

KEVIN P. CRANE, ESQ.

ATTORNEY AT LAW
104 MOUNT AUBURN STREET
HARVARD SQUARE
P. O. BOX 381030
CAMBRIDGE, MA 02238

TELEPHONE
(617) 876-8500

FACSIMILE
(617) 864-6357

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)



CITY OF CAMBRIDGE

Community Development Department

SUSAN GLAZER
*Acting Assistant
City Manager for
Community Development*

To: Robert W. Healy, City Manager

From: Susan Glazer,
Acting Assistant City Manager for Community Development

Date: November 9, 2010

Re: Council Order # 14, dated September 27, 2010, and Council Order #O-7, dated November 1, 2010 regarding potential development and uses at the former North Cambridge Catholic High School on Norris Street

The former North Cambridge Catholic High School at 40 Norris Street is located in a Residence B District which limits uses on the lot to single family, two family and townhouse residences, conversion of non-residential structures to residential use and a limited number of institutional uses.

Institutional Uses

The past school function could continue, or the entire building could be re-used as of right for the limited range of institutional uses allowed, provided all zoning requirements could be met. Other institutional uses would be allowed only after issuance of a special permit from the Board of Zoning Appeal. If the building were demolished, a limited range of institutional uses would be permitted in a new building slightly larger in size (about 12,800 square feet).

Residential Uses

Redevelopment of this site would most likely entail reuse of the existing building. Under the provisions of Section 5.28.2 of the Zoning Ordinance, which would require the issuance of a special permit by the Planning Board, about 40 dwelling units could be constructed within the existing building, with the potential for additional units if additional floors could be inserted within the building where former gym and other spaces are particularly tall. However, the actual number of units that would be practical on the site will depend on other factors such as providing the requisite accessory parking at one space per dwelling unit. Were the school to be demolished, housing on the site would be limited to seven units in about 9,700 square feet of new construction, and any residential use of more than five dwelling units would require the issuance of a special permit from the Planning Board.

The attached is a summary of the most important information pertaining to the development potential of this site.

344 Broadway
Cambridge, MA 02139
Voice: 617 349-4600
Fax: 617 349-4669
TTY: 617 349-4621
www.cambridgema.gov

Because of neighborhood interest in this project, staff is working with the Mayor's Office constituent assistant staff who will serve as a liaison to residents with questions and concerns about the project.

**Development Potential of the North Cambridge Catholic High School
40 Norris Street**

Relevant Facts

Zoning District: Residence B
Lot Area: 25,700 square feet
Existing Building Area: ca 36,600 square feet

Potential Non-residential Construction

Vacant Site

Permitted Uses (*as-of-right or by special permit*): Various religious functions, any public school, private pre-school, private primary school, vocational schools, library, a variety of medical clinics, social service center, club or lodge, museum.

Gross Floor Area: 12,850 square feet

Reuse of Existing Building

Permitted Uses: As above
Gross Floor Area: Ca. 36,600 square feet

Potential Residential Construction

Vacant Site

Number of Units: 7 single family, two family or townhouse units (more than 5 would require a special permit)

Gross Floor Area: 9,745 square feet

Reuse of Existing Building

Number of Units: Ca. 40 dwelling units (based on existing building size which might be increased through construction of infill floors; special permit required)

Gross Floor Area: Ca. 36,600 square feet (which might be increased through construction of infill floors)

Where the computation of the total number of dwelling units allowed in each district results in two fractional numbers and where the sum of the resulting remainders from both districts equals or exceeds one, an additional unit shall be permitted.

- 5.27.2** The maximum gross floor area shall be the sum of the total allowed gross floor area in each district, determined by adding the lot area in each district multiplied by the maximum allowed floor area ratio (FAR) for each district.

$$\text{Maximum Gross Floor Area} = (\text{Lot area in district 1} \times \text{district 1 FAR}) + (\text{Lot area in district 2} \times \text{district 2 FAR})$$

5.28 *Special Dimensional Standards Applicable to Dwellings*

- 5.28.1** Dwellings in Non Residential Districts. A dwelling shall be subject to the dimensional standards generally applicable in the district set forth in the Tables of Dimensional Requirements in Section 5.30, except as provided for below.
- a. A dwelling in a Business A district shall be subject to the same dimensional requirements and other restrictions as a dwelling in a Residence C-2B district, except that the height limitation on lots abutting Hampshire Street shall be sixty-five (65) feet.
 - b. A dwelling in a Business A-1 district shall be subject to the same dimensional requirements and other restrictions as a dwelling in a Residence C-1 district.
 - c. A dwelling in a Business B district shall be subject to the same dimensional requirements and other restrictions as a dwelling in a Residence C-3 district.
- 5.28.2** Conversion of Non Residential Structures to Residential Use. Where it is proposed to convert an existing principal use structure, designed and built for non residential use, to residential use (excluding Transient Accommodations, Section i (1) and (2)), 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.
- 5.28.21** Gross Floor Area. The Gross Floor Area permitted shall be that which is the result of the application of the FAR permitted in the district in which the structure is located, or the existing Gross Floor Area of the structure itself, whichever is greater. However, additional Gross Floor Area may be added to the non residential structure without limit provided all construction creating additional Gross Floor Area occurs within the physical limits of the existing structure.
- 5.28.22** Dwelling Units. The number of dwelling units permitted shall be that number which is the result of the application of the Lot Area Per Dwelling Unit requirement in the district in which the structure is located, or that number of units produced when the Gross Floor Area of the structure as permitted in Section 5.28.21 above is divided by 900 square feet, whichever is greater.
-

