



CITY OF CAMBRIDGE, MASSACHUSETTS

PLANNING BOARD

CITY HALL ANNEX, 344 BROADWAY, CAMBRIDGE, MA 02139

2014 OCT 30 PM 10 28
OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

NOTICE OF DECISION

Case Number:	288
Address:	40 Thorndike Street
Zoning:	Business B
Applicant:	LMP GC Holdings LLC c/o Leggat McCall Properties LLC 10 Post Office Square, Boston, MA 02109
Owner:	Commonwealth of Massachusetts, Division of Capital Asset Management and Maintenance One Ashburton Place, Boston, MA 02108
Application Date:	November 21, 2013
Date of Planning Board Public Hearing:	January 7, 2014
Date of Planning Board Decision:	September 30, 2014
Date of Filing Planning Board Decision:	October 30, 2014

Application: Request for Project Review Special Permit (Section 19.20), Alteration of Non-conforming Structure (Section 8.22.2.a), Conversion of Non-Residential Structure to Residential Use (Section 5.28.2) and Off-Site Accessory Parking (Section 6.22.2) to permit the conversion of the former Sullivan Courthouse building to a mixed-use building with 476,303 square feet of Gross Floor Area occupied by office, multifamily residential and retail uses.

Decision: GRANTED, with Conditions.

Appeals, if any, shall be made pursuant to Section 17 of Massachusetts General Laws, Chapter 40A, and shall be filed within twenty (20) days after filing of the above referenced decision with the City Clerk. Copies of the complete decision and final plans, if applicable, are on file with the Community Development Department and the City Clerk.

Authorized Representative of the Planning Board: Jeffrey C. Roberts JCR 10/30/14.

For further information concerning this decision, please contact Liza Paden at 617-349-4647, or lpaden@cambridgema.gov.

DOCUMENTS SUBMITTED

Application Documents and Supporting Material

1. Special Permit application dated 11/21/14, containing the Project Description, Traffic Narrative, Infrastructure Systems, Noise Narrative, Conformance and Appendices, Volume One
2. Special Permit application dated 11/21/14, containing Existing and Proposed plans, Volume Two
3. Green Building report dated 2/25/14
4. Construction Mitigation submission dated 2/27/14
5. Letter to the Planning Board from Martin R. Healy, Goodwin Procter LLC, dated 4/22/14
6. Planning Board presentation for 4/29/14, including Environmental Notification Form, filed 1/15/14 and MEPA Review, views, and lighting study
7. Letter to the Planning Board from Martin R. Healy, Goodwin Procter, LLP, dated 5/15/14
8. Revised Planning Board submittal dated 7/22/14
9. Planning Board presentation dated 7/29/14
10. Letter and materials to the Planning Board from Robert M. Dickey, Executive Vice President/Partner of Leggat McCall Properties, dated 9/23/14, including a letter to the Planning Board from Martin R. Healy, Goodwin Procter LLP, dated 9/23/14 and a list of letters and petitions in support

City of Cambridge Documents

11. City Manager Letter dated 10/7/13
12. City Council Order dated 10/7/13
13. Memo to the Planning Board from Susan Clippinger, Director of TP&T, dated 1/7/14
14. Memo to the Planning Board from John Bolduc, Environmental Planner, dated 2/28/14
15. Memo to the Planning Board from the Cambridge Pedestrian Committee, dated 2/28/14
16. Extension of time to 5/1/14

17. Extension of time to 6/20/14
18. Letter to Richard C. Rossi, City Manager, from Nancy E. Glowa, City Solicitor, dated 5/5/14
19. Extension of time to 8/15/14
20. Memo to the Planning Board from CDD staff, dated 7/23/14
21. Memo to the Planning Board from Susan Clippinger, dated 7/29/14
22. Extension of time to 10/15/14
23. Letter to Richard C. Rossi, City Manager, from Nancy E. Glowa, City Solicitor, dated 9/30/14
24. Extension of time to 10/30/14

