

28 Magoun Street  
Cambridge, MA 02140  
May 15, 1996

Ms. Margaret Drury  
City Clerk  
795 Massachusetts Avenue  
Cambridge, MA 02139

To Whom It May Concern:

As you are no doubt aware, there has been some controversy over the viability of the PUD permit for the Grace site. After combing city files and reviewing the information, the Alewife Study Group is convinced: The PUD permit was never initiated, so it is not viable.

We have enclosed copies of many of the relevant documents in four packets. The first packet prepared by the Alewife Study Group and entitled, "Brief Overview of Why the Existing PUD Permit for Alewife Center Is No Longer Valid," includes a comprehensive   timeline and a summary explanation of why we believe the PUD is not viable. We think of it as the "map" for all the subsequent documents. It orients you to the data.

The second packet put together by the Alewife Study Group and entitled, "Supporting Documents" contains copies of the documents cited in the timeline.

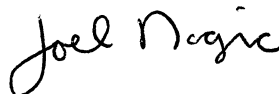
The third and fourth documents are copies of the city's Law Department's opinions on the PUD permit's viability. The first is dated, December 1, 1989, and the second, May 3, 1996. We hope you find these useful.

We would like all of this information included in the Consent Communication Agenda for the upcoming City Council meeting on Monday, May 20, 1996. Thank you for your consideration--and xeroxing!

For the Committee,



Lisa Birk  
Co-chair



Joel Nogie  
Co-chair

**HOLD HARMLESS CLAUSE:** The Permittee(s) by acceptance of this permit agree(s) to indemnify and hold harmless the City of Cambridge, and its employees, from and against any and all claims, demands and actions for damages resulting from operations under this permit, regardless of negligence of the City of Cambridge, and its employees, and to assume the defense of the City of Cambridge, and its employees, against all such claims, demands and actions.



**CITY OF CAMBRIDGE**  
INSPECTIONAL SERVICES DEPARTMENT CITY HALL  
CAMBRIDGE, MASSACHUSETTS 02139 (617) 498-9013

JOSEPH J. CELLUCCI  
COMMISSIONER OF BUILDINGS  
AND HOUSING

**OFFICE USE**

22. Additional Information needed from:

Electrical	Gas	Engineering
Plumbing	Energy	*Rent Control Sign Off
Mechanical	Planning Board	Historical
Fire Department	Conservation	Board of Zoning Under Appeal
Traffic	Water	Other _____

\*Date \_\_\_\_\_ Hearing Examiner \_\_\_\_\_

23. Application Approval: Subject to the provisions of the Building Code, Zoning Laws of the City of Cambridge and State Law and Regulations.

Application accepted by: J. Cellucci Date: 9/12/84  
 Plans accepted by: " Bin No: 443  
 Zoning approved by: D. Horgan Date: 9/12/84  
 Plan Review approval by: J. Cellucci Date: 9/12/84  
 Permit granted by: " Date: "

24. Renewal issued: \_\_\_\_\_

25. Certified plot plan submitted after foundation placed: \_\_\_\_\_

26. Inspections made: \_\_\_\_\_ Final Inspection made: \_\_\_\_\_

11/30/84 BLDG MOVED

27. Certificate of Use and/or Occupancy issued: \_\_\_\_\_

The undersigned hereby applies for a Permit to Build, Alter, Repair in accordance with Section 113.0 of Mass. State Building Code.

OFFICE USE

FEE 251<sup>00</sup> SPECIAL \_\_\_\_\_ TOTAL FEE 251<sup>00</sup>

Date Received: SEP 12 1984  
 Date Issued: 09/20/84  
 Permit No.: \_\_\_\_\_

(PRINT IN INK)

- Building Location: 41 WHITEMORE AVE Date of Application: Sept. 12, 1984
- Zone \_\_\_\_\_ Certified plot plan submitted \_\_\_\_\_ Lot area \_\_\_\_\_ Frontage \_\_\_\_\_  
 Set backs: front \_\_\_\_\_ right \_\_\_\_\_ left \_\_\_\_\_ rear \_\_\_\_\_  
 Height above grade: \_\_\_\_\_ ft., \_\_\_\_\_ stories; below grade: \_\_\_\_\_ ft., \_\_\_\_\_ stories  
 Use & Occupancy \_\_\_\_\_ How is Building Occupied \_\_\_\_\_
- Owner: W.R. GRACE  
 Address: WHITEMORE AVE Phone No.: \_\_\_\_\_
- Applicant: James J. Murphy - Lessee or other:  
 Address: \_\_\_\_\_ Phone No.: \_\_\_\_\_
- Contractor: CONCRETE CRUST License No.: 821  
 Address: 10 Willow St. Saffordham Ma Phone No.: 468-3511
- Architect/designer: BECKSTEFFER & ASSOC. Registration No.: \_\_\_\_\_  
 Address: 255 Newbury St. Bos. Phone No.: \_\_\_\_\_
- Engineer: \_\_\_\_\_ License No.: \_\_\_\_\_  
 Address: \_\_\_\_\_ Phone No.: \_\_\_\_\_
- Type of work: new addition alteration repair change or use/occupancy  
 Other: MANE 2 STORY HOUSE
- Description of work: \_\_\_\_\_  
MORE EXISTING DWELLING FROM 146 WHITEMORE  
12-131 WHITEMORE AS PER PLANS AT APPROVED  
SUBJECT TO TEST BORINGS - FIELD SUBMITTED.
- Construction characteristics: Type of construction:  
 a. Type of footings: Concrete  
 b. Type of foundation: Concrete and Masonry  
 c. Type of frame: reinforced concrete structural steel masonry bearing wall wood other \_\_\_\_\_  
 d. Type of heat and fuel: \_\_\_\_\_
- Are the following included?: (notes: 1. see no. 18b; 2. requires separate permit; 3. see no. 16)  
 a. Fire extinguishing equip. (note 1) yes no f. Air conditioning (note 3) yes no  
 b. Plumbing (note 2) yes no g. Electrical (note 2) yes no  
 c. Water pipes (note 2) yes no h. Sprinklers (note 1) yes no  
 d. Gas fitting (note 2) yes no i. Fire detection equip. (note 1) yes no  
 e. Heating (note 3) yes no j. Any items in Sect. 1200.00 (note 1) yes no

12. Is a street Occupancy Permit necessary? Yes
13. Total volume (cubic ft.) 35,000 cu. ft. and not R-3, requires stamp of Massachusetts registered P.E. or Architect - see no. 6 and no. 7) (EXCEPTION: single family residences)
14. Is structure subject to control in accordance with section 127.0 of the Massachusetts State Building Code? If YES, state the following and attach affidavits in accordance with Section 113.5.1 of State Building Code.
- a. Laboratory: \_\_\_\_\_ License No.: \_\_\_\_\_  
Address: \_\_\_\_\_
  - b. Technician: \_\_\_\_\_ License No.: \_\_\_\_\_  
Address: \_\_\_\_\_
  - c. Plan review waived: \_\_\_\_\_
  - d. Structural review waived: \_\_\_\_\_

15. Costs: read entirely before completing—
- A. Estimated cost of general work: 33,700.
- B. If any of the following are checked as "YES" in item 11 and not included in cost in item 15 A above, then include below.
- a. Fire extinguishing equipment \$ \_\_\_\_\_
  - b. Plumbing \$ 5000.
  - c. Water piping \$ \_\_\_\_\_
  - d. Gas fitting \$ \_\_\_\_\_
  - e. Heating \$ \_\_\_\_\_
  - f. Air conditioning \$ \_\_\_\_\_
  - g. Electrical \$ 1000.
  - h. Sprinklers \$ \_\_\_\_\_
  - i. Fire detection equipment \$ \_\_\_\_\_

16. Is compliance with article 20 (Energy Conservation) of the State Building Code required in any part of the work?  
yes no if YES, answer no. 17.
17. Does a summary and certification of compliance with Article 20 (Energy) accompany this application?  
yes no
18. Plans and specifications: (Section 113.5 of state building code)
- a. Specifications submitted: \_\_\_\_\_ No. of copies: 1
  - b. Plans submitted: \_\_\_\_\_ No. of copies: \_\_\_\_\_

(If any one of items 11a, h, i or j is answered Yes; 1 set of plans is required to be sent to the Fire Dept. for review, and a copy of transmittal form attached to this application.) (Plans will be sent by this department)

19. If existing building, complete the following:
- a. Type of construction: \_\_\_\_\_
  - b. Use group: \_\_\_\_\_
  - c. Occupancy: \_\_\_\_\_
  - d. No. of rooms/units: \_\_\_\_\_
  - e. Height in feet: \_\_\_\_\_
  - f. Height in stories above/grade: 2.5
  - g. Area per floor: 860
  - h. Total volume (cubic feet): \_\_\_\_\_

20. a. Number of persons per floor

b. Live load per floor (PSF)

	a	b	a	b	a	b	a	b
1		6		11		16		
2		7		12		17		
3		8		13		18		
4		9		14		19		
5		10		15		20		

The undersigned hereby certifies that he/she has read and examined his application and that the proposed work subject to the provision of the Massachusetts State Building Code and other applicable laws and ordinances is accurately represented in the statements made in this application and that the work shall be carried out in accordance with the foregoing statements and in compliance with the provisions of law and ordinance in force on the date of this application to the best of his/her ability.

The following sections are quoted directly from the Massachusetts State Building Code, as of June 1, 1979.

113.6 SITE PLAN: There shall also be filed prior to a permit being granted for the excavation or for the erection of any building or structure a site plan showing to scale the size and location of all new construction and all existing structures on the site, distances from lot lines, the established street grades if they exist (verified by the town or city), and proposed finished grades. In the case of demolition, the site plan shall show all construction to be demolished and the location and size of all existing structures and construction that are to remain on the site or plot. The site plan shall not be changed except as specified in Sections 113.8 and 115.3.

- 114.3 EXPIRATION OF PERMIT: Any permit is issued shall be deemed abandoned and invalid unless the work authorized by it shall have been commenced within six (6) months after its issuance; . . . .
- 114.7 REVOCATION OF PERMITS: The building commissioner may revoke a permit or approval issued under the provisions of this Code in the case of any false statement or misrepresentation of fact in the application or the plans on which the permit or approval was based.
- 115.1 COMPLIANCE WITH CODE: The permit shall be a license to proceed with the work and shall not be construed as authority to violate, cancel or set aside any of the provisions of this Code, except as specifically stipulated by modification or legally granted variation in accordance with Section 126.0.
- 115.2 COMPLIANCE WITH PERMIT: All work shall conform to the stamped or printed application and plans for which the permit has been issued and any approved amendments thereto.
- 115.3 CHANGE IN SITE PLAN: A lot or site shall not be changed, increased or diminished in area from that shown on the official site plan, as specified in Section 113.6, unless a revised plan showing such changes accompanied by the necessary affidavit of owner or applicant shall have been filed and approved. EXCEPTION: A revised site plan will not be required if the change is caused by reason of an official street opening, street widening or other public improvement.
- 119.1 NEW BUILDINGS AND STRUCTURES: A building or structure hereafter shall not be used or occupied in whole or in part until the certificate of use and occupancy shall have been issued by the building commissioner or inspector of buildings or, when applicable, the state inspector. The certificate shall not be issued until all the work has been completed in accordance with the provisions of the approved permits and of the applicable codes for which a permit is required, except as provided in Section 113.4.

119.2 BUILDINGS OR STRUCTURES HEREAFTER ALTERED: A building or structure, in whole or in part, altered to change: from one use group to another; to a different use within the same group; the fire grading; the maximum live load capacity; the occupancy load capacity; or a building or structure hereafter altered for which a certificate of use and occupancy has not been heretofore issued, shall not be occupied or used until the certificate shall have been issued certifying that the work has been completed in accordance with the provisions of the approved permits and of the applicable codes for which a permit is required. Any use or occupancy, which was not discontinued during the work of alteration, shall be discontinued within thirty (30) days after the completion of the alteration unless the required certificate is issued.

122.3 VIOLATION PENALTIES: A person who shall violate a provision of the Basic Code shall be punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year, or both, for each violation. Each day during which any portion of a violation continues shall constitute a separate offense.

James J. Murphy (Signature of Licensed Builder or Wrecker)  
 James J. Murphy (Signature of Owner or Authorized Representative)  
 (Address) 75 Lexington St. Billerica, Ma. 01821 (Address)

Lic. No. 821 Class 1, 2, 3, 4  
 My license expires 12/19/84 City or Town Camb. Telephone No. 669-6319

12. Is a street Occupancy Permit necessary? Yes
13. Total volume (cubic ft.) \_\_\_\_\_ (if 35,000 cu. ft. and not R-3, requires stamp of Massachusetts registered P.E. or Architect - see no. 6 and no. 7) (EXCEPTION: single family residences)
14. Is structure subject to control in accordance with section 127.0 of the Massachusetts State Building Code? If YES, state the following and attach affidavits in accordance with Section 113.5.1 of State Building Code.
- a. Laboratory: \_\_\_\_\_ License No.: \_\_\_\_\_  
Address: \_\_\_\_\_
- b. Technician: \_\_\_\_\_ License No.: \_\_\_\_\_  
Address: \_\_\_\_\_
- c. Plan review waived: \_\_\_\_\_
- d. Structural review waived: \_\_\_\_\_

15. Costs: read entirely before completing-
- A. Estimated cost of general work: \$6,500,000
- B. If any of the following are checked as "YES" in item 11 and not included in cost in item 15 A above, then include below.
- a. Fire extinguishing equipment \$ \_\_\_\_\_
- b. Plumbing \$ \_\_\_\_\_
- c. Water piping \$ \_\_\_\_\_
- d. Gas fitting \$ \_\_\_\_\_
- e. Heating \$ \_\_\_\_\_
- f. Air conditioning \$ \_\_\_\_\_
- g. Electrical \$ \_\_\_\_\_
- h. Sprinklers \$ \_\_\_\_\_
- i. Fire detection equipment \$ \_\_\_\_\_

16. Is compliance with article 20 (Energy Conservation) of the State Building Code required in any part of the work?  
yes no if YES, answer no. 17.

17. Does a summary and certification of compliance with Article 20 (Energy) accompany this application?  
yes no

18. Plans and specifications: (Section 113.5 of state building code)
- a. Specifications submitted: Yes No. of copies: 1-Health Dept. (2-Bldg.Dept.-1-Fire Dept.-)
- b. Plans submitted: Yes No. of copies: 1-Health Dept. (2-Bldg.Dept.-1-Fire Dept.-)

(If any one of items 11a, h, i or j is answered Yes; 1 set of plans is required to be sent to the Fire Dept. for review, and a copy of transmittal form attached to this application.) (Plans will be sent by this department)

19. If existing building, complete the following:
- a. Type of construction: \_\_\_\_\_
- b. Use group: \_\_\_\_\_
- c. Occupancy: \_\_\_\_\_
- d. No. of rooms/units: \_\_\_\_\_
- e. Height in feet: \_\_\_\_\_
- f. Height in stories above/grade: \_\_\_\_\_
- g. Area per floor: \_\_\_\_\_
- h. Total volume (cubic feet): \_\_\_\_\_

20. Number of persons per floor

	a	b	a	b	a	b	a	b
b. Live load per floor (PSF)								
1	165	100	6		11		16	
2	185	70	7		12		17	
3	193	70	8		13		18	
4	193	70	9		14		19	
5			10		15		20	
Live Load	50 psf							
Partition	20 psf							
Total L.L.	70 psf							

The undersigned hereby certifies that he/she has read and examined this application and that the proposed work subject to the provision of the Massachusetts State Building Code and other applicable laws and ordinances is accurately represented in the statements made in this application and that the work shall be carried out in accordance with the foregoing statements and in compliance with the provisions of law and ordinance in force on the date of this application to the best of his/her ability.

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- 119.2 BUILDINGS OR STRUCTURES HEREAFTER ALTERED: A building or structure, in whole or in part, altered to change: from one use group to another; to a different use within the same group; the fire grading; the maximum live load capacity; the occupancy load capacity; or a building or structure hereafter altered for which a certificate of use and occupancy has not been heretofore issued, shall not be occupied or used until the certificate shall have been issued certifying that the work has been completed in accordance with the provisions of the approved permits and of the applicable codes for which a permit is required. Any use or occupancy, which was not discontinued during the work of alteration, shall be discontinued within thirty (30) days after the completion of the alteration unless the required certificate is issued.
- 122.3 VIOLATION PENALTIES: A person who shall violate a provision of the Basic Code shall be punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year, or both, for each violation. Each day during which any portion of a violation continues shall constitute a separate offense.

(Signature of Licensed Builder or Wrecker)  
J. Kevin Hurton

(Signature of Owner or Authorized Representative)  
David R. Vickery/Hines Industrial

(Address) 29 Wing Road  
Lynnfield, MA 01940

124 Mt. Auburn Street  
Cambridge, MA 02138

Lic. No. B00497 Class ABC

My license expires. 1/21/86 City or Town. Boston Telephone No. 661-8200

**HOLD HARMLESS CLAUSE:** The Permittee(s) by acceptance of this permit agree(s) to indemnify and hold harmless the City of Cambridge, and its employees, from and against any and all claims, demands and actions for damages resulting from operations under this permit, regardless of negligence of the City of Cambridge, and its employees, and to assume the defense of the City of Cambridge, and its employees, against all such claims, demands and actions.

**OFFICE USE**

**22. Additional Information needed from:**

Electrical	Gas	Engineering
Plumbing	Energy	*Rent Control Sign Off
Mechanical	Planning Board	Historical
Fire Department	Conservation	Board of Zoning Under Appeal
Traffic	Water	Other _____

\*Date \_\_\_\_\_ Hearing Examiner \_\_\_\_\_

**23. Application Approval:** Subject to the provisions of the Building Code, Zoning Laws of the City of Cambridge and State Law and Regulations.

Application accepted by: RS Date: 3-18-85  
 Plans accepted by: RS Bin No. 444  
 Zoning approved by: RS Date: 6-4-85  
 Plan Review approval by: RS Date: 6-4-85  
 Permit granted by: [Signature] Date: 6-7-85

24. Renewal issued \_\_\_\_\_ 6/29/85  
SHELL ONLY

25. Certified plot plan submitted after foundation placed \_\_\_\_\_

26. Inspections made \_\_\_\_\_ Final Inspection made \_\_\_\_\_

27. Certificate of Use and/or Occupancy issued: \_\_\_\_\_



JOSEPH J. CELLUCCI  
 COMMISSIONER OF BUILDINGS  
 AND HOUSING

**CITY OF CAMBRIDGE**

INSPECTION SERVICES DEPARTMENT CITY HALL  
 CAMBRIDGE, MASSACHUSETTS 02139 (617) 498-9013

*check to be received letter if credit advised*

The undersigned hereby applies for a Permit to Build, Alter, Repair in accordance with Section 113.0 of Mass. State Building Code.

OFFICE

FEE 147 SPECIAL 500 TOTAL FEE 647 Date Received: \_\_\_\_\_  
 Date Issued: \_\_\_\_\_  
 Permit No.: \_\_\_\_\_

(PRINT IN INK) 148 Whittemore Avenue

1. Building Location: Cambridge, MA Date of Application: 2/28/85
2. Zone 1C Certified plot plan submitted Yes Lot area 336,283sf Frontage 222.4 ft.  
 Set backs: front 21 ft. right 27 ft. left 14 ft. rear 545.0 ft.  
 Height above grade: 53 ft. 4 stories; below grade: 0 ft. 0 stories  
 Use & Occupancy B-Business How is Building Occupied Office Use
3. Owner: See Attachment For Listing Address: \_\_\_\_\_ Phone No.: \_\_\_\_\_
4. Applicant: Vappi & Company, Inc. Lessee or other: \_\_\_\_\_  
 Address: 240 Sidney St., Cambridge, MA 02139 Phone No.: 661-8200
5. Contractor: Vappi & Company, Inc. License No.: \_\_\_\_\_  
 Address: 240 Sidney St., Cambridge, MA 02139 Phone No.: 661-8200
6. Architect/designer: Michael Graves, Architect Registration No.: C.O.M. 5788  
 Address: 341 Nassau St., Princeton, NJ Phone No.: 1-609-924-6409
7. Engineer: See Attachment - License No.: \_\_\_\_\_  
 Address: For Listing Phone No.: \_\_\_\_\_
8. Type of work: new addition alteration repair change or use/occupancy  
 Other \_\_\_\_\_
9. Description of work: Four (4) story office building, approximate size, 86,000 s. f.
10. Construction characteristics: Type of construction: 2C with Sprinkler  
 a. Type of footings: Pressure Injected Footings  
 b. Type of foundation: Pressure Injected Footings/Pile Caps/Grade Beams/  
Structural Slab. I II III IV  
 c. Type of frame: reinforced concrete structural steel masonry bearing wall wood other \_\_\_\_\_  
 d. Type of heat and fuel: Electric - Variable Air Volume System
11. Are the following included?: (notes: 1. see no. 18b; 2. requires separate permit; 3. see no. 16)  
 a. Fire extinguishing equip. (note 1) yes no f. Air conditioning (note 3) yes no  
 b. Plumbing (note 2) yes no g. Electrical (note 2) yes no  
 c. Water pipes (note 2) yes no h. Sprinklers (note 1) yes no  
 d. Gas fitting (note 2) yes no i. Fire detection equip. (note 1) yes no  
 e. Heating (note 3) yes no j. Any items in Sect. 1200.00 (note 1) yes no

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**HOLD HARMLESS CLAUSE:** The Permittee(s) by acceptance of this permit agree(s) to indemnify and hold harmless the City of Cambridge, and its employees, from and against any and all claims, demands and actions for damages resulting from operations under this permit, regardless of negligence of the City of Cambridge, and its employees, and to assume the defense of the City of Cambridge, and its employees, against all such claims, demands and actions.

**OFFICE USE**

22. Additional Information needed from:

Electrical	Gas	Engineering
Plumbing	Energy	*Rent Control Sign Off
Mechanical	Planning Board	Historical
Fire Department	Conservation	Board of Zoning Under Appeal
Traffic	Water	Other _____

\*Date \_\_\_\_\_ Hearing Examiner \_\_\_\_\_

23. Application Approval: Subject to the provisions of the Building Code, Zoning Laws of the City of Cambridge and State Law and Regulations.

Application accepted by: CO/US Date: 11/12/87  
 Plans accepted by: CD Bin No. 446  
 Zoning approved by: PR Date: 12/18/87  
 Plan Review approval by: CO Date: \_\_\_\_\_  
 Permit granted by: PR Date: 12/18/87

24. Renewal issued \_\_\_\_\_

25. Certified plot plan submitted after foundation placed \_\_\_\_\_

26. Inspections made \_\_\_\_\_ Final Inspection made \_\_\_\_\_

27. Certificate of Use and/or Occupancy issued: \_\_\_\_\_

148 Whittemore Ave  
 (1A)ewk



JOSEPH J. CELLUCCI  
 COMMISSIONER OF BUILDINGS  
 AND HOUSING

**CITY OF CAMBRIDGE**

INSPECTIONAL SERVICES DEPARTMENT CITY HALL  
 CAMBRIDGE, MASSACHUSETTS 02139 (617) 498-9013

**121861**

The undersigned hereby applies for a Permit to Build, Alter, Repair  
 in accordance with Section 113.0 of Mass. State Building Code.