- 5.28.23 Yard Requirements.** The required yards shall be those of the structure existing at the time of the conversion to residential use. However, any construction occurring outside the limits of the existing structure shall be subject to the yard requirements of the district in which the structure is located.
- 5.28.24 Maximum Height.** The maximum height shall be that height permitted in the district in which the structure is located, or the building height, whichever is greater. However, any construction that occurs outside the existing limits of the structure, other than construction exempt from the height limit as set forth in Section 5.23, shall be subject to the maximum height limit of the district in which the structure is located.
- 5.28.25 Private open space Requirements.** The Private open space requirement shall be that required in the district in which the structure is located, except as modified herein.
- a. The dimensional and locational limitations for Private open space set forth in Section 5.22 shall not apply; any combination of at-grade private open space and decks and balconies at other levels shall be permitted as shall walks intended for non vehicular use. However, in every case where those requirements of Section 5.22 waived by this Paragraph (a) are not met, all portions of the surface of the lot shall be Green Area as defined in Article 2.000 that are (1) not covered by the building or (2) devoted to the minimum area necessary to provide at grade, conforming parking spaces and the minimum necessary circulation and driveways for no more than one parking space per dwelling unit. The amount of Private open space required may be reduced by the Planning Board should the Board find that full compliance cannot reasonably be expected given the existing development of the lot and the provision of parking necessary to serve the dwelling units.
- 5.28.26 Conforming Additions.** Conforming additions to such non-residential structures shall be permitted without reference to the limitations set forth in Section 8.22 for such additions to non-conforming structures.
- 5.28.27 Criteria for Approval of a Special Permit.** In acting upon this special permit, the Planning Board shall take into account the standards and criteria set forth in Sections 10.43, 10.47 and 10.47.1 of this Ordinance. In addition the Planning Board shall consider the following:
- (1) The impact of residential neighbors of the new housing use as it may affect privacy. The location and size of windows, screening elements, decks, entries, and other aspects of the design shall be reviewed to maintain reasonable levels of privacy of abutter where significant variations from the normally required dimensional standards for the district are granted. In reviewing a proposed development plan, the Board shall consider, among other factors, the potential negative impacts of the new activity on abutters and the location, orientation, and use of structures and yards on adjacent properties.
- (2) The impact of increased numbers of dwelling units above that normally permitted in the district, on on-street parking, particularly in neighborhoods where off street parking is limited. In reaching a determination, the Board may acquire an analysis of on-street parking utilization on streets in the vicinity of the proposed development to consider
-

availability capacity relative to the demand generated by the proposed development. The scope and methodology of such an analysis shall be determined in consultation with City staff. Following its consideration of the results of the analysis, the Board may require changes to the project.

5.30 DISTRICT DIMENSIONAL REGULATIONS

5.30.1 Rules for Applying Certain Provisions of the Tables of Dimensional Requirements

5.30.11 FAR and Height. Where two numbers appear in Column (1) – Maximum Ratio of Floor Area to Lot Area and Column (6) Maximum Height in Feet, the first number shall apply to all permitted uses in the district except Residential Uses, Section 4.31 a-h, and Dormitory (but excluding resident fraternity or sorority) Uses, Section 4.33 b(7), both of which shall be governed by the second number.

5.30.12 Calculation of Permitted Gross Floor Area on a Lot

Where two numbers regulate the permitted FAR on a lot, the Gross Floor Area of any uses proposed on the lot shall be determined by the following formula:

$$\text{Gross Floor Area Permitted} = [(A \times \text{FAR}_1) \times \text{Lot Area}] + [(B \times \text{FAR}_2) \times \text{Lot Area}]$$

Where A equals the percentage of Gross Floor Area in the building to be used for nonresidential use(s), and

Where B equals the percentage of Gross Floor Area in the building to be used for residential and dormitory use(s), and

Where $A + B = 100\%$ (or 1.0) or less, and

FAR_1 equals permitted FAR for nonresidential uses, and

FAR_2 equals permitted FAR for residential and dormitory uses.

ARTICLE 4.000 USE REGULATIONS

Text current through Ordinance #1335 of September 27, 2010.
--

- 4.10 GENERAL CLASSIFICATION RULES**
- 4.20 SPECIAL CLASSIFICATION RULES**
- 4.30 TABLE OF USE REGULATIONS**
- 4.40 FOOTNOTES TO TABLE OF USE REGULATIONS**
- 4.50 INSTITUTIONAL USE REGULATIONS**

4.10 GENERAL CLASSIFICATION RULES

4.11 In each district, except the Cambridge Center Mixed Use Development (MXD) District, the use of land, buildings, and structures shall be regulated as set forth in Section 4.30 of this Article, Table of Use Regulations, and as provided elsewhere in this Ordinance. Uses in the Cambridge Center MXD District shall be governed by Section 14.20.

4.12 A use listed in Section 4.30 is permitted as of right in any district under which it is denoted by the word "YES". Uses designated in the Table by the letters "SP" may be allowed only if a special permit is issued by the Board of Zoning Appeal. Uses designated in the Table by the letters "PB" may be allowed only if issued a special permit by the Planning Board. Special permits shall be issued in accordance with the provisions of Section 10.40 and may be subject to such restrictions as the special permit granting authority may establish. Uses designated in the Table by the "PUD" may be allowed only if the use is part of a Planned Unit Development approved by the Planning Board in accordance with the applicable requirements of Articles 12.000 and 13.000. Uses denoted by the word "NO" in Section 4.30 shall be prohibited. Uses in certain districts designated in the Table by the letters "IUR" shall be governed by the applicable provisions of Section 4.50, Institutional Use Regulations.

4.13 No building, structure, or land in any district may be used, erected or designed to be used, in whole or in part, for any use not listed in Section 4.30, except nonconforming uses which may be continued under the provisions of 8.20.