Other Documents

25. Letter to the Planning Board from Rhoda Fantasia, dated 1/7/14
26. Email to the Planning Board from Hazel Arnett, dated 1/19/14
27. Letter to the Planning Board from Barbara Broussard, dated 1/21/14
28. Letter to the Planning Board from John Paul, dated 1/23/14
29. Email to the City Council from Michael Hawley, dated 1/26/14
30. Letter to the Planning Board from Joseph Fantasia, dated 1/26/14
31. Email to the Planning Board from Thomas Feraco, dated 1/30/14
32. Letter to the Planning Board from Eric Batcho, dated 1/31/14
33. Letter to the Planning Board from Donna M. Keefe, dated 2/3/14
34. Letter to the Planning Board from Fabrizio Gentili, dated 2/3/14
35. Letter to the Planning Board, et al, from Maya Bittar, et al, The James Diman Green Condominium Association, dated 2/4/14
36. Letter to the Planning Board from Barbara Broussard, President of the East Cambridge Planning Team, dated 2/6/14

37. Letter to the Cambridge Public Servants, from Elizabeth Summons, dated 2/9/14
38. Letter to the Cambridge Public Servants, from Roger Summons, dated 2/9/14
39. Email to the Planning Board from Paul Kroner, dated 2/10/14
40. Email to the Planning Board from David de Swaan Arons, dated 2/10/14
41. Email to the Planning Board from Abigail Lewis-Bowen, dated 2/10/14
42. Email to the City of Cambridge from Henry Lieberman, dated 2/10/14
43. Letter to the Planning Board from Maya K. Bittar, dated 2/10/14
44. Letter to the Planning Board from Deborah Johnes and Lesley Boson, dated 2/10/14
45. Letter to the Planning Board from Nina Kanikar Meng You, dated 2/10/14
46. Letter to the Planning Board from Dan Colonnese, dated 2/11/14
47. Email to the Planning Board, with attachment, from Jay Wasserman, dated 2/11/14
48. CC email to Barbara Broussard, East Cambridge Planning Team, from James Rafferty, Adams & Rafferty, dated 2/12/14
49. Email to the Planning board from Ellen Adelson, dated 2/12/14
50. Letter to the Planning Board from Ilan Levy, dated 2/17/14
51. Letter to the Planning Board from Jacob D. Albert, dated 2/17/14
52. Letter to the Planning Board from Seth Teller, Neighborhood Association of East Cambridge, dated 2/19/14
53. Letter to the Planning Board from Bethany and Jack Stevens, dated 2/20/14
54. Email to the Planning Board from Samuel Murphy, dated 2/23/14
55. Email to the Planning Board from Bob Liu and Jinlan Yang, dated 2/23/14
56. Email to the Planning Board from Jack Boesen, dated 2/23/14
57. Letter to the Planning Board, et al, from Karen and Frank Field, dated 2/23/14
58. Email to the Planning Board from Michael Austin, dated 2/25/14

59. Email to the Planning Board from Ken Gaulin, dated 2/24/14
60. Letter to the Planning Board from Peter A. Crawley, et al, dated 2/24/14
61. Letter to the Planning Board from Councilor Leland Cheung, dated 2/24/14
62. Letter to the Planning Board from Alan Greene, dated 2/24/14
63. Letter to the Planning Board, et al, from Anne and Richard Taylor, dated 2/24/14
64. Email to the Planning Board from Monica Raymond, dated 2/24/14
65. Email to the Planning Board from Carolyn V. Oatley, dated 2/24/14
66. Email to the Planning Board from Abe Lateiner, dated 2/24/14
67. Email to the Planning Board from Yumi Izuyama, dated 2/24/14
68. Email to the Planning Board from Rajiv Manglani, dated 2/24/14
69. Email to the Planning Board from Kate Skubecz, dated 2/24/14
70. Email to the Planning Board from Deborah A. Colburn, dated 2/24/14
71. Letter to the Planning Board form Jan Devereux, dated 2/24/14
72. Email to the Planning Board from Carole Bellew, dated 2/24/14
73. Email to the Planning Board from Kennie Lyman, dated 2/24/14
74. Email to the Planning Board from Amy Stone, dated 2/24/14
75. Email to the Planning Board from Gaylen Morgan, dated 2/24/14
76. Email to the Planning Board from Agnes Criss, dated 2/24/14
77. Email to the Planning Board from H. Susan Freireich, dated 2/24/14
78. Email to the Planning Board from Remy Trahant, dated 2/25/14
79. Email to the Planning Board from Catherine B. Hoffman, dated 2/25/14
80. Email to the Planning Board from Paul Stone, dated 2/25/14
81. Email to the Planning Board from Jeanne Koopman, dated 2/25/14

