



CNI, p. 2 of 10

CAMBRIDGE LICENSE COMMISSION CITY OF CAMBRIDGE

831 MASSACHUSETTS AVE., 1ST FLOOR, CAMBRIDGE, MASSACHUSETTS 02139 • TEL. 349-6140

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Police Department
Commission Member

RICHARD V. SCALI
Commission Executive Officer

May 18, 1998

David Vickery
Spaulding & Slye
125 Cambridge Park Drive
Cambridge, MA 02140

RE: Garage for Commercial Parking; 577 spaces at 784 Memorial Drive

Dear Mr. Vickery:

It has come to our attention that you are in the process of developing a 577 vehicle garage for commercial parking at 784 Memorial Drive, Cambridge.

Under M.G.L.c.148, s.13, a garage and gasoline license would be required by our office before you could operate your garage. A public hearing and advertising of your application would be necessary before the Commissioners, with abutters and the neighborhood being able to make comments at such hearing.

The statute establishing the license requirement for a building or structure used as a garage for the keeping of motor vehicles is G.L.c.148, s.13. The function of the license is to regulate the use of land in the interest of public safety. See *Saxe v. Street Commissioners of Boston*, 307 Mass. 495, 498 (1940). Clearly, the primary standards to be used under the statute in deciding to grant, deny, condition, or restrict such a license is whether the exercise of the license will create an unreasonable risk of fire or explosion. See *Chase v. Board of Selectmen of Littleton*, 2 Mass. App. 159, 160 (1974). However, the licensing authority under G.L.c. 148, s.13 is given a wide discretion to consider other matters affecting the public interest and the public welfare and is not limited to an evaluation of the fire risks. See *Scudder v. Board of Selectmen of Sandwich*, 309 Mass. 373, 378 (1941). And see *Kidder v. City Council of Brockton*, 329 Mass. 288, 290 (1952).

Other matters affecting the public interest and the public welfare include a determination whether the exercise of the license will create: 1) a public or private nuisance. See *Sherman v. Board of Selectmen of Orleans*, 355 Mass. 786 (1969); 2) a traffic problem, e.g., an increase in traffic in an area which is already burdened by heavy traffic, interference with the free and orderly flow of traffic on a roadway, or traffic congestion on a narrow roadway. See *Kidder*, at 290. See also *Davidson v. Board of Selectmen of Duxbury*, 358 Mass.

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64, 66 (1970). See E.A.D. Realty Corp. v. Board of Selectmen of Shrewsbury, 6 Mass. App. 826, 827, (1978). And see Johnson Products, Inc. v. City Council of Medford 353 Mass. 540, 543 (1967), cert den and app dsmd, 392 U.S. 296 1968; 3) a noise or odor problem. See Kidder, at 291, and see E.A.D. Realty Corp at 827; 4) a general adverse effect on an adjacent residential neighborhood. See E.A.D. Realty Corp. at 827; 5) a general adverse effect on property values. See Kidder at 291; and 6) an increased risk of vehicle/pedestrian accidents. See Kidder at 291.

You should also be aware that, by the very words of the statute, any license granted under G.L.c.148, s.13 may be subjected to conditions and restrictions by the licensing authority. Of course, any such conditions or restrictions must be reasonable as written and as interpreted. See Commonwealth v. Willcutt, 259 Mass. 406, 408 (1927). See also Foster from Gloucester, Inc. v. City Council of Gloucester, 10 Mass. App. 284, 295 (1980).

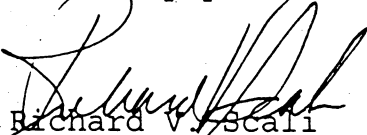
You should also be aware that the License Commission is not required to grant this license merely because the garage is allowed under the zoning laws -- independently, the License Commission must conduct its own hearing and make its own decision. This rule is always applied where the garage/gasoline license is to be exercised in an area which, although zoned for business, is still to a great extent resident in character. See Kidder, at 290. See Davidson at 67-68. See also E.A. D. Realty Corp. at 827.

Finally, you should be aware that the Commission will consider evidence of a public need for this garage as a counter-balance to any adverse evidence, in weighing whether to grant, deny, condition or restrict the garage license. See Kidder, at 291. See Davidson, at 65-66.

