payments on the expansion space and not the entire building, equal protection considerations would certainly be implicated.

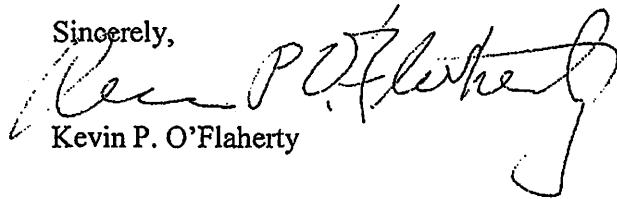
Accordingly, we submit that the housing contribution should be calculated using the GFA of the area which was added and not the GFA of the whole building, the majority of which, as noted above, has not undergone a change in use.

We appreciate your attention to and consideration of the foregoing. Please understand that we also reserve all of our client's rights with respect to the matters addressed herein and the interpretation and application of Sections 11.202 and 2.000 of the Cambridge Zoning Ordinance.

Mr. Ranjit Singanayagam
June 6, 2019
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Please do not hesitate to contact me should you wish to discuss these matters.

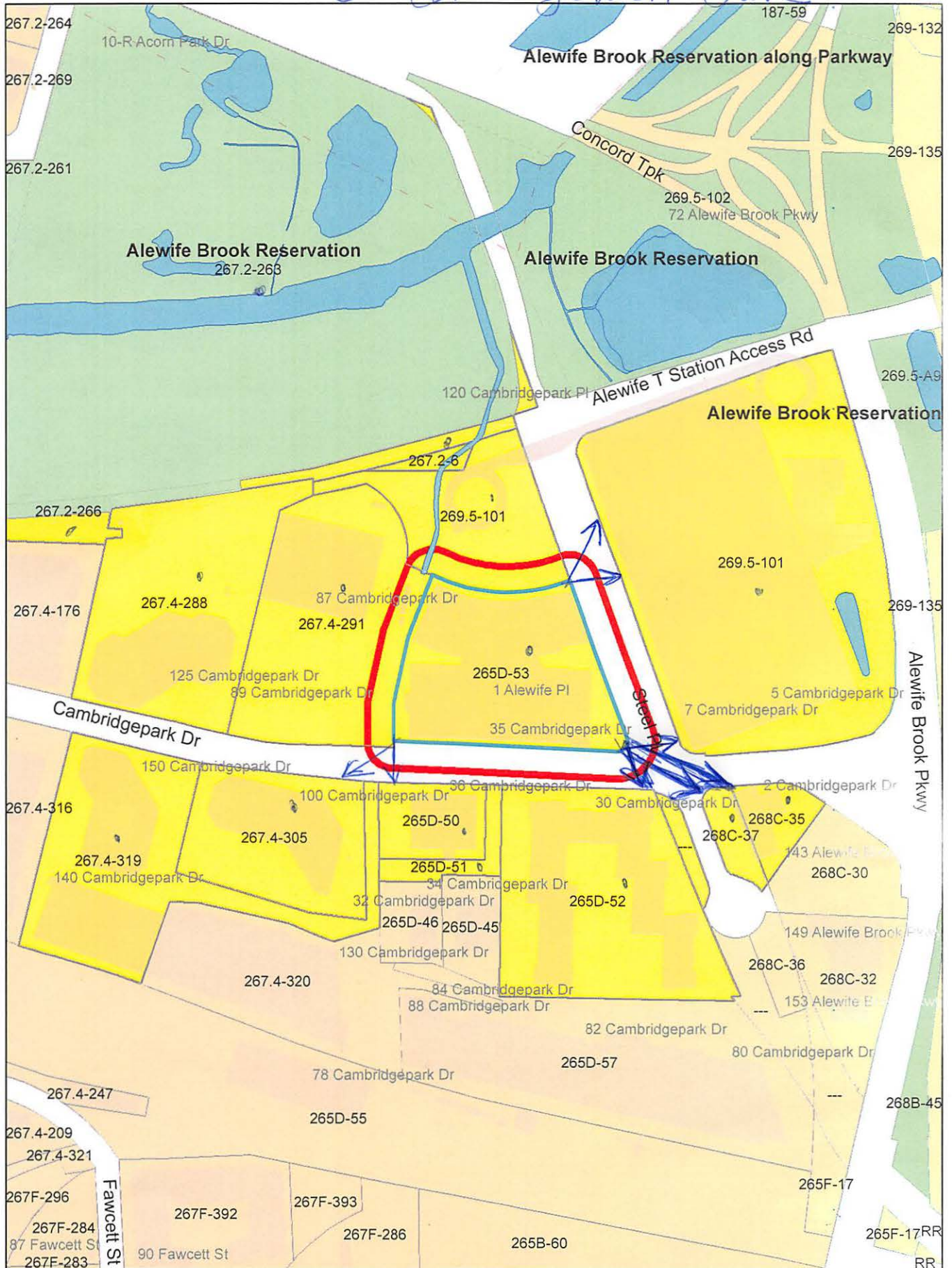
Sincerely,

A handwritten signature in dark ink, appearing to read "Kevin P. O'Flaherty", written in a cursive style.

Kevin P. O'Flaherty

cc: Nancy Glowa, Esq. (via mail)
Mr. Brian Fallon (via email)
Robert Kubica, Esq. (via email)
Mr. Dante Angelucci (via email)
James Rafferty, Esq. (via email)

35 Cambridgepark Drive



35 Cambridge Park Dr.

Petitioner

265D-50-51
PROPERTIES AT CAMBRIDGE PARK, LLC,
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CAMBRIDGE, MA 02140

265D-53
DIV 35 CPD, LLC
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268C-35
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