82. Email to the Planning Board from Ovadia R Simha, dated 2/24/14
83. Letter to the Planning Board from Patrick Magee, Atwood's Tavern, East Cambridge Business Association, dated 2/25/14
84. Email to the Planning Board from Genevieve Coyle, dated 2/25/14
85. Email to the Planning Board from Annette Ghelfi, dated 2/25/14
86. Email to the Planning Board from Peter Fougere, dated 2/25/14
87. Letter to the Planning Board from Marie Elena Saccoccio, Attorney At Law, dated 2/25/14
88. Letter to the Planning Board from Patrick Magee, East Cambridge Business Association, dated 2/25/14
89. Letter to the Planning Board from Tom Stohlman, dated 2/25/14
90. Email to the Planning Board from Ben Morse, dated 2/25/14
91. Email to the Planning Board from Bill Morse, dated 2/25/14
92. Email to the Planning Board from Mike Connolly, dated 2/25/14
93. Email to the Planning Board from Carolyn Shipley, dated 2/25/14
94. Email to the Planning Board from Jay Featherstone, dated 2/25/14
95. Email to the Planning Board from Michael Hawley, dated 2/25/14
96. Email to the Planning Board from Sheli and Henry Wortis, dated 2/25/14
97. Email to the Planning Board from Christopher Keppelman, dated 2/25/14
98. Email to the Planning Board from Susan Redlich, dated 2/25/14
99. Email to the Planning Board from Shelley Rieman, dated 2/25/14
100. Email to the Planning Board from David Whelan, dated 2/25/14
101. Email to the Planning Board from Albert Huang, dated 2/25/14
102. Email to the Planning Board from Mark Eastly, dated 2/25/14
103. Email to the Planning Board from Lee Farris, dated 2/25/14

104. Email to the Planning Board from Joel Springer, dated 2/25/14
105. Email to the Planning Board from James Madden, dated 2/26/14
106. Letter to the Planning Board from Michael S. Nuesse, attorney at law, dated 2/26/14
107. Email to the Planning Board from James Madden, dated 2/26/14
108. Email to the Planning Board from Carol O'Hare, 2/27/14
109. Letter to the Planning Board from Barbara Broussard, President of the East Cambridge Planning Team, dated 2/27/14
110. Email to the Planning Board from Carol O'Hare, dated 2/27/14
111. Email to the Planning Board from Seth Zeren, dated 2/28/14
112. Email to the Planning Board from Susan Strang, dated 3/1/14
113. Email to the Planning Board from Seth Teller, dated 3/3/14
114. Email to the Planning Board from Stephen Kaiser, dated 3/3/14
115. Email to the Planning Board from Chris Matthews, dated 3/3/14
116. Letter to the Planning Board from Stephen H. Kaiser, dated 3/3/14
117. Email to the Planning Board from Matt Moran, dated 3/4/14
118. Email to the Planning Board from Alex Papazian, dated 3/4/14
119. Email to the Planning Board from Stephen Kaiser, dated 3/6/14
120. Letter to Mr. Dickey, from Councilor Timothy J. Toomey, Jr., dated 3/10/14
121. Copy of letter to Abigail Lewis-Brown, Acting President, Neighborhood Association of East Cambridge, from Barbara Broussard, President of the East Cambridge Planning Team dated 3/18/14
122. Email to the Planning Board from Michael Hawley, dated 3/19/14
123. Letter to the Planning Board from Michael Hawley, dated 3/19/14
124. Letter to the Planning Board from Michael Hawley and Nina You, The James Diman Green Condominium Association, dated 3/31/14