4.20 SPECIAL CLASSIFICATION RULES**4.21 Accessory Uses.**

- a. An accessory use shall be permitted only on the same lot as the building or use to which it is accessory, with the following exceptions:
 - (1) Off street parking facilities complying with the requirements of Section 6.50 may be located on a separate lot;
 - (2) The Board of Zoning Appeal may grant a Special Permit for a use accessory to a scientific research, scientific development, or related production activity, whether or not on the same lot as such activity. A Special Permit shall be granted where said Board finds that the proposed accessory use does not substantially derogate from the public good.
 - (3) A use accessory to other permitted uses within the Cambridge Center MXD District may be located on other lots in the MXD District.
-

4.30 TABLE OF USE REGULATIONS

	Open Space	Res A 1&2	Res B	Res C, C-1, C-1A, 2, 2A, 2B, 3, 3A, 3B	Off 1, 2A,2, 3,3A	Bus A-1, A-2, A-3	Bus A	Bus B, B-1, B-2	Bus C, C-1	Ind A-1, A-2	Ind A	Ind B-1, B-2	Ind B	Ind C	
4.31 Residential Uses															
a. Detached dwelling occupied by not more than one family	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	PB	PB	PB	PB	
b. Two family dwelling	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	PB	PB	PB	PB	
c. Existing one-family detached dwelling converted for two families ^{15,16}	No	Yes ²	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	PB	PB	PB	PB	
d. Townhouse development	No	No	Yes ³	Yes ³	Yes ³	Yes ³	Yes	Yes	Yes	PB ³					
e. Elderly oriented congregate housing	No	PB	PB	Yes ⁵	Yes ⁵	Yes ⁵	Yes	Yes	Yes	Yes	PB ⁵	PB ⁵	PB ⁵	PB ⁵	
f. Existing dwelling converted for elderly oriented congregate housing ¹⁷	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	PB	PB	PB	PB	
g. Multifamily dwelling	No	No	No	Yes ⁵	Yes ⁵	Yes ⁵	Yes	Yes	Yes	Yes	PB ⁵	PB ⁵	PB ⁵	PB ⁵	
h. Existing dwelling converted for more than two families ¹⁸	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	PB	PB	PB	PB	
i. Transient accommodations															
1. Tourist house in an existing dwelling	No	No	No	Yes	Yes	No	SP	Yes	Yes	SP	PB	PB	PB	PB	
2. Hotel or motel	No	No	No	SP ⁷	Yes ⁶	No	SP	Yes	Yes ⁵³	No	SP	No	SP	PUD ⁴	
3. Lodging House	No	No	No	Yes ⁷	Yes ⁶	Yes	Yes	Yes	Yes	SP	PB	No	SP	PB	
j. Trailer Park or mobile home park	No	No	No	No	No	SP	SP	No	No	No	No	No	No	No	
4.32 Transportation, Communication & Utility Uses															
a. Bus or railroad passenger station	No	No	No	No	No	Yes	Yes	Yes	Yes	SP	Yes	Yes	Yes	Yes	
b. Automobile parking lot or parking garage for private passenger cars ¹⁸	No	No	No	No	Yes	SP	SP	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
c. Railroad freight terminal, railroad yard and shops	No	No	No	No	No	No	No	No	No	No	No	Yes	Yes	No	

4.40 FOOTNOTES TO THE TABLE OF USE REGULATIONS

1. All uses except residential uses in Section 4.31 (a)-(h) and (i) 3 shall be subject to the following limitations:
 - a. Permitted nonresidential uses must be located in a building containing the above enumerated residential uses;
 - b. Permitted nonresidential uses may not occupy more than 40%(forty percent) of the Gross Floor Area in the building; all remaining GFA must be devoted to permitted residential uses.
 - c. The permitted nonresidential uses may only be located on the first floor or basement of the building.
 - d. No accessory parking shall be provided for any nonresidential use.
 2. Provided that in Residence A districts the exterior design of the structure is not changed.
 3. Planning Board Special Permit for developments specified in Section 11.12.
 4. Deleted
 5. Planning Board special permit for dwellings specified in Section 4.26.
 6. No in the Office 1 District.
 7. Subject to the following provisions:
 - (a) Hotels and motels shall be prohibited in Residence C or Residence C-1 districts;
 - (b) Hotels and motels shall be permitted as of right in Residence C-3A districts and in Residence C-2, 2A, 2B, and 3 districts where at least fifty (50) [percent of the area of the lot upon which the hotel or motel is located, and the point of entry from a street for all vehicular access to the hotel or motel, is located within the Harvard Square Overlay District the Central Square Overlay District or the Massachusetts Avenue Overlay District.
 - (c) Hotels or motels shall be permitted by special permit from the Board of Zoning Appeal (BZA) in Residence 2, 2A, 2B, and 3 districts, where paragraph (b) above does not apply. In granting such special permit the BZA shall find that the proposed location and its surrounding neighborhood is predominately institutional or commercial in use, and specifically not a low-density residential area. The Board shall further find that the physical development of the site for hotel use will be similar to, and compatible with, the existing (or potential) site development pattern on surrounding sites for other uses permitted in the applicable zoning district or districts; and that the operation of the hotel or motel, with regard to delivery of goods, the kind and volume of vehicular trips to and from the site, and the numbers of people visiting the site on foot, among other factors, is compatible with the use of adjacent properties for uses permitted in the applicable zoning district or districts. In making these findings the Board shall consider the following, among other considerations:
 1. The scale of the building in the immediate neighborhood;
-

