
Subject:

FW: Brown Petition

From: Mike Johnston**Sent:** Monday, July 30, 2018 2:32 PM**To:** Kelley, Craig <ckelley@cambridgema.gov>; DePasquale, Louie <ldepasquale@cambridgema.gov>**Cc:** Carlone, Dennis <dcarlone@cambridgema.gov>**Subject:** RE: Brown Petition

Councillor,

I am sorry that I was not able to respond sooner to your inquiry but I wanted to involve the CHA's outside counsel to assure that everyone is on the same page.

Let me first say that we appreciate the support for the Millers River project from City Councilors, the City Manager, and various City staff and departments, and the vote by the Board of Zoning Appeals (BZA) to grant the requested Comprehensive Permit for Millers River. However, because the BZA did not/could not grant relief from the Brown petition, the Millers River project continues to proceed with risk. Specifically, given that the Brown petition remains outstanding or could re-emerge as a revised petition (assuming one is developed that is deemed to contain substantive differences from the current Brown petition which we believe is possible), there continues to be uncertainty for the project that could impede the project's ability to meet the financing requirements established by the equity investor and lender and as a result jeopardize the project's ability to meet the December 2018 deadline to close on the financing. This risk continues until the building permit is issued which at the earliest would be mid-October, but could extend into November.

The specific outcomes and concerns to Millers River are:

- 1) The Ordinance Committee and City Council could act to reject the Brown petition before the September 25th expiration date, but the petitioner submits a revised petition shortly after the rejection and before the Miller River project's building permit is issued. If a hearing for this revised petition is noticed before the building permit is issued, then the Millers River project would be again subject to the provisions unless there was a broad enough exclusion in the revised petition for affordable housing. An exclusion just for Millers River would not be enough since it would possibly be subject to a challenge based on spot zoning.
- 2) The current petition could expire without action on September 25, and either the Ordinance Committee could schedule a new hearing, or the petitioner could submit a revised petition that would restore it or a portion of it. If a hearing is noticed in either event before the building permit is issued, then the Millers River project would be again subject to the provisions unless there was a broad enough exclusion for affordable housing. As noted above, an exclusion just for Millers River would not be enough since it would possibly be subject to a challenge based on spot zoning.

The CHA has identified the following steps forward to mitigate/lessen the risk to the Millers River project. The steps are:

- 1) For reasons noted above, it would be critical for the project that the City and Petitioners not take further action on the reviving or revising the Brown Petition until the Millers River building permit is

issued. As noted above, the project would be subject to the petition unless it had broad restrictions that affordable housing projects are exempted from the provisions.

- 2) Submit a building permit application to the Inspectional Services Department (ISD) as soon as possible. ISD has indicated that it would be willing to begin the review process while the project is still awaiting the final issuance of the comprehensive permit and/or going through the associated 21-day appeal process. The A/E team is working on finalizing the plans and specifications, and the final documents will be available on August 17th. The CHA will submit the documents to ISD on that day. It typically takes ISD approximately 2 months to complete its review of CHA projects. If ISD can maintain this schedule, then the CHA would expect to have a building permit in hand by October 17 at the earliest or into November or later if the process takes longer than expected. Once the building permit is in hand, the risk to the Millers River project dissipates.

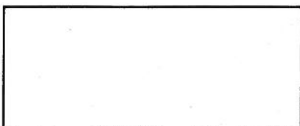
While there is a tenuous path forward for Millers River, we must reiterate that overall fundamental flaws of the current version of the Brown petition as:

- The current methodology of identifying which properties are in the Flood Overlay District is too broad and too ambiguous. We would recommend that the overlay be more carefully delineated, and the basis of identifying areas be based upon a more definitive FEMA map which has been subject to more review and public process than the ones currently specified.
- As noted, if the desire is not to have affordable housing projects be subject to the provisions, we would recommend that the provision exempting affordable housing be broad enough to cover a variety of affordable housing projects and not just those that are 100% affordable. We would recommend that the ordinance adopt the standard for the low-income housing tax credit program that at least 40% of the units are affordable to households with incomes at or below 60% of area median income.
- We continue to be concerned that there are conflicts between provisions of the Green Factor and other already in place provisions for sustainable and resilient design. We would recommend that the conflicts be identified and resolved prior to issuance of a new ordinance so that the requirements are more clearly specified to allow for more meaningful plan development.

Additional comments and concerns are detailed in our correspondence of June 25, 2018 specific to the Brown petition.

As noted, we are hoping to get commitments from the City and Petitioners that no further action on the reviving or revising the Brown petition will occur until the Millers River building permit is issued by ISD.

mjj



Michael J. Johnston, Esq. | Executive Director

362 Green Street, 3rd Floor
1-617-520-6228 | www.cambridge-housing.org