

RECEIVED BY
OFFICE OF CITY CLERK
1987 JAN -5 PM 3:48
CAMBRIDGE MA.

WHEREAS:

A communication has been received from the City Manager transmitting a request from 75-83 Cambridge Parkway Limited Partnership that a portion of the air space above Commercial Avenue be abandoned, discontinued as a public way of the City of Cambridge and that an easement pertaining to such portion be granted to 75-83 Cambridge Parkway Limited Partnership; and

WHEREAS:

This City Council has determined that public convenience and necessity requires that portions of this air space above Commercial Avenue consisting of ten ~~eight~~^{3.75} square foot triangular areas above the sidewalk on Commercial Avenue adjacent to the rear of 75-83 Cambridge Parkway more particularly shown on the plans attached hereto are no longer required for public purposes; therefor be it

ORDERED:

- (1) That such portion of the air space above Commercial Avenue be, and hereby is, discontinued as a public way in the City of Cambridge;
- (2) That 75-83 Cambridge Parkway Limited Partnership be granted an easement in such discontinued area in the form of the Easement Agreement attached hereto; and
- (3) That the City Manager is hereby authorized to execute and deliver to 75-83 Cambridge Parkway Limited Partnership such Easement Agreement.

GRANT OF EASEMENT

This Easement Agreement is made as of the day of , 1987, by and between THE CITY OF CAMBRIDGE, a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts (the "City") and 75-83 CAMBRIDGE PARKWAY LIMITED PARTNERSHIP, a Massachusetts limited partnership having an address at c/o Cohen Properties, Exchange Place, Boston, Massachusetts ("CPLP").

W I T N E S S E T H T H A T :

WHEREAS, CPLP owns a parcel of land and improvements thereon known as 75-83 Cambridge Parkway more particularly described in a deed dated December 9, 1985 recorded in the Middlesex South District of the Land Court as Document No. 695895 (the "Development Site") and on which CPLP plans to engage in major construction of residential or other structures approved by the City pursuant to a Special Permit as part of a Planned Unit Development; and

WHEREAS, CPLP seeks to acquire from the City a permanent easement in certain areas abutting the Development Site more particularly described on Exhibit A (the "Easement Area"),

WHEREAS, pursuant to an order adopted January __, 1987 the Cambridge City Council has approved the granting of this easement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and CPLP agree as follows:

1. The City hereby grants to CPLP (and its successors and assigns as owners of the Development Site) a permanent exclusive easement in the Easement Area for the benefit of the Development Site for any purpose incident to any use from time to time on the Development Site including, without limitation, the placement of bay windows and balconies in the Easement Area relating to buildings constructed on the Development Site.

2. CPLP agrees that the City shall not be responsible for any loss or damage to person or property which may occur in connection with its activities in or use of the Easement Area, and that in any case CPLP shall save the City harmless and indemnified from any liability for injury, loss, accident or damage to person or property, and from any claims, actions, proceedings, and costs in connection therewith, including reasonable attorney's fees, arising from omission, fault, negligence or other misconduct of CPLP, or arising from any use by CPLP made on or about the Easement Area provided that no partner of CPLP shall have any personal liability hereunder.

COMMONWEALTH OF MASSACHUSETTS

Middlesex County, ss.

, 1987

Then personally appeared the above-named Robert W. Healy, City Manager of the City of Cambridge (the "City"), and acknowledged the foregoing to be his free act and deed and the free act and deed of the City, before me

Notary Public

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss.

, 1987

Then personally appeared the above-named Richard D. Cohen, the General Partner of 75-83 Cambridge Parkway Limited Partnership, and acknowledged the foregoing to be his free act and deed and the free act and deed of RDC-Cambridge Parkway Limited Partnership, as general partner of 75-83 Cambridge Parkway Limited Partnership, before me

Notary Public

My commission expires:

3. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives as of the date and year first above written.

75-83 CAMBRIDGE PARKWAY
LIMITED BY PARTNERSHIP
By: RDC-CAMBRIDGE PARKWAY
LIMITED PARTNERSHIP,
GENERAL PARTNER

By


General Partner

THE CITY OF CAMBRIDGE

By

Robert Healy, City Manager

Approved as to form:



City of Cambridge

Communication No. 4

IN CITY COUNCIL

January 5, 1987

VICE-MAYOR VELLUCCI

- WHEREAS: A communication has been received from the City Manager transmitting a request from 75-83 Cambridge Parkway Limited Partnership that a portion of the air space above Commercial Avenue be abandoned, discontinued as a public way of the City of Cambridge and that an easement pertaining to such portion be granted to 75-83 Cambridge Parkway Limited Partnership; and
- WHEREAS: This City Council has determined that public convenience and necessity requires that portions of this air space above Commercial Avenue consisting of ten 2.75 square foot triangular areas above the sidewalk on Commercial Avenue adjacent to the rear of 75-83 Cambridge Parkway more particularly shown on the plans attached hereto are no longer required for public purposes; therefore be it
- ORDERED:
- (1) That such portion of the air space above Commercial Avenue be, and hereby is, discontinued as a public way in the City of Cambridge;
 - (2) That 75-83 Cambridge Parkway Limited Partnership be granted an easement in such discontinued area in the form of the Easement Agreement attached hereto; and
 - (3) That the City Manager is hereby authorized to execute and deliver to 75-83 Cambridge Parkway Limited Partnership such Easement Agreement.