125. Letter and attached cases to the City Council and the Planning Board from Mark Bobrowski, Blatman, Bobrowski & Mead, LLC, dated 4/9/14.
126. Letter to the Planning Board from Michael Hawley, Concerned Abutters and the James Green Association, dated 4/9/14
127. Email to the Planning Board from Michael Hawley, for James Capano, dated 4/17/14
128. Letter to the Planning Board from Robert M. Dickey, Executive Vice President/Partner of Leggat McCall Properties , applicant, dated 4/23/14, and attached letter from Martin R. Healy, Goodwin Proctor LLP, dated 4/22/14
129. Email to the Planning Board from Landan Khamsi, dated 4/23/14
130. Email to the Planning Board from Adam Mara, dated 4/22/14
131. Email to the Planning Board from Greg Zaff, dated 4/18/14
132. Email to the Planning Board from Rachel Gould, dated 4/18/14
133. Letter to the Planning Board from Shelley Neill, Executive Director, Multicultural Arts Center, dated 4/18/14
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135. Letter to the Planning Board from Peter Mayfield, Associated Beverage Group, dated 4/25/14
136. Letter to the Planning Board from Robert Veley, David's Famous Name Shoes, Inc. dated 4/25/14
137. Letter to the Planning Board from Andrew G. Montone, Cambridge Art and Frame, dated 4/25/14
138. Letter to the Planning Board from Morgan Pierson, dated 4/25/14
139. Email to the Planning Board from Pam Latimer, dated 4/27/14
140. Letter to the Planning Board from Gregory Golding, dated 4/23/14
141. Email to the Planning Board from Stephen H. Gardiner, dated 4/24/14
142. Email to the Planning Board from Arleen Henry, dated 4/25/14
143. Email to the City Council, from Minga Claggett-Borne, dated 4/27/14
144. Email to the Planning Board from Hazel Arnett, dated 4/24/14

145. Email to the Planning Board from Councilor Craig Kelley, dated 4/24/14
146. Email to Liza Paden from Michael Hawley, dated 4/26/14
147. Letter to the Planning Board from William J. Beckman, Linear Retail Properties, dated 4/28/14
148. Email to the Planning Board, Kate McDonough, dated 4/28/14
149. Letter to the Planning Board from Graham Gund, dated 4/24/14
150. Email to the Planning Board from Dennis Warren, Warren Business Media, dated 4/28/14
151. Letter to the Planning Board from Marie Elena Saccoccio, Attorney at Law, dated 4/27/14, with additional signatories
152. Letter to the Planning Board from Michael Hawley, The James Diman Green Condominium Association, dated 4/28/14
153. Response to Attorney Healy, from Mark Bobrowski, Blatman, Bobrowski & Mead, LLC, dated 4/29/14
154. Letter to the Planning Board from Councilor Timothy J. Toomey, Jr., dated 4/29/14
155. Letter to the Planning Board from Alan Green, dated 4/29/14.
156. Email to the Planning Board from Sheli Wortis, dated 4/28/14.
157. Email to the Planning Board from tony Wagner, Ed.D, dated 4/28/14.
158. Email to the Planning Board from Torgun Austin, dated 4/28/14.
159. Email to the Planning Board from Martha Older, dated 4/28/14.
160. Email to the Planning Board from Kelly Courtney, dated 4/29/14
161. Email to the Planning Board from Marilyn Wellons, dated 4/29/14.
162. Email to the Planning Board from Susan Strang, dated 4/29/14.
163. Letter to the Planning Board from O. Robert Simha, dated 5/10/14
164. Letter to the Planning Board from Michael Hawley, The James Diman Green Condominium; Association, dated 5/19/14
165. Letter to the Planning Board, et al from Michael S. Nuesse, dated 5/19/14

166. Email to the Planning Board from Robert Buder, dated 5/29/14
167. East Cambridge Businesses for A Smaller Sullivan Courthouse Redevelopment, dated June 2014
168. Letter to the Planning Board from Helen Kobeck, et al, dated 6/1/14
169. Letter to the Planning Board from Judith Vreeland, dated 6/2/14
170. Letter to the Planning Board from Mark P. Rogers, et al, dated 6/9/14
171. Letter To Whom It May Concern from Tony Marques, dated 6/18/14
172. Email to the Planning Board from Ellen Huang, dated 6/19/14
173. Email to the Planning Board from Mark Tang, dated 6/23/14
174. Email to the Planning Board from Alice Lin, dated 6/24/14
175. Email to the Planning Board from Selene Angier, dated 6/25/14
176. Email to the Planning Board from Olga Sokolova, dated 7/1/14
177. Letter to the Planning Board, et al from Michael Hawley, the James Diman Green Condominium Association, dated 7/10/14
178. Email to the Planning Board from Michael Hawley, dated 7/11/14
179. Letter to the Planning Board, et al, from Neighborhood Association of East Cambridge, dated 7/16/14
180. Letter to the Planning Board from Mary Ellen Doran, dated 7/18/14
181. Email to the Planning Board from Frances Antupit, dated 7/19/14
182. Letter to the Planning Board from Roberta and Tatsuya Goto, dated 7/20/14
183. Letter to the Planning Board from Barbara Broussard, East Cambridge Planning Team, dated 7/21/14
184. Letter to the Planning Board from the East Cambridge Planning Team, dated 7/21/14
185. Letter to the Planning Board from Barbara Broussard, dated 7/21/14
186. Letter to the Planning Board from Stephen H. Kaiser, dated 7/22/14