OFFICE USE

FEE 37963 SPECIAL 5 TOTAL FEE 37968  
 Date Received: \_\_\_\_\_  
 Date Issued: \_\_\_\_\_  
 Permit No.: \_\_\_\_\_

- (PRINT IN INK) 148 Whittemore Avenue  
 1. Building Location: Cambridge, MA Date of Application: 11/9/87  
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 Set backs: front 21 ft. right 27 ft. left 14 ft. rear 545.0 ft  
 Height above grade: 53 ft., 4 stories; below grade: 0 ft., 0 stories  
 Use & Occupancy B-Business How is Building Occupied Office Use  
 Gross Floor Area: \_\_\_\_\_  
 3. Owner: See Attachment For Listing Phone No.: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 4. Applicant: Vappi & Company, Inc. Lessee or other: \_\_\_\_\_  
 Address: 240 Sidney St., Cambridge, MA 02139 Phone No.: 661-8200  
 5. Contractor: Vappi & Company, Inc. License No.: \_\_\_\_\_  
 Address: 240 Sidney St., Cambridge, MA 02139 Phone No.: 661-8200  
 6. Architect/designer: Monacelli Associates, Inc. Registration No.: C.O.M. 2379  
 Address: 806 Massachusetts Ave Cambridge, MA Phone No.: 661-1015  
 7. Engineer: See Attachment - License No.: \_\_\_\_\_  
 Address: For Listing Phone No.: \_\_\_\_\_  
 8. Type of work: new addition alteration repair change or use/occupancy  
 Other \_\_\_\_\_  
 9. Description of work: Four (4) story office building, approximate size,  
86,000 s.f.  
 \_\_\_\_\_  
 \_\_\_\_\_  
 10. Construction characteristics: Type of construction: 2C with Sprinkler  
 a. Type of footings: Pressure Injected Footings  
 b. Type of foundation: Pressure Injected Footing/Pile Caps/Grade Beams  
 Structural Slab. I II III IV  
 c. Type of frame: reinforced concrete structural steel masonry bearing wall wood other \_\_\_\_\_  
 d. Type of heat and fuel: Electric - Variable Air Volume System  
 11. Are the following included?: (notes: 1. see no. 18b; 2. requires separate permit; 3. see no. 16)  
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 e. Heating (note 3) yes no j. Any items in Sect. 1200.00 (note 1) yes no

Is a street Occupancy Permit necessary? Yes

Total volume (cubic ft.) \_\_\_\_\_ (if 35,000 cu. ft. and not R-3, requires stamp of Massachusetts registered P.E. or Architect - see no. 6 and no. 7) (EXCEPTION: single family residences)

Is structure subject to control in accordance with section 127.0 of the Massachusetts State Building Code? If YES, state the following and attach affidavits in accordance with Section 113.5.1 of State Building Code.

- a. Laboratory: \_\_\_\_\_ License No.: \_\_\_\_\_  
Address: \_\_\_\_\_
- b. Technician: \_\_\_\_\_ License No.: \_\_\_\_\_  
Address: \_\_\_\_\_
- c. Plan review waived: \_\_\_\_\_
- d. Structural review waived: \_\_\_\_\_

Costs: read entirely before completing-

A. Estimated cost of general work: \$5,024,512 (See Attached Copy) (less 62400 and 57600)

B. If any of the following are checked as "YES" in item 11 and included in cost in item 15 A above, then include below.

- a. Fire extinguishing equipment \$ \_\_\_\_\_
- b. Plumbing \$ \_\_\_\_\_
- c. Water piping \$ \_\_\_\_\_
- d. Gas fitting \$ \_\_\_\_\_
- e. Heating \$ \_\_\_\_\_
- f. Air conditioning \$ \_\_\_\_\_
- g. Electrical \$ \_\_\_\_\_
- h. Sprinklers \$ \_\_\_\_\_
- i. Fire detection equipment \$ \_\_\_\_\_

Is compliance with article 20 (Energy Conservation) of the State Building Code required in any part of the work?

yes  no  if YES, answer no. 17.

Does a summary and certification of compliance with Article 20 (Energy) accompany this application?

yes  no

Plans and specifications: (Section 113.5 of state building code)

- a. Specifications submitted: Yes No. of copies: 3-Bldg. Dept.
- b. Plans submitted: Yes No. of copies: 3-Bldg. Dept.

(If any one of items 11a, h, i or j is answered Yes; 1 set of plans is required to be sent to the Fire Dept. for review, and a copy of transmittal form attached to this application.) (Plans will be sent by this department)

If existing building, complete the following:

- a. Type of construction: \_\_\_\_\_
- b. Use group: \_\_\_\_\_
- c. Occupancy: \_\_\_\_\_
- d. No. of rooms/units: \_\_\_\_\_
- e. Height in feet: \_\_\_\_\_
- f. Height in stories above/grade: \_\_\_\_\_
- g. Area per floor: \_\_\_\_\_
- h. Total volume (cubic feet): \_\_\_\_\_

Gross Floor Area: (All floors, incl. bsmt/attic) \_\_\_\_\_

Number of persons per floor

Live load per floor (PSF)

	a	b	a	b	a	b	a	b
1	165	100	6		11		16	
2	185	70	7		12		17	
3	193	70	8		13		18	
4	193	70	9		14		19	
5			10		15		20	

e Load 50 psf  
tition 20 psf

al L.L. 70 psf

21. READ BEFORE SIGNING: (and the following sections of Massachusetts State Building Code)

The undersigned hereby certifies that he/she has read and examined this application and that the proposed work subject to the provision of the Massachusetts State Building Code and other applicable laws and ordinances is accurately represented in the statements made in this application and that the work shall be carried out in accordance with the foregoing statements and in compliance with the provisions of law and ordinance in force on the date of this application to the best of his/her ability.

The following sections are quoted directly from the Massachusetts State Building Code, as of June 1, 1979.

113.6 SITE PLAN: There shall also be filed prior to a permit being granted for the excavation or for the erection of any building or structure a site plan showing to scale the size and location of all new construction and all existing structures on the site, distances from lot lines, the established street grades if they exist (verified by the town or city), and proposed finished grades. In the case of demolition, the site plan shall show all construction to be demolished and the location and size of all existing structures and construction that are to remain on the site or plot. The site plan shall not be changed except as specified in Sections 113.8 and 115.3.

114.3 EXPIRATION OF PERMIT: Any permit is issued shall be deemed abandoned and invalid unless the work authorized by it shall have been commenced within six (6) months after its issuance; . . . . .

114.7 REVOCATION OF PERMITS: The building commissioner may revoke a permit or approval issued under the provisions of this Code in the case of any false statement or misrepresentation of fact in the application or the plans on which the permit or approval was based.

115.1 COMPLIANCE WITH CODE: The permit shall be a license to proceed with the work and shall not be construed as authority to violate, cancel or set aside any of the provisions of this Code, except as specifically stipulated by modification or legally granted variation in accordance with Section 126.0.

115.2 COMPLIANCE WITH PERMIT: All work shall conform to the stamped or endorsed application and plans for which the permit has been issued and any approved amendments thereto.

115.3 CHANGE IN SITE PLAN: A lot or site shall not be changed, increased or diminished in area from that shown on the official site plan, as specified in Section 113.6, unless a revised plan showing such changes accompanied by the necessary affidavit of owner or applicant shall have been filed and approved. EXCEPTION: A revised site plan will not be required if the change is caused by reason of an official street opening, street widening or other public improvement.

119.1 NEW BUILDINGS AND STRUCTURES: A building or structure hereafter shall not be used or occupied in whole or in part until the certificate of use and occupancy shall have been issued by the building commissioner or inspector of buildings or, when applicable, the state inspector. The certificate shall not be issued until all the work has been completed in accordance with the provisions of the approved permits and of the applicable codes for which a permit is required, except as provided in Section 119.4.

119.2 BUILDINGS OR STRUCTURES HEREAFTER ALTERED: A building or structure, in whole or in part, altered to change: from one use group to another; to a different use within the same group; the fire grading; the maximum live load capacity; the occupancy load capacity; or a building or structure hereafter altered for which a certificate of use and occupancy has not been heretofore issued, shall not be occupied or used until the certificate shall have been issued certifying that the work has been completed in accordance with the provisions of the approved permits and of the applicable codes for which a permit is required. Any use or occupancy, which was not discontinued during the work of alteration, shall be discontinued within thirty (30) days after the completion of the alteration unless the required certificate is issued.

122.3 VIOLATION PENALTIES: A person who shall violate a provision of the Basic Code shall be punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year, or both, for each violation. Each day during which any portion of a violation continues shall constitute a separate offense.

*Richard L. Fiorenza*  
(Signature of Licensed Builder or Wrecker)

Richard L. Fiorenza  
(Address) 12 Beverly Road  
Reading, MA 01867

*Sum*  
Lic. No. B00601 Class ABC

My license expires 11/13/87 City or Town Boston

*David R. Vickery*  
(Signature of Owner or Authorized Representative)

Alewife Phase I Limited Partnership  
124 Mt. Auburn Street  
Cambridge, MA 02138

(Address)  
C/O David R. Vickery

Telephone No. 661-8200

*Sum*  
11/13/88

48 Whittemore Ave  
Cambridge, MA



# CITY OF CAMBRIDGE

INSPECTIONAL SERVICES DEPARTMENT CITY HALL  
CAMBRIDGE, MASSACHUSETTS 02139 (617) 498-9013



JOSEPH J. CELLUCCI  
COMMISSIONER OF BUILDINGS  
AND HOUSING

# 120372

The undersigned hereby applies for a Permit to Build, Alter, Repair  
in accordance with Section 113.0 of Mass. State Building Code

OFFICE  
USE

FEE \_\_\_\_\_ SPECIAL \_\_\_\_\_ TOTAL FEE \_\_\_\_\_

87 DEC 3 11  
Date Received: \_\_\_\_\_  
Date Issued: \_\_\_\_\_  
Permit No.: \_\_\_\_\_

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T

- (PRINT IN INK) 148 Whittemore Avenue
- Building Location: Cambridge, MA Date of Application: 12/01/87
  - Zone 1C Certified plot plan submitted Yes Lot area 336,283sf Frontage 222.4 ft.  
Set backs: front 21 ft right 27ft left 14 ft rear 545.0 ft.  
Height above grade: 53 ft., 4 stories; below grade: 0 ft., 0 stories  
Use & Occupancy B-Business How is Building Occupied Office use
  - Owner: See Attachment for Listing Gross Floor Area: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone No.: \_\_\_\_\_
  - Applicant: Vappi & Company, Inc. Lessee or other: \_\_\_\_\_  
Address: 240 Sidney St, Cambridge, MA 02139 Phone No.: 661-8200
  - Contractor: Vappi & Company, Inc. License No.: \_\_\_\_\_  
Address: 240 Sidney St, Cambridge, MA 02139 Phone No.: 661-8200
  - Architect/designer: Monacelli Associates, Inc. Registration No.: C.O.M 2379  
Address: 806 Massachusetts Avenue Cambridge, MA Phone No.: 661-1015
  - Engineer: See Attachment for Listing License No.: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone No.: \_\_\_\_\_
  - Type of work: new addition iteration repair change or use/occupancy  
Other \_\_\_\_\_
  - Description of work: Four (4) story office building, approximate size  
86,000 sf.  
Structural Steel Erection ONLY gmo.

- Construction characteristics: Type of construction: 2C with Sprinkler
  - Type of footings: Pressure Injected Footings
  - Type of foundation: Pressure Injected Footing/Pile Caps/Grade Beams/Structural
  - Type of frame: I reinforced concrete II structural steel III masonry bearing wall IV wood Slab other
  - Type of heat and fuel: Electric - Variable Air Volume System

- Are the following included?: (notes: 1. see no. 18b; 2. requires separate permit; 3. see no. 16)

a. Fire extinguishing equip. (note 1)	yes	no	f. Air conditioning (note 3)	yes	no
b. Plumbing (note 2)	yes	no	g. Electrical (note 2)	yes	no
c. Water pipes (note 2)	yes	no	h. Sprinklers (note 1)	yes	no
d. Gas fitting (note 2)	yes	no	i. Fire detection equip. (note 1)	yes	no
e. Heating (note 3)	yes	no	j. Any items in Sect. 1200.00 (note 1)	yes	no

12. Is a street Occupancy Permit necessary? Yes

13. Total volume (cubic ft.) \_\_\_\_\_ (if 35,000 cu. ft. and not R-3, requires stamp of Massachusetts registered P.E. or Architect - see no. 6 and no. 7) (EXCEPTION: single family residences)

14. Is structure subject to control in accordance with section 127.0 of the Massachusetts State Building Code? If YES, state the following and attach affidavits in accordance with Section 113.5.1 of State Building Code.

- a. Laboratory: \_\_\_\_\_ License No.: \_\_\_\_\_  
Address: \_\_\_\_\_
- b. Technician: \_\_\_\_\_ License No.: \_\_\_\_\_  
Address: \_\_\_\_\_
- c. Plan review waived: \_\_\_\_\_
- d. Structural review waived: \_\_\_\_\_

15. Costs: read entirely before completing—

A. Estimated cost of general work: \$576,000 (See Attached Copy)

B. If any of the following are checked as "YES" in item 11 and included in cost in item 15 A above, then include below.

- a. Fire extinguishing equipment \$ \_\_\_\_\_
- b. Plumbing \$ \_\_\_\_\_
- c. Water piping \$ \_\_\_\_\_
- d. Gas fitting \$ \_\_\_\_\_
- e. Heating \$ \_\_\_\_\_
- f. Air conditioning \$ \_\_\_\_\_
- g. Electrical \$ \_\_\_\_\_
- h. Sprinklers \$ \_\_\_\_\_
- i. Fire detection equipment \$ \_\_\_\_\_

16. Is compliance with article 20 (Energy Conservation) of the State Building Code required in any part of the work?  
yes no if YES, answer no. 17.

17. Does a summary and certification of compliance with Article 20 (Energy) accompany this application?  
yes no

18. Plans and specifications: (Section 113.5 of state building code)

- a. Specifications submitted: Yes No. of copies: 3-Bldg Dept
- b. Plans submitted: Yes No. of copies: 3-Bldg Dept

(If any one of items 11a, h, i or j is answered Yes; 1 set of plans is required to be sent to the Fire Dept. for review, and a copy of transmittal form attached to this application.) (Plans will be sent by this department)

19. If existing building, complete the following:

- a. Type of construction: \_\_\_\_\_
- b. Use group: \_\_\_\_\_
- c. Occupancy: \_\_\_\_\_
- d. No. of rooms/units: \_\_\_\_\_
- e. Height in feet: \_\_\_\_\_
- f. Height in stories above/grade: \_\_\_\_\_
- g. Area per floor: \_\_\_\_\_
- h. Total volume (cubic feet): \_\_\_\_\_

20. a. Number of persons per floor \_\_\_\_\_

b. Live load per floor (PSF)

Live Load 50 psf  
Partition 20 psf  
Total L.L 70 psf

	a	b	a	b	a	b	a	b
1	165	100	6		11		16	
2	185	70	7		12		17	
3	193	70	8		13		18	
4	193	70	9		14		19	
5			10		15		20	

21. READ BEFORE SIGNING: (and the following sections of Massachusetts State Building Code)

The undersigned hereby certifies that he/she has read and examined this application and that the proposed work subject to the provision of the Massachusetts State Building Code and other applicable laws and ordinances is accurately represented in the statements made in this application and that the work shall be carried out in accordance with the foregoing statements and in compliance with the provisions of law and ordinance in force on the date of this application to the best of his/her ability.

The following sections are quoted directly from the Massachusetts State Building Code, as of June 1, 1979.

- 113.6 SITE PLAN: There shall also be filed prior to a permit being granted for the excavation or for the erection of any building or structure a site plan showing to scale the size and location of all new construction and all existing structures on the site, distances from lot lines, the established street grades if they exist (verified by the town or city), and proposed finished grades. In the case of demolition, the site plan shall show all construction to be demolished and the location and size of all existing structures and construction that are to remain on the site or plot. The site plan shall not be changed except as specified in Sections 113.8 and 115.3.
- 114.3 EXPIRATION OF PERMIT: Any permit is issued shall be deemed abandoned and invalid unless the work authorized by it shall have been commenced within six (6) months after its issuance; . . . .
- 114.7 REVOCATION OF PERMITS: The building commissioner may revoke a permit or approval issued under the provisions of this Code in the case of any false statement or misrepresentation of fact in the application or the plans on which the permit or approval was based.
- 115.1 COMPLIANCE WITH CODE: The permit shall be a license to proceed with the work and shall not be construed as authority to violate, cancel or set aside any of the provisions of this Code, except as specifically stipulated by modification or legally granted variation in accordance with Section 126.0.
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- 119.2 BUILDINGS OR STRUCTURES HEREAFTER ALTERED: A building or structure, in whole or in part, altered to change: from one use group to another; to a different use within the same group; the fire grading; the maximum live load capacity; the occupancy load capacity; or a building or structure hereafter altered for which a certificate of use and occupancy has not been heretofore issued, shall not be occupied or used until the certificate shall have been issued certifying that the work has been completed in accordance with the provisions of the approved permits and of the applicable codes for which a permit is required. Any use or occupancy, which was not discontinued during the work of alteration, shall be discontinued within thirty (30) days after the completion of the alteration unless the required certificate is issued.
- 122.3 VIOLATION PENALTIES: A person who shall violate a provision of the Basic Code shall be punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year, or both, for each violation. Each day during which any portion of a violation continues shall constitute a separate offense.

*Richard L. Fiorenza*  
(Signature of Licensed Builder or Wrecker)

Richard L. Fiorenza  
(Address) . . . 12 Beverly Road  
Reading, MA 01867

*David R. Vickery*  
(Signature of Owner or Authorized Representative)

Alewife Phase I Limited Partnership  
124 Mt. Auburn Street, Cambridge, MA 02138  
c/o David R. Vickery (Address)

Lic. No. . . . B00601 . . . . Class . . . ABC . . . . .

My license expires. . . . 11/13/87 . . . . City or Town. . . . Boston . . . . Telephone No. . . . 661-8200

**HOLD HARMLESS CLAUSE:** The Permittee(s) by acceptance of this permit agree(s) to indemnify and hold harmless the City of Cambridge, and its employees, from and against any and all claims, demands and actions for damages resulting from operations under this permit, regardless of negligence of the City of Cambridge, and its employees, and to assume the defense of the City of Cambridge, and its employees, against all such claims, demands and actions.

**OFFICE USE**

**22. Additional Information needed from:**

Electrical	Gas	Engineering
Plumbing	Energy	*Rent Control Sign Off
Mechanical	Planning Board	Historical
Fire Department	Conservation	Board of Zoning Under Appeal
Traffic	Water	Other _____

\*Date \_\_\_\_\_ Hearing Examiner \_\_\_\_\_

**23. Application Approval: Subject to the provisions of the Building Code, Zoning Laws of the City of Cambridge and State Law and Regulations.**

Application accepted by: \_\_\_\_\_ CD \_\_\_\_\_ Date: 11/12/87  
Plans accepted by: \_\_\_\_\_ CD \_\_\_\_\_ Bin No. 446  
Zoning approved by: \_\_\_\_\_ W.A. PB 43 \_\_\_\_\_ Date: 12/3/87  
Plan Review approval by: \_\_\_\_\_ CD \_\_\_\_\_ Date: 12/3/87  
Permit granted by: \_\_\_\_\_ [Signature] \_\_\_\_\_ Date: 12/3/87

24. Renewal issued \_\_\_\_\_

25. Certified plot plan submitted after foundation placed \_\_\_\_\_

26. Inspections made \_\_\_\_\_ Final Inspection made \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

27. Certificate of Use and/or Occupancy issued: \_\_\_\_\_

**BRIEF OVERVIEW OF WHY THE EXISTING PUD PERMIT FOR ALEWIFE  
CENTER IS NO LONGER VALID**

**PREPARED BY MEMBERS OF THE  
ALEWIFE STUDY GROUP  
6 MAY, 1996**



**I. THE FOLLOWING FACTS WERE NOT RECOGNIZED IN LEGAL DEPT. MEMO OF MAY 3, 1996 ADDRESSING THE VALIDITY OF THE EXISTING PUD PERMIT FOR ALEWIFE CENTER.**

**A. TIMELINE OF DOCUMENTS (note address is Whittemore Ave not Alewife One)**

**4/12/84** Public hearing notice (Camb. Chronicle,) for 4/26/84 hearing on height variance for 126-140 Whittemore Ave. Size of parcel is 3.3 acres (minimum PUD site is 5 acres)

**4/23/84** PB memo to BZA, case #5107 126-140 Whittemore Avenue: "Leave decision to the BZA"

This proves PB didn't consider this permit part of PUD, as PB has jurisdiction over PUDs.

**5/29/84** Height variance (#5107) for IC zoning district granted by BZA (126-140 Whittemore)  
setback granted: 16 ft.

**9/12/84** House moving permit (#091207) requested; granted 9/12/84 (148 Whittemore Ave)

**2/28/85** Building permit for Zone IC (#80900) requested; granted 6/7/85 (148 Whittemore Ave)

**3/6/85** Received bonding for \$64,718 (148 Whittemore Ave)

**8/19/86** In-progress drawings for permit #082025 (on file at inspectional services)  
5 drawings showing foundation, floor, framing plans (148 Whittemore)

**8/20/86** Building permit (#082025) for foundation work (148 Whittemore)

**10/9/86; 10/16/86** Public hearing notice (Camb. Chronicle) for 10/23/86 hearing by BZA on expired height variance (148 Whittemore) Now requesting for 7 acres, not 3.3 originally requested; still IC district, increased setback from 16' (1984) to 21'.

**10/21/86 Planning Board Memo to Board of Zoning Appeals**

The Planning Board's preference would have been that the project follow the PUD process instead of the variance procedure. However, given the history of the project including the variance previously granted by the BZA in 1984, the Planning Board understands that there has been a rationale to the application for a variance, that is, the Whittemore Avenue site is on the periphery of the larger Alewife Center project and has a different timetable. . . .

[T]he PUD process includes a review at all levels of a project, from early conception to final design. If the BZA reconfirms its earlier variance, the Planning Board



recommends that the following conditions, which would have been required under a PUD decision, be required.

1. That the final design, including facade treatment, materials, and landscaping be approved by Community Development Department staff, and
2. The developer will continue to update the neighborhood and Community Development Department staff on the relation of this project's design to the Alewife Center Plan.