-
- 4.25** *Non Open Space Uses in Open Space Districts.* The purpose of this section is to provide for public notification and review of governmental and institutional nonopen space development statutorily exempt from prohibition in designated Open Space Districts. All uses in an Open Space District other than a park or recreation use permitted by Subsection 4.33.1 shall comply with the procedural requirements of this Subsection prior to the issuance of any building or special permit, variance or other approval or before conveyance of any lot within the district.
- 4.25.1** A report shall be submitted to the Planning Board and filed with the City Clerk by the agency or other party proposing such non open space development or proposing to convey a lot. This report shall include the following information, as appropriate:
- (1) A map indicating the location and area of the land proposed for nonopen space development or for conveyance.
 - (2) A description of the proposed development and future use of the area including information concerning the proposed site plan, physical design, and user population.
 - (3) An analysis of alternative sites for the development outside of the district.
 - (4) Evaluation of the anticipated impacts of the development or property transfer on the remainder of the open space district, upon the ability of alternative park and recreation areas in the neighborhood and city to meet the needs served by the affected open space district which would be displaced by the proposed action, and upon other land uses in the neighborhood.
 - (5) Any other information reasonably determined pertinent by the Planning Board.
- 4.25.2** Within thirty (30) days of the receipt of a report required by Section 4.25.1, the Planning Board shall hold a public hearing concerning the proposed development or conveyance. Notice for the hearing shall comply with the requirements of Section 11, Chapter 40A, G.L.
- 4.25.3** The Planning Board shall prepare a report with recommendations concerning the proposed development or conveyance, including conditions that should be attached to such action. This report shall be filed with the City Clerk within thirty (30) days of the public hearing required in Section 4.25.2. Filing of such a report shall satisfy the requirements of this Section 4.25. Failure of the Board to file a report within thirty (30) days of the public hearing shall obviate any further actions under this Section 4.25.
- 4.26** *Multifamily Special Permit Applicability*
- 4.26.1** The construction of a multifamily dwelling containing twelve (12) or more dwelling units or of elderly oriented congregate housing containing twenty-four (24) or more separate living spaces in a Residence C, Residence C-1, Residence C-1A, Office 1, Business A-1, or Business A-3 district shall require a special permit granted by the Planning Board.
- 4.26.2** The construction of a multifamily dwelling or of elderly oriented congregate housing in a Residence C, Residence C-1, Residence C-1A, Office 1, Business A-1 or Business A-3 district which contains less than twelve (12) dwelling units or twenty-four (24) dwelling living spaces shall require a special permit if both of the following conditions pertain to the development.
-

- (1) another permit for a multifamily dwelling or elderly oriented congregate housing has been granted within the twelve month period immediately preceding the date of permit application for the lot on which the development would be located or on an abutting lot;
- (2) the development for which the permit is being sought would increase the total number of dwelling units on said lot(s) to twelve (12) or more, the total number of living spaces to twenty-four (24) or more, or the total number of dwelling units and living spaces to eighteen (18) or more.

4.26.3 The construction of multifamily dwellings and elderly oriented congregate housing in Industry A and A-2 districts, Industry B, B-1, and B-2 districts, and the Industry C district shall require a special permit granted by the Planning Board where any one of the following conditions exists:

1. The development exceeds fifty thousand (50,000) square feet of Gross Floor Area;
2. The lot area per dwelling unit proposed is less than one thousand, two hundred (1,200) square feet in an Industry C district, six hundred (600) square feet in an Industry A, or three hundred (300) square feet in an Industry A-2, Industry B or Industry B-1 district; or
3. Twelve (12) or more dwelling units are proposed where any portion of the development is located within one hundred (100) feet of a Residence A-1, A-2, B, C, or C-1 district.

4.26.4 A special permit from the Planning Board shall be required for development of elderly oriented housing if a building permit, special permit or variance application filed for construction of elderly oriented housing on a lot on which a permit to demolish a dwelling has been granted within the previous three (3) years and on which said dwelling was demolished or will be demolished prior to construction of said elderly oriented housing.

4.27 Special Use Limitations in the Business B-1 and B-2 Districts.

4.27.1 In the Business B-1 and B-2 districts, the uses specified in Subsection 4.35 shall be permitted provided that they occupy no more than twenty-five (25) percent of the maximum gross floor area allowed on the lot. However, the gross floor area of any single retail establishment shall not exceed twelve thousand (12,000) square feet.

4.27.2 In the Business B-1 district, the portion of any parcel within forty-five (45) feet of a front lot line facing Green Street shall be limited to the following uses: (1) residential uses permitted by Subsections 4.31 a, b, d, and g; (2) parking which is both covered and enclosed and which is accessory to dwelling units located within said aforementioned portion of the parcel; and (3) landscaped green space subject to the requirements of Subsection 4.27.3; however, where more than fifty (50) percent of the area of said portion of a lot is devoted to landscaped green space a special permit shall be secured from the Planning Board. Development plans for parcels which face Green Street shall show how such portion will be used in compliance with this Subsection 4.27.2. Completion of plans for said forty-five (45) foot portion shall be required prior to the issuance of a Certificate of Occupancy for development on other portions of the parcel. It is the intention of this

Land Use Category	Open Space, Res A-1, A-2, Res B	Res C, C-1, C-1A, Off 1, Bus A (Comm), Bus A-1, A-2, Bus A-3 ¹⁴ , Ind A-1, Ind B-2, Ind C	Bus, C, C-1, Ind A, Off 2, 2A, Res C-2, C-2A, Res C-2B, Bus A (res)	Ind B-1, Res C-3, C-3A, C-3B, Off 3-A, 3, Bus B, Ind A-2, Ind B, Bus B-1, B-2	Loading Facility Category
-------------------	---------------------------------------	---	--	---	---------------------------------

6.36.1 Residential Uses

a.	Detached dwelling occupied by not more than one family	1 per d.u.	1 per d.u.	1 per d.u.	n/a
b.	Two family dwelling	1 per d.u.	1 per d.u.	1 per d.u.	n/a
c.	Existing one-family detached dwelling converted for two families	1 per d.u.	1 per d.u. ¹	1 per d.u. ¹ n/a	n/a
d.	Townhouse development ²	1 per d.u. ³	1 per d.u. ³	1 per d.u.	n/a
e.	Elderly oriented housing, elderly oriented congregate housing	1 per 2 d.u.'s ⁴	1 per 2 d.u.'s ⁴	1 per 2 d.u.'s ⁴ n/a	n/a
f.	Existing dwelling converted for elderly oriented congregate housing	1 per 2 d.u.'s ⁴	1 per 2 d.u.'s ⁴	1 per 2 d.u.'s ⁴ n/a	n/a
g.	Multifamily dwelling	n/a	1 per d.u. ³	1 per d.u.	n/a
h.	Existing dwelling converted for more than two families	n/a	1 per d.u. ¹	1 per d.u. ¹	n/a

i. Transient and nonfamily accommodations

1.	Tourist house in an existing dwelling	n/a	1 per d.u. + 1 per 4 guest rooms	1 per d.u. + 1 per 4 guest rooms	n/a
2.	Hotel	n/a	1 per 2 sleeping rooms ⁵	1 per 2 sleeping rooms ⁵	E
3.	Motel	n/a	1 per motel unit ⁵	1 per motel unit ⁵ E	E
4.	Lodging House	n/a	1 per 4 bedrooms + one	1 per 4 bedrooms + one	E
j.	Trailer park or mobile home park	n/a	1 per d.u.	n/a	n/a