Although the License Commissioners always keep an open mind, they may not be sympathetic to an argument by you that monies have been expended on the erection of such garage and therefore a license must be granted. Therefore, you should submit your application as soon as possible so that you may be heard at our next available hearing. We would hope that your plans would meet with all the necessary approvals before you start to build your garage, thereby not causing you any added expense to change your design.

If you should have any questions, please do not hesitate to contact my office.

Sincerely yours,



Richard V. Scali
Executive Officer

cc: Lauren Preston, Deputy Director; Robert Bersani, Director; Stash Horowitz; Susan Scheslinger, Asst. City Manager

Cambridgeport Neighborhood Initiative
c/o 12 Florence Street,
Cambridge, MA 02139
(617) 491-1534 (SH)
(617) 491-5350 (EY)
(617) 722-2692 (DA)
May 21, 1998

Stephen M. Johnson
Chief, Site Management Section
Department of Environmental Protection
205A Lowell Street
Wilmington, MA 01887

Dear Mr. Johnson,

The following is a request for a targeted audit at 784 Memorial Drive, Cambridge, by the Cambridgeport Neighborhood Initiative (CNI), a neighborhood association of the City of Cambridge.

The CNI is a group of over a hundred residents of Cambridgeport, mainly abutters and near-neighbors, to this six-acre site slated for development by 784 Memorial Drive LLC, a partnership of Spaulding & Slye Real Estate Services Company, Inc and Polaroid Corporation, which purchased the property from Polaroid Corp. for \$10.5 million in December, 1997.

The CNI has held eight large public meetings in the neighborhood to discuss concerns about this proposal. The proponent attended the first two meetings in May and June of 1997, and then refused further meetings when the CNI inquired of MEPA whether an Environmental Notification Form (ENF) should be filed for a proposal of this size. The CNI has also met with various State and City agencies, such as the MEPA Unit, the MDC, DEP Wetlands & Waterways, DEP Site Management, the MWRA, Massachusetts Historical Commission, Cambridge City Council, Cambridge Community Development Department, Cambridge Inspectional Services Department and Cambridge Department of Public Health, in an attempt to understand better the complexities of this project and its effects on the environment.

The Proposed Project

784 Memorial Drive LLC has proposed for this site 295,000 sq ft of office space, including the renovation of an historic 45,000 sq ft building (originally built by BB Chemical, a subsidiary of United Shoe Machinery Corporation in 1936-37), the demolition of 9 other buildings on the site, the erection of two new six-storey office towers, construction of a 577-space structural parking garage, and the sale of approximately one acre along Pleasant Street for construction of 33,000 sq ft (30 units) of connected town houses, abutting the garage. Cf. Plan of buildings built by BB Chemical; also Canon Associates (architect) plan drawing for the proposed project.

History of the Site

Before the filling in of the north bank of the Charles River with landfill in the decade c. 1900 to create the current river front boundary and the part of Cambridgeport adjacent to Memorial Drive, the land area of the site was about half its current size. The area was bordered by tideland and divided by several small

tributary creeks extending up to and beyond Walnut Street (currently Putnam Ave), another interface of this site with the neighborhood. Cf. Hopkins map, 1894.

Dover Stamping & Manufacturing purchased the site, constructed numerous buildings bordering the Pleasant Street side of the tract, and began manufacturing on June 16, 1866. Dover Stamping manufactured galvanized and other sheet metal products for a variety of markets, for more than 8 decades. The chief source of power was steam (coke furnace). Energy production, processing equipment and building construction, especially in the wood frame buildings up to c. 1950, made heavy use of asbestos products.

The galvanizing tanks produced both tinplate and terneplate (85% lead, 15% zinc) sheets. Lead was also used for hand soldering. Standard manufacturing practice for the period often involved the use of land adjacent to factory sites for the dumping of non-combustible waste. Much of this waste was buried with the fill after 1892. Dover ceased manufacturing c. 1950 and the remaining buildings were demolished c. 1960.