187. Email to the Planning Board from Jay Wasserman, dated 7/22/14
188. Email to the Planning Board from David de Swaan Arons, dated 7/22/14
189. Email to the Planning Board from Bethany Stevens, dated 7/22/14
190. Letter to the Planning Board from Neighborhood Association of East Cambridge, dated 7/22/14
191. Letter to the Planning Board from the Neighborhood Association of East Cambridge, dated 7/22/14
192. Copy of Letter to Maeve Valleyly Bartlett, Secretary of Executive Office of Energy and Environmental Affairs, from Stephen H. Kaiser, PhD, dated 7/23/14
193. Letter to the Planning Board from Charles J. Marquardt, dated 7/24/14
194. Letter to the Planning Board from Sarah E. Kennedy, director of Government Affairs, Cambridge Chamber of Commerce, dated 7/24/14
195. Email to the Planning Board from Joseph Aiello, dated 7/28/14
196. Petition of supporters dated 7/29/14
197. Letter To Whom It May Concern from John Levantakis, Arams #2 House of Pizza, dated 7/29/14
198. Email to the Planning Board from Chris Matthews, dated 7/29/14
199. Email to the Planning Board from Susan Markowitz, dated 7/29/14
200. Email to the Planning Board from Carol O'Hare and Walter McDonald, dated 7/29/14
201. Email to the Planning Board from Jacquelyn Smith, dated 7/29/14
202. Email to the Planning Board from Shelley Rieman, dated 7/29/14
203. Letter To Whom It May Concern from R and Caye Kafofo, dated 7/29/14
204. Letter To Whom It May Concern from Bill Strazzullo, and Family, dated 7/29/14
205. Public Comment to the Planning Board from Stephen Kaiser, dated 7/29/14
206. Letter to the Planning Board from John M. Braithwaite, dated 8/23/14

207. Email to the Planning Board from Robert L. Doyle, MD, dated 8/24/14
208. Email to the Planning Board from John Filoon, dated 8/24/14
209. Email to the City Council from Michael Hawley, dated 9/8/14
210. Email to the Planning Board from Susan Johansen, dated 9/13/14
211. Letter to the Planning Board, et al, from Abigail Lewis-Bowen for the Neighborhood Association of East Cambridge, dated 9/18/14
212. Email to the Planning Board from Ladan Khamsi, dated 9/20/14
213. Letter to the Planning Board from George N.J. Sommer, III, dated 9/22/14
214. Letter to the Planning Board from Stephen H. Kaiser, dated 9/23/14
215. Email to the Planning Board from Susan Koechner, dated 9/23/14
216. Email to the Planning Board from Farhad Khamsi, dated 9/24/14
217. Letter to the Planning Board from Councilor Mark McGovern, dated 9/25/14
218. Email to the Planning Board from Ed & Carol Green, dated 9/25/14
219. Email to the Planning Board from Bill Johansen, dated 9/25/14
220. Letter to the Planning Board from Barbara Broussard, dated 9/27/14
221. Email to the Planning Board from Susan Strang, dated 9/29/14
222. Email to the Planning Board from Heather Hoffman, dated 9/29/14
223. Email to the Planning Board from Kathy Desmond, dated 9/29/14
224. Email to the Planning Board from Ivy A. Turner, dated 9/29/14
225. Email to the Planning Board from Michael Connolly, dated 9/29/14
226. Email to the Planning Board from Jeanne Koopman, dated 9/29/14
227. Letter to the Planning Board from Nancy Stiening, dated 9/29/14
228. Email to the Planning Board from Al and Teresa Jacobson, dated 9/29/14

- 229. Email to the Planning Board from Jeff DaSilva, dated 9/29/14
- 230. Email to the Planning Board from Jacquelyn Smith, dated 9/29/14
- 231. Email to the Planning Board from Lauren O’Neal, dated 9/30/14
- 232. Email to the Planning Board from Roger Summons, dated 9/30/14

APPLICATION SUMMARY

The Special Permit Application, as modified by supplemental Application Materials, proposes to convert the existing Sullivan Courthouse building at 40 Thorndike Street, containing 513,241 square feet of Gross Floor Area occupied (prior to its vacancy) by governmental facilities including offices, courtrooms and detention facilities (the “Sullivan Courthouse”), to a mixed-use building with 452,237 square feet of Gross Floor Area occupied by commercial office and retail uses and 24,066 square feet occupied by residential uses.