**11/6/86** BZA variance decision grant; DOES NOT INCLUDE requirements requested by PB (see above); "the granting of the variance will not . . . result in an increase in traffic beyond that which would be generated by a building . . . constructed as of right."  
Setback to 21 ft. to reduce shadows

**11/86** Cambridge Chronicle article on "BZA Approves Grace Permit" : "The only difference between the recent variance and the expired variance of 1984 is an additional 4.7 acres, which Hines project manager David Vickery claims is for parking."

**1/15/87** Notice of hearing (in Camb. Chronicle ) for 2/3/87 Planning Board hearing on PUD special permit for property "off" of Whittemore Ave.

**1/29/87**: letter from Paul Dietrich, Chair PB- "We understand that you are not yet proposing detailed designs for each of the buildings. We do need to understand what guidelines you propose for the future development..." without reference to Alewife 1. If Alewife 1, which was being built, was supposedly part of the PUD, why didn't the letter mention it?

**11/9/87** Document accompanying structural building permit application (#121861) for 148 Whittemore Ave., (requested, granted 12/18/87); shows \$624,000 spent by date of application on foundation; estimates structural steel costs \$576,000.

**11/12/87** Structural steel building permit (#120372) (accepted; requested 12/1/87; granted 12/3/87) for 148 Whittemore Ave.; shows following costs expended: piles, site work, concrete/rebar, masonry/granite

**12/1/87** Planning Board decision, , renewing flood plain variance (original grant 8/7/84; application for renewal 10/18/84) "Renewal for the Special Permit 43 for a single 88,000 square foot building not in the floodplain overlay district is proposed for Whittemore Avenue with related parking which is in the floodplain overlay district. . ." "After consideration of the application for renewal the Planning Board grants a special permit to construct an office building and accessory parking in the Floodplain Overlay District generally as described in the original Special Permit filed on Nov. 28, 1984 with the city clerk." Zoning district is IC; Address is 143 Whittemore Ave.

x

## **II. HOW THE PUD CONFLICTS WITH THE BUILDING OF 1 ALEWIFE CENTER**

The following paragraphs illustrate a few of the reasons proving that 1 Alewife Center was built as a stand-alone development, not as part of a larger PUD process:

A. PUD Page 13; 2(a)(3) In addition to such changes note above... In the event a permit issued by some other permit granting authority modifies the overall master plan concept or the mix of uses as approved, the Planning Board shall require a new hearing on the proposed changes to the extent that such changes constitute a major amendment as defined in Paragraph 2(a)(2) above." So, because there was a never a hearing for a major amendment for 1 Alewife Center's differences from the PUD (parcel size went from 3 acres to 7 acres; parking at Alewife 1 is above grade, PUD is below grade; 1 Alewife is smaller than other office buildings in PUD; 1 Alewife does not align with or help shape the mall as PUD page 10, 3(1) says) it could not have been part of the PUD. If 1 Alewife Center had been part of the PUD, these differences and others too, would have required a major amendment.

B. The proponent did not follow proper zoning procedure for PUD when doing 1 Alewife Center. Zoning Code Dimensional Regulation 13.142 says "PB shall approve all lot sizes within a development parcel," but PB never reviewed the lot size of 1 Alewife Center within PUD. Instead, it was done, twice, by BZA. The first time there were only four acres involved, one acre less than PB should have required, the second time another 3 acres were added for accessory parking.

C. 1 Alewife Center violates finding 2(c)(2) (page 7) states that "ample parking is provided in enclosed garages under each building." This parking requirement is not true for 1 Alewife Center.

D. 13.144 allows PUD heights of 85 feet, 60 feet without being a major modification under PUD permit 1(c) page 12 says over 60' is a major amendment, but 1 Alewife Center received a BZA *variance* for its height of 53', so how could it have been part of the PUD.

E. Similarly, 13.143 says PB approves all setbacks in a PUD but BZA approved 1 Alewife Center's setbacks.

## **III. THE PUD PERMIT ITSELF CONFLICTS WITH THE NOTION THAT 1 ALEWIFE CENTER WAS PART OF THE PUD.**

A. The PUD states that "[t]he Planning Board shall approve of the design of each phase of the project. Phases of the project are defined as (I) each of the buildings . . . Such review shall be initiated no later than the design development phase of each building or landscape element. . . As the final product of the review the Planning Board shall certify to the Superintendent of Buildings that all final design plans conform to the requirements of this Decision before a building permit, or certificate of occupancy where no building is involved, may be issued."



[see attached, dated Dec. 1, 1989]

THIS language is the language cited in the first legal department memo for why this scenario "present[s] a very close case making it difficult to predict how a court would rule on this issue. Since there have been no relevant legal decisions since this last memo, why are they so sure now? [see attached, dated May 3, 1996]?

#### IV. STATEMENTS AGAINST INTEREST BY DEVELOPER

Statements in various documents to MEPA

DEIR Design Evolution (dated Dec. 1986):

All permits received for construction of Alewife One by 1985

Included in No-Build Alternative (existing conditions of site with imminent construction of Alewife One)

PUD process is never mentioned in the DEIR

FEIR (dated Nov. 1987)

No-Build Alternative is defined as the existing condition of the site with the inclusion of Alewife Center I. . . which received all its necessary environmental approvals and building permits in 1985 and which is now under construction. . .



# SUPPORTING DOCUMENTS

## CITY OF CAMBRIDGE BOARD OF ZONING APPEAL

The Board of Zoning Appeal will hold a public hearing on Thursday, April 26, 1984 in Room 200, City Hall, Cambridge, Massachusetts. The following cases will be heard:

7:00 P.M.

**Case No. 5102:** 1 and 3 Soden Place/14 Soden Street, Residence C-1 Zone: **Joan Lautenschleger and David H. Halpert, Joseph S. Vera and Jane Creed Vera.** Variance: Subdivision of the lot so that each house has its own lot. Article 5.000, Section 5.15 (subdivision) Section 5.31 (Table Dimensional Requirements) of the Zoning Ordinance

7:20 P.M.

**Case No. 5103:** 738 Cambridge Street, Residence C-1 Zone. **Ernest and Salvatore Coppola.** Variance: Construct a one-story addition to a bakery. Violations of Article 4.000, Section 4.37b2 (use), Article 5.000, Section 5.31 (Table Dimensional Requirement; Article 8.000, Section 8.22e (Alteration of non-conforming structure) of the Zoning Ordinance

7:40 P.M.

**Case No. 5104:** 15-21 Ellery Street, Residence C-1 Zone: **Ellery Trowbridge Trust.** Special Permit to allow parking with insufficient setback. Violation of Article 6.000, Section 6.441 of the Zoning Ordinance.

8:00 P.M.

**Case No. 5105:** 15 Trowbridge Street, Residence C-1 Zone: **Ellery Trowbridge Trust.** Variance: To legitimize the thirteenth existing unit (Apt. no. 12a) Special Permit, provide for non-accessory parking for 15 Trowbridge Street for 13 vehicles on the owner's lot at 15-21 Ellery Street. Violation of Article 5.000, Section 5.26 (conversion); Section 5.31 (Table Dimensional Requirements); Article 6.000, Section 6.222b (off-site parking) of the Zoning Ordinance.

8:20 P.M.

**Case No. 5106:** ~~74-75~~ Alewife Brook Parkway, Residence B Zone: **Francois & Agnes Tomezy.** Variance: To allow the existing basement apartment. Article 4, Section 4.31g, Article 5, Section 5.26 and Section 5.31.

126-140 Whittemore Avenue, Industry C Zone: **Hines Industrial Co.** Variance: To allow proposed office building to exceed the 45 foot height limitation. (Proposed height: 53') Violation of Article 5.000, Section 5.34 of the Zoning Ordinance

Eileen McGaughey  
Secretary

(C)Apr. 12, 1984

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CITY OF CAMBRIDGE  
COMMUNITY DEVELOPMENT DEPARTMENT

City Hall Annex Inman & Broadway

**To** Board of Zoning Appeals

**From** Planning Board

**Date** April 23, 1984

**Subject** Board of Zoning Appeals Cases no. 5102-5107

Case no. 5102

1 and 3 Soden Place/ 14 Soden Street  
Leave decision to the BZA

Case no. 5103

738 Cambridge Street

The Planning Board does not ordinarily support the variance for the addition to the bakery. The work to be performed would involve expansion of a non-conforming use into a residential neighborhood. Such expansion would provide only one foot setback on the property when a minimum of 20 feet is required.

Case no. 5104 and no. 5105

15-21 Ellery Street and 15 Trowbridge Street

The Planning Board recommends the granting of the Special Permit to allow parking with insufficient setbacks at 15-21 Ellery Street. The Board also recommends the Special Permit that would allow residents of 15 Trowbridge Street to use thirteen parking spaces on the owner's lot at 15-21 Ellery Street. Thirteen parking spaces will be tied to each unit at 15 Trowbridge Street.

The decision for the variance to legitimize the thirteenth unit at 15 Trowbridge Street should be left to the BZA.

Case no. 5106

24-25 Alewife Brook Parkway  
Leave decision to the BZA.

Case no. 5107

126-140 Whittemore Avenue  
Leave decision to the BZA.

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CITY OF CAMBRIDGE  
BOARD OF ZONING APPEAL  
VARIANCE DECISION

RECEIVED BY  
OFFICE OF CITY CLERK  
MAY 29 10 15 AM '84  
CAMBRIDGE, MASS.

5107

126-140 Whittemore Avenue

Industry C Zone/Flood Plain Overlay District

Middlesex (South) County Registry of Deeds: Book

5268, Page 228; Book 6588, Page 415; Book 6634,

Page 529; Book 6636, Page 23; Book 9957, Page 136;

Book 11698, Page 136; Book 11698, Page 423; Book

14265, Page 312; Middlesex (South) Registry

District of the Land Court: Certificates of Title

No. 31493, 39472, 44505, 163178, 166439, 166441.

Hines Industrial Co.

W.R. Grace & Co.

Variance to allow a four-story office building on  
the premises to be built to a height of 53 feet  
(exceeding the 45 foot height limitation applicable  
in the IC Zoning District; Article 5, Section 5.34,  
Table 5-4 of the Cambridge Zoning Ordinance).

h Russell,  
cent Panico,  
ndan Sullivan,  
. Clauson,  
embers;  
vin Gadd,  
ssociate  
ember;  
hard Horgan,  
oning  
pecialist.

h Russell,  
cent Panico,  
ndan Sullivan,  
. Clauson,  
embers;  
vin Gadd,  
ssociate  
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The premises to which this variance relates is a three acre parcel of land located on Whittemore Avenue within an Industry C Zoning District. The premises are also located with the Flood Plain Overlay District. The proposed four-story office building will be built to a height of 53 feet and will violate the 45 foot height limitation applicable in the IC Zoning District and set forth in Article 5.000, Section 5.34, Table 5-4 of the Cambridge Zoning Ordinance.

The premises is an irregularly shaped lot which has its narrowest width at the Whittemore Avenue lot line. The area available for construction is affected by the boundary of the Flood Zone A5 which sets back approximately 180 feet from Whittemore Avenue and extends (at varying setbacks) opposite the width of the street frontage. These factors have influenced the decision to locate the proposed building between the front lot line and the winding flood zone boundary. As a result of the unusual site constraints, it is necessary to construct the proposed building at a greater height than allowed in order to make a reasonable use of the site.

The proposed building will contain only four stories, the number of stories contemplated by the 45-foot height limitation. The proposed building will exceed the 45-foot limitation by eight feet (less than one typical story) because the petitioner's design standards call for a greater floor to ceiling height than one might expect in other buildings. The proposed building will contain 87,000 square feet of gross floor area and will comply with the 1.0 floor area ratio applicable in the IC Zoning



District. Therefore, the granting of the variance will not allow an excessive number of people to be employed on the premises, nor result in an increase in traffic beyond that which would be generated by a building containing the same number of square feet of gross floor area constructed as of right on the premises. Literal application of the height limitation in this context would require each story of the building to be reduced in height, causing the proposed building to be reduced in quality and resulting in substantial financial hardship to the petitioner. The variance requested is the minimum variance which allows the reasonable and allowed use of the site for an office building of the proposed gross floor area.

In response to the concerns of occupants of neighboring residences, petitioner has agreed to set the proposed building back approximately sixteen feet from the lot line that runs along Whittemore Avenue to reduce the shadow patterns that would be cast if the proposed building was constructed as shown on the plot plan submitted with the petition for this variance. Consequently, the shadow patterns cast after construction of the proposed building will be no greater than those which would be cast if the building were 45 feet high and built on the Whittemore Avenue lot line. Such a building could be built as of right under the Zoning Ordinance. By agreeing to set the building back from the lot line, petitioner is serving one of the principal purposes of the height limitation, namely providing for adequate light to reach abutting streets, land and buildings. Accordingly, the variance can be granted without substantial

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detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning Ordinance.

#### SUMMARY OF FINDINGS

1. Petitioner is planning to construct a four-story office building on the three-acre premises.
2. The proposed office building will be 53 feet in height.
3. The 45-foot height limitation contained in Article 5.000, Section 5.34, Table 5-4 of the Zoning Ordinance would require that the proposed building be reduced in height and consequently in quality, causing substantial financial hardship to the petitioner, and would be an unreasonable limitation on use of the site in light of its unique circumstances.
4. The proposed building will be set back approximately sixteen feet from the Whittemore Avenue lot line. As a result, the shadow patterns cast by the proposed building will be no greater than those that would be cast by a 45-foot high building which could be constructed as of right on the Whittemore Avenue lot line and one of the principal purposes of the height limitation of the Zoning Ordinance will be served.
5. The premises is an irregularly shaped lot with its narrowest width at the Whittemore Avenue lot line, a condition not generally affecting other land in the IC Zoning District.

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6. The premises is partially within the Flood Plain Overlay District and contains poor soil conditions which so limit the area of the premises which the Building may cover that the only feasible and practical alternative is to construct the proposed building within the limited area available at a greater height than allowed.
7. The construction of the proposed building is consistent with PUD Overlay for this area which represents the City's most recent policy for use of this area.
8. Development of buildings of this sort is being encouraged by the City at this time and is appropriate in this area.
9. Owing to circumstances relating to the soil conditions and shape of the site, especially affecting the site and not other land within the applicable zoning and overlay district, a literal enforcement of the provisions of the Zoning Ordinance would involve substantial hardship, financial and otherwise, to the petitioner, and desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning Ordinance.

THEREFORE, the Board of Zoning Appeal unanimously votes to grant the relief sought to allow the proposed office building to be built to a height of 53 feet; provided, however, that (i) a landscape plan be prepared for approval by Mr. Clauson, whom the Board designates to review and approve such plan, and (ii) such landscape plan show planting of trees to accomplish the dense screening of the proposed building when viewed from Whittemore Avenue.

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**HOLD HARMLESS CLAUSE:** The Permittee(s) by acceptance of this permit agree(s) to indemnify and hold harmless the City of Cambridge, and its employees, from and against any and all claims, demands and actions for damages resulting from operations under this permit, regardless of negligence of the City of Cambridge, and its employees, and to assume the defense of the City of Cambridge, and its employees, against all such claims, demands and actions.



**CITY OF CAMBRIDGE**  
INSPECTIONAL SERVICES DEPARTMENT CITY HALL  
CAMBRIDGE, MASSACHUSETTS 02139 (617) 498-9013

JOSEPH J. CELLUCCI  
COMMISSIONER OF BUILDINGS  
AND HOUSING

**OFFICE USE**

**22. Additional Information needed from:**

Electrical	Gas	Engineering
Plumbing	Energy	*Rent Control Sign Off
Mechanical	Planning Board	Historical
Fire Department	Conservation	Board of Zoning Under Appeal
Traffic	Water	Other _____

\*Date \_\_\_\_\_ Hearing Examiner \_\_\_\_\_

**23. Application Approval:** Subject to the provisions of the Building Code, Zoning Laws of the City of Cambridge and State Law and Regulations.

Application accepted by: J. Cellucci Date: 9/12/84  
 Plans accepted by: " Bin No: 443  
 Zoning approved by: D. Hogan Date: 9/12/84  
 Plan Review approval by: J. Cellucci Date: 9/12/84  
 Permit granted by: " Date: "

24. Renewal issued \_\_\_\_\_

25. Certified plot plan submitted after foundation placed \_\_\_\_\_

26. Inspections made \_\_\_\_\_ Final Inspection made \_\_\_\_\_

11/30/84 BLDG MOVED

27. Certificate of Use and/or Occupancy issued: \_\_\_\_\_

The undersigned hereby applies for a Permit to Build, Alter, Repair  
in accordance with Section 113.0 of Mass. State Building Code.

OFFICE

FEE 251<sup>00</sup> SPECIAL — TOTAL FEE 251<sup>00</sup> Date Received: SEP 13 1984  
 Date Issued: 09/20/84  
 Permit No.: \_\_\_\_\_

**(PRINT IN INK)**

- Building Location: 44 Whittemore Ave Date of Application: Sept. 12, 1984
- Zone \_\_\_\_\_ Certified plot plan submitted \_\_\_\_\_ Lot area \_\_\_\_\_ Frontage \_\_\_\_\_  
 Set backs: front \_\_\_\_\_ right \_\_\_\_\_ left \_\_\_\_\_ rear \_\_\_\_\_  
 Height above grade: \_\_\_\_\_ ft., \_\_\_\_\_ stories; below grade: \_\_\_\_\_ ft., \_\_\_\_\_ stories  
 Use & Occupancy \_\_\_\_\_ How is Building Occupied \_\_\_\_\_
- Owner: W.R. GRACE Phone No.: \_\_\_\_\_  
 Address: WHITTEMORE AVE
- Applicant: James J. Murphy - Lessee or other: \_\_\_\_\_  
 Address: \_\_\_\_\_ Phone No.: \_\_\_\_\_
- Contractor: CONRAD DEAN CRIST License No.: 821  
 Address: 120 William St. South Hamilton Ma Phone No.: 468-3511
- Architect/designer: BECKSTUFFER & ASSOC. Registration No.: \_\_\_\_\_  
 Address: 288 Newbury St. Bos. Phone No.: \_\_\_\_\_
- Engineer: \_\_\_\_\_ License No.: \_\_\_\_\_  
 Address: \_\_\_\_\_ Phone No.: \_\_\_\_\_
- Type of work: new addition alteration repair change or use/occupancy  
 Other: More 2 story house
- Description of work: \_\_\_\_\_  
More existing dwelling from 146 Whittemore  
12-131 Whittemore Ave. As per Plans attached  
Subject to Test Borings - field submitted.
- Construction characteristics: Type of construction: \_\_\_\_\_  
 a. Type of footings: Concrete  
 b. Type of foundation: Concrete and masonry  
 c. Type of frame: reinforced concrete structural steel masonry bearing wall wood other \_\_\_\_\_  
 d. Type of heat and fuel: \_\_\_\_\_
- Are the following included?: (notes: 1. see no. 18b; 2. requires separate permit; 3. see no. 18)  

a. Fire extinguishing equip. (note 1)	yes	no	f. Air conditioning (note 3)	yes	no
b. Plumbing (note 2)	yes	no	g. Electrical (note 2)	yes	no
c. Water pipes (note 2)	yes	no	h. Sprinklers (note 1)	yes	no
d. Gas fitting (note 2)	yes	no	i. Fire detection equip. (note 1)	yes	no
e. Heating (note 3)	yes	no	j. Any items in Sect. 1200.00 (note 1)	yes	no

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12. Is a street Occupancy Permit necessary? Yes
13. Total volume (cubic ft.) 41 35,000 cu. ft. and not R-3, requires stamp of Massachusetts registered P.E. or Architect — see no. 6 and no. 7) (EXCEPTION: single family residences)
14. Is structure subject to control in accordance with section 127.0 of the Massachusetts State Building Code? If YES, state the following and attach affidavits in accordance with Section 113.5.1 of State Building Code.

- a. Laboratory: \_\_\_\_\_ License No.: \_\_\_\_\_  
Address: \_\_\_\_\_
- b. Technician: \_\_\_\_\_ License No.: \_\_\_\_\_  
Address: \_\_\_\_\_
- c. Plan review waived: \_\_\_\_\_
- d. Structural review waived: \_\_\_\_\_

15. Costs: read entirely before completing—

- A. Estimated cost of general work: 33,700.
- B. If any of the following are checked as "YES" in item 11 and not included in cost in item 15 A above, then include below.
- a. Fire extinguishing equipment \$ \_\_\_\_\_
- b. Plumbing \$ 5000.
- c. Water piping \$ \_\_\_\_\_
- d. Gas fitting \$ \_\_\_\_\_
- e. Heating \$ \_\_\_\_\_
- f. Air conditioning \$ \_\_\_\_\_
- g. Electrical \$ 1000.
- h. Sprinklers \$ \_\_\_\_\_
- i. Fire detection equipment \$ \_\_\_\_\_

16. Is compliance with article 20 (Energy Conservation) of the State Building Code required in any part of the work?  
yes no if YES, answer no. 17.

17. Does a summary and certification of compliance with Article 20 (Energy) accompany this application?  
yes no

18. Plans and specifications: (Section 113.5 of state building code)

- a. Specifications submitted: \_\_\_\_\_ No. of copies: 1
- b. Plans submitted: \_\_\_\_\_ No. of copies: \_\_\_\_\_

(If any one of items 11a, h, i or j is answered Yes; 1 set of plans is required to be sent to the Fire Dept. for review, and a copy of transmittal form attached to this application.) (Plans will be sent by this department)

19. If existing building, complete the following:

- a. Type of construction: \_\_\_\_\_
- b. Use group: \_\_\_\_\_
- c. Occupancy: \_\_\_\_\_
- d. No. of rooms/units: \_\_\_\_\_
- e. Height in feet: 20'
- f. Height in stories above/grade: 2.5
- g. Area per floor: 860
- h. Total volume (cubic feet): \_\_\_\_\_

20. a. Number of persons per floor

b. Live load per floor (PSF)

	a	b	a	b	a	b	a	b
1			6		11		16	
2			7		12		17	
3			8		13		18	
4			9		14		19	
5			10		15		20	

The undersigned hereby certifies that he/she has read and examined the application and that the proposed work subject to the provision of the Massachusetts State Building Code and other applicable laws and ordinances is accurately represented in the statements made in this application and that the work shall be carried out in accordance with the foregoing statements and in compliance with the provisions of law and ordinance in force on the date of this application to the best of his/her ability.

The following sections are quoted directly from the Massachusetts State Building Code, as of June 1, 1979.

113.6 SITE PLAN: There shall also be filed prior to a permit being granted for the excavation or for the erection of any building or structure a site plan showing to scale the size and location of all new construction and all existing structures on the site, distances from lot lines, the established street grades if they exist (verified by the town or city), and proposed finished grades. In the case of demolition, the site plan shall show all construction to be demolished and the location and size of all existing structures and construction that are to remain on the site or plot. The site plan shall not be changed except as specified in Sections 113.8 and 115.3.