6.36.2 Transportation, Communication & Utility Uses

a.	Bus or railroad passenger station	n/a	1 per 300 sq. ft.	1 per 900 sq. ft.	n/a
b.	Automobile parking lot or parking garage for private passenger cars	n/a	n/a	n/a	n/a

Parking Table Footnotes

1. Required parking may be reduced if a special permit is granted by the Board of Appeals upon determination that the criteria of Subsection 6.35 will be satisfied.
 2. See also Section 11.16.
 3. Special permit granting authority may require visitor spaces in excess of the minimum requirement.
 4. The requirement for elderly oriented housing may be reduced below the requirement specified in the table but not below one space per four dwelling units.
 5. Additional parking spaces shall be provided for public restaurants in excess of two thousand (2000) square feet for a hotel or motel containing up to one hundred (100) rooms, in excess of five thousand (5000) square feet for one containing between one hundred and one (101) rooms and two hundred and fifty (250) rooms, and eight thousand (8,000) square feet in one containing more than two hundred and fifty (250) rooms. The number of such spaces shall equal fifty (50) percent of the requirement for such uses specified in Subsection 6.36.5. Additional parking spaces shall also be provided for function rooms in an amount equal to one space per three hundred (300) square feet of floor area contained in such rooms.
 6. The amount of parking required for this use shall be at the discretion of the special permit granting authority. In making its determination of required parking, the Board shall consider the size of the staff customarily occupying the premises, the nature of the client, resident, or customer population and the extent to which additional off street parking will be detrimental to the physical character of the neighborhood.
 7. The required number of spaces shall be reduced by not more than fifty (50) percent if the place of worship is located within five hundred (500) feet of any public parking facility or any other parking facility where an equivalent number of spaces are available without charge during the time of services.
 8. The requirement for areas devoted to fabrication shall be based on the parking requirement for the applicable industrial use category listed in Subsection 6.36.7 or 6.36.8.
 9. This requirement shall not apply to accessory employee cafeterias.
 10. A queue line for five (5) cars shall be provided for each window, bay, or other service providing unit. Such unit shall not block any parking spaces and shall be in addition to other applicable requirements.
 11. A queue line for three (3) cars or comparable loading or live parking area shall also be provided for dropping off and picking up students.
 12. Providing that the establishment is located in a structure also containing nonretail uses, and that no establishment shall exceed two thousand five hundred (2,500) square feet of gross floor area.
 13. In Residence C, C-1, C-2, C-2A, C-2B, C-3, C-3A districts the amount of parking required for this use may be reduced at the discretion of the Board of Zoning Appeal in accordance with Section 4.28.
 14. No accessory parking or loading shall be required for any permitted nonresidential use in Business A-3 district.
-

ARTICLE 8.000 NONCONFORMITY

Text current through Ordinance #1335 of September 27, 2010.
--

- 8.10 EXISTING BUILDINGS**
- 8.20 NONCONFORMANCE**

810 EXISTING BUILDINGS

- 8.11** This Ordinance shall not apply to existing buildings or structures, nor to the existing use of any building or structure or of land, to the extent to which it is used at the time of first publication of notice of public hearing by the Planning Board of applicable provisions of this or any prior Ordinance, but it shall apply to any change of use thereof and to any alteration of a building or structure when the same would amount to reconstruction, extension or structural change, and to any alteration of a building or structure to provide for its use for a purpose or in a manner substantially different from the use to which it was put before alteration, or for its use for the same purpose to a substantially greater extent.
- 8.12** Except as herein provided no building or structure or land shall be used and no building or other structure or part thereof shall be constructed, extended or structurally altered except in conformity with the State Building Code and with the provisions of this Ordinance applying to the district in which said building, structure or land is located.

8.20 NONCONFORMANCE

- 8.21** Any nonconforming structure or use which existed at the time of the first notice of public hearing by the Planning Board of the applicable provisions of this or any prior Ordinance or any amendment thereto may be continued or changed to be conforming, but when so changed to be conforming it shall not be made nonconforming again.
 - 8.22** As provided in Section 6, Chapter 40A, G.L., permits for the change, extension, or alteration of a pre-existing nonconforming structure or use may be granted as permitted in Subsections 8.22.1 and 8.22.2 below. Such a permit, either a building permit in the case of the construction authorized in Section 8.22.1 or a special permit in the case of construction authorized in Section 8.22.2. may 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 structure or use.
 - 8.22.1** The following alterations, reconstructions, extensions, and/or enlargements of nonconforming structures, which do not result in a use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent than the existing use, or which are undertaken to accommodate a new conforming use, shall be permitted after the issuance of a building permit by the Superintendent of Buildings. Any change, extension or alteration of a nonconforming use shall be subject to the provisions of Subsection 8.22.2.
-

as prohibited in Section 5.53; or any conforming construction where only the requirements of 5.53 are nonconforming.