The proposed change in use will involve the following alterations to the building and site, among alterations, which are described in detail in the Application Materials:

- Demolition and removal of the top two stories;
- Removal of the existing building façade and replacement with new materials;
- Installation of new mechanical systems at the roof level;
- Reconfiguration and reconstruction of interior spaces, most notably at the ground level, where new building entries will be created;
- Installation of bicycle parking facilities within the below-grade portion of the building and on outdoor portions of the site;
- Replacement of an existing at-grade parking facility with a publicly beneficial open space along Spring Street; and
- Construction of outdoor open spaces on portions of the building roof.

Accessory parking will be provided by maintaining ninety-two (92) parking spaces in the existing on-site parking facility below-grade, and by securing a long-term lease arrangement to provide four hundred twenty (420) spaces either from the municipal parking garage on First Street, which would meet the as-of-right standards for location of accessory parking, or within the parking facility at the Cambridgeside Galleria mall, also on First Street, which requires a special permit due to the greater distance between the facility and the principal use.

The requested special permits are described below.

- A Project Review Special Permit is required pursuant to Section 19.20, because the project involves a change of use of a building to include new uses exceeding fifty thousand (50,000) square feet of Gross Floor Area.

- A special permit is required pursuant to Section 8.22.2, Paragraph (a), to allow the alteration of a pre-existing nonconforming structure to accommodate a new use. Such special permit is normally within the purview of the Board of Zoning Appeal, but in this case may be granted by the Planning Board pursuant to Section 10.45 because the application also requires special permits under the purview of the Planning Board.
- A special permit is required pursuant to Section 5.28.2 for the proposed residential portions of the building in order to modify the yard and open space requirements normally applicable to a residential building in the district.
- A special permit is required pursuant to Section 6.22.2 to permit off-site accessory parking for non-residential uses on a lot that is greater than three hundred (300) feet, but not greater than one thousand (1,000) feet, from the lot on which the principal use is located. Such special permit is normally within the purview of the Board of Zoning Appeal, but in this case may be granted by the Planning Board pursuant to Section 10.45 because the application also requires special permits under the purview of the Planning Board.

PUBLIC HEARING PROCESS

The public hearing for this special permit case was opened and testimony heard on January 7, 2014. The hearing was then continued to March 4, 2014. On March 4, no testimony was taken and no substantive discussion was held, and the Applicant and Planning Board mutually agreed to an extension of the time period for final action to May 1, 2014. The hearing was continued on April 29, 2014, at which time public testimony was heard, and the Applicant and Planning Board mutually agreed to an extension of the time period for final action to June 20, 2014. At the Planning Board meeting on June 17, 2014, as a matter of general business, the Applicant and Planning Board mutually agreed to an extension of the time period for final action to August 15, 2014. During the intervening time, the Applicant engaged in discussion with community members outside of the hearing process.

The Planning Board hearing was continued on July 29, 2014, at which the Applicant presented revised application materials and public testimony was heard. The Applicant and Planning Board mutually agreed to an extension of the time period for final action to October 15, 2014. The Planning Board continued its deliberation on September 30, 2014, after which the Board stated findings, voted to grant the requested special permits, with conditions, and the Applicant and Planning Board mutually agreed to an extension of the time period for filing the Special Permit Decision to October 30, 2014. All time extensions referred to above were recorded and filed with the City Clerk.

FINDINGS

After review of the Application Materials and other documents submitted to the Planning Board, testimony given at the public hearing, and review and consideration of the applicable requirements and criteria set forth in the Zoning Ordinance with regard to the special permits being sought, the Planning Board makes the following Findings:

1. Alteration of a Nonconforming Structure (Section 8.22)

The Board first addressed the question of whether the project meets the standards for approval of alterations to a pre-existing nonconforming structure. In making its findings the Board is instructed by Section 8.22.2 of the Zoning Ordinance and subsequent Paragraph (a), copied below.

