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November 30, 2010

City of Cambridge
Inspectional Services Department
Attn: Ranjit Singanayagam, Superintendent of Buildings
831 Massachusetts Avenue
Cambridge, MA 02139

RE: North Cambridge Catholic High School Conversion
40 Norris Street, Cambridge, Massachusetts

Dear Mr. Singanayagam:

I own and reside at the premises known and numbered as 27-29 Norris Street, Cambridge, Massachusetts directly opposite the street from the property located at 40 Norris Street, Cambridge known as the former site of the North Cambridge Catholic High School (hereinafter, the "Property"). As such, I am a "party in interest" as that term is defined under MGL Chapter 40A, Section 11.

Pursuant to MGL Chapter 40A, Section 7 and Article 9.15 of the City of Cambridge Zoning Ordinance (hereinafter "the Ordinance"), request is hereby made that you, as the Superintendent of Buildings charged with enforcement of the Ordinance, refrain from issuing a building permit to the present owner of the Property until a variance for multi-family dwelling use of the Property has been sought and obtained. The property owner has applied to the Cambridge Planning Board for a special permit pursuant to Article 5.28.2 with a hearing on said application scheduled for December 7, 2010. For the reasons stated below it is my opinion that the proposed use of the building as a multi-family dwelling is not permitted in a Residence B zone pursuant to Article 5.28.2.

Article 5.28.2 of the Ordinance was adopted by the Cambridge City Council in February of 2001 as Ordinance No. 1248 which was a citywide rezoning petition. Under Ordinance 1301 of October 16, 2006, Section 5.28.2 was further amended by the Cambridge City Council adding certain criteria for approval of the special permit under Section 5.28.27.

Article 5.28.2 of the Ordinance states:

"Conversion of Nonresidential Structures to Residential Use. Where it is proposed to convert an existing principal use structure, designed and built for nonresidential use, to residential use.... the dimensional standards generally applicable in the district as set forth in the tables of dimensional requirements in Section 5.30 and other applicable regulations in this Ordinance shall apply. However, where some or all of those requirements cannot be met, the following provisions shall apply after issuance of a special permit by the Planning Board."

There is no doubt that the property was originally designed and built for nonresidential use. The Article specifically refers to dimensional requirements and proceeds to refer to DIMENSIONAL REQUIREMENTS (my emphasis) which the Planning Board should specifically apply to an application for a special permit. See Article 5.28.21 (gross floor area); 5.28.22 (dwelling units per lot area); 5.28.23 (yard requirements); 5.28.24 (height); 5.28.25 (private open space requirements); and 5.28.26 (conforming addition). There is no reference in this specific laundry list of provisions in the Article relating to a use which does not comply with Article 4.000 of the Ordinance. Article 5.28.2 specifically refers to "other applicable regulations in this Ordinance shall apply". The use regulations of Article 4.000 would certainly be considered "other applicable regulations in this Ordinance".

The underlying zoning district is Residence B with the use of a "multi-family dwelling" not allowed as a matter of right. A multi-family dwelling is defined as a building containing three or more dwelling units. See Article 2.000 of the Ordinance. Accordingly, a variance from the Table of Use Regulations under Article 4.31(g) is required for a multi-family dwelling in a Residence B district.

Furthermore, when the drafters of the Ordinance intended to permit a multi-family dwelling under Section 4.31(g) in a Residence B district, they knew how to do it. See Special District 2 Use Regulations at Article 17.23.1, which covers an area abutting the Linear Park in North Cambridge.

Under Article 17.23 entitled "Use Regulations", the Ordinance states:

"The uses allowed in a Residence B district shall be equally allowed in Special District 2 except as modified by the following provisions."

The aforementioned Article 17.23.1 follows which states:

"Additional permitted residential uses. Multi-family dwelling, Section 4.31(g) shall be permitted, subject to the special permit requirements for townhouse development in a Residence B district."

Clearly, if the City Council intended for Article 5.28.2 Special Permits to include multi-family dwelling use in a Residence B district, the same language would have been employed. The conclusion that the drafters of the Ordinance did not intend to include multi-family dwelling use in a Residence B district pursuant to Article 5.28.2 is underscored by the fact that the specific language referred to above in the Special 2 District provisions allowing multi-family dwelling use in that district was adopted in February 2000 as Ordinance Number 1235 which was one year prior to the Council's adoption of Article 5.28.2. It is a maxim of statutory construction that when a legislative body employs specific language in one part of a statute, but not in another part which deals with the same topic, the earlier language should not be implied where it is not present. See Hartford Insurance Company v Hertz Corporation, 410 Mass. 279 (1991). The City's interpretation of Article 5.28.2 attempts to draw this implication of allowable multi-family dwelling use under Article 5.28.2 although the earlier language of Article 17.23.1 is not present.

In determining whether a multi-family dwelling use is permitted under Article 5.28.2 in a Residence B district, other relevant provisions of the Ordinance should be examined. See Hartford Insurance Company, *supra* and Quincy City Hospital v Rate Setting Commission, 406 Mass. 431 (1990). Under Article 6.36.1(g) of the Ordinance which is the Table of Parking Requirements under the Residence B land use category, the language "N/A" is inserted indicating that the parking requirements of the Ordinance do not apply in a Residence B district for multi-family dwelling use. The reason the parking requirements do not apply is that the use is not allowed in the Residence B district. There is no specific number of required parking spaces shown in the Ordinance as the use is not allowed in the district. If the Council intended for multi-family dwelling use in a Residence B district, they would have provided criteria for calculating the required number of parking spaces in the Ordinance whether by footnote or otherwise and they have not.

Finally, the prevailing interpretation of Article 5.28.2 is that said Article by implication/extrapolation trumps the entire use regulation portion of the Ordinance encompassed in Article 4.000. The logical extension of the application of this interpretation is that nonresidential structure conversion to residential use for a multi-family dwelling would be permitted use-wise without

the requirement of a variance even in a Residence A-1 or Residence A-2 district or for that matter in an Open Space District. If the Buckingham, Browne & Nichols School building on Sparks Street closed and the property was sold to a developer who proposed a multi-family dwelling use in this Residence A-2 zone, would Section 5.28.2 trump the underlying zoning district use regulation? I doubt very much that the Cambridge City Council intended such when they adopted Article 5.28.2. Zoning bylaws should not be interpreted as to cause absurd or unreasonable results when the language is susceptible of a sensible meaning. See Green v Board of Appeal of Norwood, 358 Mass. 253 (1970). In this instance, the interpretation of the Ordinance producing a sensible meaning would be to require a variance for multi-family dwelling use in any district (Residence B, Residence A-1, Residence A-2, open space) which does not allow multi-family dwelling use as a matter of right or contain specific permission for multi-family dwelling use such as Special District 2 under Article 17.23.1.

I look forward to receiving your reply to this statutory request for enforcement of the Ordinance.

Sincerely,



Kevin P. Crane

KPC/jg
DELIVERY BY HAND

cc: City Manager Robert Healy (by hand)
City Solicitor Donald Drisdell (by hand)
Mayor David Maher
Asst. City Manger for Community Development Susan Glazer
Les Barber, Community Development Dept.
Liza Paden, Community Development Dept. (by fax)
Councilor Sam Seidel
Councilor Timothy J. Toomey, Jr.
Councilor Leland Cheung
Vice Mayor Henrietta Davis
Councilor Marjorie C. Decker
Councilor Craig A. Kelley
Councilor E. Denise Simmons
Councilor Kenneth Reeves
Attorney Sean Hope (by fax and regular mail)
City Clerk D. Margaret Drury
Planning Board Chairman Hugh Russell
My Neighbors (by hand)