114.3 EXPIRATION OF PERMIT: Any permit is issued shall be deemed abandoned and invalid unless the work authorized by it shall have been commenced within six (6) months after its issuance; . . . .

114.7 REVOCATION OF PERMITS: The building commissioner may revoke a permit or approval issued under the provisions of this Code in the case of any false statement or misrepresentation of fact in the application or the plans on which the permit or approval was based.

115.1 COMPLIANCE WITH CODE: The permit shall be a license to proceed with the work and shall not be construed as authority to violate, cancel or set aside any of the provisions of this Code, except as specifically stipulated by modification or legally granted variation in accordance with Section 126.0.

115.2 COMPLIANCE WITH PERMIT: All work shall conform to the stamps on approved application and plans for which the permit has been issued and any approved amendments thereto.

115.3 CHANGE IN SITE PLAN: A lot or site shall not be changed, increased or diminished in area from that shown on the official site plan, as specified in Section 113.6, unless a revised plan showing such changes accompanied by the necessary affidavit of owner or applicant shall have been filed and approved. EXCEPTION: A revised site plan will not be required if the change is caused by reason of an official street widening, street widening or other public improvement.

119.1 NEW BUILDINGS AND STRUCTURES: A building or structure hereafter shall not be used or occupied in whole or in part until the certificate of use and occupancy shall have been issued by the building commissioner or inspector of buildings or, when applicable, the state inspector. The certificate shall not be issued until all the work has been completed in accordance with the provisions of the approved permits and of the applicable codes for which a permit is required, except as provided in Section 113.4.

119.2 BUILDINGS OR STRUCTURES HEREAFTER ALTERED: A building or structure, in whole or in part, altered to change: from one use group to another; to a different use within the same group; the fire grading; the maximum live load capacity; the occupancy load capacity; or a building or structure hereafter altered for which a certificate of use and occupancy has not been heretofore issued, shall not be occupied or used until the certificate shall have been issued certifying that the work has been completed in accordance with the provisions of the approved permits and of the applicable codes for which a permit is required. Any use or occupancy, which was not discontinued during the work of alteration, shall be discontinued within thirty (30) days after the completion of the alteration unless the required certificate is issued.

122.3 VIOLATION PENALTIES: A person who shall violate a provision of the Basic Code shall be punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year, or both, for each violation. Each day during which any portion of a violation continues shall constitute a separate offense.

James J. Murphy (Signature of Licensed Builder or Erector)  
James J. Murphy (Signature of Owner or Authorized Representative)

(Address) 75 Lexington Rd. Billerica, MA 01821 (Address)

Lic. No. 821 . . . . . Class 1, 2, 3, 9 . . . . .  
My license expires 12/19/84 . . . . . City or Town Cambridge . . . . . Telephone No. 467-6379



**HOLD HARMLESS CLAUSE:** The Permittee(s) by acceptance of this permit agree(s) to indemnify and hold harmless the City of Cambridge, and its employees, from and against any and all claims, demands and actions for damages resulting from operations under this permit, regardless of negligence of the City of Cambridge, and its employees, and to assume the defense of the City of Cambridge, and its employees, against all such claims, demands and actions.

**OFFICE USE**

22. Additional Information needed from:

Electrical	Gas	Engineering
Plumbing	Energy	*Rent Control Sign Off
Mechanical	Planning Board	Historical
Fire Department	Conservation	Board of Zoning Under Appeal
Traffic	Water	Other _____

\*Date \_\_\_\_\_ Hearing Examiner \_\_\_\_\_

23. Application Approval: Subject to the provisions of the Building Code, Zoning Laws of the City of Cambridge and State Law and Regulations.

Application accepted by: RS Date: 3-18-85  
 Plans accepted by: RS Bin No. 444  
 Zoning approved by: RS Date: 6-4-85  
 Plan Review approval by: RS Date: 6-4-85  
 Permit granted by: [Signature] Date: 6-7-85

24. Renewal issued \_\_\_\_\_ SHELL ONLY 6/29/85

25. Certified plot plan submitted after foundation placed \_\_\_\_\_

26. Inspections made \_\_\_\_\_ Final Inspection made \_\_\_\_\_

27. Certificate of Use and/or Occupancy issued: \_\_\_\_\_



JOSEPH J. CELLUCCI  
COMMISSIONER OF BUILDINGS  
AND HOUSING

**CITY OF CAMBRIDGE**

INSPECTIONAL SERVICES DEPARTMENT CITY HALL  
CAMBRIDGE, MASSACHUSETTS 02139 (617) 498-9013

0-308  
check received letter if needed  
mrmddc

The undersigned hereby applies for a Permit to Build, Alter, Repair in accordance with Section 113.0 of Mass. State Building Code.

OFFICE USE

FEE 527 SPECIAL 5 TOTAL FEE 60718

Date Received: \_\_\_\_\_  
Date Issued: \_\_\_\_\_  
Permit No.: \_\_\_\_\_

(PRINT IN INK) 148 Whittemore Avenue

- Building Location: Cambridge, MA Date of Application: 2/28/85
- Zone 1C Certified plot plan submitted Yes Lot area 336,283sf Frontage 222.4 ft.  
Set backs: front 21 ft. right 27 ft. left 14 ft. rear 545.0 ft.  
Height above grade: 53 ft. 4 stories; below grade: 0 ft. 0 stories  
Use & Occupancy B-Business How is Building Occupied Office Use
- Owner: See Attachment For Listing Address: \_\_\_\_\_ Phone No.: \_\_\_\_\_
- Applicant: Vappi & Company, Inc. Lessee or other: \_\_\_\_\_  
Address: 240 Sidney St., Cambridge, MA 02139 Phone No.: 661-8200
- Contractor: Vappi & Company, Inc. License No.: \_\_\_\_\_  
Address: 240 Sidney St., Cambridge, MA 02139 Phone No.: 661-8200
- Architect/designer: Michael Graves, Architect Registration No.: C.O.M. 5788  
Address: 341 Nassau St., Princeton, NJ Phone No.: 1-609-924-6409
- Engineer: See Attachment - License No.: \_\_\_\_\_  
Address: For Listing Phone No.: \_\_\_\_\_
- Type of work: new addition alteration repair change or use/occupancy  
Other \_\_\_\_\_
- Description of work: Four (4) story office building, approximate size, 86,000 s. f.
- Construction characteristics: Type of construction: 2C with Sprinkler
  - Type of footings: Pressure Injected Footings
  - Type of foundation: Pressure Injected Footings/Pile Caps/Grade Beams/Structural Slab.
  - Type of frame: reinforced concrete structural steel masonry bearing wall wood other \_\_\_\_\_
  - Type of heat and fuel: Electric - Variable Air Volume System
- Are the following included?: (notes: 1. see no. 18b; 2. requires separate permit; 3. see no. 16)
 

a. Fire extinguishing equip. (note 1)	<u>yes</u>	no	f. Air conditioning (note 3)	<u>yes</u>	no
b. Plumbing (note 2)	<u>yes</u>	no	g. Electrical (note 2)	<u>yes</u>	no
c. Water pipes (note 2)	<u>yes</u>	no	h. Sprinklers (note 1)	<u>yes</u>	no
d. Gas fitting (note 2)	<u>yes</u>	no	i. Fire detection equip. (note 1)	<u>yes</u>	no
e. Heating (note 3)	<u>yes</u>	no	j. Any items in Sect. 1200.00 (note 1)	<u>yes</u>	no

APPLICANT



12. Is a street Occupancy Permit necessary? Yes
13. Total volume (cubic ft.) \_\_\_\_\_ (if 35,000 cu. ft. and not R-3, requires stamp of Massachusetts registered P.E. or Architect - see no. 6 and no. 7) (EXCEPTION: single family residences)
14. Is structure subject to control in accordance with section 127.0 of the Massachusetts State Building Code? If YES, state the following and attach affidavits in accordance with Section 113.5.1 of State Building Code.
- a. Laboratory: \_\_\_\_\_ License No.: \_\_\_\_\_  
Address: \_\_\_\_\_
- b. Technician: \_\_\_\_\_ License No.: \_\_\_\_\_  
Address: \_\_\_\_\_
- c. Plan review waived: \_\_\_\_\_
- d. Structural review waived: \_\_\_\_\_

15. Costs: read entirely before completing-
- A. Estimated cost of general work: \$6,500,000
- B. If any of the following are checked as "YES" in item 11 and not included in cost in item 15 A above, then include below.
- a. Fire extinguishing equipment \$ \_\_\_\_\_
  - b. Plumbing \$ \_\_\_\_\_
  - c. Water piping \$ \_\_\_\_\_
  - d. Gas fitting \$ \_\_\_\_\_
  - e. Heating \$ \_\_\_\_\_
  - f. Air conditioning \$ \_\_\_\_\_
  - g. Electrical \$ \_\_\_\_\_
  - h. Sprinklers \$ \_\_\_\_\_
  - i. Fire detection equipment \$ \_\_\_\_\_

16. Is compliance with article 20 (Energy Conservation) of the State Building Code required in any part of the work?  
yes no if YES, answer no. 17.

17. Does a summary and certification of compliance with Article 20 (Energy) accompany this application?  
yes no

18. Plans and specifications: (Section 113.5 of state building code)

a. Specifications submitted: Yes No. of copies: 2-Bldg.Dept.-1-Fire Dept.-1-Health Dept.

b. Plans submitted: Yes No. of copies: 2-Bldg.Dept.-1-Fire Dept.-1-Health Dept.

(If any one of items 11a, h, i or j is answered Yes; 1 set of plans is required to be sent to the Fire Dept. for review, and a copy of transmittal form attached to this application.) (Plans will be sent by this department)

19. If existing building, complete the following:

- a. Type of construction: \_\_\_\_\_
- b. Use group: \_\_\_\_\_
- c. Occupancy: \_\_\_\_\_
- d. No. of rooms/units: \_\_\_\_\_
- e. Height in feet: \_\_\_\_\_
- f. Height in stories above/grade: \_\_\_\_\_
- g. Area per floor: \_\_\_\_\_
- h. Total volume (cubic feet): \_\_\_\_\_

20. a. Number of persons per floor

	a	b	a	b	a	b	a	b
b. Live load per floor (PSF)								
1	165	100	6		11		16	
2	185	70	7		12		17	
3	193	70	8		13		18	
4	193	70	9		14		19	
5			10		15		20	
Live Load 50 psf								
Partition 20 psf								
Total L.L. 70 psf								

The undersigned hereby certifies that he/she has read and examined this application and that the proposed work subject to the provision of the Massachusetts State Building Code and other applicable laws and ordinances is accurately represented in the statements made in this application and that the work shall be carried out in accordance with the foregoing statements and in compliance with the provisions of law and ordinance in force on the date of this application to the best of his/her ability.

The following sections are quoted directly from the Massachusetts State Building Code, as of June 1, 1979.

- 113.6 SITE PLAN: There shall also be filed prior to a permit being granted for the excavation or for the erection of any building or structure a site plan showing to scale the size and location of all new construction and all existing structures on the site, distances from lot lines, the established street grades if they exist (verified by the town or city), and proposed finished grades. In the case of demolition, the site plan shall show all construction to be demolished and the location and size of all existing structures and construction that are to remain on the site or plot. The site plan shall not be changed except as specified in Sections 113.8 and 115.3.
- 114.3 EXPIRATION OF PERMIT: Any permit is issued shall be deemed abandoned and invalid unless the work authorized by it shall have been commenced within six (6) months after its issuance; . . . .
- 114.7 REVOCATION OF PERMITS: The building commissioner may revoke a permit or approval issued under the provisions of this Code in the case of any false statement or misrepresentation of fact in the application or the plans on which the permit or approval was based.
- 115.1 COMPLIANCE WITH CODE: The permit shall be a license to proceed with the work and shall not be construed as authority to violate, cancel or set aside any of the provisions of this Code, except as specifically stipulated by modification or legally granted variation in accordance with Section 128.0.
- 115.2 COMPLIANCE WITH PERMIT: All work shall conform to the stamped or endorsed application and plans for which the permit has been issued and any approved amendments thereto.
- 115.3 CHANGE IN SITE PLAN: A lot or site shall not be changed, increased or diminished in area from that shown on the official site plan, as specified in Section 113.6, unless a revised plan showing such changes accompanied by the necessary affidavit of owner or applicant shall have been filed and approved. EXCEPTION: A revised site plan will not be required if the change is caused by reason of an official street opening, street widening or other public improvement.
- 119.1 NEW BUILDINGS AND STRUCTURES: A building or structure hereafter shall not be used or occupied in whole or in part until the certificate of use and occupancy shall have been issued by the building commissioner or inspector of buildings or, when applicable, the state inspector. The certificate shall not be issued until all the work has been completed in accordance with the provisions of the approved permits and of the applicable codes for which a permit is required, except as provided in Section 119.4.
- 119.2 BUILDINGS OR STRUCTURES HEREAFTER ALTERED: A building or structure, in whole or in part, altered to change: from one use group to another; to a different use within the same group; the fire grading; the maximum live load capacity; the occupancy load capacity; or a building or structure hereafter altered for which a certificate of use and occupancy has not been heretofore issued, shall not be occupied or used until the certificate shall have been issued certifying that the work has been completed in accordance with the provisions of the approved permits and of the applicable codes for which a permit is required. Any use or occupancy, which was not discontinued during the work of alteration, shall be discontinued within thirty (30) days after the completion of the alteration unless the required certificate is issued.
- 122.3 VIOLATION PENALTIES: A person who shall violate a provision of the Basic Code shall be punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year, or both, for each violation. Each day during which any portion of a violation continues shall constitute a separate offense.

(Signature of Licensed Builder or Wrecker)  
J. Kevin Hurton

(Signature of Owner or Authorized Representative)  
David R. Vickery/Hines Industrial

(Address) 29 Wing Road, Lynnfield, MA 01940  
124 Mt. Auburn Street, Cambridge, MA 02138

Lic. No. B00497 Class ABC  
My license expires 1/21/86 City or Town BRSEQ Telephone No 661-8200

2

The Hanover Insurance Companies

The Hanover Insurance Company

Massachusetts Bay Insurance Company

Bond No. BLN1521349

LICENSE OR PERMIT BOND

KNOW ALL MEN BY THESE PRESENTS, that we, Hines Industrial

of Cambridge, Massachusetts

as Principal, and  The Hanover Insurance Company (A New Hampshire Corporation)  Massachusetts Bay Insurance Company (A Massachusetts Corporation) as Surety, are held and firmly bound unto

City of Cambridge as Obligee, in the penal sum and no/00

of Sixty-Four Thousand Seven Hundred Eighteen Dollars, good and lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, and our heirs, executors, administrators, jointly and severally, firmly by these presents.

WHEREAS the said Principal has applied to said Obligee for a license to Construct  
a building at 148 Whittemore Avenue, Cambridge, Massachusetts

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That, if Principal shall faithfully observe and honestly comply with the provisions of all Laws or Ordinances of Obligee regulating the business for which license is issued, then this obligation shall be void; otherwise to be and remain in full force and virtue.

PROVIDED, THE LIABILITY OF THE SURETY upon this bond shall be and remain in full force and effect for the full period of the license, and renewals thereof, issued to the principal above named, or until ten days after receipt by the Obligee of a written notice signed by such Surety, or its authorized agent, stating that the liability of such Surety is thereby terminated and canceled; and provided further, that nothing herein shall affect any rights or liabilities which shall have accrued under this bond prior to the date of such termination.

Signed, sealed and dated the 6th day of March, 1985.

Hines Industrial

Principal

(Seal)

By 

THE HANOVER INSURANCE COMPANY  
 MASSACHUSETTS BAY INSURANCE COMPANY

By Roger G. Regnier Attorney-in-fact



M. GRAVES ARCHT  
(609) 924-6409

" IN PROGRESS DRAWINGS ON FILE  
FOR PERMIT

8/19/86 (# 082025)

TITLE

- ① " FOUNDATION AND  
FIRST FLOOR PLAN " → SHEET " S-1 "
- ② " 2<sup>ND</sup> FLOOR  
+ FRAMING PLAN " → SHEET S-2
- ③ ~~3<sup>RD</sup> FLOOR  
FRAMING  
PLAN~~ → SHEET S-3
- ④ 4<sup>TH</sup> FLOOR  
FRAMING  
PLAN → S-4
- ⑤ ROOF FRAMING PLAN → S-5



REVERSE SIDE OF REQUEST FOR  
CERTIFICATE OF OCCUPANCY

For Office Use Only

TYPE OF CONSTRUCTION 3 DATE BUILT 1989  
 FIRE ZONE NO ARCHITECT MICHAEL GRAVES  
 PERMIT NUMBER 082025 CONTRACTOR VAPPI & COMPANY INC  
 DATE OF PERMIT 8/20/86 BIN NUMBER 445  
 OCCUPANCY GROUP A B USE ZONE TC

Safety Provisions:

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> EXIT SIGNS                  | <input checked="" type="checkbox"/> SPRINKLERS           |
| <input checked="" type="checkbox"/> FIRE ALARM                  | <input type="checkbox"/> FIRE EXTINGUISHERS              |
| <input checked="" type="checkbox"/> EMERGENCY LIGHTS            | <input checked="" type="checkbox"/> EXIT DOORS SWING OUT |
| <input checked="" type="checkbox"/> STAIRWELL DOOR SELF CLOSING | <input type="checkbox"/> OTHER _____                     |

Second Means of Egress:

- |  |  |
|--|--|
| <input type="checkbox"/> COMMUNICATING DOORS | <input checked="" type="checkbox"/> STAIR ENCLOSURES |
| <input type="checkbox"/> FIRE ESCAPES        | <input type="checkbox"/> SMOKE SCREENS               |
| <input type="checkbox"/> AREA OF REFUGE      | <input type="checkbox"/> OTHER _____                 |

Payment Received By RB

Date Issued 1/28/89

CITY OF CAMBRIDGE

Loc. 148 Whittemore Ave. Permit No. 082025

Owner: David R. Vicery/ Hines Inds. Date: 8-20-86

Arch: Michael Graves

Cont: Vappi & Compnav, Inc.

Descr. Four (4) story office building, approximate size 86,000 s.f. foundation work only.

Comm/ New

Permit signed by: J. Kevin Hurton

Permit extended from 8/19/86 over to 2/19/87 d.d.C.

FORM IS 9 445 \$ 600,000.00

REVERSE  
OF  
THE  
"PERMIT  
EXTENDED  
FROM  
2/19/87  
TO 8/19/87"



2-7834

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Massachusetts... Edward, Jr. Joseph and his grandchild Rhonda Cor... A funeral home's Ch... ed by inter... Cemetery. A by the Roge

Hazel I Hazel (C... story writer... Auburn Ho... She was bor... Canada and... bridge for a... She was a... lege, Univer... she was aw... her academi... also a men... Plant Club... She was... Douglas Bu... at Harvard... Bush of Carr... Ivan H. Cle... tario, Canad... her daughte... grandsons... James... Private se... convience o... rangements... Waterman... Funeral Hor

Mathew Funeral se... Mathew J. G... resident of Car... in Brunswick... He was the... Mahon of Br... bara T. Finr... Services v... the David... Home, Bath.

Constai Constant... 85, died Oct... Hospital afte... born in Ather... living in Can... She was th

COMMONW... Middlesex, ss. NOTICE 6 To all perso... Frances A. Fin... person under co... You are here... R Civ P. Rule 7:

COMMONWEALTH OF MASSACHUSETTS Probate Court Middlesex, ss. 86D3231-D-1

Paul J. Cavanaugh Register of Probate

County Commissioners

BRIDGE COMMISSIONERS

CITY OF CAMBRIDGE BOARD OF ZONING APPEAL The Board of Zoning Appeal will hold a public hearing on Thursday, October 23, 1986 in Room 200, City Hall, Cambridge, Massachusetts. The following cases will be heard: 7:00 P.M. Case No. 5376: 149-155 Cherry Street, Residence C-1 Zone. Henry A. Blumkin. Variance: Subdivision of the lot... 7:20 P.M. Case No. 5377: 26 Chatham Street, Residence C-1 Zone. John F. Gonzalez Jr. Variance: Construction of three back porches... 7:40 P.M. Case No. 5378: 135 Hampshire Street, Residence C-1 Zone. Neal Motron. Special Permit: To create an employee parking lot... 8:00 P.M. Case No. 5379: 126-148 Whittemore Avenue, Industry C Zone. Alowife Center Limited Partnership. Variance to allow proposed office building to exceed the 45-foot height limitation... 8:20 P.M. Case No. 5380: 116 Conledge Hill, Residence A-1 Zone. William B. Marsh. Special Permit: One-story addition to the single family house... 8:40 P.M. Case No. 5381: 56 Shepard Street, Residence B Zone. Charles Walsh. Variance: Enlarge the kitchen and enclose the rear entry of the single family dwelling... Eileen McGaughey Secretary

(C)Oct. 9.16

RECORD BOOK ROLLER & PLAIN SHELF CASES AND DOCUMENT FILE CABINETS Sealed proposals will be received by the Middlesex County Commissioners, through the Central Purchasing Office, Superior Court House E, Cambridge, Ma. until 1:00 P.M. Tuesday October 28, 1986. Proposals will be opened for record book roller & plain shelf cases and document file cabinets for the South Middlesex Registry of Deeds, Cambridge, Ma at 3:00 P.M. Tuesday, October 28, 1986, on the Commissioners Hearing Room, Superior Courthouse level 3, Cambridge, Ma. The said Commissioners

CITY OF CAMBRIDGE BOARD OF LICENSE COMMISSIONERS Notice is hereby given under General Laws, Chapter 140, as amended, that Theatre Holdings, Inc. d/b/a James Theatre, Peter Johnston, Manager at 57 John F. Kennedy Street has applied for a Cinema exhibition license, one screen, 343 seats, and a food concession license. The hearing on this application will be held on Tuesday evening, October 28, 1986, at six-thirty a clock, in the Barbara Ackermann Room, Room 200, City Hall, Cambridge. James Thaddeus McDavitt Anthony G. Paolillo Thomas V. Scott License Commission

(C)Oct. 16

COMMONWEALTH OF MASSACHUSETTS Middlesex, ss. Probate Court No. 86D3039-D-1 Solaire Lamitie Plaintiff vs. Necessary Lamitie Defendant To the above-named Defendant: A complaint has been presented to this Court by your spouse, Solaire Lamitie, seeking a divorce on the grounds of cruel and abusive treatment. You are required to serve upon Barry S. Glassman, plaintiff's attorney, whose address is 15 Court Square, Boston, Massachusetts 02108 your answer on or before December 29, 1986. If you fail to do so, the Court will proceed to the hearing and adjudication of this action. You are also required to file a copy of your answer in the office of the Register of this Court at Cambridge. Witness, Sheila E. McGovern, Esq., First Judge of said Court at Cambridge. September 12, 1986 Paul J. Cavanaugh Register of Probate

(C)Oct. 9.16.23

COMMONWEALTH OF MASSACHUSETTS THE TRIAL COURT THE PROBATE AND FAMILY COURT DEPARTMENT REMOVAL OF FIDUCIARY AND APPOINTMENT OF SUCCESSOR Middlesex Division Docket No. 85P2252E TO ALL PERSONS INTERESTED IN THE Estate of Raffaele Brango late of Cambridge in the County of Middlesex NOTICE

A petition has been presented in the above-captioned matter praying that John Brango and Frank A. Brango both of Rochester in the State of New York be removed from their office as Executors and that Edward Behar of Cambridge in the County of Middlesex or some other suitable

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dinance narrowly passed by the city council in 1984, the five-member CRB was officially established last spring by City Manager Robert Healy after a review of candidates from each of the city's five sections. The CRB is empowered to review Cambridge Police Department policies and practices, as well as conduct investigations of complaints filed by citizens against police officers.