In City Council January 5, 1987.

Adopted by a yeas and nays vote:-

Yeas 9; Nays 0; Absent 0.

Attest:- Joseph E. Connarton, City Clerk.

A true copy;

Joseph E. Connarton

ATTEST:-

Joseph E. Connarton, City Clerk.

EXHIBIT A

Easement Area

See attached Plans

FINE & AMBROGNE

COUNSELORS AT LAW

1987 JAN -5 PM 3:48

Exchange Place, Boston 02109

PHIL DAVID FINE
PETER VAN
RALPH I. FINE
ANNA M. DiGENIO
ROBERT F. SYLVIA
ARNOLD M. ZAFF
GENE A. BLUMENREICH
FREDERICK J. PITTARO
CHRISTOPHER H. MILTON
STEPHEN R. DELINSKY
ROBERT L. NESSEN
BARRY L. WEISMAN
ROBERT L. CAPORALE
MICHAEL J. STONE
CATHLEEN DOUGLAS STONE
NANCY L. CONLIN
RODERICK MACLEISH, JR.

STUART A. OFFNER
JULIA LIVINGSTON BELL
STEPHEN T. LANGER
ANTHONY M. MOCCIA
SUSAN H. ALEXANDER
DANIEL C. COHN
JAMES C. SCHULWOLF
MICHAEL B. ROITMAN
DAVID E. KELLEY
MARC D. SCHERR
TREAZURE R. JOHNSON
ETHAN E. JACKS
SUSAN B. TUCHMAN
JUDITH B. MILLER
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KENNETH S. FEDERMAN
MURRAY L. SACKMAN
M. CHRYSA LONG
PETER M. PALLADINO
PETER D. VAN OOT
LEJB FOGELMAN
DAVID F. SLOTTJE*
DAVID E. DRYER
LAWRENCE A. KLETTER
AMANDA DARWIN

*NOT ADMITTED IN MASSACHUSETTS

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WASHINGTON, D.C. 20005
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OF COUNSEL

ALAN L. FELD

JAMES R. HOPKINS

GILBERT P. VERBIT

January 2, 1987

File No. 3604-1

Joseph Connarton
City Clerk
795 Massachusetts Avenue
Cambridge, MA 02139

Re: 75-83 Cambridge Parkway

Dear Mr. Connarton:

In accordance with our conversation of Wednesday, I am enclosing a Request for a discontinuance and related easement in the air space over Commercial Avenue together with a proposed form of Easement Agreement and City Council Order.

I think you will find the Request, Easement Agreement and Order similar in form to those used for the so-called "triangle easement" that was granted last summer.

As I mentioned, the necessity for requesting easements at this time does not relate to a design change but rather an internal miscommunication. The bay windows and balconies on the Commercial Avenue side of the project extend in a triangular configuration ~~seven~~ ^{FIVE} feet ~~from~~ ^{AND FOUR INCHES} the wall of the building and, since the property line is three feet from the building, the tips of these triangles extend ~~four~~ ^{TWO} feet ~~over~~ ^{AND FOUR INCHES} the Cambridge Avenue sidewalk beginning at the fourth story of the building.

These design features have always been a part of the project and have been approved by the Cambridge Planning Department in connection with the Planned Unit Development, have undergone design review by Mr. Dennis Carlone and have been approved by the Cambridge Building Department in the issuance of its building permit.

FINE & AMBROGNE

Joseph Connarton
City Clerk
Page Two
January 2, 1987

We appreciate your attempting to have our request heard
on such short notice and thank you for your cooperation.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Fred", with a long, sweeping horizontal line extending to the right.

Frederick J. Pittaro

FJP/bcf
Enclosures

RECEIVED BY
OFFICE OF CITY CLERK
1987 JAN -5 PM 3:48
CAMBRIDGE MA.

Cambridge, January 2, 1987

To the Honorable, the City Council
of the City of Cambridge:

The undersigned respectfully pray that the City Council order the discontinuance of and grant an easement for certain portions of air space above Commercial Avenue, a public way in the City of Cambridge, in connection with the proposed construction by 75-83 Cambridge Parkway Limited Partnership of a residential project at 75-83 Cambridge Parkway (the "Site").