In the decade surrounding 1900, Memorial Drive was created. Various activities were conducted on the new landfill, including a dance hall, bowling alley, etc. In 1936-37, BB Chemical constructed 10 buildings for the manufacture of adhesives primarily for shoes using benzol-containing compounds. Bldg #2 (part of the L-shaped manufacturing building comprising #2, #3, and #8, behind the historical main building) contained a churn room in which benzol was piped in and mixed with other organics, to make toxic adhesives.

In 1966, the combined site was purchased by MIT, which in turn leased the remaining ten buildings to Polaroid Corporation the next year. In 1979, Polaroid purchased the site for \$2.5 million. Polaroid used these buildings for film R & D, assembly of film packs, pilot coders, chemical mix areas, and solvent and raw material storage until the late 1980's.

Reported Releases

Two releases were reported on the site by Polaroid c. 1990, and assigned RTN #3-1369 (772 Memorial Drive, a gas station bought by Polaroid and incorporated into their property) and RTN #3-1959 (784 Memorial Drive), 6 underground tanks in and around bldg #7, containing toluene, and 1, 2-dichloroethylene (DCE). GZA GeoEnvironmental Inc of Newton was the LSP for the latter and prepared the site investigation and Response Action Outcome (RAO, September 1994, File #13488). In the GZA Vol. I site history, a chart of previous usage (p.7,8) focuses only on the Polaroid usage since 1967. The succeeding text gives only the briefest description of prior usage by BB Chemical and Dover Stamping.

Concerns

The CNI requests that this site be the subject of a DEP targeted audit. It has not been the subject of a random audit.

The CNI is especially concerned about environmental hazards to the nearby neighborhood now that demolition and removal of the asphalt cap has begun. As stated in the GZA report, (Vol I, p.22), "If future construction activities include excavation, the potential exists for the release of vapors and fugitive dust from contaminated soil and the volatilization of VOCs from the contaminated ground water."

CNI is also perplexed about the absence of testing for both heavy metals and asbestos fibre dust. Lack of a third-party sale, in the recently formed partnership, diminishes the need for due diligence, and also resulted in a partner using its own construction subsidiary as the major contractor.

In the following list CNI enumerates its major environmental concerns and other aspects that impact on environmental issues. We offer support for our statements, and provide background information for some

unanswered questions, in the documents appended to this letter. For your convenience, we have marked the left-hand margins of some of these documents at points which especially attracted our attention. We rely on your expertise to notice other important facts.

1. The lengthy industrial and chemical history of the site going back to 1866 and Dover Stamping was not adequately taken into account by the LSP and the proponent, when they prepared the profile for testing.
2. The recent demolition may have already uncovered new routes of exposure to the neighborhood, on three of the site's four sides.
3. The City of Cambridge Department of Public Health (DPH) has reviewed the site in a committee including experts such as Professors David Ozonoff and Richard Clapp of the BU School of Public Health, experts from the Cambridge Health Alliance/ Cambridge City Hospital, an environmental epidemiologist, an environmental toxicologist, and the former Health Commissioner of the City of Cambridge. The DPH has sent a letter to you recommending a targeted audit for this site, and the testing for heavy metals, including a partial list of such metals. Cf letter March 24, 1998.
4. No heavy metal testing was done by GZA. The official position of the City of Cambridge, as stated in testimony before the City Council on April 27, 1998, is that a targeted audit and heavy metals testing be required by the DEP to reassure the neighborhood in terms of public health and safety. Cf. transcript of testimony by city toxicologist and deputy city solicitor, and their responses to questions by City Councillors, and videotape of same.
5. The Cambridge City Council has passed several orders, the earliest as far back as June 23, 1997, urging Polaroid to conduct additional testing on the site.
6. The DEP Site Management Section told Polaroid in a letter dated July 31, 1997, that additional testing is in everyone's best interest, and that delaying such testing could result in expensive delays at a later date.
7. A City Council Order of March 23, 1998, asked seven questions of Cambridge's DPH about City and State protections available to the public. We attach the written reply to the Council by the DPH. This reply was the basis of the testimony and discussion referenced in #4.
8. The site had been for sale for about five years. Polaroid, the former owner, showed great reluctance to reassure prospective buyers of the environmental safety of the site, as far as due diligence, Chapter 21E, and an ENF. In fact, the former owner refused purchase offers from buyers at the asking price, when three or four buyers requested due diligence. We cannot understand the refusal of due diligence when an offer is serious and the purchase price is met.
9. A previous purchaser, Vertex Pharmaceuticals, forfeited a \$500,000 deposit (\$15 million purchase price). Another potential purchaser, Equity Company, was told that a P&S agreement would be forthcoming, but this verbal agreement was broken when due diligence was requested. Equity sued both Polaroid and Spaulding & Slye. Equity has recently been offered an out of court settlement.
10. Another interested buyer, Lyme Properties, also believed it had a verbal agreement with Polaroid to purchase the site. Once again, the P&S agreement foundered upon a request for due diligence. The president of Lyme, David Clem, was deposed twice in the Equity suit. These depositions show that Polaroid Corp and its then advisor and broker, and future partner, Spaulding & Slye, were determined to avoid an ENF. Cf. attached copies of depositions.
11. A memo sent by Haley & Aldrich, an LSP who investigated the site for Vertex, to an agent conducting due diligence for another prospective buyer, Rich Vazza, points out that there will likely be contamination problems with the fill on the site. Cf. attached memo.