Yet the CRB and Healy did not meet again until early October. During the past two weeks, the board has met informally to consider hiring a full-time executive secretary, sup-

Association (CCA). City Councilor Sandra Graham and many of their constituents, for lacking aggressiveness in forming the CRB, must find a replacement for the Rev. Jose Ferreira of St. Anthony's Church in East Cambridge. Ferreira resigned from the CRB this summer because, he said, "I have no time...and I knew it was going to be a very sensitive position."

The city manager said he accepts the criticism by the CCA, Graham and others as part of his job.

Continued on back page

## Hines seeks new permit for Grace site project

Hines Industrial hopes to be granted a variance today by the Board of Zoning Appeal for the first building of a project the firm wants to build on the W.R. Grace site near Fresh Pond.

Hines initially received a variance for the project in 1984, but that variance had since expired.

One snag may be that the new request states that 7.7 acres will be used for building purposes, instead of the 3 acres described on the 1984 permit.

Hines project manager David Vickery said he was not aware of any changes in acreage for the new variance and said that he would have to confer with his attorney.

"We expect a vote," said Vickery. "I haven't had any negative comments about the variance."

The issue may heat up over recent environmental concerns about development of the 20-acre site and the presence of toxic waste, a concern of neighborhood environmental groups Toxic Alert and the North Cambridge Stabilization Committee.

"Some people may use the variance for bargaining," agreed Councilor Alice Wolf, adding that Hines was given a clean slate by the Department of Environmental Quality Engineering to build on the site and has supposedly complied with clean-up standards for this particular portion of the property.

That was why the 1984 variance was granted in the first place, although testimony of abutting neighbors was recognized. At the time, neighbors complained that the height of the proposed building would create a shadow impact and obstruct television reception. Hines complied with neighborhood requests and changed the location of the building.

The variance would permit the construction of a 52-foot building, at four stories, which exceeds the 45-foot zoning limits.

W.R. Grace bought the land 40 years ago and operated it as a chemical company until a few years ago. According to Ed Cyr, Toxic Alert member, the firm dumped disburants and sealants on the site.

Recently, the Environmental Protection Agency released a report criticizing the 1985 study made by Haley and Aldrich, under contract to Grace. The EPA charged there were inconsistencies with the consulting firm's findings, which concluded that there was not enough toxic waste to endanger human health.

Vickery submitted his development plans for the site on October 15 at a meeting of neighborhood groups, which also included Wes Stimpson from Haley and Aldrich.

Hines plans to develop approximately one million square feet, seven buildings with a hotel, health club facilities, and over 2000 parking spaces.

Toxic Alert members suggested that Hines have a deadline of January 1 for filing the required Environmental Impact Statement, rather than Hines's selection of December 1.

Cyr said the one-month delay would enable the second round of testing to be completed by Haley and Aldrich, would allow the community to hire an independent consulting firm to judge data, and would avoid the holidays, which would be a difficult time for community response.

Other suggestions by Toxic Alert members included requests that the entire site be cleaned up, and not only

Continued on back page

dy slush to be tracked into the homes on Harvard street.

Monica Mosquera, a nanny for a Harvard Street family, said she hoped the city would fix the streets soon.

"I have to cross over to the other side of the street with the stroller," she explained, "It's terrible. It seems like the only street that isn't fixed yet."

Don't tell that to the residents of Pearl street, however.

Pearl street residents were polled, according to Jeffrey Dunn, a photographer who lives on the street, about what they wanted for the future of their sidewalks. Dunn says that the Department of Public Works telephoned him and other street residents to determine what type of materials they wanted in March or April.

## Hines

Continued from page 1

the building sites — which Cyr refers to as "the footprints" — and that Hines would pay for the private consultation the community would need to interpret the findings offered by Hines on final testing.

"Hines needs to help us understand this," says Kate Mattes, co-chair of the North Cambridge Stabilization Committee.

The city council will have its Environmental Subcommittee, comprised of Councilors Wolf, Shelia Graham and Frank Duehey, hold a meeting on November 14 relative to the W.R. Grace issue.

"We need an objective overview from the city," said Wolf.

If the new variance is granted to Hines Industrial tonight, the site will be leased by Bolt, Baranek and Newman, a Cambridge sound engineering firm, which is expected to become the main tenant of the project.

— JANE THURMAN

## photo show

ministered by the Cambridge Arts Council), has specialized in making portraits of artists during the past five years. Says he of his work, "I am searching for that spark of life which distinguishes them (his subjects) as artists...the really successful portraits are those made when I encounter that creative spark in the intimacy between artist and photographer."

and will

Continued from page 1

"One woman at the meeting the library goes, she would leave the neighborhood."

The library has been on avenue for over 50 years. Sakey's opinion, "the city much interested in main library on this site."

No plans are definite for library and Harvard. Acc Sakey, Spiegelman said would "commit to maximum possible."

"I'd like a little more for the future," concluded Sakey cautiously optimistic that will meet the library need area."

The last facility built for faculty members in the 15 the Botanic Gardens on street. The building curriculum a mixture of administrative officers, stand some faculty.

Harvard's planning department to hold another meeting sometime in December before the university apply special permit from the City bridge to build the townhouse.

Harvard needs a special because it plans to build over units, although the Concord property presently meets the requirements.

City Councilor Alice Wolf doesn't see any problems with project, as long as Harvard with community members, the problems any increased

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Attachment C-



CITY OF CAMBRIDGE, MASSACHUSETTS

# PLANNING BOARD

CITY HALL ANNEX, 57 INMAN STREET, CAMBRIDGE 02139

TO: Board of Zoning Appeal

FROM: Planning Board

SUBJECT: Cases 5376-5381 to be heard on October 23, 1986

DATE: October 21, 1986

The Planning Board leaves all cases to the Board of Zoning Appeal for determination with the exception of Case #5378 and Case #5379.

### Case #5378

The proposal to create an employee parking lot in a Residence C1 zone goes against the Planning Board's policy of strongly discouraging the provision of business parking in residential areas. Therefore, the Planning Board recommends that the Board of Zoning Appeal deny the request for a Special Permit in Case #5378.

### Case #5379

The proposed project at 140 Whittemore Avenue is in an IC zone with the PUD overlay which was conceived to allow the kinds of changes currently being sought. Therefore, the Planning Board's preference would have been that the project follow the PUD process instead of the variance procedure. However, given the history of the project including the variance previously granted by the BZA in 1984, the Planning Board understands that there has been a rationale to the application for a variance; that is, the Whittemore Avenue site is on the periphery of the larger Alewife Center project and has a different timetable.

With the passage of two years of planning, design, and environmental review, the Hines organization has stated that they intend to begin the PUD process for review of the Alewife Center plan in the near future. Clearly, the Whittemore Avenue building is designed as part of the edge of Alewife Center, and as such, will become an important part of the urban design context.

6-1



As noted in Sections 12 and 13 of the Zoning Ordinance, the PUD process includes review at all levels of a project, from early conception to final design. If the BZA reconfirms its earlier variance, the Planning Board recommends that the following conditions, which would have been required under a PUD decision, be required:

1. That the final design, including facade treatment, materials, and landscaping be approved by Community Development Department staff; and
2. The developer will continue to update the neighborhood and Community Development Department staff on the relation of this project's design to the Alewife Center plan.



CITY OF CAMBRIDGE  
BOARD OF ZONING APPEAL  
VARIANCE DECISION

2017-8 21 4: 14  
CAMBRIDGE MA.

Case No.: 5379

Premises: 126-140 Whittemore Avenue  
Industry C Zone/Flood Plain Overlay  
District Middlesex (South) County  
Registry of Deeds: Book 16152, Page  
284; Middlesex (South) Registry  
District of the Land Court:  
Certificate of Title No. 173484.

Petitioner: Alewife Center Limited Partnership,  
a Massachusetts limited partnership  
(Hines/Boston Industrial-General  
Partner).

Owner: Alewife Land Corporation.

Petition: Variance to allow a four-story  
office building on the premises to  
be building on to a height of 53  
feet (exceeding the 45 foot height  
limitation applicable in the IC  
Zoning District; Article 5, Section  
5.34, Table 5-4 of the Cambridge  
Zoning Ordinance).



Dates of Public Notice: October 9 and 16, 1986  
Cambridge Chronicle

Date of Public Hearing: October 23, 1986, continued to  
October 30, 1986.

Date of Deliberation Meeting:  
October 30, 1986

Members of the Board Present:

October 23, 1986:

Brendan J. Sullivan, Edward Goode,  
Susan Spurlock, Melvin Gadd,  
Members; J.T. Rickard, Associate  
Member; Ranjit Singanayagam, Zoning  
Specialist.

October 30, 1986:

Brendan J. Sullivan, Edward Goode,  
Susan Spurlock, Melvin Gadd,  
Members; Ranjit Singanayagam, Zoning  
Specialist.

The petitioner's project, with some minor variations, was the subject of a similar variance petition for which a variance was issued to Hines Industrial Co. on May 29, 1984 (Case No. 5107). This variance has expired.



At the public hearing held on October 23, 1986 no speakers were heard on this petition and the Board voted to continue the hearing to October 30, 1986.

At the public hearing held on October 30, 1986, the Board heard David Vickery of Hines/Boston Industrial, the general partner of the petitioner, in support of the petition.

Various neighbors appeared at the hearings to comment on the petition.

The premises to which this variance relates is a seven acre parcel of land located on Whittemore Avenue within an Industry C Zoning District. The premises are also located with the Flood Plain Overlay District. The proposed four-story office building will be built to a height of 53 feet and will violate the 45 foot height limitation applicable in the IC Zoning District and set forth in Article 5.000, Section 5.34. Table 5-4 of the Cambridge Zoning Ordinance.

The premises is an irregularly shaped lot which has its narrowest width at the Whittemore Avenue lot line. The area available for construction is affected by the boundary of the Flood Zone A5 which sets back approximately 180 feet from Whittemore Avenue and extends (at varying setbacks) opposite the width of the street frontage. These factors have influenced the decision to locate the proposed building between the front lot line and the winding flood zone boundary. As a result of the unusual site constraints, it is necessary to construct the proposed building at a greater height than allowed in order to make a reasonable use of the site.



The proposed building will contain only four stories, the number of stories contemplated by the 45-foot height limitation. The proposed building will exceed the 45-foot limitation by eight feet (less than one typical story) because the petitioner's design standards call for a greater floor to ceiling height than one might expect in other buildings. The proposed building will contain 88,000 square feet of gross floor area and will comply with the 1.0 floor area ratio applicable in the IC Zoning District. Therefore, the granting of the variance will not allow an excessive number of people to be employed on the premises, nor result in an increase in traffic beyond that which would be generated by a building containing the same number of square feet of gross floor area constructed as of right on the premises. Literal application of the height limitation in this context would require each story of the building to be reduced in height, causing the proposed building to be reduced in quality and resulting in substantial financial hardship to the petitioner. The variance requested is the minimum variance which allows the reasonable and allowed use of the site for an office building of the proposed gross floor area.

In response to the concerns of occupants of neighboring residences, petitioner has agreed to set the proposed building back approximately twenty-one feet from the lot line that runs along Whittemore Avenue to reduce the shadow patterns that would be cast. Consequently, the shadow patterns cast after construction of the proposed building will be no greater than



those which would be cast if the building were 45 feet high and built on the Whittemore Avenue lot line. Such a building could be built as of right under the Zoning Ordinance. By agreeing to set the building back from the lot line, petitioner is serving one of the principal purposes of the height limitation, namely providing for adequate light to reach abutting streets, land and buildings. Accordingly, the variance can be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning Ordinance.

#### SUMMARY OF FINDINGS

1. Petitioner is planning to construct a four-story office building on the seven-acre premises.
2. The proposed office building will be 53 feet in height.
3. The 45-foot height limitation contained in Article 5.000, Section 5.34, Table 5-4 of the Zoning Ordinance would require that the proposed building be reduced in height and consequently in quality, causing substantial financial hardship to the petitioner, and would be an unreasonable limitation on use of the site in light of its unique circumstances.
4. The proposed building will be set back approximately twenty-one feet from the Whittemore Avenue lot line. As a result, the shadow patterns cast by the proposed building will be no greater than those that would be cast by a



45-foot high building which could be constructed as of right on the Whittemore Avenue lot line and one of the principal purposes of the height limitation of the Zoning Ordinance will be served.

5. The premises is an irregularly shaped lot with its narrowest width at the Whittemore Avenue lot line, a condition not generally affecting other land in the IC Zoning District.
6. The premises is partially within the Flood Plain Overlay District and contains poor soil conditions which so limit the area of the premises which the building may cover that the only feasible and practical alternative is to construct the proposed building within the limited area available at a greater height than allowed.
7. The construction of the proposed building is consistent with PUD Overlay for this area which represents the City's most recent policy for use of this area.
8. Development of buildings of this sort is being encouraged by the City at this time and is appropriate in this area.
9. Owing to circumstances relating to the soil conditions and shape of the site, especially affecting the site and not other land within the applicable zoning and overlay district, a literal enforcement of the provisions of the Zoning Ordinance would involve substantial hardship, financial and otherwise, to the petitioner, and desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially



derogating from the intent or purpose of the Zoning Ordinance.

THEREFORE, the Board of Zoning Appeal unanimously votes to grant the relief sought to allow the proposed office building to be built to a height of 53 feet.

This decision does not relieve the petitioner in any way from the duty to comply with requirements of the Building Code or other applicable laws and regulations. The Board of Zoning Appeal is empowered to vary local zoning regulations only.

Board of Zoning Appeal

By:  Raymond Sullivan

ATTEST: A true and correct copy of the decision filed with the office of City Clerk and Planning Board on 11-6-76 by E. M. Gaughey, Secretary.

Date: \_\_\_\_\_

Twenty days have elapsed since the filing of this decision. No appeal has been filed \_\_\_\_\_. Appeal has been filed and dismissed or denied.

\_\_\_\_\_  
City Clerk, City of Cambridge

23

# BZA approves Grace permit

Cambridge  
Chronicle

11/186

Although the Board of Zoning Appeal granted Hines Industrial a renewed variance last week for a portion of the W.R. Grace site, the action was met with reservations by community residents and environmental activists.

The site, at 126-140 Whittemore Ave. in North Cambridge, was given a clean bill by the Department of Environmental Quality Engineering (DEQE) in 1984, and is still the source of concern because no one knows what was buried beneath the soil when the landfill was a chemical dumping ground.

"If there is contamination in that site, and if the underground water flows northwest, that stuff will be in our basements," said John Seeger, chair of the Alewife Grace Residential Organization and Toxic Alert. "Contamination in our basements has very few remedies. I mean what do you do about it?"

Hines plans to construct an 88,000 square foot office building with a brick exterior and supply 320 parking spaces. The only difference between the recent variance and the expired variance of 1984 is an additional 4.7 acres which Hines Project Manager David Vickery claims is for parking.

The Whittemore building brushes the larger W.R. Grace site of 30 acres and one million square feet of office space consisting of seven buildings also to be developed by Hines.

Ed Cyr, Toxic Alert member, says that both sites are linked by a single tenant, and the newly approved variance is the first step for all eight buildings to be constructed.

"It's really one development," says Cyr, "and this variance should have been part of the PUD process for the rest of the plan."

A Planned Unit Development (PUD) approval, which involves projects with high density, or additional height specifications, goes before the BZA or the City Council. The remaining W.R. Grace plan has yet to be submitted for PUD approval.

The Board of Zoning Appeal (BZA) was originally scheduled to vote on the variance two weeks ago, but decided to delay the proceedings a week when members of the North Cambridge Stabilization Committee asked for more time to discuss the construction with David Vickery.

The stabilization committee and members of Toxic Alert have been meeting with Vickery to discuss the toxic waste issue at the W.R. Grace site.

Both Vickery and Peter Kasch, chair of the North Cambridge Stabilization Committee, outlined a time plan for Hines to provide additional information to the community. Hines' draft of a report is expected in early December and community hearings to respond are planned for various dates in December and January.

W.R. Grace hired consulting firm Haley and Aldrich to do tests on the site in 1985, which studies were challenged as having discrepancies by the Environmental Protection Agency in early September of this year.

"Haley and Aldrich only studied one form of pollution, air borne pollution from disturbed soil," added John Seeger.

Vickery claimed that he has worked on this project for four years and

that Hines "started better than a year and a half ago doing testing on this site."

"If it comes out six months from now that there are major subsurface problems, the developer will regroup to address that problem. What they risk is the DEQE not issuing that final permit," said Melvin Gadd, member of the BZA.

The BZA voted unanimously to reaffirm their original findings of 1984 with the modifications that the Planning Board would have the right to review the final design.

Also planned for the future is a meeting by the Environmental Subcommittee on November 19 at city hall, and on December 9, a meeting at city hall with members of the DEQE present.

"It's not the responsibility of the city council," said Cyr, "It's the citizens who always raise the subject."

"I would just like the assurance that the developer remains responsible if there is an act of God and contamination affects the neighborhood, that it's not just the neighbor's problem," added John Seeger.



**PROBATE OF WILL WITHOUT SURETIES**  
**Middlesex Division Docket No. 86P6666**  
 Estate of Nora T. O'Connor  
 late of Cambridge  
 in the County of Middlesex  
**NOTICE**

A petition has been presented in the above-captioned matter praying that a certain instrument purporting to be the last will of said deceased may be proved and allowed and that James M. O'Connor of New Haven in the State of Connecticut be appointed executor without giving surety on his bond.

If you desire to object to the allowance of said petition, you or your attorney must file a written appearance in said Court at Cambridge on or before 10:00 in the forenoon on January 27, 1987.

In addition you must file a written affidavit of objections to the petition, stating the specific facts and grounds upon which the objection is based, within (30) days after the return day (or such other time as the Court, on motion with notice to the petitioner, may allow) in accordance with Probate Rule 2A.

Witness, Sheila E. McGovern, Esquire, First Justice of said Court at Cambridge, the twentieth day of December in the year of our Lord one thousand nine hundred and eighty-six.

Paul J. Cavanaugh  
 Register of Probate

(C)Jan 15

**COMMONWEALTH OF MASSACHUSETTS**  
**Middlesex, ss.**  
**Probate Court**  
**No. 214668**

**NOTICE OF FIDUCIARY'S ACCOUNT**

To all persons interested in the estate of Helen F. Hubbard late of Cambridge, in said County, deceased

You are hereby notified pursuant to Mass R. Civ. P. Rule 72 that the tenth thru twelfth accounts of G. D'Andolet Bellin and Brianley M. Hall as Trustees (the fiduciaries) of the will of said deceased for the benefit of Elliot Hubbard and others, have been presented to said Court for allowance.

If you desire to preserve your right to file an objection to said accounts, you or your attorney must file a written appearance in said Court at Cambridge on or before the 9th day of February, 1987, the return day of this citation. You may upon written request by registered or certified mail to the fiduciaries or to the attorney for the fiduciaries obtain without cost a copy of said accounts. If you desire to object to any item of said accounts, you must, in addition to filing a written appearance as aforesaid, file within thirty days after said return day or within such other time as the Court upon motion may order a written statement of each such item together with the grounds for each objection thereto, a copy to be served upon the fiduciaries pursuant to Mass R. Civ. P. Rule 5.

Witness, Sheila E. McGovern, Esquire, First Judge of said Court, this 8th day of January, 1987.

Paul J. Cavanaugh  
 Register

(C)Jan. 15

**COMMONWEALTH OF MASSACHUSETTS**  
**Middlesex, ss.**  
**Probate Court**  
**No. 86D4328D-1**

**Summons by Publication**  
**Mary Ellen O'Brien Plaintiff**  
 vs.  
**Donald Patrick O'Brien Defendant**

To the above-named Defendant:  
 A complaint has been presented to this Court by your spouse, Mary Ellen O'Brien, seeking a divorce for cruel and abusive treatment.

You are required to serve upon Clarissa Bronson, plaintiff's attorney, whose address is 1511 Massachusetts Avenue, Cambridge, MA 02138 your answer on or before Monday, March 30, 1987. If you fail to do so, the Court will proceed to the hearing and adjudication of this action.

Special Permit Reduction of required parking spaces from thirteen to eight required Article 4 000, Section 4.34d (use), Article 5 000, Section 5.31 (Table of Dimensional Requirements), Article 6 000, Sections 6.36d and 6.44c (insufficient parking and setbacks), Section 6.35 (Reduction of required parking), Article 8 000, Section 8.22e (alteration of non-conforming structure and use) of the Zoning Ordinance.

8:20 P.M. Case No. 8426:

237 Brattle Street, Residence A-1 Zone, Debbie and Paul Walker. Variance: Addition to single family house to provide a master bedroom suite with bath and study and living unit for Debbie Walker's mother. Article 5.000, Section 5.31 (Table of Dimensional Requirements), Article 8 000, Section 8.22(c) (Alteration of non-conforming structure) of the Zoning Ordinance

Eileen McGaughey  
 Secretary

(C)Jan 15.22

**PLANNING BOARD**  
**NOTICE OF**  
**PUBLIC HEARING**

The Planning Board of the City of Cambridge will hold a public hearing on February 3, 1987 at 8:00 P.M. Community Development Department Conference Room, 57 Inman Street on a petition by W.R. Grace & Co., and its affiliate, Alewife Land Corporation, and Lehigh Investment Trust, acting through Reynolds, Victory, Messina & Grielen, Inc. as development consultant for a PUD Special Permit for property off of Whittemore Avenue, Alewife Brook Parkway and Rindge Avenue, Cambridge.

It is proposed to construct six (6) office buildings (including some retail space) and a hotel containing a total of approximately 1,050,000 square feet of gross floor area, and parking structures for approximately 2,335 cars. Copies of the petition are on file at the office of the City Clerk, City Hall, and at the Community Development Department, 57 Inman Street. Questions may be addressed to Lester Barber at 498-9034. Comments are welcome at the hearing or by mail.