- 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.
 - b. In an Office, Business or Industrial District the Board of Zoning Appeal may grant a special permit for the issuance of a certificate of occupancy for the occupancy of an existing building designed and built for nonresidential use by any use permitted as of right in a Business or Industrial District in Article 4.000 of this Ordinance, provided such new use will be carried out entirely within the existing building and provided the off street parking and loading requirements in Article 6.000 for the district in which such building is located will not be further violated.
 - c. In a Residence District the Board of Zoning Appeal may grant a special permit for the alteration or enlargement of a nonconforming structure, not otherwise permitted in Section 8.22.1 above, but not the alteration or enlargement of a nonconforming use, provided any enlargement or alteration of such nonconforming structure is not further in violation of the dimensional requirements of Article 5.000 or the off street parking and loading requirements in Article 6.000 for the district in which such structure is located and provided such nonconforming structure will not be increased in area or volume by more than twenty-five (25) percent since it first began to be nonconforming.
- 8.22.3** Any alteration or enlargement of a nonconforming structure or of a nonconforming use not otherwise permitted in Section 8.22.1 and 8.22.2 above shall be a variance.
- 8.23** If a nonconforming structure or use shall have been destroyed or damaged by fire, explosion or other catastrophe to such an extent that the cost of restoration would be less than fifty (50) percent of the replacement value of the building at the time of the catastrophe, such buildings or use may be rebuilt or restored and used again as previously. If a nonconforming structure or use shall have been destroyed, damaged, or caused to be moved as the result of a public taking, said structure or use may be relocated or reconstructed on the lot or on an abutting lot in the same ownership, provided that said relocation or reconstruction does not result in the enlargement of the
-

2.06



CITY OF CAMBRIDGE, MASSACHUSETTS
PLANNING BOARD

CITY HALL ANNEX, 57 INMAN STREET, CAMBRIDGE 02139

a. SPECIAL PERMIT APPLICATION – COVER SHEET

To the Planning Board of the City of Cambridge:

The undersigned hereby petitions the Planning Board for one or more Special Permits in accordance with the requirements of the following Sections of the Zoning Ordinance:

- 1. S.28.2 2. _____
- 3. _____ 4. _____

Applicant: LACOURT FAMILY LLC

Address: 30 College Ave
Somerville MA 02144.

Telephone: (617) 872-4499 FAX: (888) 371-6130

Location of Premises: 40 NORRIS ST.

Zoning District: RESIDENCE B

Submitted Materials: CONTEXT PLAN, SITE PLAN, FLOOR PLANS,
ELEVATIONS

Signature of Applicant: *[Signature]* MANAGER.

For the Planning Board, this application has been reviewed and is hereby certified complete by the Community Development Department:

10-15-10 *[Signature]*
Date Signature of CDD Staff

b. SPECIAL PERMIT APPLICATION – SUMMARY OF APPLICATION

Project Name:
Address of Site: 40 MORRIS STREET
Applicant: LACOURT FAMILY LLC
Planning Board Project Number: (CDD)

Hearing Timeline (CDD)

Application Date: _____
Planning Board 1st Hearing Date: _____ *
(PUD Development Proposal, other special permit)
Planning Board Preliminary Determination: _____ *
(PUD Development Proposal)
Second Submission Date: _____ *
(PUD Final Development Plan)
Planning Board 2nd Hearing Date: _____ *
(PUD Final Development Plan)
Final Planning Board Action Date: _____ *
(PUD Final Development Plan, other special permit)
Deadline for Filing Decision: _____ *

*Subject to extension by mutual agreement of the Applicant and the Planning Board

Requested Relief:

- CHANGE OF USE TO 35 APARTMENTS 37?

Project Description

Brief Narrative: See attached

Project Size:

- Total GFA: ~50,000 s/f
- Non-residential uses GFA: _____
- Site Area (acres and SF): 25,700 s/f
- # of Parking Spaces: 35

Proposed Uses:

- # of Dwelling Units: 35
- Other Uses _____
- Open Space (% of the site and SF) _____

Proposed Dimensions:

- Height: No. change
- FAR: _____

NARRATIVE:

**40 Norris Street
Cambridge, MA 02140**

PROPOSED NUMBER OF UNITS UNDER 5.28.27: 33 to 36 units

The North Cambridge Catholic High School is located at 40 Norris Street, about center-way of a residential street in North Cambridge. The building is located within 150 feet of a public park, and about 300 feet from the 77 Bus Stop.

The building has approximately 47,000 square feet of livable space with the top level (old auditorium) having 17 foot ceilings to the cat-walk and 32-foot ceilings to the roof rafters. This auditorium area is slated to receive either duplexed or triplexed units, as proposed in the working plans, so as to capture the 17 foot and 32 foot ceiling heights.

The building has 20 audited parking spaces (from a 1990 audit), and the high school routinely used 35 parking spaces in the lot (we have an affidavit from the High School Attorneys speaking to that level of usage. Additionally, aerial photography via Google-Earth verifies this type of parking usage level). Furthermore, the High School reserved as many as seven spaces on the street in front of the building for bus standing. The new use of the building can return these extra spaces to the neighborhood. In total, the change of use from school to residential apartments will comfortably lend 42 added spaces to support the conversion project, though the applicant is only seeking to place 35 or so apartments into the building.

With the exception of the auditorium area, the proposed plan is to largely maintain the existing internal layout of the building and utilize the pre-existing classrooms/administrative spaces as individual units, comprised largely of 2 & 3 bedroom units, with as many as 8 –10 one bedroom units. If only 33 units are provided by the planning board, the auditorium area will be converted to Two 8-bedroom units with large open community spaces. In order to reduce these unit sizes, the auditorium's massive 5-member-structural-timber-truss framework could allow units to go "between" the truss spans, which would produce 6 smaller units (in the 2-3 bedroom size), rather than the 2 large units. If this were the chosen direction of the planning board, the number of units would grow from 33 units to 37 units.

The beautiful oversized double wooden staircases will be largely unaltered and refinished so as to maintain the character of the building. While one of the staircases could be removed to make use of the space for multiple added apartments, we feel this is not a good decision to protect the character of the project.

The hallways of the school will be consumed into units, and the pre-existing 5 –foot central storage rooms (running down the center of the building, parallel to the existing hallways) will become the new 5 foot wide hallway/corridor. These types of minimally

altered areas will lend to LEED certification at the silver level by taking advantage of minimal demolition of the existing room partitions and structural walls.

The external of the building will not be changing, with the exception of landscaping improvements, removal of the large fire escape egress for the top floor auditorium (was previously needed for large occupancy associated with auditorium events), and skylights in the roof for the cathedraled units. Additionally, outdoor bike racks will be provided in the front of the building (racks will be largely hidden from view by “mounding” of soil for plantings of low-growth trees (such as Weeping Japanese Maples) and large hostas/grasses. The selection of landscaping species will be done in concert with the abutters directly in front of the building, as they are the most affected by the views of the landscape.