12. Spaulding & Slye, Polaroid's broker and advisor, became the majority partner in 784 Memorial Drive LLC. Their construction company, S&S Construction, is the major contractor. The deed of sale was registered December 30, 1997 and shows three of the four officers are those of Spaulding & Slye Real Estate Services Company, Inc.

13. Neither the former owner nor the present partnership have responded to the City Council order for additional testing. Promises to present construction mitigations to the neighborhood have not been kept.

14. Interior demolition began without a proper city permit. Cf. letter by Philip Dowds, architectural consultant to CNI.

15. After the permit was finally obtained, demolition requiring heavy equipment proceeded for two days with no precautions taken to control release of dust into the neighborhood. In response to citizen complaints to Cambridge Police Department, Inspectional Services Department (ISD), the Department of Public Health (DPH), and the project manager for Spaulding & Slye, inadequate attempts at protection ensued. It is most likely that during the week of March 23 a few hundred pounds of toxic dust entered the neighborhood. No netting, and only one hose with a very slow outflow of water was used to control dust.

16. If the above represents a pattern of the proponent's methods of impending future excavation and construction, the neighborhood has cause for serious concern.

17. Housing is proposed for a part of this site adjacent to the neighborhood (See Canon plan). The Stop & Shop Company (now owned by Royal Ahold of the Netherlands) owned the nearby 5-acre site at 727 Memorial Drive. Because part of this site was zoned for residential use, after soil testing, they decided to place an Activity & Use Limitation (A&UL) on their property prohibiting residential construction, due to high lead levels in the landfill used to create the area adjacent to Memorial Drive c. 1900. Shortly afterward, they sold it to GHB partners (about five years ago).

Looking on Sanborn maps and Hopkins maps, before and after the date of the landfill, it is strongly suggested that similar landfill material with high lead content may comprise a large part of the Polaroid site. CNI cannot understand how housing is a part of this proposal, given that no testing for lead has been done in the area adjacent to the neighborhood where the housing is proposed.

18. CNI believes that testing for asbestos is essential. The absence of regulated removal at the time of the Dover buildings' demolition, the heavy use of asbestos laden materials at the site, and the likelihood of their disintegration into the the soil and debris under the asphalt cap make this testing necessary. Cf. Information about Dover Stamping Company.

19. Professor Ozonoff also recommended testing for arsenic, due to the presence of an apple orchard on the site, and the practice of arsenic use at that time. Cf. above mentioned letter from Cambridge DPH to DEP of March 24, 1998. Prof. Ozonoff also mentioned the possibility of an underground plume approaching the neighborhood, in a hydrogeological sense, and suggested that further testing might reassure the neighborhood. Cf. John O'Brien letter to Cambridge City Council, January 1998, referring to an earlier meeting held July 29, 1997.

20. Time schedule: Demolition of bldgs #2 - #10 was recently done. The soil underneath these buildings has not been removed from the site, but was thoroughly mixed and replaced into the removed foundations, and is currently available for testing. When this soil was piled up adjacent to the neighborhood, three weeks ago, it emitted a foul chemical odor after a heavy rainstorm.