(C)Jan 15.22



**FIRST PUBLICATION NO. 2343**  
**CITY OF CAMBRIDGE**  
**In the Year One Thousand,**  
**Nine Hundred Eighty-Seven**  
**AN ORDINANCE**

In amendment to an ordinance formerly entitled "The General Ordinances of the City of Cambridge" as revised in 1972 and now designated as "The Code of the City of Cambridge"

Be it ordained by the City Council of the City of Cambridge as follows:

The Code of the City of Cambridge, chapter 12, entitled "Licenses and Permits", is hereby amended by striking section 13 therein and inserting in place thereof the following section:

**Sec. 12-13. Sunday Entertainment Licenses**

Applications for Sunday entertainment licenses required by section four of chapter one hundred and thirty-six of the Massachusetts General Laws shall be granted, denied, conditioned, modified, suspended, and revoked in accordance with the procedures and standards set forth in section one hundred and eighty-three A of chapter one hundred and forty of the Massachusetts General Laws. It is hereby provided that the fee for a Sunday entertainment license shall be the maximum amount permitted under said section four unless the City Manager or his designee shall set such fee at a lesser amount. The City Manager or his designee

session shall be considered as an accessory use provided that no more than three persons shall practice or be employed on the premises at any one time.

2. Delete the first line of the existing Section 4 21, paragraph (g) and substitute therefore the following:

g. The area occupied by accessory uses, with the exception of home family day care duly licensed by the Commonwealth of Massachusetts, Office for children, shall be subject to the following limitations:

Passed to a second reading at the City Council meeting held on January 12, 1987 and on or after January 26, 1987 the question comes on passing to be ordained.

(C)Jan. 15

**CITY OF CAMBRIDGE**  
**BOARD OF LICENSE COMMISSIONERS**

Notice is hereby given pursuant to General Laws, Chapter 148 that Frost Street Associates Limited Partnership, has applied for a parking garage for 45 cars and the keeping and storage of 70 gals. of gasoline/diesel fuel aboveground and 380 gals. gasoline/diesel fuel, underground, at 7 Frost Street.

A hearing on said application will be held on Tuesday evening, January 27, 1987, at 6:30, in Room 200, City Hall, 795 Massachusetts Avenue. Any person wishing to comment on said application may attend the hearing or such person may prior to the hearing submit a written statement to James Thaddeus McDavitt, Chairman of the License Commission, Room 205, City Hall, 795 Massachusetts Avenue, Cambridge, Mass., 02139.

James Thaddeus McDavitt  
 Anthony G. Paolillo  
 Thomas V. Scott  
 License Commission

(C)Jan 15

**COMMONWEALTH OF MASSACHUSETTS**  
**Middlesex, ss.**  
**Probate Court**  
**No. 86D4217B-1**

**Summons by Publication**  
**Lazaro Saul Quevedo Plaintiff**  
 vs.  
**Ana Cecilia Pizarro Defendant**

To the above-named Defendant:  
 A complaint has been presented to this Court by your spouse, Lazaro Saul Quevedo, seeking divorce.

You are required to serve upon Daniel Kenstrom, plaintiff's attorney, whose address is 763 Massachusetts Avenue, Cambridge 02139 your answer on or before March 23, 1987. If you fail to do so, the Court will proceed to the hearing and adjudication of this action. You are also required to file a copy of your answer in the office of the Register of this Court at Cambridge.

Witness Sheila E. McGovern, Esq., First Judge of said Court at Cambridge.

Paul J. Cavanaugh  
 Register of Probate

(C)Jan. 1, 8, 15

**CITY OF CAMBRIDGE**

**BOARD OF LICENSE COMMISSIONERS**

Notice is hereby given that Edward & Patricia Yallery & Elaine Perry doing business as Sentero Sub Shop, by Patricia & Elaine Perry, Manager, has applied for a common victualer's license to be exercised on the 1st floor at 309 Cambridge Street. Said license if granted would allow food and non-alcoholic beverages to be sold, served, and consumed on said premises and would allow the applicant to maintain said premises as a restaurant to be open to all classes of the public and to have a seating capacity of 34 persons. Said license if granted would be exercised from 6:30 A.M. to 6:00 P.M. on weekdays. The applicant is not seeking to maintain any entertainment on the premises.

A hearing on said application will be held on Tuesday, Jan. 27, 1987 at 6:30 P.M. in Room 200, City Hall, 795 Massachusetts Avenue. Any person wishing to comment on said application may attend the hearing, or such person may

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CITY OF CAMBRIDGE, MASSACHUSETTS

 PLANNING BOARD

CITY HALL ANNEX, 57 INMAN STREET, CAMBRIDGE 02139

29 January 1987

Mr. David R. Vickery  
RVM & G  
124 Mt. Auburn Street  
Cambridge, MA 02138

Dear David:

In regard to Alewife Center, the following comments summarize some of the Board's major concerns after our preliminary review of the proposed project.

- o A much more direct and inviting pedestrian connection is needed between the Linear Park and the Alewife MBTA Station. Similarly, a safe pedestrian way from the neighborhood to the north through the colonnade needs to be made more evident.
- o Throughout the project, we encourage you to consider whether areas of asphalt could be reduced so that pedestrian ways and green space may be enlarged and enhanced. In particular, the plaza and its connection to Jerry's Pond needs further design study. Further, we are not convinced that all the service roads are necessary. The truck dock locations around the periphery impact public open spaces, and should be relocated to be less obtrusive. You should consider grade changes within your project to help screen parking and to break up what appears to be an entirely flat site. In this regard, we would like to see more detailed information about the grades you propose.
- o The grid which organizes the site plan is followed very strictly. We encourage you to consider varying the grid to help emphasize important connections such as the link between the Linear Park and the MBTA station. Some variation of the spacing between buildings could also perhaps alleviate the severity of the plan.
- o As you know, your request for a 40' height variance is problematic. From the information you have presented to date,



it is not clear what the benefits to the public are from the proposed increase in height. We agree that heights lower than 85 feet around public open spaces, particularly around Russell Field, are desirable. However, it does seem that other ways of accommodating the proposed floor area, including breaking out of the grid, could also allow for lower heights where preferred. Furthermore, the Board is concerned about the policy implications of allowing a height that is so much greater than the Zoning Ordinance permits.

- o We agree with the concerns raised in Roger Boothe's letter of January 9 in regard to the difficulty of screening the 3 levels of parking which are above grade throughout much of your project, and look forward to learning how you plan to mitigate the impacts of this parking. We encourage you to bring as much active space to grade as possible, so that the project is safe and pleasant to experience as one walks in and around it.

We understand that you are not yet proposing detailed designs for each of the buildings. We do need to understand what guidelines you propose for the future development -- where you envision strict controls, and where there is flexibility. This project has the potential to help make a vastly improved environment in this rapidly changing sector of Cambridge. The Board and the Community Development Department look forward to working with you towards that end.

Very truly yours,

Paul Dietrich  
Chairman

PD/nbm



**HOLD HARMLESS CLAUSE:** The Permittee(s) by acceptance of this permit agree(s) to indemnify and hold harmless the City of Cambridge, and its employees, from and against any and all claims, demands and actions for damages resulting from operations under this permit, regardless of negligence of the City of Cambridge, and its employees, and to assume the defense of the City of Cambridge, and its employees, against all such claims, demands and actions.

148 Whittemore Ave  
Cambridge



**CITY OF CAMBRIDGE**  
INSPECTIONAL SERVICES DEPARTMENT CITY HALL  
CAMBRIDGE, MASSACHUSETTS 02139 (617) 498-9013

**101361**

JOSEPH J. CELLUCCI  
COMMISSIONER OF BUILDINGS  
AND HOUSING

The undersigned hereby applies for a Permit to Build, Alter, Repair  
in accordance with Section 113.0 of Mass. State Building Code.

**OFFICE USE**

22. Additional Information needed from:

- |                 |                |                              |
|-----------------|----------------|------------------------------|
| Electrical      | Gas            | Engineering                  |
| Plumbing        | Energy         | *Rent Control Sign Off       |
| Mechanical      | Planning Board | Historical                   |
| Fire Department | Conservation   | Board of Zoning Under Appeal |
| Traffic         | Water          | Other _____                  |
- \*Date \_\_\_\_\_ Hearing Examiner \_\_\_\_\_

23. Application Approval: Subject to the provisions of the Building Code, Zoning Laws of the City of Cambridge and State Law and Regulations.

Application accepted by: CO/US Date: 11/12/87  
 Plans accepted by: CP Bin No. 446  
 Zoning approved by: PR Date: 12/18/87  
 Plan Review approval by: CO Date: 12/18/87  
 Permit granted by: \_\_\_\_\_ Date: \_\_\_\_\_

24. Renewal issued \_\_\_\_\_
25. Certified plot plan submitted after foundation placed \_\_\_\_\_  
 Final Inspection made \_\_\_\_\_
26. Inspections made \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
27. Certificate of Use and/or Occupancy issued: \_\_\_\_\_

OFFICE USE

FEE 37963 SPECIAL 5 TOTAL FEE 37968

Date Received: \_\_\_\_\_  
 Date Issued: \_\_\_\_\_  
 Permit No.: \_\_\_\_\_

APPLICANT

- (PRINT IN INK) 148 Whittemore Avenue  
 1. Building Location: Cambridge, MA Date of Application: 11/9/87
2. Zone 1C Certified plot plan submitted Yes Lot area 336,283sf Frontage 222.4 ft  
 Set backs: front 21 ft. right 27 ft. left 14 ft. rear 545.0 ft  
 Height above grade: 53 ft., 4 stories; below grade: 0 ft., 0 stories  
 Use & Occupancy B-Business How is Building Occupied Office Use  
 Gross Floor Area: \_\_\_\_\_
3. Owner: See Attachment For Listing Phone No.: \_\_\_\_\_  
 Address: \_\_\_\_\_
4. Applicant: Vappi & Company, Inc. Lessee or other: \_\_\_\_\_  
 Address: 240 Sidney St., Cambridge, MA 02139 Phone No.: 661-8200
5. Contractor: Vappi & Company, Inc. License No.: 661-8200  
 Address: 240 Sidney St., Cambridge, MA 02139 Phone No.: \_\_\_\_\_
6. Architect/designer: Monacelli Associates, Inc. Registration No.: C.O.M. 2379  
 Address: 806 Massachusetts Ave Cambridge, MA Phone No.: 661-1015
7. Engineer: See Attachment - License No.: \_\_\_\_\_  
 Address: For Listing Phone No.: \_\_\_\_\_
8. Type of work: new addition alteration repair change or use/occupancy  
 Other \_\_\_\_\_
9. Description of work: Four (4) story office building, approximate size,  
 86,000 s.f.
10. Construction characteristics: Type of construction: 2C with Sprinkler  
 a. Type of footings: Pressure Injected Footings  
 b. Type of foundation: Pressure Injected Footing/Pile Caps/Grade Beams  
 Structural Slab. I reinforced concrete II structural steel III masonry bearing wall IV wood other \_\_\_\_\_  
 c. Type of frame: \_\_\_\_\_  
 d. Type of heat and fuel: Electric - Variable Air Volume System
11. Are the following included?: (notes: 1. see no. 18b; 2. requires separate permit; 3. see no. 16)
- |                                       |     |    |  |     |    |
|---------------------------------------|-----|----|--|-----|----|
| a. Fire extinguishing equip. (note 1) | yes | no | f. Air conditioning (note 3)           | yes | no |
| b. Plumbing (note 2)                  | yes | no | g. Electrical (note 2)                 | yes | no |
| c. Water pipes (note 2)               | yes | no | h. Sprinklers (note 1)                 | yes | no |
| d. Gas fitting (note 2)               | yes | no | i. Fire detection equip. (note 1)      | yes | no |
| e. Heating (note 3)                   | yes | no | j. Any items in Sect. 1200.00 (note 1) | yes | no |



Is a street Occupancy Permit necessary? Yes

Total volume (cubic ft.) \_\_\_\_\_ (if 35,000 cu. ft. and not R-3, requires stamp of Massachusetts registered P.E. or Architect - see no. 6 and no. 7) (EXCEPTION: single family residences)

Is structure subject to control in accordance with section 127.0 of the Massachusetts State Building Code? If YES, state the following and attach affidavits in accordance with Section 113.5.1 of State Building Code.

- a. Laboratory: \_\_\_\_\_ License No.: \_\_\_\_\_  
Address: \_\_\_\_\_
- b. Technician: \_\_\_\_\_ License No.: \_\_\_\_\_  
Address: \_\_\_\_\_
- c. Plan review waived: \_\_\_\_\_
- d. Structural review waived: \_\_\_\_\_

Costs: read entirely before completing--

A. Estimated cost of general work: \$5,024,512 (See Attached Copy) (less 62400 and 516000)

B. If any of the following are checked as "YES" in item 11 and included in cost in item 15 A above, then include below.

- a. Fire extinguishing equipment \$ \_\_\_\_\_
- b. Plumbing \$ \_\_\_\_\_
- c. Water piping \$ \_\_\_\_\_
- d. Gas fitting \$ \_\_\_\_\_
- e. Heating \$ \_\_\_\_\_
- f. Air conditioning \$ \_\_\_\_\_
- g. Electrical \$ \_\_\_\_\_
- h. Sprinklers \$ \_\_\_\_\_
- i. Fire detection equipment \$ \_\_\_\_\_

Is compliance with article 20 (Energy Conservation) of the State Building Code required in any part of the work?

yes  no  if YES, answer no. 17.

Does a summary and certification of compliance with Article 20 (Energy) accompany this application?

yes  no

Plans and specifications: (Section 113.5 of state building code)

- a. Specifications submitted: Yes No. of copies: 3-Bldg. Dept.
- b. Plans submitted: Yes No. of copies: 3-Bldg. Dept.

(If any one of items 11a, h, i or j is answered Yes; 1 set of plans is required to be sent to the Fire Dept. for review, and a copy of transmittal form attached to this application.) (Plans will be sent by this department)

If existing building, complete the following:

- a. Type of construction: \_\_\_\_\_
- b. Use group: \_\_\_\_\_
- c. Occupancy: \_\_\_\_\_
- d. No. of rooms/units: \_\_\_\_\_
- e. Height in feet: \_\_\_\_\_
- f. Height in stories above/grade: \_\_\_\_\_
- g. Area per floor: \_\_\_\_\_
- h. Total volume (cubic feet): \_\_\_\_\_

Gross Floor Area: (All floors, incl. bsmt/attic) \_\_\_\_\_

Number of persons per floor

Live load per floor (PSF)

Load 50 psf  
Distribution 20 psf

11 L.L. 70 psf

	a	b	a	b	a	b	a	b
1	165	100	6		11		16	
2	185	70	7		12		17	
3	193	70	8		13		18	
4	193	70	9		14		19	
5			10		15		20	

21. READ BEFORE SIGNING: (and the following sections of Massachusetts State Building Code)

The undersigned hereby certifies that he/she has read and examined this application and that the proposed work subject to the provision of the Massachusetts State Building Code and other applicable laws and ordinances is accurately represented in the statements made in this application and that the work shall be carried out in accordance with the foregoing statements and in compliance with the provisions of law and ordinance in force on the date of this application to the best of his/her ability.

The following sections are quoted directly from the Massachusetts State Building Code, as of June 1, 1979.

113.6 SITE PLAN: There shall also be filed prior to a permit being granted for the excavation or for the erection of any building or structure a site plan showing to scale the size and location of all new construction and all existing structures on the site, distances from lot lines, the established street grades if they exist (verified by the town or city), and proposed finished grades. In the case of demolition, the site plan shall show all construction to be demolished and the location and size of all existing structures and construction that are to remain on the site or plot. The site plan shall not be changed except as specified in Sections 113.8 and 115.3.

114.3 EXPIRATION OF PERMIT: Any permit issued shall be deemed abandoned and invalid unless the work authorized by it shall have been commenced within six (6) months after its issuance; . . . .

114.7 REVOCATION OF PERMITS: The building commissioner may revoke a permit or approval issued under the provisions of this Code in the case of any false statement or misrepresentation of fact in the application or the plans on which the permit or approval was based.

115.1 COMPLIANCE WITH CODE: The permit shall be a license to proceed with the work and shall not be construed as authority to violate, cancel or set aside any of the provisions of this Code, except as specifically stipulated by modification or legally granted variation in accordance with Section 126.0.

115.2 COMPLIANCE WITH PERMIT: All work shall conform to the stamped or endorsed application and plans for which the permit has been issued and any approved amendments thereto.

115.3 CHANGE IN SITE PLAN: A lot or site shall not be changed, increased or diminished in area from that shown on the official site plan, as specified in Section 113.6, unless a revised plan showing such changes accompanied by the necessary affidavit of owner or applicant shall have been filed and approved. EXCEPTION: A revised site plan will not be required if the change is caused by reason of an official street opening, street widening or other public improvement.

119.1 NEW BUILDINGS AND STRUCTURES: A building or structure hereafter shall not be used or occupied in whole or in part until the certificate of use and occupancy shall have been issued by the building commissioner or inspector of buildings or, when applicable, the state inspector. The certificate shall not be issued until all the work has been completed in accordance with the provisions of the approved permits and of the applicable codes for which a permit is required, except as provided in Section 119.4.

119.2 BUILDINGS OR STRUCTURES HEREAFTER ALTERED: A building or structure, in whole or in part, altered to change: from one use group to another; to a different use within the same group; the fire grading; the maximum live load capacity; the occupancy load capacity; or a building or structure hereafter altered for which a certificate of use and occupancy has not been heretofore issued, shall not be occupied or used until the certificate shall have been issued certifying that the work has been completed in accordance with the provisions of the approved permits and of the applicable codes for which a permit is required. Any use or occupancy, which was not discontinued during the work of alteration, shall be discontinued within thirty (30) days after the completion of the alteration unless the required certificate is issued.

122.3 VIOLATION PENALTIES: A person who shall violate a provision of the Basic Code shall be punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year, or both, for each violation. Each day during which any portion of a violation continues shall constitute a separate offense.

*Richard L. Fiorenza*  
(Signature of Licensed Builder or Wrecker)  
Richard L. Fiorenza

(Address) 12 Beverly Road  
Reading, MA 01867  
BO0601  
Lic. No. B03439 Class ABC

*David R. Vickery*  
(Signature of Owner or Authorized Representative)  
Alewife Phase I Limited Partnership  
124 Mt. Auburn Street  
Cambridge, MA 02138  
C/O David R. Vickery  
(Address)

My license expires: 11/13/87 City or Town: Boston Telephone No. 661-8200

*Smr*  
12/18/87  
11/13/88



ALEWIFE CENTER I  
November 9, 1987

Item/Description	Estimated Cost
Franki Piles	\$ 115,850
Site Work	571,326
Concrete/Rebar	568,496
Masonry/Granite	656,987
Structural Steel	576,000
Miscellaneous Metal	68,400
Carpentry/Wood Doors/Millwork	155,880
Waterproofing/Dampproofing/Sealants	40,100
Insulation	3,222
Roof	77,500
Doors/Frames	10,905
Rolling Door	2,500
Hardware	17,750
Windows	318,570
Drywall/Lt. Ga. Mtl. Framing/Spray Fireproofing	393,850
Ceramic Tile	40,781
Interior Granite	20,143
Terrazo	40,000
Acoustic	9,219
Resilient	2,067
Carpet	9,936
Painting & Vinyl Wall	37,000
Specialties	19,500
Job Sign (40 x 20)	15,000
Elevator	141,830
Plumbing	83,900
Fire Protection	116,900
HVAC	568,000
Electrical	343,000
<b>FINAL COST</b>	<b>\$5,024,512</b>

Ref. City of Cambridge Permit #082025 (8/19/86)	
Foundation Cost 8/19/86	\$600,000
Escalation for Fnd. Cost 7/15/87	24,000
Estimated Costs Previous Paid for:	\$624,000
	<u>624,000</u>

Estimated Cost Now Due: (11/8/87) \$4,400,512

Ref: 12/3, 87 structural - seal Permits 576,000

3,824,512

Fee 713 204 3,825,000

Special Use 37,250 1,000,000

5 3,725,000

12/18/87 Due: 57,968





CITY OF CAMBRIDGE

INSPECTIONAL SERVICES DEPARTMENT CITY HALL  
CAMBRIDGE, MASSACHUSETTS 02139 (617) 498-9013

JOSEPH J. CELLUCCI  
COMMISSIONER OF BUILDINGS  
AND HOUSING

120372

The undersigned hereby applies for a Permit to Build, Alter, Repair  
in accordance with Section 113.0 of Mass. State Building Code

OFFICE USE

FEE \_\_\_\_\_ SPECIAL \_\_\_\_\_ TOTAL FEE \_\_\_\_\_

Date Received: \_\_\_\_\_  
Date Issued: \_\_\_\_\_  
Permit No.: \_\_\_\_\_

87 DEC 3 17

(PRINT IN INK) 148 Whittemore Avenue

- 1. Building Location: Cambridge, MA Date of Application: 12/01/87
- 2. Zone 1C Certified plot plan submitted Yes Lot area 336,283sf Frontage 222.4 ft.  
Set backs: front 21 ft right 27ft left 14 ft rear 545.0 ft.  
Height above grade: 53 ft.ft., 4 stories; below grade: 0 ft., 0 stories  
Use & Occupancy B-Business How is Building Occupied Office use
- 3. Owner: See Attachment for Listing Gross Floor Area: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone No.: \_\_\_\_\_
- 4. Applicant: Vappi & Company, Inc. Lessee or other: \_\_\_\_\_  
Address: 240 Sidney St, Cambridge, MA 02139 Phone No.: 661-8200
- 5. Contractor: Vappi & Company, Inc. License No.: \_\_\_\_\_  
Address: 240 Sidney St. Cambridge, MA 02139 Phone No.: 661-8200
- 6. Architect/designer: Monacelli Associates, Inc. Registration No.: C.O.M 2379  
Address: 806 Massachusetts Avenue Cambridge, MA Phone No.: 661-1015
- 7. Engineer: See Attachment for Listing License No.: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone No.: \_\_\_\_\_
- 8. Type of work: new addition alteration repair change or use/occupancy  
Other \_\_\_\_\_

9. Description of work: Four (4) story office building, approximate size 86,000 sf.  
Structural Steel Erection ONLY gms.