8.22.2 The following changes, extensions, or alterations of a pre-existing nonconforming structure or use may be granted in the following cases after the issuance of a special permit. Such a permit shall be granted only if the permit granting authority specified below finds that such change, extension, or alteration will not be substantially more detrimental to the neighborhood than the existing nonconforming use.

- a. In an Office, Business, or Industrial District the Board of Zoning Appeal may issue a special permit for the alteration or enlargement of a nonconforming structure, not otherwise permitted in Section 8.22.1 above, or the enlargement (but not the alteration) of a nonconforming use, provided any alteration or enlargement of such nonconforming use or structure is not further in violation of the dimensional requirements in Article 5.000 or the off street parking and loading requirements in Article 6.000 for the district in which such structure or use is located and provided such nonconforming structure or use not be increased in area or volume by more than twenty-five (25) percent since it first began to be nonconforming.*

The current structure does not conform to the dimensional requirements of the Business B district with regard to Floor Area Ratio (FAR) and height. When the Sullivan Courthouse was constructed, it was not required to comply with local zoning requirements for either the construction of the building or its use as a courthouse and jail facility. Questions were raised in public testimony as to whether the building can be considered a lawful pre-existing nonconforming structure. The Cambridge City Solicitor has provided a legal opinion on the matter, which was entered into the record during the public hearing and taken into consideration by the Planning Board. In her opinion dated May 5, 2014, the City Solicitor concluded that the building is a lawful pre-existing nonconforming structure and therefore is protected by and may be used pursuant to the provisions of Section 6 of the Zoning Act and Section 8.22 of the Zoning Ordinance. The Board accepts this conclusion as a basis for its further Findings, with reference to letters from the City Solicitor to the City Manager dated

May 5, 2014 and September 30, 2014, which are included as an appendix to this Special Permit Decision.

The building is located in the Business B zoning district, and the proposal is to alter the existing structure and to change its use from a government courthouse and jail facility to a mix of office, residential and retail uses with publicly beneficial open space. All existing and proposed uses are allowed as-of-right in the Business B district, and therefore no alteration or enlargement of a nonconforming use is proposed. The proposed alteration will not result in any increase in floor area, volume or height, and will not decrease yard setbacks or open space. To the extent that new nonconformities may be created, they would result from the addition of residential uses to the site, because residential uses have different dimensional requirements than non-residential uses in the Business B district; however, because the residential uses will occupy an existing structure built for non-residential use, the project is eligible for special permit relief pursuant to Section 5.28.2 of the Zoning Ordinance, which has been requested in the Special Permit Application and is addressed further below in these Findings. The proposal describes how parking and bicycle parking requirements for the proposed new uses will be met, and those are discussed further below in these Findings. Therefore, the Board concludes that the proposed alteration is eligible for special permit relief pursuant to Section 8.22.2, Paragraph (a). Because this special permit is normally within the purview of the Board of Zoning Appeal, but the proposal also requires special permits for which the Planning Board is the designated granting authority, it is within the Planning Board's purview to grant this special permit pursuant to Section 10.45 of the Zoning Ordinance.

The criterion informing whether the Board should grant the requested special permit is whether the Board finds the alteration not to be "substantially more detrimental to the neighborhood than the existing nonconforming use," a standard which the Board finds reasonably applies to the structure, given that the existing and proposed uses are both conforming to the Zoning Ordinance but the dimensional nonconformities of the structure are significant. The Board acknowledges that a new structure of this size and intensity would not be permitted at this location, with its proximity to lower-scale residential uses, given current zoning restrictions and planning guidelines for the area. However, given that it is a pre-existing structure, the Board is basing its judgment on the impact of the proposed alterations as they compare to the existing conditions of the site.

The Board finds that the proposed new uses in the building, primarily office with smaller amounts of residential and ground-floor retail, will not be substantially more detrimental than the existing courthouse and jail uses. At the present time, the courthouse and jail facilities have been vacated from the building, but when they were operating at full capacity the character and intensity of use was comparable to what would be expected for an office building of a similar size. The proposed reduction in the size of the building will mitigate any potential impacts related to the intensity of the office use. Residential uses in the lower parts of the building will help to make the building more compatible with surrounding residential uses, and the retail and publicly beneficial open space proposed at the ground floor will help to make the building more welcoming to the surrounding neighborhood. It should be noted