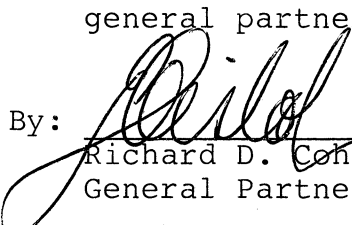
The areas to be discontinued consist of ten ^{2.75}~~eight~~ square foot triangular areas above the sidewalk on Commercial Avenue adjacent to the rear of 75-83 Cambridge Parkway beginning at the fourth floor of the proposed project all as shown on the plans attached hereto. Such areas shall be used for the placement of bay windows and balconies the plans for which have been previously approved by the Cambridge Planning Department in its approval of a Planned Unit Development and by the Cambridge Building Department in its issuance of a building permit. Therefor, such areas are no longer required for public purposes and the City Manager has determined, in his opinion, such areas are no longer required for public purposes.

Petitioners request that you act at the earliest possible date to discontinue the public right of way in this portion of Commercial Avenue and that you grant to 75-83 Cambridge Parkway Limited Partnership an easement appurtenant to the Site in the form submitted herewith.

75-83 CAMBRIDGE PARKWAY
LIMITED PARTNERSHIP,
Petitioner

By: RDC-Cambridge Parkway
Limited Partnership,
general partner

By:


Richard D. Cohen,
General Partner

FOR

City of Cambridge

MASSACHUSETTS

In City Council

Jan 5 198 *7*

<i>C. Sella - Motion to approve Request for an Easement at 75-83 Cambridge Parkway</i>				
	YEA	NAY	ABSENT	PRESENT
Mr. Thomas W. Danehy	✓			
Mr. Francis H. Duehay	✓			
Ms. Sandra Graham	✓			
Mrs. Sheila T. Russell	✓			
Mr. David E. Sullivan	✓			
Mr. Alfred Vellucci	✓			
Mr. William H. Walsh	✓			
Ms. Alice K. Wolf	✓			
Mayor Walter J. Sullivan	✓			

9

CJ
MS
Mr

1/2/87

GRANT OF EASEMENT

This Easement Agreement is made as of the day of , 1987, by and between THE CITY OF CAMBRIDGE, a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts (the "City") and 75-83 CAMBRIDGE PARKWAY LIMITED PARTNERSHIP, a Massachusetts limited partnership having an address at c/o Cohen Properties, Exchange Place, Boston, Massachusetts ("CPLP").

W I T N E S S E T H T H A T :

WHEREAS, CPLP owns a parcel of land and improvements thereon known as 75-83 Cambridge Parkway more particularly described in a deed dated December 9, 1985 recorded in the Middlesex South District of the Land Court as Document No. 695895 (the "Development Site") and on which CPLP plans to engage in major construction of residential or other structures approved by the City pursuant to a Special Permit as part of a Planned Unit Development; and

WHEREAS, CPLP seeks to acquire from the City a permanent easement in certain areas abutting the Development Site more particularly described on Exhibit A (the "Easement Area"),

WHEREAS, pursuant to an order adopted January __, 1987 the Cambridge City Council has approved the granting of this easement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and CPLP agree as follows:

1. The City hereby grants to CPLP (and its successors and assigns as owners of the Development Site) a permanent exclusive easement in the Easement Area for the benefit of the Development Site for any purpose incident to any use from time to time on the Development Site including, without limitation, the placement of bay windows and balconies in the Easement Area relating to buildings constructed on the Development Site.

2. CPLP agrees that the City shall not be responsible for any loss or damage to person or property which may occur in connection with its activities in or use of the Easement Area, and that in any case CPLP shall save the City harmless and indemnified from any liability for injury, loss, accident or damage to person or property, and from any claims, actions, proceedings, and costs in connection therewith, including reasonable attorney's fees, arising from omission, fault, negligence or other misconduct of CPLP, or arising from any use by CPLP made on or about the Easement Area provided that no partner of CPLP shall have any personal liability hereunder.

3. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives as of the date and year first above written.

75-83 CAMBRIDGE PARKWAY
LIMITED BY PARTNERSHIP
By: RDC-CAMBRIDGE PARKWAY
LIMITED PARTNERSHIP,
GENERAL PARTNER

By _____
General Partner

THE CITY OF CAMBRIDGE

By _____
Robert Healy, City Manager

Approved as to form:

EXHIBIT A

Easement Area

See attached Plans

Comm. from Frederick J. Pittaro, Esq., Fine & Ambroogne on behalf of 75-83 Cambridge Pkwy. Ltd. Partnership by RDC-Cambridge Parkway Ltd. Partnership, Richard D. Cohen, Gen. Partner requesting permission for a discontinuance & related easement in the air space over Commercial Ave. for the premises numbered 75-83 Cambridge Parkway & transmitting a proposed easement agreement & Council order for consideration.

In City Council,

January 5, 1987

VMV

Order Adopted
Roll Call
9-0-0