The project is expected to take about 12 months to complete.

40 NORRIS STREET

Revised

Appendix I - Dimensional Form

Special Permit #

Address:

	Allowed/Required	Existing	Proposed	Granted
Total FAR		1.83	1.86	
Residential	0.5	Ø	1.58	
Non-Residential	Ø	1.83	Ø	
Inclusionary Bonus	0.5	Ø	0.28	
Total GFA in Sq. Ft.		47,000	47,900	
Residential	Ø	Ø	47,900	
Non-Residential	Ø	47,000	Ø	
Inclusionary Bonus	Ø	Ø	15%	
Max. Height				
Range of heights	35'	77'	77'	
Lot Size	5,000	25,700	25,700	
Lot area/du	2,500	NO CURRENT A.U.'S	695	
Total Dwelling Units			37	
Base units	Ø	Ø	31	
Inclusionary units	Ø	Ø	6	
Min. Lot Width	50'	185'	185'	
Min. Yard Setbacks				
Front	15'	10'	10'	
Side, Left	7'6" (sum of 20)	23'	23'	
Side, Right	7'6" (sum of 20)	4'10"	4'10"	
Rear	25'	62'	62'	
Total % Open Space	40%	57% 57%	57%	
Usable		97%	97%	
Other		3%	3%	
Off Street Parking	1 PER UNIT			
Min #		20		
Max #		37	35	
Handicapped		Ø	2	
Bicycle Spaces	Ø	Ø	24 OUTDOOR / 24 WOOD	
Loading Bays	Ø	Ø	Ø	

Part V – Ownership Certificate



OWNERSHIP CERTIFICATE - PLANNING BOARD SPECIAL PERMIT

This form is to be completed by the OWNER, signed, and returned to the Office of the Planning Board:

I hereby authorize: LACOURT FAMILY LLC MANAGER MOUHAB RIZKALLAH
(Petitioner)

Address 30 College Ave City or Town SOMERVILLE MA 02144.

to apply for a special permit for APARTMENT BUILDING. on premises
(Type of Development)

located at: 40 MORRIS ST 192-151 CAMBRIDGE.
(Street and Number) (Assessor Plat and Lot Number (s)) (City)

for which the record title stands in the name of: LACOURT FAMILY LLC

whose address is: 30 COLLEGE AVE
(Street and Number) (City or Town) (State)

by a deed duly recorded in the SOUTHERN MIDDLESEX County Registry of Deeds
in Book 55397 Page 563; or Registry District of the Land Court, Certificate

No 2010 00163224 Book 55397 Page 563

Mouhab Rizkallah, MANAGER.
Signature of Land Owner MOUHAB RIZKALLAH, MANAGER.
(If authorized Trustee, Officer or Agent so denitrify)

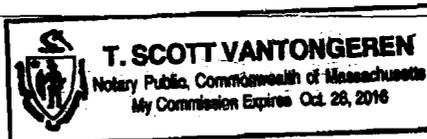
Commonwealth of Massachusetts, County of MIDDLESEX

The above-named MOUHAB RIZKALLAH personally appeared before me, this 12th
(Day)

of Oct., 2010, and made oath that the above statement is true.
(Month) (Year)

T. Scott Vantongerren Notary

My Commission expires _____ (Notary Seal)





Bk: 55397 Pg: 583 Doc: DEED
Page: 1 of 4 09/17/2010 02:30 PM

MASSACHUSETTS EXCISE TAX
Southern Middlesex District ROD # 001
Date: 09/17/2010 02:30 PM
Ctrl# 145210 15153 Doc# 00163224
Fee: \$16,416.00 Cons: \$3,800,000.00

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS that the Roman Catholic Archbishop of Boston, A corporation sole duly and legally organized and existing under the laws of the Commonwealth of Massachusetts, (the "Grantor") for consideration paid of Three Million Six Hundred Thousand (\$3,600,000.00) Dollars grants to

LACOURT FAMILY LLC, a Massachusetts limited liability company, maintaining an address at 30 College Avenue, Somerville, Massachusetts 02144 (the "Grantee")

A certain parcel of land with the building thereon situated in Cambridge, bounded and described as follows:

Beginning at a point in the southerly line of Norris Street, said point being at the intersection of the easterly line of Drummond Place;

Thence, southerly by said easterly line of Drummond Place one hundred (100.0) feet to an angle;

Thence, easterly five (5.0) feet to an angle;

Thence, again, southerly forty (40.0) feet to a point in the southerly line of Drummond Place;

Thence, easterly one hundred eighty (180.0) feet to a corner;

Thence, northerly by Lot No. 70 division line, one hundred forty (140.0) feet to a point in the southerly line of Norris Street;

Thence, westerly by said, southerly line of Norris Street one hundred eighty-five (185.0) feet to the point of beginning.

Containing twenty-five thousand seven hundred (25,700) square feet as shown as Lot. No 151 on Assessors' Block Plan 191. All the above described dimensions and area are more or less.

Gerard Fong, Esq.
Fong & Kaston, LLP
24 School Street
Suite 720
Boston, MA 02108

This conveyance is subject to the following covenants: The Grantee agrees for itself or another entity in which the Grantee holds a controlling legal or beneficial interest and its successors in title and assigns to covenant that: (a) it shall not use the Premises for a church chapel or other house of religious worship; (b) an abortion clinic; (c) the operations of professional counseling services which advocate abortion or euthanasia; or (d) the operation of any embryonic stem cell research facility or services implementing embryonic stem cell research ((a) through (d) collectively the "Use Restrictions"). The Use Restrictions described above shall expire upon the ninetieth (90th) year from the date of recording of the Deed. The Roman Catholic Archbishop of Boston, A Corporation Sole, with an address of 66 Brooks Drive, Braintree, Massachusetts 02184 is benefitted under the provisions of Massachusetts General Laws, Chapter 184, Section 27 (the Benefitted Parcel"). The Grantee acknowledges that these Use Restrictions are imposed for the benefit of the Grantor and are of actual and substantial benefit to the Grantor. At such time as the Grantor ceases to operate a Roman Catholic Parish at, or from, the Benefitted Parcel, these Use Restrictions shall automatically terminate and shall not then after be enforceable. In such event, upon request of the Grantee, or its successors in title or its assigns, Grantor shall execute a written and recordable instrument confirming such termination.