- 10. Construction characteristics: Type of construction: 2C with Sprinkler
  - a. Type of footings: Pressure Injected Footings
  - b. Type of foundation: Pressure Injected Footing/Pile Caps/Grade Beams/Structural
  - c. Type of frame: I reinforced concrete II structural steel III masonry bearing wall IV wood other Slab
  - d. Type of heat and fuel: Electric - Variable Air Volume System

- 11. Are the following included?: (notes: 1. see no. 18b; 2. requires separate permit; 3. see no. 16)
 

a. Fire extinguishing equip. (note 1)	yes	no	f. Air conditioning (note 3)	yes	no
b. Plumbing (note 2)	yes	no	g. Electrical (note 2)	yes	no
c. Water pipes (note 2)	yes	no	h. Sprinklers (note 1)	yes	no
d. Gas fitting (note 2)	yes	no	i. Fire detection equip. (note 1)	yes	no
e. Heating (note 3)	yes	no	j. Any items in Sect. 1200.00 (note 1)	yes	no



12. Is a street Occupancy Permit necessary? Yes

13. Total volume (cubic ft.) \_\_\_\_\_ (if 35,000 cu. ft. and not R-3, requires stamp of Massachusetts registered P.E. or Architect - see no. 6 and no. 7) (EXCEPTION: single family residences)

14. Is structure subject to control in accordance with section 127.0 of the Massachusetts State Building Code? If YES, state the following and attach affidavits in accordance with Section 113.5.1 of State Building Code.

a. Laboratory: \_\_\_\_\_ License No.: \_\_\_\_\_  
 Address: \_\_\_\_\_

b. Technician: \_\_\_\_\_ License No.: \_\_\_\_\_  
 Address: \_\_\_\_\_

c. Plan review waived: \_\_\_\_\_

d. Structural review waived: \_\_\_\_\_

15. Costs: read entirely before completing—

A. Estimated cost of general work: \$576,000 (See Attached Copy)

B. If any of the following are checked as "YES" in item 11 and included in cost in item 15 A above, then include below.

- a. Fire extinguishing equipment \$ \_\_\_\_\_
- b. Plumbing \$ \_\_\_\_\_
- c. Water piping \$ \_\_\_\_\_
- d. Gas fitting \$ \_\_\_\_\_
- e. Heating \$ \_\_\_\_\_
- f. Air conditioning \$ \_\_\_\_\_
- g. Electrical \$ \_\_\_\_\_
- h. Sprinklers \$ \_\_\_\_\_
- i. Fire detection equipment \$ \_\_\_\_\_

16. Is compliance with article 20 (Energy Conservation) of the State Building Code required in any part of the work?  
 yes no if YES, answer no. 17.

17. Does a summary and certification of compliance with Article 20 (Energy) accompany this application?  
 yes no

18. Plans and specifications: (Section 113.5 of state building code)

- a. Specifications submitted: Yes No. of copies: 3-Bldg Dept
- b. Plans submitted: Yes No. of copies: 3-Bldg Dept

(If any one of items 11a, h, i or j is answered Yes; 1 set of plans is required to be sent to the Fire Dept. for review, and a copy of transmittal form attached to this application.) (Plans will be sent by this department)

19. If existing building, complete the following:

- a. Type of construction: \_\_\_\_\_
  - b. Use group: \_\_\_\_\_
  - c. Occupancy: \_\_\_\_\_
  - d. No. of rooms/units: \_\_\_\_\_
  - e. Height in feet: \_\_\_\_\_
  - f. Height in stories above/grade: \_\_\_\_\_
  - g. Area per floor: \_\_\_\_\_
  - h. Total volume (cubic feet): \_\_\_\_\_
- Gross Floor Area: (All floors, incl. bsmt/attic) \_\_\_\_\_

20. a. Number of persons per floor

b. Live load per floor (PSF)

Live Load 50 psf  
 Partition 20 psf  
 Total L.L. 70 psf

	a	b	a	b	a	b	a	b
1	165	100	6		11		16	
2	185	70	7		12		17	
3	193	70	8		13		18	
4	193	70	9		14		19	
5			10		15		20	



21. READ BEFORE SIGNING: (and the following sections of Massachusetts State Building Code)

The undersigned hereby certifies that he/she has read and examined this application and that the proposed work subject to the provision of the Massachusetts State Building Code and other applicable laws and ordinances is accurately represented in the statements made in this application and that the work shall be carried out in accordance with the foregoing statements and in compliance with the provisions of law and ordinance in force on the date of this application to the best of his/her ability.

The following sections are quoted directly from the Massachusetts State Building Code, as of June 1, 1979.

- 113.6 SITE PLAN: There shall also be filed prior to a permit being granted for the excavation or for the erection of any building or structure a site plan showing to scale the size and location of all new construction and all existing structures on the site, distances from lot lines, the established street grades if they exist (verified by the town or city), and proposed finished grades. In the case of demolition, the site plan shall show all construction to be demolished and the location and size of all existing structures and construction that are to remain on the site or plot. The site plan shall not be changed except as specified in Sections 113.8 and 115.3.
- 114.3 EXPIRATION OF PERMIT: Any permit is issued shall be deemed abandoned and invalid unless the work authorized by it shall have been commenced within six (6) months after its issuance; . . . .
- 114.7 REVOCATION OF PERMITS: The building commissioner may revoke a permit or approval issued under the provisions of this Code in the case of any false statement or misrepresentation of fact in the application or the plans on which the permit or approval was based.
- 115.1 COMPLIANCE WITH CODE: The permit shall be a license to proceed with the work and shall not be construed as authority to violate, cancel or set aside any of the provisions of this Code, except as specifically stipulated by modification or legally granted variation in accordance with Section 126.0.
- 115.2 COMPLIANCE WITH PERMIT: All work shall conform to the stamped or endorsed application and plans for which the permit has been issued and any approved amendments thereto.
- 115.3 CHANGE IN SITE PLAN: A lot or site shall not be changed, increased or diminished in area from that shown on the official site plan, as specified in Section 113.6, unless a revised plan showing such changes accompanied by the necessary affidavit of owner or applicant shall have been filed and approved. EXCEPTION: A revised site plan will not be required if the change is caused by reason of an official street opening, street widening or other public improvement.
- 119.1 NEW BUILDINGS AND STRUCTURES: A building or structure hereafter shall not be used or occupied in whole or in part until the certificate of use and occupancy shall have been issued by the building commissioner or inspector of buildings or, when applicable, the state inspector. The certificate shall not be issued until all the work has been completed in accordance with the provisions of the approved permits and of the applicable codes for which a permit is required, except as provided in Section 119.4.
- 119.2 BUILDINGS OR STRUCTURES HEREAFTER ALTERED: A building or structure, in whole or in part, altered to change: from one use group to another; to a different use within the same group; the fire grading; the maximum live load capacity; the occupancy load capacity; or a building or structure hereafter altered for which a certificate of use and occupancy has not been heretofore issued, shall not be occupied or used until the certificate shall have been issued certifying that the work has been completed in accordance with the provisions of the approved permits and of the applicable codes for which a permit is required. Any use or occupancy, which was not discontinued during the work of alteration, shall be discontinued within thirty (30) days after the completion of the alteration unless the required certificate is issued.
- 122.3 VIOLATION PENALTIES: A person who shall violate a provision of the Basic Code shall be punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year, or both, for each violation. Each day during which any portion of a violation continues shall constitute a separate offense.

*Richard L. Fiorenza*  
(Signature of Licensed Builder or Wrecker)

Richard L. Fiorenza  
(Address) 12 Beverly Road  
Reading, MA 01867

*David R. Vickery*  
(Signature of Owner or Authorized Representative)  
Alewife Phase I Limited Partnership

124 Mt. Auburn Street, Cambridge, MA 02138  
c/o David R. Vickery (Address)

Lic. No. B00601 Class ABC

My license expires 11/13/87 City or Town Boston Telephone No. 661-8200



**HOLD HARMLESS CLAUSE:** The Permittee(s) by acceptance of this permit agree(s) to indemnify and hold harmless the City of Cambridge, and its employees, from and against any and all claims, demands and actions for damages resulting from operations under this permit, regardless of negligence of the City of Cambridge, and its employees, and to assume the defense of the City of Cambridge, and its employees, against all such claims, demands and actions.

**OFFICE USE**

22. Additional Information needed from:

Electrical	Gas	Engineering
Plumbing	Energy	*Rent Control Sign Off
Mechanical	Planning Board	Historical
Fire Department	Conservation	Board of Zoning Under Appeal
Traffic	Water	Other _____

\*Date \_\_\_\_\_ Hearing Examiner \_\_\_\_\_

23. Application Approval: Subject to the provisions of the Building Code, Zoning Laws of the City of Cambridge and State Law and Regulations.

Application accepted by: \_\_\_\_\_ CD \_\_\_\_\_ Date: 11/12/87  
Plans accepted by: \_\_\_\_\_ CD \_\_\_\_\_ Bin No. 446  
Zoning approved by: \_\_\_\_\_ WTA PB 43 \_\_\_\_\_ Date: 12/3/87  
Plan Review approval by: \_\_\_\_\_ CD \_\_\_\_\_ Date: 12/3/87  
Permit granted by: \_\_\_\_\_ [Signature] \_\_\_\_\_ Date: 12/3/87

24. Renewal issued \_\_\_\_\_

25. Certified plot plan submitted after foundation placed \_\_\_\_\_

26. Inspections made \_\_\_\_\_ Final Inspection made \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

27. Certificate of Use and/or Occupancy issued: \_\_\_\_\_



# for Structural Steel

12/1/87

ALEWIFE CENTER 1  
November 9, 1987

Item/Description	Estimated Cost
Franki Piles	\$ 115,850
Site Work	571,326
Concrete/Rebar	568,496
Masonry/Granite	656,987
Structural Steel	576,000
Miscellaneous Metal	68,400
Carpentry/Wood Doors/Millwork	155,880
Waterproofing/Dampproofing/Sealants	40,100
Insulation	3,222
Roof	77,500
Doors/Frames	10,905
Rolling Door	2,500
Hardware	17,750
Windows	318,570
Drywall/Lt. Ga. Mtl. Framing/Spray Fireproofing	393,850
Ceramic Tile	40,781
Interior Granite	20,143
Terrazo	40,000
Acoustic	9,219
Resilient	2,067
Carpet	9,936
Painting & Vinyl Wall	37,000
Specialties	19,500
Job Sign (40 x 20)	15,000
Elevator	141,830
Plumbing	83,900
Fire Protection	116,800
HVAC	568,000
Electrical	343,000
<b>FINAL COST</b>	<b>\$5,024,512</b>

## fee Calculation:

576,000 ←  
~~600,000~~ → 713  
576,000

$\frac{476,000}{1000} \times 10 \rightarrow 4760$  <sup>713</sup> *gwr*

Special license → 5

fee      5478 *gwr*  
~~1194~~

Ref. City of Cambridge Permit #082025 (8/19/86)	
Foundation Cost 8/19/86	\$600,000
Escalation for Fnd. Cost 7/15/87	<u>24,000</u>
Estimated Costs Previous Paid for:	\$624,000
Estimated Cost <u>Now Due:</u> (11/8/87)	<u>\$4,400,512</u>





CITY OF CAMBRIDGE, MASSACHUSETTS  
**PLANNING BOARD**

CITY CLERK'S OFFICE  
CITY HALL ANNEX, 57 INMAN STREET, CAMBRIDGE 02139

**RECEIVED**

DEC 1 1987

REYNOLDS, VICKERY, MESSINA  
AND GRIEFEN, INC.

**NOTICE OF DECISION**

CASE NO: PB#43

PREMISES: 143 Whittemore Avenue

ZONING DISTRICT: Industry C/Flood Plain Overlay District

PETITIONER: Reynolds, Vickery, Messina & Griefen, Inc.

APPLICATION DATE: August 7, 1984

APPLICATION FOR RENEWAL: October 14, 1987

DATE OF PUBLIC HEARING: September 11, 1984

DATE OF PUBLIC HEARING FOR RENEWAL: November 17, 1987

PETITION: Construction of an office building and accessory parking within the Flood Plain Overlay District.

DATE OF PLANNING BOARD DECISION: November 13, 1984

DATE OF PLANNING BOARD DECISION FOR RENEWAL: November 17, 1987

DATE OF FILING DECISION: November 28, 1984

DATE OF FILING DECISION FOR RENEWAL: November 25, 1987

DECISION (summary): Grants renewal of the permit.

Appeals, if any, shall be made pursuant to Section 17 of Massachusetts General Laws Chapter 40A, and shall be filed within twenty (20) days after the date of filing of the above referenced decision with the City Clerk.

Copies of the complete decision and final plans, if applicable, are on file with the office of the Community Development Department and the City Clerk.

*November 25, 1987*

Date

*Elizabeth J. Malenfant*  
Authorized Representative  
of the Planning Board

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CASE NO: PB43

PREMISES: 143 Whittemore Avenue

ZONING DISTRICT: Industry C/Flood Plain Overlay District

PETITIONER: Reynolds, Vickery, Messina & Griefen, Inc.

APPLICATION DATE: August 7, 1984

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PETITION: Construction of an office building and accessory parking within the Flood Plain Overlay District.

DATE OF PLANNING BOARD DECISION: November 13, 1984

DATE OF PLANNING BOARD DECISION FOR RENEWAL: November 17, 1987

#### The Development Proposal

A renewal for the Special Permit number 43 for a single 88,000 square foot building, not in the Flood Plain Overlay District, is proposed on Whittemore Avenue with related parking, which is in the Flood Plain Overlay District, located to the rear.

#### The Application

In support of the petition, the applicant submitted the following documents:

1. Letter to Lester Barber of the Community Development Department from David Vickery dated October 14, 1987, requesting a renewal of Special Permit #43.
2. Special Permit #43 granted by the Planning Board dated November 13, 1984.

#### The Public Hearing

At the public hearing held on November 17, 1987, David Vickery of Reynolds, Vickery, Messina & Griefen, Inc. explained the request for the renewal of the permit. The storm storage will remain as originally presented in 1984. This swale is a temporary receptacle for flood water until the Pond is completed, and becomes the permanent reservoir for the water which comes through the underpass.

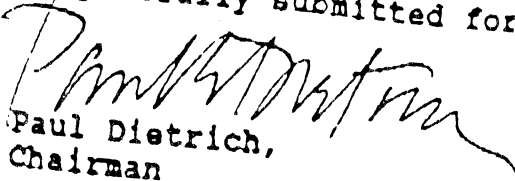
The developer is following all requirements of the Order of Conditions issued by the Cambridge Conservation Commission, as well as applying for a renewal of that permit.



Decision

After consideration of the application for renewal, the Planning Board GRANTS a Special Permit to construct an office building and accessory parking in the Flood Plain Overlay District generally as described in the original Special Permit filed on November 28, 1984 with the City Clerk.

Respectfully submitted for the Planning Board,



Paul Dietrich,  
Chairman

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DEC 5 1989

CITY OF CAMBRIDGE

Office of the City Solicitor  
City Hall  
795 Massachusetts Avenue  
Cambridge, Massachusetts 02139

REYNOLDS, VICKERY, MESSINA  
AND GRIFFIN CO.

Birge Albright  
Legal Counsel

Gail S. Gabriel  
Legal Counsel

Joseph M. Kaigler  
Legal Counsel

Diane Wynshaw-Boris  
Legal Counsel

(617) 499-9020

Russell B. Higley  
City Solicitor

Donald A. Driscoll  
Deputy City Solicitor

Michael C. Costello  
Assistant City Solicitor

December 1, 1989

Cambridge Planning Board  
City Hall  
Cambridge, MA 02139

Re: Alewife Center Project

Dear Members:

You have requested my opinion on the issue of the applicability of the Incentive Zoning Provisions, added to the Cambridge Zoning Ordinance (the "Zoning Ordinance") as Section 11.200 (effective July 25, 1988) to the Alewife Center project currently under redevelopment by Reynolds, Vickery, Messina and Griffen, Inc. ("RVM&G") and W.R. Grace & Co. ("Grace"). This issue has arisen in connection with the applications by RVM&G and Grace to the Planning Board for design review approval and an amendment to the PUD Special Permit for this project to enable the developers to commence the construction of a second building. To a great extent, the resolution of this issue turns on whether the first building constructed by RVM&G and Grace, known as "One Alewife Center," entitled the entire project to a zoning freeze.

Section 8.25 of the Zoning Ordinance requires construction or use under a special permit to commence within 6 months after the issuance of the permit in order to obtain a freeze against *det - this include before?*



subsequent zoning amendments. M.G.L. c. 40A, sec. C contains a similar requirement. If construction is commenced within that time period, then the zoning applicable to the project is that which was in effect at the time of issuance of the special permit, together with later amendments for which notice of a Planning Board public hearing was first published before the issuance of the permit.

In this case, construction of One Alewife Center began within six months of the issuance of the PUD Special Permit and continued through to completion (except for untenanted areas). Therefore, if One Alewife Center is properly considered part of the project authorized by the PUD Special Permit, the project qualified for a zoning freeze under Section 8.25 of the Zoning Ordinance and M.G.L. c. 40A, sec. 6. In order to resolve this issue, we must consider the factual history of this project.

RVM&G and Grace applied for the zoning approvals for One Alewife Center starting in late 1985. In November 1986, they obtained a height variance from the Board of Zoning Appeal. On January 12, 1987 they filed an application with the Planning Board for a PUD Special Permit for a project consisting of six office buildings, a hotel, and associated open space areas. The PUD application and all accompanying plans included One Alewife Center in its gross floor area calculations, parking calculations and construction sequence. The developers met with the Planning Board, staff members and community groups throughout the first half of 1987. No formal design review was conducted by the Planning Board on One Alewife Center. although various design drawings were



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circulated to members of the staff. On September 1, 1987, the Planning Board issued the PUD Special Permit for this project (PB#04). The PUD Special Permit approved the general outline of the project, but required the developers to submit additional materials to the Planning Board for review in connection with the various phases of the project. The PUD special Permit acknowledged that the project would be built in several phases over a period of 8 to 10 years, and established a schedule of estimated start dates for each phase.

In November 1987, the Planning Board issued a flood plain special permit for One Alewife Center. RVM&G received a building permit for One Alewife Center on December 18, 1987. Construction of that building had commenced in the fall of 1987 under a foundation permit, and continued through to completion of the base building in 1988. The first tenant took occupancy in late 1988.

In assessing whether a court would consider One Alewife Center as part of the PUD project for purposes of a zoning freeze, neither the statutes nor the case law offer much assistance as to how to weight the facts of this case. I note, on the one hand, that One Alewife Center was not subjected to the design review process set forth in the PUD Special Permit, and it was permitted somewhat separately from the PUD process. On the other hand, all the plans submitted to the Planning Board and to the neighborhood groups in connection with the PUD process included that building; the PUD decision itself references that building as part of the project and includes it in the approved Final Development Plan and dimensional



and use limitations; the building's design was influenced by the schematic design of the remainder of the project; and the design of the rest of the project as approved by the Planning Board was in turn influenced by the design of that building. The facts of this project are unusual, and present a very close case making it difficult to predict how a court would rule on this issue. In the final analysis, however, because there can be no dispute that all the PUD documentation includes One Alewife Center as part of the project, it is my opinion that One Alewife Center should be considered part of the PUD project, and that the construction of that building was sufficient to create a zoning freeze.

*Their  
conclusion  
of course*

The Planning Board noted in the PUD decision that this project is unlike other PUD projects approved by the Board in that it will not all be constructed simultaneously, but will be phased over 3 to 10 years. The length of the buildout period, and the interdependence of the physical elements of this project, are unique to it. In developing this project, the developers must engage in significant long-term planning, which can only be done successfully if there is some certainty to the applicable zoning requirements. The PUD decision itself recognizes the need to provide continuity to the developer since it expressly permits modifications to be made to the PUD Special Permit as mere "Minor Amendments" when necessary to accommodate the State's redesign of the Route 2/Route 16 intersection. While the courts have left open the issue of how a zoning freeze applies to multi-phase projects, after consideration of the unique facts presented by this project



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it is my opinion that the entire project has the benefit of a zoning freeze so long as the requirements of Section 8.25 of the Zoning Ordinance and M.G.L. c. 40A, sec. 8 are met (i.e., that construction of the project (i) commenced within the 6 month period, and (ii) continues through to completion as continuously and expeditiously as is reasonable under the circumstances). I have already addressed the first of these requirements.

The next issue which must be addressed is whether the zoning freeze has lapsed by virtue of the passage of time since the issuance of the PUD Special Permit in 1987. In order for the zoning freeze to remain in effect, construction of the project must be "continued through to completion as continuously and expeditiously as is reasonable." In this case, since 1987 RVM&G and Grace have constructed One Alewife Center and have worked on the design of the infrastructure for the project, the additional permitting for the overall project, and the design of the second building. No construction has started yet on any other phase of this project.

In such a situation, the test under the case law for the continuation of a zoning freeze is whether the alleged obstacle to continued construction constitutes a "real practical impediment" to construction progress which is not resolvable by unilateral action of the developer. See, e.g., Smith v. Board of Appeals of Brockling, 366 Mass. 429 (1973). There is little guidance in the case law as to what, short of an appeal of the grant of the permit which gives rise to the freeze, constitutes a "real practical



impediment."

The primary reason for the delay in starting the second phase of the Alewife Center project has been the announced intention of Secretary Salvucci, of the Executive Office of Transportation and Construction, to take a portion of the project site to accommodate a redesign of the Route 2/Route 16 intersection. Since the first announcement of this plan in early 1989, the developers have met with Mr. Salvucci and his staff many times to reach an understanding of the effect of this proposed redesign on the project site and their proposed building program. The complexity of Secretary Salvucci's undertaking has made this slow going, and led him to tell the developers in early 1990 that he would not approve any further development of the project at that time so as to provide him with maximum flexibility for his redesign. Only this fall has Secretary Salvucci's proposal sufficiently crystallized to enable the Alewife Center developers to commence development of a second building. At that time, the developers presented to the Planning Board for design review the second building.

There has been no dispute that the developers have acted diligently and in good faith in attempting to resolve the problems created by Secretary Salvucci's proposal so that development of the project could continue. However, their inability to force a resolution of this issue probably constitutes a "real practical impediment" sufficient under the case law to justify the delay in starting construction of the second building. In addition,



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construction of One Alewife Center did continue throughout 1988. Therefore, in my opinion the zoning freeze has not lapsed by virtue of the passage of time without the commencement of the second building.

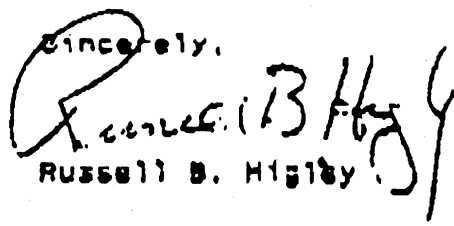
On the lapse issue, I also want to bring to the Planning Board's attention Section 12.411 of the Zoning Ordinance, which requires that each phase in a phased PUD development begin within the time limits set forth in the Final Development Plan. This Board previously approved a Minor Amendment to the Alewife Center PUD Special Permit, pursuant to Section 12.371 of the Zoning Ordinance and the provisions of the PUD Special Permit itself (page 15, paragraph (e)), to enable the developers to handle the phasing differently from the sequence presented in the PUD application in light of the delays caused by EOTC.

As noted above, there is little guidance in the Zoning Ordinance, the General Laws or the case law on the set of complicated issues presented by this issue. It is my opinion, after reviewing the facts and the relevant law, that the construction of One Alewife Center qualified the entire Alewife Center Project for a zoning freeze as of September 1, 1987 (the date of issuance of the PUD Special Permit), and that this freeze remains in effect today. Therefore, since the first public hearing on the Incentive Zoning Provisions was not advertised prior to



September 1, 1987, the Alewife Center project is not subject to these provisions.