21. City of Cambridge permit status: Building permits have been issued for construction of a 10,000 sq ft addition to the historic building currently being restored, and for the 577-space garage. No permits have yet been issued for the two six-storey towers. The Cambridge License Commission wrote the proponent on May 18, 1998, strongly advising a garage/gasoline license be obtained before any work is begun on the

garage. The License Commission has broad authority to regulate the use of the land in the interest of public safety and public welfare. The earliest date permission may be obtained from the License Commission is June 23, 1998. CNI hopes that your decision in the matter of a targeted audit will be made before any work begins on the garage. Cf. letter from Cambridge License Commission to Spaulding & Slye, May 18.

22. The information and maps attached to this letter about industrial processes performed at Dover Stamping and at BB Chemical were obtained from the Division of Occupational Hygiene, Cambridge Historical Commission archives, Cambridge Inspectional Services files, Cambridge Public Library, Cambridge Department of Public Health, Cambridge City Assessors Office, Middlesex Registry of Deeds, and the Boston Public Library. We found no files on Polaroid (at 784 Memorial Drive) at the Division of Occupational Hygiene, and were told by the director that Polaroid most likely handled compensation claims internally. The BB Chemical letters indicate that workmen's compensation claims exist in the Boston files of the Division of Industrial Accidents, but we were unable to obtain access in time for this submission because release of such information requires Freedom of Information requests.

23. All four State Representatives from Cambridge sent a letter to Trudy Coxe, Secretary of the Office of Environmental Affairs, requesting her to ensure that all State agencies use available regulations and laws to protect and reassure the neighborhood that development of this site be safe. Cf. attached letter.

In sum, what is proposed at this site represents an extremely high health risk for the neighborhood, according to the Cambridge Department of Public Health, the CNI, various professional experts, and the Cambridge City Council. The proponent has been non-responsive to the DEP's and the City's suggestions for additional testing. The City and Prof. Ozonoff especially recommend heavy metals testing. CNI's own research suggests risk of asbestos and benzol-compound contamination. Previous testing profiles were not wide enough. The disclaimer that the great number of organic compounds found in the soil tested by gas chromatography weakens the validity and accuracy of these results. For all the reasons enumerated above, and given the reluctance of the former and new owners to do additional testing to reassure the neighborhood, CNI requests the DEP to conduct a targeted audit at this site.

Thank you for your attention and consideration,

Very truly yours,

Daphne Abeel
Elie Yarden
Stash Horowitz
Co-Chair, CNI

Attachments:



The Cambridge Hospital

CNI, p. 9 of 10



1493 Cambridge Street, Cambridge, Massachusetts 02139 (617) 498-1000

To: Stephen Johnson, Site Management Section Chief
Northeast Regional Office, Department of Environmental Protection
From: Harold Cox, Chief Public Health Officer
David Ozonoff MD, BU School of Public Health
Sam Lipson, Environmental Toxicologist
Subject: Public Health Department concerns over the 784 Memorial Drive site
Date: March 24th, 1998
CC: Patricia Donahue, Site Management Section, DEP NE Regional Office

Summary:

- 1) The Cambridge Public Health Department concurs that testing for metals is warranted
- 2) A decision by the Massachusetts DEP to audit the site would be appropriate
- 3) Future exposure to metals and VOCs during construction should be considered

After consulting with nearby residents and several professionals in disciplines supporting the assessment of public health risk from chemical exposure, the Cambridge Public Health Department believes that it is in the best interest of the citizens of Cambridgeport that testing for several metals, specified below, be conducted on that portion of the 784 Memorial Drive parcel formerly occupied by the Dover Stamping Company. Though previous characterization of the site at 784 Memorial Drive appears to be satisfactory with regard to contamination from organic chemicals, no data has been collected elucidating metals concentrations. Since Polaroid has asserted that there was no generation of improperly contained metal waste during their occupancy of the site, the absence of metals data may reflect their intention to profile only those releases which are known to have occurred during that period.