Grantee, on behalf of itself and its successors and assigns, waives any and all claims and defenses as to the enforceability of the Use Restrictions and the Covenant, as the case may be, in accordance with their terms. The Grantee acknowledges and agrees, on behalf of itself, and its assigns and successors in title that the Grantor will from time to time record notices of extensions of the Use Restrictions and Covenant as such notices and extensions are provided for in Massachusetts General Laws, Chapter 184, Sections 27 and 29.

In the event of a breach of the Covenant and/or Use Restrictions at any time during the duration of same as set forth herein, the Grantor, and its successors in title ("Specific Performance of Covenant and Use Restrictions") may seek specific performance of the Use Restrictions in a Court of Law having jurisdiction over the matter and obtain from the Grantee or its successors in title, all costs and expenses, including attorney's fees, incurred in the enforcement of defense of the Use Restrictions, and any other damages (excluding any consequential, indirect or punitive damages) suffered by the Grantor arising or resulting from a breach of the Use Restrictions. In no event shall the Grantee, or any successor or assign of the Grantee, be responsible or liable in any way for a breach of the Use Restrictions occurring outside of Grantee's (or such successor's or assign's, respectively) term of ownerships of the premises.

The Grantee agrees, on behalf of itself, its assigns and its successors in title that if the Grantee, its assigns, and its successors in title make an arms-length fair market conveyance of the Property in its entirety within five (5) years of the date of the recording of the Deed from the Seller, to the Grantee, the Grantee, its assigns and its successors in title shall pay the Seller as follows (being the "Unjust Enrichment Covenant"):

Fifty (50%) of the difference between the consideration paid by the Purchaser to the Seller for the Property, and any increased sale price of the subsequent initial arms-length fair market conveyance, less (i) the actual documented acquisition, development and disposition

costs, including, without limitation, development fees, carry costs, financing costs and interest incurred by the Purchaser, its assigns, or its successors in title for permits and improvements made to the Property by the Purchaser or its assigns or its successors in title and less (ii) a profit of twenty(20%) percent of all such acquisition and development costs incurred in acquiring and developing the Property (collectively, the "Off-Set Amounts");

If such initial arms-length fair market value sale occurs after the date of the first anniversary of the date of the recording of the Deed, the aforementioned percentage will be reduced to Forty (40%) per cent;

If such initial arms-length fair market value sale occurs after the date of the second anniversary of the date of the recording of the Deed, the aforementioned percentage will be reduced to Thirty (30%) per cent;

If such initial arms-length fair market value sale occurs after the date of the third anniversary of the date of the recording of the Deed, the aforementioned percentage will be reduced to Twenty (20%) per cent; and

If such initial arms-length fair market value sale occurs after the date of the fourth anniversary of the date of the recording of the Deed, the aforementioned percentage will be reduced to Ten (10%) per cent."

The Unjust Enrichment Covenant will expire upon the earlier the fifth anniversary of the date of the recording of the Deed from the Seller to the Purchaser or at such earlier time for any phase of Purchaser's project for which the Purchase obtains the issuance of a valid and permanent Certificate of Occupancy from the City of Cambridge for its first unit of housing in said phase, if any.. Payment shall be made by the Purchaser, its assigns, or its successors in title, at the closing of the initial arms-length fair market value conveyance of the entire Property or at each initial arms-length fair market value conveyance of any portion of the Property. Upon payment of the aforementioned sum in the instance of the first arms-length conveyance of the entire Property, or sums in each instance of the first arms-length fair market conveyance of a portion of the Property (or residential or commercial condominium unit) upon request, the Seller shall issue a release of this Covenant to the Purchaser or its assigns or its successor in title as it pertains to the Property or a portion of the Property. If the Purchaser, its assigns or its successors in title conveys a portion or portions of the Property during the initial five-year period, the aforementioned payment (s) will be made on the same percentage basis, based upon (i) a fair allocation of the Purchase Price based on the relative value of such portion(s) sold to the entire Property, and (ii) a fair allocation of the Off-Set Amounts based upon the relative acquisition, development and disposition costs attributable to such portion(s) sold to the entire Property.

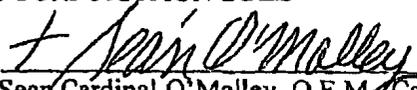
Anything herein to the contrary notwithstanding, the Unjust Enrichment Covenant shall terminate following any foreclosure sale with respect to any mortgage, deed of trust or other security interest held by an unrelated third party, institutional lender on or in the Property, or following such conveyance in lieu of foreclosure of such security interest.

For title of said Roman Catholic Archbishop of Boston, see Deed recorded in Book 8975, Page 262 of Middlesex South District Registry of Deeds (see also Book 10510, Page 155).

See Certificate of Merger of Archdiocesan Central High Schools, Inc. into the Roman Catholic Archbishop of Boston, a Corporation Sole to be recorded herewith.

IN WITNESS WHEREOF, I hereunto set my hand and seal this 15 day of September, 2010.

ROMAN CATHOLIC ARCHBISHOP OF BOSTON,
A CORPORATION SOLE


Sean Cardinal O'Malley, O.F.M., Cap.

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

Sept. 15, 2010

Then personally appeared before me, the undersigned notary public, the above-named Archbishop of Boston, his Eminence, Sean Cardinal O'Malley, O.F.M., Cap., of the Roman Catholic Archbishop of Boston, a Corporation Sole, and proved to me through satisfactory evidence of identification which was PERSONAL KNOWLEDGE to the person's whose name is stated on the preceding document, and acknowledged to me that they signed it for its stated purpose.



Notary Public

My commission expires: 7/29/10