RBH/jab

Sincerely,  
  
Russell B. Higley





**CITY OF CAMBRIDGE**

Office of the City Solicitor  
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*Donald A. Drisdell*  
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*Michael C. Costello*  
Assistant City Solicitor

*Legal Counsel*

*Birge Albright*  
*Gail S. Gabriel*  
*Arthur J. Goldberg*  
*Linda A. Stamper*  
*Deborah R. Cautela*  
*Nancy J. Glawa*

May 3, 1996

Robert W. Healy  
City Manager  
City Hall  
Cambridge, MA 02139

**Re: *Planning Board Special Permit #64 (Alewife Center)***

Dear Mr. Healy:

The Planning Board has requested advice regarding the Planned Unit Development ("PUD") Special Permit originally granted on September 1, 1987 for development of the Alewife Center project.

On April 2, 1996 the Planning Board received a request from David Vickery, Spaulding and Slye Vice President, to amend the authorized schedule of construction contained in Special Permit #64. Susan Schlesinger's memorandum to me dated April 10, 1996 references several requests for advice sought by the Planning Board. The Planning Board has assumed that the Special Permit is still "valid" based upon conclusions reached in the December 1, 1989 opinion from Russell B. Higley that the start of construction on One Alewife Center began construction under the Special Permit. The Planning Board asks that this office review that opinion and



advise the Board whether there is any reason to alter the opinion expressed in 1989. If the Special Permit has not lapsed, the Planning Board wishes to know if it may treat the requested extension of the construction schedule as a Minor Amendment as requested by Mr. Vickery. The Board also indicates a desire for some clarification on the differences between a Minor Amendment, a Major Amendment and revocation of the Special Permit. I think it would be helpful to identify specific legal questions that are inherent in the request from the Planning Board as follows:

1. Has the passage of time since the issuance of the PUD Special Permit caused the permit to lapse?
2. Does the Alewife Center project continue to have the benefit of a zoning freeze by virtue of the issuance of the Special Permit?
3. If the Planning Board thinks it may be appropriate to alter the time limits specified in the Final Development Plan for commencement of construction of each phase of the project, should the Board do so by a Minor Amendment, a Major Amendment, or should the Special Permit be revoked and a new application required?

I will briefly provide some factual background and answer each of the questions.

#### BACKGROUND

On January 12, 1987 Reynolds, Vickery, Messina and Griefen ("RVM&G") applied for a PUD Special Permit for a project consisting of six office buildings and a hotel. PUD Application, p.8, §4. PUD-IC Special Permit #64 for the Alewife Center project was granted on September 1, 1987. Evidently, Spaulding and Slye is the successor in interest to RVM&G.

While the PUD Application was pending, RVM&G applied for zoning approvals for One Alewife Center (identified in the PUD Application as Building #1). In November of 1986 they had obtained a height variance from the Board of Zoning Appeals. After the issuance of the



Special Permit, they also obtained a Flood Plain Special Permit issued by the Planning Board in November of 1987. A Building Permit was issued for One Alewife Center on December 18, 1987. Construction of One Alewife Center was begun in the fall of 1987 pursuant to a foundation permit, and continued through to completion of the base building in 1988, with the first tenant occupying the building in late 1988.

The Planning Board recognized that the Alewife Center project would be developed "...over an 8 to 10 year period...." PUD Permit #64, p.12, §2(a). The application for the Special Permit included a schedule of construction start dates that phased the construction of the various buildings out to the year 1994. PUD Application, p.8, §4. The Planning Board, at the request of the permittee, amended the "schedule of phase commencement" on August 1, 1989 by Minor Amendment #1. The amended schedule provides construction start dates for each building as follows:

- Building #1: 9/1/87
- Building #2: 9/1/93
- Building #3: 9/1/95
- Building #4: 9/1/91
- Building #5: 9/1/89
- Building #6: 3/1/91
- Building #7: 9/1/97

Building #1 (One Alewife Center) was begun and completed as described above. None of the other phased construction start dates have been met, and no other construction at the site has occurred.

The permittee now asks that the Planning Board further amend the Final Development Plan by accepting a new schedule of phase development as follows:

- Building #1: 9/1/1987
- Building #2: 9/1/2004

NOT  
11/25/87  
128/84  
R-4  
128/84



Building #3: 9/1/2000  
Building #4: 9/1/2004  
Building #5: 9/1/1998  
Building #6: 3/1/2002  
Building #7: 9/1/2000

1. Has the passage of time since the issuance of the PUD Special Permit caused the permit to lapse?

Section 9 of Chapter 40A ("the "Zoning Act") provides as follows:

Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

Section 10.46 of the Cambridge Zoning Ordinance essentially incorporates the provisions of G.L. c. 40A, §9. In the context of a PUD Special Permit, §12.41 of the Zoning Ordinance provides that the developer shall "...begin construction of the PUD within twelve (12) months of the date of the granting of the Special Permit to construct a PUD." Section 12.41.1 provides further that "...if the PUD is to be developed in stages, then the developer must begin the construction of each stage within the time limits specified in the Final Development Plan...."

As the Planning Board is aware, this office, in a different context, concluded in 1989 that the start of construction of One Alewife Center commenced construction under the Special Permit. There have been no intervening court decisions or amendments to the Zoning Act or the Zoning Ordinance that would alter the conclusion reached in 1989, and that opinion remains unchanged in that respect.

In assessing whether or not a court would consider One Alewife Center as part of the PUD project, despite the fact that zoning relief was obtained separately for that building, the



1989 opinion pointed out that the application, plans, community presentations, and the decision itself, all referenced One Alewife Center as part of the PUD. The developer argues that despite the sequence of permitting, Building #1 has been an integral part of the planning and design concept from the start. If the developers can demonstrate, as they claim, that basic aspects of the entire project emanated from the design of Building #1, that, coupled with the inclusion of the building in the plans and decision form a strong argument that One Alewife Center was a part of the project. A court would probably find that the start of construction of One Alewife Center was commencement of construction under the Special Permit. Subject to the Planning Board's discretion to revoke, require amendment, or extend the time for construction, it is my opinion that the Special Permit has not lapsed.

2. Does the Alewife Center project continue to have the benefit of a zoning freeze by virtue of the issuance of the Special Permit?

As indicated above, nothing has occurred or been brought to my attention that would alter the opinion rendered by this office in 1989 which concluded that the commencement of One Alewife Center triggered a zoning freeze for the entire project. The 1989 opinion noted that in order for a zoning freeze to remain in effect, construction of the project must be "...continued through to completion as continuously and expeditiously as is reasonable." G.L. c.40A, §6; Cambridge Zoning Ord., §8.25.

There is no Massachusetts appellate decision addressing the difficulties of applying the zoning freeze concept to a phased PUD Special Permit project. While deciding the case on other grounds, the Appeals Court in *Murphy v. Selectmen of Manchester*, 1 Mass. App. Ct. 409 (1973) noted:



It is open to question whether, where one permit authorizes the construction of severable, distinct, independent buildings, the six-month requirement is not applicable to each of those buildings.

At issue in *Murphy* was a building permit under an old version of the Zoning Act, but language governing zoning freezes in the current law is nearly identical and such a rationale could be equally applicable to a special permit for a multiple phase project.

Other cases have addressed the circumstance in which a building permit has issued prior to notice of a public hearing on a proposed zoning amendment, and the developer later obtains a modification to the permit. In *Smith v. Building Commissioner of Brookline*, 367 Mass. 765 (1975) the court determined that modifications to a building permit did not necessarily constitute the issuance of a new building permit and the permittee could be entitled to a zoning freeze that insulated the project from zoning amendments first advertised after the issuance of the original permit. See also, *Carstensen v. Zoning Board of Appeals of Cambridge*, 11 Mass. App. Ct. 348 (1981) (good faith efforts to correct deficiencies by modification of original building permit relate back to original issuance of permit for purposes of zoning freeze protection).

These cases do not, however, address the specific concern of how to deal with a zoning freeze in the context of a multi-phase PUD Special Permit. In enacting Article 12.000 of the Zoning Ordinance, the City Council stated the purpose of the ordinance as follows:

The Planned Unit Development districts and uses created herein are intended to provide greater opportunity for the construction of quality developments on large tracts of land by providing flexible guidelines which allow the integration of a variety of land uses and densities in one development.

Section 9 of the Zoning Act expressly authorizes Planned Unit Developments pursuant to special permit, and recognizes that such permits may impose conditions and limitations on time or use.

Practical realities suggest that if a city is to be successful in encouraging PUD projects,



developers will need to be assured that they may rely upon permits for subsequent buildings in the project not being subject to intervening zoning changes.

A zoning freeze, once established by commencement of construction, is maintained so long as construction proceeds "as continually and expeditiously as is reasonable." Zoning Ordinance §8.25. The City Council has given the Planning Board substantial flexibility in the PUD process to establish a schedule for construction of a multi-phase project. In §12.42, the Council has provided a requirement that the Board periodically monitor the construction, and, if the developer has failed to begin or proceed in a timely manner, the Planning Board has authority to extend, amend, or revoke the permit. In effect, the Planning Board is charged under §12.42 with determining whether or not construction has begun and proceeded reasonably enough to maintain a zoning freeze.

There are judicial precedents indicating that the purpose of a zoning freeze is to afford protection from zoning changes to good faith holders of permits taken out before the first zoning notice who proceed with some diligence to build the approved project. See, *Alexander v. Building Inspector of Provincetown*, 350 Mass. 370, 375-376 (1966). But courts have noted that the statute "...must not be allowed to create a permanent license to construct a building for a nonconforming use." *Smith v. Board of Appeals of Brookline*, 366 Mass. 197, 202, quoting from, *Papalia v. Inspector of Bldgs. of Watertown*, 351 Mass. 176, 179 (1966).

It is my view that a PUD Special Permit, once timely begun, benefits from a zoning freeze through all its stages to completion, subject to the authority of the Planning Board to revoke the permit pursuant to §12.42. This interpretation reconciles the various provisions of the ordinance and appears to be consistent with the statute. There is tension between the

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legislative policy to protect permit holders from subsequent zoning changes, and the prerogative of City officials and citizens to re-examine planning and zoning goals. Lengthy extensions not supported by proper findings of the reasonableness of any delays in construction might prompt a court to conclude that a zoning freeze has lapsed.

3. If the Planning Board thinks it may be appropriate to alter the time limits specified in the Final Development Plan for commencement of construction of each phase of the project, should the Board do so by a Minor Amendment, a Major Amendment, or should the Special Permit be revoked and a new application required?

The City Council has given discretion to the Planning Board to respond to the failure of a permittee to commence initial or phased construction under a PUD Special Permit. The Board may: (1) extend the time, (2) revoke the Special Permit, or (3) recommend that the developer amend the Final Development Plan in accordance with §12.37 (discussed below).

Neither this provision, nor any comparable to it, has been interpreted by the Massachusetts courts. In general, a special permit granting authority must "...make an affirmative finding as to the existence of each condition of the statute or by-law required for the granting of the ...special permit." *Vazza Properties v. City Council of Woburn*, 1 Mass. App. Ct. 308 (1973 (citing *Planning Board of Springfield v. Board of Appeals of Springfield*, 355 Mass. 460 (1969), see also, *Brackett v. Board of Appeal of the Building Department of Boston*, 311 Mass. 52 (1942). A permit granting authority has greater discretion to deny the relief sought. *Gamache v. Town of Acushnet*, 14 Mass. App. Ct. 215, 220 (1982). Findings of fact relevant to the standards of the statute and the ordinance must be made in order to establish that the denial was not arbitrary or capricious or based on a legally untenable ground. *MacGibbon v. Bd. of Appeals of Duxbury (Macgibbon I)*, 347 Mass. 690 (1964); *MacGibbon II* 356 Mass.



635 (1970); *MacGibbon III*, 369 Mass. 512 (1976).

A number of cases have addressed the question of a board's power to modify special permits. It is clear that a board has "inherent power...to correct an inadvertent or clerical error in its decision so that the record reflects its true decision." *Selectmen of Stockbridge v. Monument Inn, Inc.*, 8 Mass. App. Ct. 158, 164 (1979). A board may not make a substantive modification which changes the result of an original deliberate decision, or which grants relief different from that originally granted, without complying with relevant notice and hearing requirements. See, *Fish v. Building Inspector of Falmouth*, 357 Mass. 774, 775 (1970); *Potter v. Board of Appeals of Mansfield*, 1 Mass. App. Ct. 89, 95-97; *Cassani v. Planning Bd. of Hull*, 1 Mass. App. Ct. 451, 456 (1973).

Section 12.37 of the Zoning Ordinance provides that a developer may seek amendments to the Final Development Plan "...only if he encounters difficulties in constructing the PUD which could not have reasonably been foreseen...." Section 12.37.1 indicates that such amendments may be considered as either major or minor amendments, to be determined by the Planning Board. Minor amendments shall be authorized by written approval of the Planning Board, and major amendments "...shall be considered as an original application for a Special Permit to construct a PUD...." The ordinance gives examples of amendments that shall be considered major or minor, but there is no express reference to changes in the schedule for phased construction. Historically, though apparently not uniformly, the Planning Board has treated amendments to phasing schedules of multi-phase PUD's as a minor amendment, including Minor Amendment #1 to the Alewife Center PUD itself.

Applying the principles enunciated thus far by the courts relating to modifications to



special permits, it is advisable for the Planning board to make use of the minor amendment procedure cautiously. Whether or not an amendment to a phasing schedule would be viewed by the courts as a change in the result of an original deliberate decision, or a grant of relief different from that originally granted, may be a close question. To do so without notice and a public hearing may exceed the Planning Board's authority.

An amendment to a phasing schedule that is sought and granted prior to the expiration of any start dates in the original permit might be viewed as not changing the result of an original deliberate decision or as not granting relief different from that originally granted, but that result is not certain. Even less certain is an amendment granted after the passage of significant periods of time with original start dates being missed. This analysis is equally applicable to an extension of time pursuant to §12.42. Given the precedents, a court is likely to closely question any procedure that allows modifications to special permits without required notice and public hearing.

Major amendments are to be considered as an original application for a special permit. The procedures relating to review of a Development Proposal and Final Development Plan, with two public hearings, must be followed. Amendments resulting from this process appear to meet the existing judicial standards for modifications to a special permit, and for that reason the major amendment process will frequently be the advisable one.

While the purpose and structure of Article 12.000 demonstrate an intent to provide a flexible vehicle for the encouragement of desirable, planned developments, the provisions of the ordinance must comply with the judicially recognized scope of authority. Regarding the specific request to amend the Final Development Plan by modifying the phasing schedule, a simple



extension or a minor amendment are problematic because neither requires the formal notice and public hearing of a major amendment or a new application. Proceeding with the request as a major amendment would more clearly comport with existing precedents.

In reviewing a revocation, the remaining option in §12.42, a court might look to the standard for denial of an original permit. The Planning Board should make findings of fact relevant to the standards in the ordinance relating to PUD permits to support such a revocation. A finding that a developer failed to meet start dates would likely satisfy the requirement of such a finding, given that the ordinance expressly authorizes revocation in such circumstances, and would very likely be deemed appropriate.

Should the permit be revoked and the developer re-apply, the project would be subject to all current provisions of the Zoning Ordinance and any amendments first advertised prior to issuance of the permit. On the other hand, as discussed above, it is my opinion that any extension of time or major or minor amendment should be viewed as relating back to the original grant of the permit, thereby entitling the entire project to the continued benefit of a zoning freeze to full build-out.

### SUMMARY

1. It remains the opinion of this office that a court would likely conclude that One Alewife Center (Building #1) is a part of the PUD project, and the commencement of the first phase within twelve months of issuance of the Special Permit constituted exercise of the permit sufficient to prevent lapse.

2. Effectuating the stated purposes of the PUD ordinance suggests the need to conclude that commencement of the first phase is sufficient to trigger a zoning freeze for the entire PUD project, subject to the Planning Board's authority to revoke the permit. Such an interpretation does not appear to run afoul of existing judicial precedent.



3. Courts have indicated that a board may not make a substantive modification to a Special Permit which changes the result of an original deliberate decision, or which grants relief different from that originally granted, without complying with relevant notice and hearing requirements.

4. Extensions of time under §12.42 and Minor Amendments under §12.37, may occur without formal review comparable to the initial review, and for that reason must be used cautiously and only in circumstances not leading to substantive modification or grants of relief different from that originally granted.

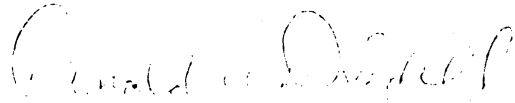
5. Whether or not an amendment to a phasing schedule would be viewed by the courts as a change to an original deliberate decision, or a grant of relief different from that originally granted, is a close question, and to do so without meeting the notice and hearing requirements for a PUD Special Permit may exceed the Planning board's authority.

6. A Major Amendment, which must follow the same procedures as an original application, would likely meet the judicial standards for an acceptable modification.

7. Both Minor Amendments and Major Amendments, if properly accomplished, should be viewed as relating back to the original grant of the Special Permit, thereby preserving any zoning freeze effected by commencement of construction under the permit.

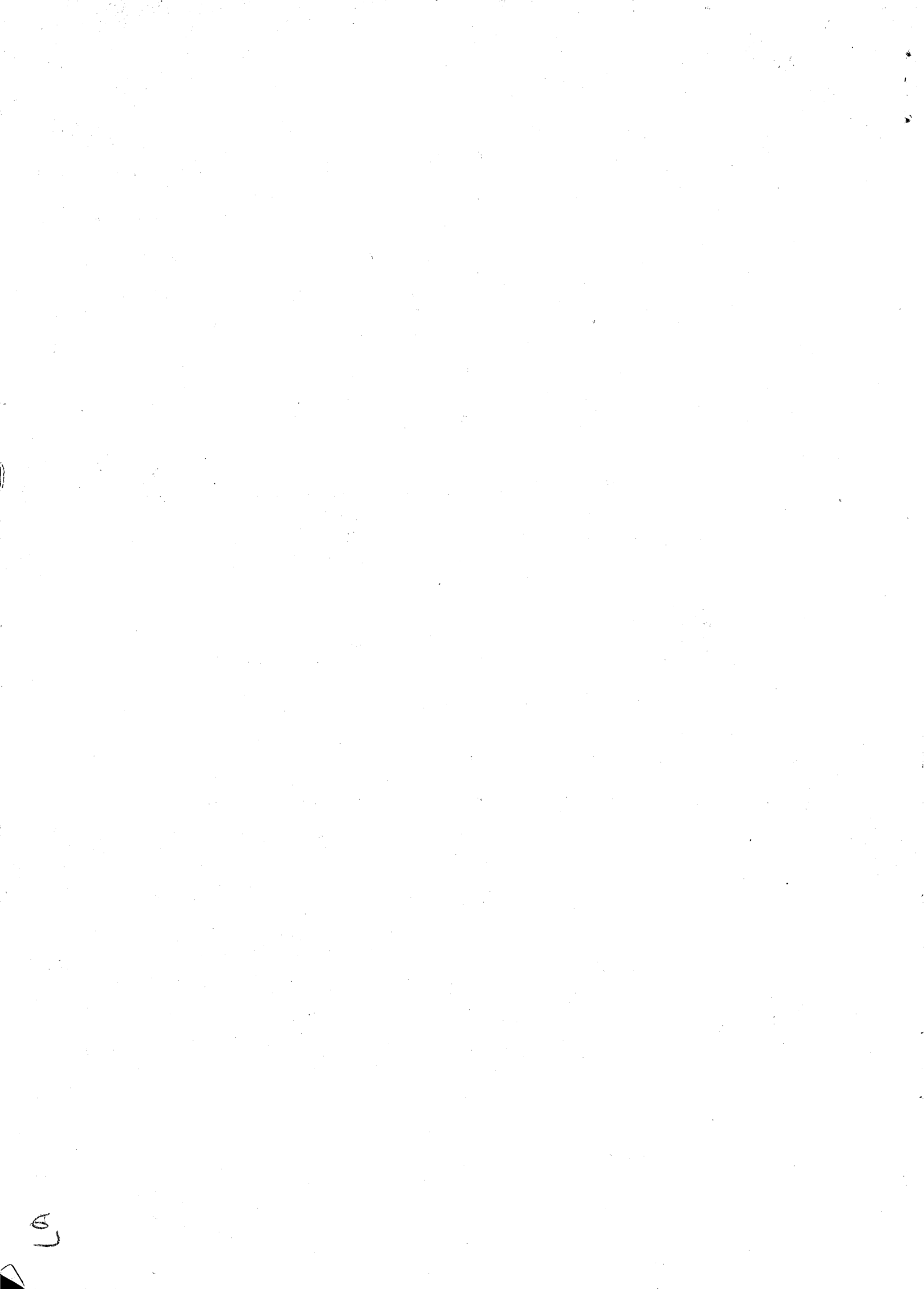
8. Revocation, based upon a proper finding under §12.42, would likely be upheld, and any new application would be subject to current zoning.

Very truly yours,



Donald A. Drisdell

cc. Cambridge Planning Board  
Susan Schlesinger



28 Magoun Street  
Cambridge, MA 02140  
May 15, 1996

Ms. Margaret Drury  
City Clerk  
795 Massachusetts Avenue  
Cambridge, MA 02139

To Whom It May Concern:

As you are no doubt aware, there has been some controversy over the viability of the PUD permit for the Grace site. After combing city files and reviewing the information, the Alewife Study Group is convinced: The PUD permit was never initiated, so it is not viable.

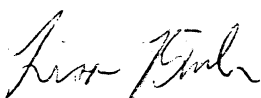
We have enclosed copies of many of the relevant documents in four packets. The first packet prepared by the Alewife Study Group and entitled, "Brief Overview of Why the Existing PUD Permit for Alewife Center Is No Longer Valid," includes a comprehensive timeline and a summary explanation of why we believe the PUD is not viable. We think of it as the "map" for all the subsequent documents. It orients you to the data.

The second packet put together by the Alewife Study Group and entitled, "Supporting Documents" contains copies of the documents cited in the timeline.

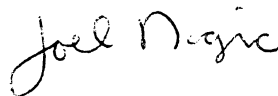
The third and fourth documents are copies of the city's Law Department's opinions on the PUD permit's viability. The first is dated, December 1, 1989, and the second, May 3, 1996. We hope you find these useful.

We would like all of this information included in the Consent Communication Agenda for the upcoming City Council meeting on Monday, May 20, 1996. Thank you for your consideration--and xeroxing!

For the Committee,



Lisa Birk  
Co-chair



Joel Nogic  
Co-chair

Consent Communication #11 S-289

Communication was received from  
Lisa Birk, Co-Chair and Joel  
Nogic, Co-Chair, transmitting  
information regarding the viability  
of the PUD permit for the Grace site.

In City Council May 20, 1996

*Referred to City Manager  
for report before  
The end of June.*