Notwithstanding the reasonable assertion that activities undertaken by Polaroid would not have resulted in significant releases of heavy metals on this parcel, historical uses of part of the site suggest possible deposition of several regulated and toxic heavy metals. These previous activities, conducted by the Dover Stamping Company from early in the 20th Century until the late 1950s or early 1960s included metal plating, metal stamping, and galvanizing, lacquering and "japanning" (dark finish with carbon) of sheet metal. In addition, there appears to have been a foundry capable of producing brass, bronze and

aluminum. Metals to be screened for should include, but not be limited to, mercury (Hg), chromium (Cr), lead (Pb), selenium (Se), cadmium (Cd), and thallium (Tl), reflecting the intensive metal plating and processing activity on the site. Furthermore, this area warrants screening for arsenic (As) because of the previous siting of an apple orchard within its boundaries and the possibility that arsenate was used extensively as an insecticide. These purported activities were indicated in historical maps included in the Response Action Outcome (RAO) generated for Polaroid by GZA (environmental consulting firm) but were not performed during any site assessment. Cambridge Department of Public Health and several consulting health and environmental professionals have agreed, after consultation, that metals sampling and testing should be carried out in that portion of the parcel.

Concurrent with the recommendation for further testing by this department, the Massachusetts Department of Environmental Protection (DEP) has stated that it is reviewing the parcel at 784 Memorial Drive as a possible candidate for a DEP site audit. This action, if taken, would result in the categorical examination of the RAO released in 1994 for significant deficiencies which might prevent the proper assessment of public health risk associated with the site. It is the view of this department that this audit should take place and that it should result in a request for further testing for metals. It is reasonable to expect that metals would have been included in the regimen of chemicals originally quantified given such a well-documented history of metal-waste generating activities.

It is also the view of this department that the public health impact of the excavation of large volumes of soil from the site during future construction was not considered in the Risk Characterization included in the 1994 RAO. While it may have been reasonable to overlook the impact of such activities at the time, since no construction on the site was then anticipated, the impact of uncovering large amounts of soil known to contain small amounts of volatile organic compounds (VOCs) and unknown concentrations of various metals should be addressed. The Cambridge Department of Public Health takes the view that a requirement for air quality monitoring may be reasonable, pending the analysis of further samples. If hazardous materials are found at sufficiently high levels, periodic air quality monitoring for airborne metals and VOCs during construction should be required. This would serve to safeguard the health not only of those residing in the near vicinity of the site, but also those working on the site during demolition, excavation and construction.

Finally, the Cambridge Public Health Department would like to draw attention to the unusually close proximity between the abutting neighborhood and the site being reviewed. While we are convinced that this site warrants further DEP consideration without reference to its placement in a densely populated area, this close vicinal relationship with its neighbors (in some areas no more than 30 feet) does add to the importance of all decisions made regarding this parcel.

Thank you for your efforts in assuring that this site is properly characterized.

To: The Honorable, the City Councillors

From: The Cambridgeport Neighborhood Initiative (CNI) Co-Chairs
Daphne Abeel, Gordie Fellman, Stash Horowitz, Anastasia Leotsakos,
Laurie Taymor-Berry, Maureen Van Stry, Elie Yarden *SH*

For: City Council meeting of June 1, 1998

Re: New documents pertaining to proposed project by 784
Memorial Drive LLC

CNI wishes to address the City Council on
issues and concerns mentioned in two recent letters:

1. May 18 letter from Cambridge License Commission
to Spaulding & Syc, about necessity for a
public hearing for a garage/gasoline license for a
577-car garage, and about traffic and
other matters which may affect public
welfare & safety, which could lead to
conditions or restrictions, on the same. Advice to
proponent to apply for same as soon as possible.
2. May 21 letter from CNI to Dept. of
Environmental Protection's site management section
chief, requesting a targeted audit and
heavy metals testing be required for this site.
This represents the first five pages of an
extensively documented submission, which CNI
will share, in its details, with all interested
parties. Copy of this letter was earlier sent to
Cambridge Dept. of Public Health.

OFFICE OF THE CLERK
98 MAY 28 PM 3:55
RECEIVED

Consent Communication #28

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A communication was received from
the Cambridgeport Neighborhood Initiative
(CNI) Co-Chairs, transmitting
new documents pertaining to proposed
project by 784 Memorial Drive, LLC.

In City Council June 1, 1998

PLACED ON FILE